

**PURCHASE CONTRACT
FOR THE CENTRAL PARK FALLEN HEROES MEMORIAL REMEMBRANCE POPPY
FROM THOMAS-SWAN SIGN COMPANY, INC.**

This Purchase Contract ("Contract"), made and entered into this day of _____, 20__, by and between the **CITY OF SAN MATEO**, a municipal corporation existing under the laws of the State of California ("CITY"), and Thomas-Swan Sign Company, Inc., a Corporation ("VENDOR").

RECITALS:

A. CITY desires to purchase certain custom fabricated signage hereinafter described to be placed in Central Park as part of the Fallen Heroes Memorial.

B. CITY desires to engage VENDOR to provide this custom fabricated signage by reason of its qualifications and experience and VENDOR has offered to provide the required goods on the terms and in the manner set forth herein.

NOW, THEREFORE, IT IS AGREED as follows:

SECTION 1 - PURCHASE

The goods to be purchased from VENDOR under this Contract are described in Exhibit A, which is attached and incorporated by reference.

SECTION 2 - PRICE AND TAXES

All prices shall be as stated in this Contract and are firm and not subject to escalation. This purchase is subject to all California sales tax. Municipalities are exempt from federal excise and transportation taxes. Prices shall exclude these taxes.

SECTION 3 - PAYMENT

Unless otherwise agreed in writing, payment terms shall be net thirty (30) days from date of delivery and acceptance of goods. Invoices must cite the purchase order number to prevent delay in payment. All invoices must be mailed to City of San Mateo, Attn: Accounts Payable, 330 West 20th Avenue, San Mateo, CA 94403.

SECTION 4 - DELIVERY AND PERFORMANCE

Time is of the essence in the performance of this Contract. Delivery of goods shall occur no later than March 3, 2024. If delivery of goods cannot be made at the specified time, VENDOR shall promptly notify the CITY of the earliest possible date for delivery. Notwithstanding such notice, if VENDOR for any reason fails to deliver goods within the time specified or to the CITY's satisfaction the CITY may terminate this Contract or any part thereof without liability except for goods previously provided and accepted. The CITY's receipt or acceptance of all or part of a non-conforming delivery shall not constitute a waiver of any claim, right or remedy the CITY has under this Contract or applicable law.

SECTION 5 - SHIPMENT AND INSPECTION

VENDOR assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products. No charges for transportation containers, packing, etc., will be allowed the vendor unless so specified in this Contract. All shipments shall be F.O. B. to the CITY's Park Yard, at 2001 Pacific Blvd., San Mateo. Transportation charges shall be shown as a separate item on the invoice.

The CITY may revise shipping instructions as to any goods not as yet shipped. The CITY shall have the right to inspect any or all of the goods at VENDOR's place of business or upon receipt by the CITY. By reason of its failure to inspect the goods, the CITY shall not be deemed to have accepted any defective goods or goods which do not conform to the specifications provided or to have waived any of the CITY's rights or remedies arising by virtue of such defects or non-conformance. VENDOR shall be responsible for payment of shipping for the return of any defective goods. Shipping documents and invoices must cite the Purchase Order number.

SECTION 6 - WARRANTIES

In addition to any other expressed or implied warranties and unless otherwise agreed in writing, VENDOR warrants that all products delivered hereunder will be new, suitable for use as described, of the grade and quality specified, free from all defects in design, material and workmanship; in conformity with all samples, drawings, descriptions and specifications furnished; in compliance with all applicable federal, state and local laws and regulations, and free of any liens and encumbrances. These warranties shall not be deemed to exclude VENDOR's standard warranties or other rights or warranties which the CITY may have or obtain.

SECTION 7 - INDEMNITY

VENDOR agrees to hold harmless and indemnify CITY, its elected and appointed officials, employees, and agents from and against any and all claims, loss, liability, damage, and expense arising out of VENDOR's performance of this Contract, except for those claims arising out of CITY's sole negligence or willful misconduct. VENDOR agrees to defend City, its elected and appointed officials, employees, and agents against any such claims. The VENDOR's duty to indemnify shall survive expiration or early termination of this Contract.

