

AGREEMENT FOR THE PURCHASE OF GOODS

THIS AGREEMENT is made and entered into this 19 day of December, 2022, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as "City") and Ferguson Enterprises, LLC, a Virginia Limited Liability Company, whose address of record is 12500 Jefferson Avenue, Newport News, Virginia 23602 (hereinafter referred to as "Vendor").

WHEREAS, City seeks to purchase the following goods and/or materials: waterline appurtenances; and,

WHEREAS, Vendor represents that it possesses the ability to supply said goods and/or materials to the City.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF PURCHASE.** Vendor shall supply the goods and/or materials described in Exhibit "A" as well as other products typically sold by Vendor attached hereto.

2. **TIME OF PERFORMANCE.** Vendor shall provide the goods and materials as soon as reasonably possible after receipt of an order from City.

3. **TERM OF AGREEMENT.** The term of this Agreement shall commence upon the day first above written and end on June 30, 2023.

4. **COMPENSATION.** The total amount of goods and/or materials purchased pursuant to this Agreement shall not exceed \$100,000.00 for the 2022-2023 fiscal year. Each individual purchase of goods and/or materials will be requested by the City on a standard Purchase Order.

5. **METHOD OF PAYMENT.** Compensation to Vendor shall be paid by the City after submission by Vendor of an invoice delineating goods and/or materials supplied and quantities of all goods, products, and materials.

6. **INDEPENDENT CONTRACTOR.** It is expressly understood that Vendor is an independent contractor and that its employees shall not be employees

of or have any contractual relationship with the City. Vendor shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Vendor desire any insurance protection, the Vendor is to acquire same at its expense.

In the event Vendor or any employee, agent, or subcontractor of Vendor 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, Vendor shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Vendor 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.

7. INDEMNITY. Vendor shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Vendor or Vendor's officers, employees, volunteers, and agents during performance of this Agreement; Vendor shall indemnify, protect, defend (with counsel selected by the City) save and hold City, its officers, employees and agents harmless from any and all claims or causes of action for any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Vendor or its employees, subcontractors, or agents, or by the quality or character of Vendor's work.

8. WARRANTY. Vendor warrants and represents to City that each of the goods and/or materials provided to the City herein shall be free from defects in material and workmanship and will conform to the manufacturer's specifications. If Vendor breaches this warranty, Vendor will, at the City's option, either replace or repair the nonconforming goods or refund the amounts paid by City for said goods.

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

a. **Workers' Compensation and Employer's Liability.** Vendor shall obtain and keep in full force Workers' Compensation Insurance with statutory limits and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000). Vendor shall provide a waiver of subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

b. **Commercial General Liability.** Vendor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. Vendor's general liability policies shall be primary and shall not seek contribution from the City's coverage, and be endorsed using Insurance Services Office form CG 20 10 (or equivalent) to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies. Any failure to comply with reporting provisions of the policies by Vendor shall not affect coverage provided to the City. Coverage shall state that Vendor insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Coverage shall contain a waiver of subrogation in favor of the City.

c. **Certificate of Insurance.** Vendor shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance, including all required endorsements, 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.

d. **Notwithstanding any language in this Agreement to the contrary,** Vendor shall not be entitled to payment pursuant to the terms of this Agreement until Vendor has obtained the insurance required by this Section 9 and provided documentation of said insurance to the City. In addition to any other remedies City may have, City reserves the right to withhold payment if Vendor's insurance policies are not current.

10. PREVAILING WAGES.

A. **Labor Code Compliance.** If the work performed under this Agreement falls within Labor Code Section 1720(a)(1) definition of a "public

works" the Vendor agrees to comply with all of the applicable provisions of the Labor Code including, those provisions requiring the payment of not less than the general prevailing rate of wages. The Vendor further agrees to the penalties and forfeitures provided in said Code in the event a violation of any of the provisions occurs in the execution of this Agreement.

11. **ASSIGNABILITY OF AGREEMENT.** It is understood and agreed that this Agreement contemplates personal performance by the Vendor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Vendor under this Agreement will be permitted only with the express written consent of the City.

12. **TERMINATION FOR CONVENIENCE OF CITY.** The City may terminate this Agreement any time by mailing a notice in writing to Vendor that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further goods shall be provided by Vendor. If the Agreement is so terminated, the Vendor shall be paid for those goods previously delivered to the City at the time the notice of termination is received.

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

Vendor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C. § 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Vendor 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, Vendor 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.

14. **WAIVER.** In the event that either City or Vendor 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.

15. **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.

16. **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.

17. **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.

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

19. **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.

20. **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.

