

# City of Merced

## AGREEMENT FOR BROKERAGE SERVICES

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Merced, (hereinafter "City") whose address of record is 678 West 18<sup>th</sup> Street, Merced, California 95340, and McLaughlin Hay Services, Inc, a California Corporation, (hereafter "Broker") 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 two hundred and sixty (260) acres of alfalfa, four hundred and fifteen (415) acres of rotating crops of Tritacale and silage corn and an additional seventy (70) acres of dry farm winter oats (the "Crops"). Broker has bid on the right to broker and harvest said Crops and is the successful bidder following a bid process. Broker agrees to harvest and broker 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.

Broker shall market the City's Crops and sell them at a price based upon the current market price in the Merced area for a similar grade and quality of the Crops sold. Broker shall utilize best marketing efforts on behalf of the City to return the highest possible price in the best interest of the City. Samples will be taken by City of Merced staff and once the results are obtained, Broker and a designated representative from the City will determine the approximate market value of the Crop.

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. PAYMENT TO CITY: Within thirty (30) days from the date of sale of any crops (in whole or in part thereof) covered by this Agreement, Broker shall pay City the proceeds from the sale of said Crops less the following expenses:

a. Broker's costs of brokering and 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. Broker 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) 385-6975. Arrangements for the harvesting and access to the fields are to be made through Mr. Slagter.

5. BROKER RESPONSIBILITIES. Broker is to pay for the costs of harvesting Crops and transporting Crops from the City of Merced Land Application site to Broker's desired location for storage or sale. Broker shall be entitled to deduct its costs of brokering and harvesting the Crops from the proceeds of any sales of the Crops only as authorized by section 3 of this Agreement. All Crops are to be sold "as is and where is" and without any recourse to the City of Merced. All Crops are to be stacked separately from each field. 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 Broker, 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 Broker'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 advanced. **(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. Broker 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 Broker. Broker 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 Broker, or 2) any act or omission on the part of the Broker or any employees, workers or assistants of Broker. Broker shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Broker desire any insurance protection, Broker is to acquire same at his/her expense. In the event Broker or any employee, agent, or subcontractor of Broker 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, Broker 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 Broker 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, Broker 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) Broker 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) Broker 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 Broker.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Broker 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) Broker 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) Broker 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 Broker.
- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Broker 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. Broker 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 Broker'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 Broker that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Broker.

14. TERM. Unless terminated pursuant to section 13 of this Agreement, the term of this Agreement shall commence on \_\_\_\_\_, and shall continue for a period of three (3) years. At the conclusion of the three 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 Broker'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 brokering and harvesting the Crops, as shown in Exhibit "A", shall remain the same but each year the Agreement is in effect, the Broker 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. **BROKER'S BOOKS AND RECORDS.** Broker 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 Broker 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.** Broker shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Broker in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Broker 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 Broker 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, Broker 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 Broker 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:

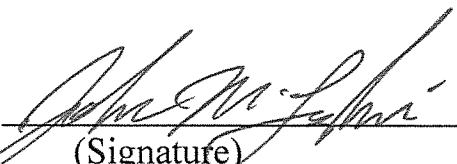
BY: Kelly Fincher 11/27/14  
City Attorney Date



ACCOUNT DATA:

BY: \_\_\_\_\_  
Verified by Finance Office

BROKER  
MCLAUGHLIN HAY SERVICE, INC.,  
A California Corporation

BY:   
(Signature)

John McLaughlin  
(Typed Name)

Its: \_\_\_\_\_

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name)

Its: \_\_\_\_\_

Taxpayer I.D. No. 26-0191008

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

TELEPHONE: (209) 777-5090

FACSIMILE: (209) 723-1924

E-MAIL: \_\_\_\_\_

City of Merced  
Request for Proposal  
For the brokerage of hay

Please contact Mr. Charles Slagter, Operations Supervisor, at (209) 385-6207 to arrange an inspection of the Land Application fields. Inspections will be arranged between 9:00 a.m. and 3:00 p.m., Monday through Friday, at the City of Merced Land Application, 10260 Gove Road, Merced CA.

The City of Merced Land Application Division currently has in production 260 acres of alfalfa, 415 acres of rotating crops of Triticale and Silage corn, and 70 acres of dry farm winter oats (hereafter "Crops"). Fields may be taken out of production upon the discretion of City of Merced staff for the incorporation of biosolids, which typically occurs twice a year. The allocation of crop acreage and rotation of crops may change during the term of the Brokerage Agreement at the sole discretion of the City.

The following Terms and Conditions will apply to the brokerage of all hay crops:

1. Bidders are to formally submit the rates they charge for brokerage of Crops. See supplemental bid form. These rates will be in effect during the term of the Agreement, but shall be subject to an annual adjustment for inflation 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. If the CPI is discontinued or revised, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same results as would be obtained if the index had not been discontinued or revised.
2. The successful responder will sell each cutting of Crops according to market value and deduct brokerage fees, harvesting costs, as well as any time or materials incurred during the growing cycle of the harvested crop. Determination of value will be coordinated with and approved by Charles Slagter, Operations Supervisor WWTF.
3. Hay Samples will be taken by City of Merced staff, and once the results are obtained, the broker and city staff will determine the approximate market value of the hay. Brokerage of the hay crop is responsibility of the broker.
4. The coordination of cutting, baling, spraying, irrigation, and planting is to be handled between the City's Land Application Program Lead Worker, the operations supervisor, and the broker. The City of Merced has the final authority and discretion regarding irrigation timing and practices and fertilizer applications to ensure compliance with permits and regulations.
5. All hay or silage is to be sold "as is and where is" and without any recourse to the City of Merced. Upon harvesting, all crops are to be sold and removed from premises in as short as time possible to avoid accumulation of stacked hay.
6. All hay is to be stacked separately from each field and tonnage per field is to be provided for documentation purposes.
7. Crops must be paid in full (minus any authorized deductions) to the City of Merced within 30 days of the sale. All loads must be weighed on a certified scale. (NO EXCEPTIONS). Checks can be made out to the City of Merced, and dropped off in person at the WWTF.
8. The City of Merced reserves the right to reject any and/or all proposals, or to accept the proposal that best serves the public, even though it may not be the lowest.