SECTION 8 - TERMINATION

This Contract may be terminated by mutual consent of both parties or by the CITY at its discretion. The CITY may cancel an order for goods at any time with written notice to VENDOR, stating the extent and effective date of termination. Upon receipt of this written notice, VENDOR shall stop performance under this Contract as directed by the CITY. If the Contract is terminated, VENDOR shall be paid in accordance with the terms of the Contract for goods delivered and accepted.

SECTION 9 - REMEDIES

In the event of VENDOR's breach of this Contract, City may take any or all of the following actions, without prejudice to any other rights or remedies available to the City by law: (a) require Vendor to repair or replace such goods, and upon VENDOR's failure or refusal to do so, repair or replace the same at VENDOR's expense; (b) reject any shipment or delivery containing defective or nonconforming goods and return for credit or replacement at VENDOR's option, said return to be made at VENDOR's cost and risk; (c) cancel any outstanding deliveries and treat such breach by VENDOR as VENDOR's repudiation of this contract. In the event of the CITY's breach hereunder, VENDOR's exclusive remedy shall be VENDOR's recovery of the goods or the purchase price payable for goods shipped prior to such breach.

SECTION 10 - COMPLIANCE WITH LAW

VENDOR warrants that it will comply with all federal, state, and local laws, ordinances, rules and regulations applicable to its performance under this Contract. VENDOR shall obtain and maintain throughout the life of the Contract all permits or licenses required in connection with the manufacture, sale, and shipment of the products ordered under this Contract.

SECTION 11 - ASSIGNMENT

VENDOR shall not delegate or subcontract any duties and services or assign any rights or claims under this Contract without the CITY's prior written consent.

SECTION 12 - ARTWORK, DESIGNS, PATENTS, COPYRIGHTS AND TRADEMARKS

VENDOR hereby agrees that the sale, use or incorporation into manufactured products of all machines, software, hardware, materials and other devices furnished under this Contract are free and clear of infringement of any valid patent, copyright, or trademark. VENDOR shall hold the CITY harmless from any and all costs and expenses, including attorney fees, liability, and loss of any kind growing out of claims, suits or actions alleging such infringement, and VENDOR agrees to defend such claims, suits or actions.

SECTION 13 - GOVERNING LAW

The Purchase Order and the Contract between the parties evidenced hereby or attached thereto shall be deemed to be made in the State of California and shall in all respects be construed and governed by the laws of that state.

SECTION 14 - VENUE

This Contract shall be governed by the laws of the State of California and, in the event of litigation, venue will be in the County of San Mateo.

SECTION 15 - WAIVER

The waiver of any term, condition or provision hereof shall not be construed to be a waiver of any other such term, condition or provision, nor shall such waiver be deemed a waiver of a subsequent breach of the same term, condition or provision.

SECTION 16 - COSTS AND ATTORNEY FEES

Attorney fees in total amount not exceeding \$5000, shall be recoverable as costs (by the filing of a cost bill) by the prevailing party in any action or actions to enforce the provisions of this Agreement. The above \$5000 limit is the total of attorney fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions. It is the intent of this Agreement that neither party shall have to pay the other more than \$5000 for attorney fees arising out of an action, or actions to enforce the provisions of this Agreement.

SECTION 17 - MEDIATION

Should any dispute arise out of this Contract, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the California State Board of Mediation and Conciliation, or other agreed-upon service. The mediator shall be selected by a "blindfolded" process.

The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

SECTION 18 - NOTICES

All notices hereunder shall be given in writing and mailed, postage prepaid, addressed as follows:

To CITY: Joanne Magrini
City of San Mateo
330 W 20th Avenue
San Mateo, CA 94403

To VENDOR: Thomas-Swan Sign Company, Inc.
Attn: Mike Roberts
2717 Goodrick Ave.
Richmond, CA 94801

SECTION 19 - AGREEMENT CONTAINS ALL UNDERSTANDINGS; AMENDMENT

This document represents the entire and integrated agreement between CITY and VENDOR and supersedes all prior negotiations, representations, and agreements, either written or oral.

This document may be amended only by written instrument, signed by both CITY and VENDOR.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, CITY OF SAN MATEO and THOMAS-SWAN SIGN COMPANY, INC. have executed this Agreement the day and year first above written.

