

City of Merced

AGREEMENT FOR HARVESTING SERVICES

This Agreement is entered into this ___ day of _____, 2020, by and between the City of Merced, (hereinafter “City”) whose address of record is 678 West 18th Street, Merced, California 95340, and McLaughlin Hay Service, Inc., a California Corporation (hereafter “Harvester”) whose address of record is P.O. Box 230, El Nido, California 95317, for good and valuable consideration the receipt and sufficiency is hereby agreed, upon the following mutual promises:

1. **SCOPE OF SERVICES.** City currently has approximately 759 acres of various crops, such as alfalfa, winter forage, sorghum sudan and corn silage (the “Crops”). Harvester has bid on the right to harvest said Crops and is the successful bidder following a bid process. Harvester agrees to harvest the Crops at the bid amount as shown in Exhibit “A” attached hereto and herein incorporated by reference. The allocation of crop acreage and rotation of crops may change during the term of this Agreement at the sole discretion of the City.

2. **CROP LOCATION.** The Crops are located at 10260 Gove Road, Merced, California. Fields may be taken out of production upon the discretion of the City for the incorporation of Bio-solids which will typically occur twice a year.

3. **COMPENSATION.** Payment by the City to the Harvester for actual services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed under the agreement, in accordance with the following:

a. Harvester’s costs of harvesting said Crops as set forth pursuant to the rate schedule set forth in Exhibit “A” attached hereto;

b. The costs of any groundwork performed on a time and materials basis pursuant to the rate schedule set forth in Exhibit “A” attached hereto. All work must be preapproved by City. Harvester must submit weekly timesheets reflecting the days and hours worked for each individual providing groundwork services pursuant to this Agreement.

4. **DESIGNATED CONTACT:** For purposes of this Agreement, the day-to-day contact for this Agreement is Mr. Charles Slagter, Operations

Supervisor, at phone number (209) 385-6207. Arrangements for the harvesting and access to the fields are to be made through Mr. Slagter.

5. HARVESTER RESPONSIBILITIES. Harvester is to pay for the costs of harvesting Crops and transporting Crops from the City of Merced Land Application site to Harvester's desired location for storage or sale. All Crops are to be stacked separately from each field. Bale count and the tonnage per field is to be provided for documentation purposes.

6. COORDINATION OF WORK. The loading and harvesting of the Crops is to be coordinated with the City's Land Application Lead Worker. All requests for harvesting and loading outside of the City's normal business hours must be coordinated and approved in advance with the City's Land Application Lead Worker.

The coordination of cutting, baling, spraying, irrigation, and planting will be jointly handled by the City's Land Application Program Lead Worker, the City Operations Supervisor and Harvester, however, City retains the final authority on irrigation timing, practices and fertilizer applications to ensure compliance with relevant permits and regulations.

7. REMOVAL OF CROPS. The Crops must be removed from City fields within a reasonable amount of time after harvesting, or the City, at Harvester's expense, will remove remaining Crops.

8. CERTIFIED WEIGHT TAGS. All certified weight tags must be submitted to the Land Application Lead Worker on a daily basis. The Land Application Lead Worker may approve weekly weight tag submittals, only when requested in advance. **(NO EXCEPTIONS TO THIS REQUIREMENT ARE ALLOWED).**

9 FIELD GRADING. The City has the sole discretion to pre-select and identify fields that may be considered standard or sub-standard.

10. RELEASE OF LIABILITY. Harvester shall sign a Release of Liability, a copy of which is attached to this Agreement. No harvesting of the Crops shall commence until all documents, including the proof of the required Insurance coverage and Release of Liability have been executed and/or filed with the City.

11. INDEPENDENT CONTRACTOR. Nothing herein is intended to create an employer-employee relationship between the City and Harvester. Harvester and any of his or her employees, workers or assistants are independent contractors and not agents, sub-agents, or employees of the City. Contractor shall indemnify, defend (with legal counsel selected by City), protect, and hold the City, its officers, employees, and agents harmless from and against any and all claims, demands, causes of action, orders, decrees or judgments for personal liability including all costs occasioned by growing out of, or arising or resulting from: 1) the performance of any services required herein to be performed by Harvester, or 2) any act or omission on the part of the Harvester or any employees, workers or assistants of Harvester. Harvester shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Harvester desire any insurance protection, Harvester is to acquire same at his/her expense.

In the event Harvester or any employee, agent, or subcontractor of Harvester providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Harvester shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Harvester or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

12. INSURANCE. During the term of this Agreement, Harvester shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

(i) Harvester shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.

