

PURCHASE CONTRACT
FOR THE PURCHASE OF ONE Sewer Equipment Company of America Model 877-TK Truck Mounted PTO Drive
Continuous Rodder Truck
FROM NIXON-EGLI EQUIPMENT CO.

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 NIXON-EGLI EQUIPMENT CO. a Corporation ("VENDOR").

RECITALS:

- A. CITY desires to purchase certain Sewer Equipment Company of America Model 877-TK Truck Mounted PTO Drive Continuous Rodder truck hereinafter described.
- B. CITY desires to engage VENDOR to provide these Sewer Equipment Company of America Model 877-TK Truck Mounted PTO Drive Continuous Rodder truck 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 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 Blvd, 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: Matt Zucca, Public Works Deputy
Director
City of San Mateo
1961 Pacific Blvd.
San Mateo, CA, 94403

To VENDOR: Nixon-Egli Equipment Co.
Attn: Evan Haase
800 East Grant Line Road
Tracy, CA 95376

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 Municipal Maintenance Equipment, Inc. have executed this Agreement the day and year first above written.

CITY OF SAN MATEO

VENDOR

Azalea Mitch
Public Works Director

Its Authorized Agent

APPROVED AS TO FORM

Linh Nguyen, Assistant City Attorney

Exhibit A

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- SO. CALIFORNIA: 2044 South Vineyard Avenue, Ontario, CA 91761 • (909) 930-1822 • FAX (909) 923-2356
 - NO. CALIFORNIA: 800 East Grant Line Road, Tracy, CA 95376 • (209) 830-8600 • FAX (209) 830-8884

January 14th, 2022

City of San Mateo
1961 Pacific Blvd.
San Mateo, CA 94403



San Mateo Contract# 2426
Sewer Equipment Contract# 122017-SCA
Quote# 100434

Attention: Harry Siddall

Reference: Updated Sewer Equipment 877-TK Rodder Quote, 1/14/2022

Dear Mr. Siddall,

We are pleased to quote you one (1) new **Sewer Equipment Company of America Model 877-TK Truck Mounted PTO Drive Continuous Rodder** unit including the following Standard and Optional (Included in Bold) features:

Chassis

- 2023 Freightliner M2 106 Conventional Chassis
- Cummins B6.7 250 Horsepower Diesel engine
- Allison 3000 RDS Automatic transmission – 6 speed
- 153" Wheelbase and 87" Cab to Axle
- 33,000 GVWR; 12,000 lb. front axle, 21,000 lb. rear axle
- Fuel Tank - 50 US Gallons – LH Mount – Aluminum
- Air ride driver and passenger seats
- Dual West Coast style side mirrors - heated
- Air conditioning
- Gray interior
- AM/FM radio
- Cab air suspension
- Steel wheels-painted
- Michelin tires

Rodder:

- Gear Driven Rod Drive Roller System with 7000 lbs. of Pull (Automatic Hydraulic Hold Down System)
- 72" Rod Storage Reel with 1200' of .393 Rod in Direct Hydraulic Motor Driven Yoke with Spring Loaded Torque Arm
- Electrical System
- Lighted NEMA 4 Control Panel
- Hydraulic System, Single Lever Control
- Friction Footage Meter
- **Cumulative Footage Meter**
- **Independent Relief Valves and Gauges for Forward/Reverse**
- **Single Lever Hydraulic Control**
- **Oiler for Rod**

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Truck:

- One Piece Steel Shroud
- Heavy Duty Frame
- Full Decking
- Skirting
- Handrail
- Three (3) Toolboxes
- Mudflaps
- Bumper
- **Rear Back Up Camera System with 7" Color Monitor**

Lighting

- **Compartment Lighting**
- **LED Floodlight**
- **Three (3) LED Strobe Lights, Front Mounted (1), Driver Side (1), & Passenger Side (1)**
- **Two (2) LED Arrow Sticks, Front Mounted (1) & Rear Mounted (1)**
- **Handheld Wireless 12v/110v Rechargeable LED Spotlight with Storage Bracket**

Accessories:

- 25' Lightweight Hose Guide and Bell with Aluminum Couplings
- Single Prong Brace
- Snap on Pliers with Cleaners
- Two (2) Assembly Wrenches
- Paper Operator Manual
- **USB Operator Manual**
- **Six (6) 18" D.O.T. Safety Cones and Holder**

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Sourcewell 877-TK Rodder Price:	\$160,298.00
Sourcewell Discount (3%):	(\$4,808.94)
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Sub Total:	\$155,489.06
Freightliner Chassis:	\$81,300.00
PDI, Training/Start Up, DMV, Etc. :	\$9,200.00
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Taxable Subtotal:	\$245,989.06
9.625% Sales Tax:	\$23,676.45
Delivery Freight:	\$2,000.00
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Sales Price with Tax:	\$271,665.51

*The above price(s) are valid for 30 days and are plus all applicable tax.

Thank you for the opportunity to quote on your equipment needs. Should you have any further questions, please feel free to contact me.

Sincerely,

NIXON-EGLI EQUIPMENT CO.

Evan Haase

Evan Haase
Municipal
Area
Manager
(510) 301-
7715
ehaase@nixonegli.com