CITY OF SAN MATEO

VENDOR

Alex Khojikian	Date
City Manager	

Thomas-Swan Sign Company, Inc. Date
Mike Roberts
President

APPROVED AS TO FORM

Mazarin Vakharia	Date
Assistant City Attorney	

EXHIBIT A

T H O M A S • S W A N



PROPOSAL

REF. NO. 09-84250

www.thomasswan.com

THOMAS-SWAN SIGN CO., INC., 2717 GOODRICK AVENUE, RICHMOND, CA 94801 510.232.9610 FAX 510.232.9611 LICENSE NO. 269069

PROPOSAL SUBMITTED TO

City Of San Mateo

PHONE

510-522-7542

DATE

August 17, 2023

STREET

330 W. 20th Ave.

JOB NAME

San Mateo Park Memorial Grove

CITY, STATE AND ZIP CODE

San Mateo, CA 94403

JOB LOCATION

Deliver to City of San Mateo

ATTENTION

King Leong

FAX OR EMAIL

kleong@cityofsanmateo.org

Thomas-Swan Sign Company is pleased to provide pricing for the following scope of work per provided drawings from RRM Design group dated 5/8/2023:

Manufacture and deliver with hardware (qty. 7) 1/4" thick stainless steel corners that are welded to 2" x 7" stainless steel channel which is welded to 1/2" thick stainless plate with mounting holes. One side of the corner to have a painted finish which is the Poppy graphic and the other side to have a non directional finish with no graphics.

\$ 79,500.00 Mfg.
3,000.00 Drawings
1,000.00 Samples
1,500.00 Delivery (2 Trips)
8,181.25 Tax @9.625%
\$ 93,181.25 Total

****Please see attached general exclusion sheet that may pertain to this scope****

We Propose hereby to furnish material and labor-complete in accordance with above specifications, for the sum of:

Ninety Three Thousand One Hundred Eighty One Dollars and 25/100

Dollars

(

\$ 93,181.25

Payment to be made as follows:

Paid in Full Upon Delivery

Michael Roberts

JM

Note: This proposal may be withdrawn by us if not accepted within

30

Days

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. ANY ALTERATION OR DEVIATION FROM ABOVE SPECIFICATIONS INVOLVING EXTRA COSTS WILL BE EXECUTED ONLY UPON WRITTEN ORDERS, AND WILL BECOME AN EXTRA CHARGE OVER AND ABOVE THE ESTIMATE. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

Acceptance of Proposal - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above and/or terms and conditions on the attached exclusion sheet.

Signature

Date

Signature

Date

PROPOSAL



REF. NO. 09-84250

www.thomasswan.com

THOMAS-SWAN SIGN CO., INC., 2717 GOODRICK AVENUE, RICHMOND, CA 94801 510.232.9610 FAX 510.232.9611 LICENSE NO. 269069

PROPOSAL SUBMITTED TO

PHONE

DATE

THOMAS-SWAN'S BID IS SUBJECT TO THE FOLLOWING EXCLUSIONS:

1. Useable artwork is required (ie. Adobe Illustrator-outlined, EPS or Vector Art)
2. Price excludes overtime or off hours, unless specified.
3. Permits (if required) will be billed at cost.
4. Permit procurement will be billed at \$95.00 per hour and close-out with inspector will be billed at \$125.00 per hour.
5. Structural calculations and engineering are not included.
6. Special inspections or testing of any kind not included.
7. Backing or bracing in wall (if required) not included.
8. Patching and painting not included.
9. Opening and/or closing of any walls or columns are not included.
10. Thomas-Swan must have full, uninterrupted access to all related work areas before work begins.
11. Primary power to be owner supplied within 6' of required area.
12. Changes in scope of work must have an approved change order before work continues.
13. Building contractor must comply with NEC Chapter 6, article 600.
14. Quote is subject to change pending site survey.
15. Thomas-Swan is not responsible for delays by others or delays due to adverse weather conditions.
16. Any utility / power line obstructions are not Thomas-Swan's responsibility.
17. Any wood product used outside is not guaranteed from warping, cracking, or extractive bleeding.
18. Landscaping or grass repair areas are not included in our scope / contract.
19. Traffic management is not included and will be billed as extra, if needed.
20. For standard illuminated letters - 4" wall with no obstructions or interruptions from others, installed during normal business hours, unless specified.