- (ii) Harvester shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Harvester.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Harvester and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Harvester shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Harvester shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Harvester.
- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Harvester and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

e. Certificate of Insurance. Harvester shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium. In addition to any other remedies City may have, City reserves the right to withhold payment if Harvester's insurance policies are not current.

13. TERMINATION FOR CONVENIENCE OF CITY. The City may terminate this Agreement any time by mailing a notice in writing to Harvester that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Harvester.

14. TERM. Unless terminated pursuant to section 13 of this Agreement, the term of this Agreement shall commence on June 1, 2020, and shall continue for a period of two (2) years. At the conclusion of the two year term, the Agreement can be extended for up to two (2) one (1) year terms- for a total of an additional two years- in the sole discretion of the City. An annual review of Harvester's performance for all services being provided pursuant to this Agreement shall occur during each year the Agreement is in effect at a date determined by the City. The costs of harvesting the Crops, as shown in Exhibit "A", shall remain the same but each year the Agreement is in effect, the Harvester shall be entitled to an annual adjustment for inflation ("New Cost") based on the Consumer Price Index ("CPI") for the area closest to the City, published by the United States Department of Labor, Bureau of Labor Statistics. In the event the CPI is discontinued or revised during the term of this Agreement, another substantially similar government index

or computation with which it is replaced shall be used in order to obtain substantially similar results.

15. **HARVESTER'S BOOKS AND RECORDS.** Harvester shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Harvester to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

16. **CONFORMANCE TO APPLICABLE LAWS.** Harvester shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Harvester in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Harvester hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Harvester so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Harvester hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

17. **WAIVER.** In the event that either City or Harvester shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

18. **INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS.** In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

19. **AMBIGUITIES.** This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

20. **VENUE.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

21. **AMENDMENT.** This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

22. **INTEGRATION.** This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

23. **AUTHORITY TO EXECUTE.** The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

24. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Jim B. Arulant 5-11-20
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Office

HARVESTER
MCLAUGHLIN HAY SERVICE, INC.,
A California Corporation

BY: 
(Signature)

John McLaughlin
(Typed Name)

Its: _____

BY: _____
(Signature)

(Typed Name)

Its: _____

Taxpayer I.D. No. _____

ADDRESS: P.O. Box 230
El Nido, CA 95317

TELEPHONE: 

FACSIMILE: _____

E-MAIL: 

McLaughlin Hay Service, Inc.

2020 rates

Swathing: \$16.00/acre alfalfa

\$20.00/acre forage

Raking: \$7.00/acre alfalfa

\$10.00/acre 3 into 1 or 4 into 1 green chop

Baling:

Big Bales \$18.00/ton or \$12.00/bale

Small bales \$18.00/ton or \$1.20/bale

Harrowbedding:

Big bales \$4.25/bale

Small bales \$0.42/bale

(cost per ton around \$7.00/ton depending on bale weight)

Package Price- Cut, Rake, Bale & Harrowbed:

\$42.00/ton- based on 1 ton to the acre, anything under 1 ton/acre will bill on piece work.

EXHIBIT A

McLaughlin Hay Service, Inc



City of Merced ♦ Wastewater Treatment Facility
 Land Application Program
 1776 Grogan Ave, Merced, CA 95341 ♦ Phone (209) 385-6892

Supplemental Bid Form

	Equipment Inventory List	Quantity
1	Big Balers with cutters	6
2	Swathers	4
3	rakes	6
4	Small balers	5
5	Retriever Truck	1
6		
7	Access to harrowbeds	8
8		
9		
10	lg. Assortment of misc. tractors &	
11	implements we loan to city when	
12	needed.	
13		

Brokerage Percentage (%) per ton for Commodity Fair Market Value:

Hay: 5% Silage: 6%

Harvest Costs

Swathing \$16 ⁰⁰ /AC Alfalfa	\$20 ⁰⁰ /AC Sudan/forage
Raking \$7 ⁰⁰ /AC dry hay	\$10 ⁰⁰ /AC green chop
Bale Big Bales: \$18 ⁰⁰ /ton	Small Bales: \$18 ⁰⁰ /ton
Remove to Hay Pad Big Bales: \$42 ⁵⁰ /per bale	Small Bales: 42 ⁵⁰ /bale

package price:
 cut, rake, bale + harrowbed
 \$42⁰⁰/ton

piece work:
 cut, rake, bale + harrowbed
 = \$48⁰⁰/ton