EXHIBIT A

9. Proposals are to encompass the entire harvest, proposal for certain crops or for certain fields are not accepted.
10. The length of the Agreement will be for three years with an option to extend the Agreement for two (2) one (1) year periods. An annual review of the broker's performance in all aspects of service shall be performed by the City. The City of Merced retains the right to cancel the contract at any time.
11. The successful responder will be required to enter into an Agreement that will include the requirements of this RFP as well as other requirements, including signing a Release of Liability and Indemnity Agreement. Any submission of a response without objection to the Agreement or Release of Liability and Indemnity Agreement indicates responder's understanding and intention to sign the aforementioned Agreements. If there is a term or condition in either Agreement that responder intends to negotiate, it must be stated in their response. The City reserves the right to reject any response(s) containing exceptions or modifications to the Agreements. The Agreements are attached to this RFP and should be reviewed carefully before submitting a response as both contain indemnification clauses.

SEALED BIDS will be accepted until 3:00 p.m. January 5, 2016, at the city of Merced Wastewater Treatment Facility located at 10260 S. Gove Road, Merced, CA, 95341.

The undersigned agrees to the harvesting, selling, brokering of all herein described hay.

The undersigned also agrees to pay all such charges as may be necessary for the purchase of the herein described Hay.

Bidder's Name: McLaughlin Hay Service Inc.  
By: [Signature]  
Signature  
Address: P.O. Box 230  
El Nido CA 95317  
Phone Number: 209-777-5090  
Date: 12-18-15

### Supplemental Bid Form

#### Equipment Inventory List

1	Big Balers	amount: 5
2	Small balers	amount: 5
3	hay rakes	amount: 5
4	Swathers	4
5	Small tractors	7
6	med. tractors	2
7	Big tractors	5
8	retriever truck	1
9	various implements	
10		
11	All Late model Equipment	
12		

#### Brokerage Fees:

Hay /ton

Silage/ton

Labor rate

\$15.00/ton  
\$5.00/ton  
\$15.00/hr

#### Harvest Costs

Cutting	\$11.00/ac Alfalfa, \$15-\$18.00/ac oats & grain
Raking	\$5.50/ac
Baling	\$16.00/ton
Stacking	45¢ small bales 4.50 big bales

#### Attachment #1

Package Deal = \$38.00/ton

McLaughlin Hay Service, Inc.

P.O. Box 230

El Nido, Ca. 95317

(209)777-5090

We have 25+ years of farming experience with 20+ years custom hay work. Currently we process 9,000 acres on a monthly basis during the hay season. We have a solid relationship and reputation with our customers and within our community. McLaughlin Hay Service, Inc. has grown annually due to reputation and quality of work. We have been doing work for the City of Merced Waste Water Treatment Plant for the past several years.

Thank You,

John McLaughlin

## RELEASE OF LIABILITY AND INDEMNITY

In consideration of the City of Merced's ("City") brokerage agreement with McLaughlin Hay Service, Inc., a California Corporation, ("Releasor") for the harvest crop, Releasor hereby agrees to forever release, discharge and acquit City, its managers, officers, employees, agents and volunteers, and each of them, from any and all claims, injuries, demands, obligations, indebtedness, acts, omissions, costs, losses, damages, liabilities or causes of action of every type, kind, nature, description or character that may arise out of or in connection with or be incidental to Releasor's harvesting, loading and transporting of the crop from the City's Land Application site, irrespective of how, why or by reason of what facts such injuries, losses, damages, or liabilities may occur.

Releasor further acknowledges that it is assuming all risks relating to, arising out of or in connection with, or inherent to harvesting, loading and transporting of the crop and that such risks may include claims, losses, injuries, demands, obligations, indebtedness, acts, omissions, costs, damages, liabilities or causes of action asserted by persons or entities not a party to this Agreement, including but not limited to, property damage, personal injury, and wrongful death claims and including but not limited to all risks relating to any act, omission, misfeasance, malfeasance or negligence of City, its managers, officers, employees, agents or volunteers.

By execution of this Agreement, Releasor on behalf of itself, its successors and assigns represents that it is insured for any and all of the above-described claims, losses, damages, or causes of action which may be asserted against City.

Releasor further acknowledges and agrees, at its sole expense, to indemnify and defend City against any and all of the above-described claims, losses, damages, or causes of action which may be asserted against City.

The undersigned hereby acknowledges that she/he has read the foregoing Agreement and knows the contents thereof, that the terms thereof are contractual and not by way of recital, that she/he signs this Agreement as his/her own free act, and that she/he is authorized to sign this Agreement by Releasor.

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I AM FULLY AWARE THAT BY SIGNING THIS DOCUMENT I AM AGREEING TO SHIFT LEGAL LIABILITY FOR ALL RISKS, INCLUDING ALL ACTS, OMISSIONS, MALFEASANCE, MISFEASANCE, OR NEGLIGENCE OF THE CITY, TO RELEASOR SO THAT I MAY FULFILL MY OBLIGATIONS UNDER THE BID AWARDED TO ME FOR THE PURCHASE OF THE ALFALFA HARVEST CROP.

DATED: 2/2/16

“RELEASOR”

McLaughlin Hay Service, Inc.,  
A California Corporation,

BY: 

Signature

John McLaughlin  
Print Name