

**PURCHASE CONTRACT FOR ONE (1) NEW CASE 540SN BACKHOE
FROM SONSRAY MACHINERY**

This Purchase Contract ("Contract"), made and entered into this day of _____, by and between the **CITY OF SAN MATEO**, a municipal corporation existing under the laws of the State of California ("CITY"), and **SONSRAY MACHINERY**, a limited liability company ("VENDOR").

RECITALS:

A. CITY desires to purchase a certain a CASE 540SN Backhoe hereinafter described.

B. CITY desires to engage VENDOR to provide this CASE 540SN Backhoe 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 to this Agreement, which is attached and incorporated by reference.

SECTION 2 - PRICE AND TAXES

All prices, for an amount not to exceed \$137,259.09, 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 receipt of invoice or acceptance of goods, whichever occurs last. 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. 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. 1961 Pacific Boulevard, San Mateo, CA 94403. 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.

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

This 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

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 an amount not exceeding \$85 per hour per attorney, and 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 Contract. 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 provision 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 Contract.

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: David Fink
City of San Mateo
1961 Pacific Blvd.
San Mateo, CA, 94403

To VENDOR: Sonsray Machinery
Attn: James Rydman
1450 Doolittle Drive
San Leandro, CA, 94621

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.

IN WITNESS WHEREOF, CITY OF SAN MATEO and SONSRAY MACHINERY, LLC, have executed this Agreement the day and year first above written.

CITY OF SAN MATEO

SONSRAY MACHINERY, LLC

Brad B. Underwood
Public Works Director

Name _____
Title _____

Its Authorized Agent

APPROVED AS TO FORM

Gabrielle Whelan
Assistant City Attorney

EXHIBIT A

Vendor Quotation



QUOTATION

NJPA-SOURCEWELL PRICING - Contract #032119

CITY OF SAN MATEO



To: City of San Mateo
 Address: 330 W. 20TH AVE., SAN MATEO, CA 94403
 Attn: Cathy Huffington
 From: James Rydman: Account Manager
 Date: February 24th, 2020

Sonsray Machinery
 1450 Doolittle Dr.
 San Leandro, CA 94621
 Store: 510-562-0653
 Fax: 510-633-7893
 Cell: 510-725-5781

Quote good for 30 days (UNIT SUBJECT TO PRIOR SALE)

2/25/2020

QTY	CODE	DESCRIPTION	Case MSRP	NJPA Price (less 37%)
1	BASE	CASE 580SN 4WD T-4 FINAL BACKHOE	\$ 135,221.00	\$ 85,189.23
	463772	QUICK PICKS	\$ (5,000.00)	\$ (3,150.00)
1	423061	4WD POWERSHIFT S-TYPE TRANSMISSION	\$ 2,370.00	\$ 1,493.10
1	8201110	FRONT WHEELS 12X16.5, 10PR LUG TREAD	BASE	
1	8401140	REAR WHEELS 19.5LX24, 10PR STD	BASE	
1	464075	1-WAY/2-WAY AUXILIARY, EXTENDAHOE, HYDRAULIC CPLR	\$ 12,808.00	\$ 8,069.04
1	423047	HEAVY FRONT COUNTER WEIGHT FOR EXTENDAHOE	\$ (750.00)	\$ (472.50)
1	423078	PILOT CONTROLS WITH POWER LIFT	\$ 3,308.00	\$ 2,084.04
1	442017	HYDRAULIC PIN & RELEASE BACKHOE COUPLER	BASE	
1	442058	DUAL FLIP OVER/STABILIZER PADS (STREET/DIRT)	\$ 816.00	\$ 514.08
1	745274	FACTORY INSTALLED HYDRAULIC THUMB	\$ 3,911.00	\$ 2,463.93
1	464078	RIDE CONTROL, COMFORT STEER, & 3 SPOOL PACKAGE	\$ 3,071.00	\$ 1,934.73
1	747863	82" 4/1 BUCKET WITH CUTTING EDGE	\$ 5,800.00	\$ 3,654.00
1	747853	CAB, 2 DOOR, WITH HEAT & AC	\$ 11,467.00	\$ 7,224.21
1	745161	PREMIUM AIR SUSPENSION HEATED SEAT	\$ 848.00	\$ 534.24
1	745242	LFED LIGHT PACKAGE	\$ 862.00	\$ 543.06
1	423093	COLD START DUAL BATTERY	\$ 847.00	\$ 533.61
1	745269	STANDARD 4WD FRONT AXLE	BASE	
1	47959107	TOOL BOX	\$ 172.00	\$ 108.36
1	47959394	LOCKING DEF/FUEL COVER	\$ 132.00	\$ 83.16
1	51473347	BLUETOOTH RADIO	\$ 841.00	\$ 529.83
1	745121	CASE SITEWATCH TELEMATICS	BASE	
1	745131	3YR ADVANCED TELE SUBSCRIPTION	BASE	
		Total MSRP List / NJPA Net	\$ 176,724.00	111,336.12
		Additional Items:		
		FREIGHT & CUSTOMER DELIVERY FREIGHT		\$ 4,920.00
		PRE DELIVERY INSPECTION RUN THROUGH		\$ 1,508.00
		M SERIES HYD. RETRO FIT COUPLER + INSTALL		\$ 1,318.00
		12" M SERIES TRENCHING BUCKET		\$ 1,371.00
		PARTS & SERVICE MANUAL (PAPER/BOOK FORM)		\$ 1,915.00
		3YR/3000HR 0\$ DED. PREMIER WARRANTY [NON TAXABLE]		\$ 2,860.00
			SUBTOTAL	\$ 125,228.12
			SALES TAX 9.5%	\$ 11,624.97
			CA TIRE TAX	\$ 7.00
		DOCUMENT/PROCESSING FEE [NON TAXABLE]		\$ 399.00
		FINAL P.O. AMOUNT WITH TAXES/FEES	TOTAL	\$ 137,259.09