21. 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:
STEPHANIE R. DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

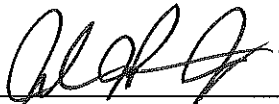
APPROVED AS TO FORM:

BY:  11/2/22
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

VENDOR
FERGUSON ENTERPRISES, LLC.,
A Virginia Limited Liability Company

BY: 
(Signature)

John J. Perea Jr.
(Typed Name)

Its: Municipal Sales
(Title)

BY: _____
(Signature)

(Typed Name)

Its: _____
(Title)

Taxpayer I.D. No. 097580458-00192

ADDRESS: 12500 Jefferson Ave.
Newport News, VA 23602

TELEPHONE: 559-316-1252

FAX: _____

E-MAIL: john.perea@ferguson.com



FERGUSON #3302 (MODESTO)
1600 LONE PALM AVE
MODESTO, CA 95351-1578

Phone: 209-577-3333
Fax: 209-529-6520

Deliver To: 373
From: John Perea Jr.
Comments:

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FERGUSON WATERWORKS #1423

Price Quotation
Phone: 209-577-3333
Fax: 209-529-6520

Bid No: B467320
Bid Date: 09/27/22
Quoted By: JJP

Cust Phone: 209-385-6985
Terms: 1% 10TH NET 25TH

Customer: CITY OF MERCED
678 WEST 18TH STREET
MERCED, CA 95340

Ship To: CITY OF MERCED
678 WEST 18TH STREET
MERCED, CA 95340

Cust PO#: 16TH STREET WTRLINE

Job Name: MERCED

Item	Description	Quantity	Net Price	UM	Total
PT-TERMS	Due to market conditions and supply chain disruptions "Quotes are estimates only" Pricing will be determined at time of shipment.	1		EA	
	PT-TERMS				0.00
=====					
PIPE					
AFT350P16	16 CL350 CL DI FASTITE PIPE	240	87.600	FT	21024.00
	30-DAY QUOTE FOR PIPE PER MANUF.				
	34-36 WEEK LEAD TIME FROM MANUF.				
	PIPE TOTAL				21024.00
=====					
PIPE BRACKETS & HANGERS					
	36-18X24 STL PIP HNGR				
	NO QUOTE				
FNW7005EP1600	16 EPOX PLTD ADJ STD CLEVIS HGR	36	73.550	EA	2647.80
	IN STOCK AT DC'S WITHIN FERGUSON				
	36-3X3/8 STL WSHR PLT				
	NO QUOTE				
SP-IATR4SG30	1 X 30 304SS ALL THREAD ROD	36	40.950	EA	1474.20
	IN STOCK WITH SUPPLIER				
S4HNG	1 SS 304 HEX NUT	144	2.160	EA	311.04
	IN STOCK WITH SUPPLIER				
	4 EA PER THREADED ROD				
SP-HKTZ2SSFSD	HILTI-KWIK TZ2SS304 3/4 X 5-1/2	8	100.850	PK	806.80
	MUST BE PURCHASED IN QTY'S OF 10				
	QUOTING 304SS,				
	NOT AVAILABLE IN 5" QUOTING NEXT				
	SIZE OF 5-1/2"				
	3-4 WORK DAY LEAD TIME				
	BID QTY CALLED FOR 72 EACH				



HOW ARE WE DOING? WE WANT YOUR FEEDBACK!

Scan the QR code or use the link below to
complete a survey about your bids:

EXHIBIT A

=415685

Fax: 209-529-6520

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Reference No: B467320

Item	Description	Quantity	Net Price	UM	Total
	PIPE BRACKET & HANGER TOT =====				5239.84
	LATERAL BRACING =====				
	2-8X4X7/16 GALV ANGLE 20' LENGTH- NO QUOTE =====				
SP-HKTZ2SSFS	HILTI-KWIK TZ2SS304 3/4 X 5-1/2 MUST BE PURCHASED IN QTY OF 10 3-4 WORKDAY LEAD TIME 5-1/2" LONG BID QTY CALLED FOR 72 EACH LAT BRACING TOTAL =====	8	100.850	PK	806.80
	WEST END - 16" CONNECT =====				806.80
DMJTCAPLA16P	DOM 16X4 MJ C153 TAP CAP L/A 2 IN STOCK IN ALABAMA - DOMESTIC	1	1129.500	EA	1129.50
E1116DEC	16 MEGALUG EBAASEAL ACCY PKG F/ DI QUOTE VALID FOR 15 DAYS FROM SUPPLIER	1	269.300	EA	269.30
	WEST END TOTAL =====				1398.80
	EAST END 16" TEMP TERM FOR PRESSURE TESTING =====				
IGS9P	4 GALV MI 150# ST 90 ELL	1	212.905	EA	212.91
IGNP48	4X48 GALV RDY CUT PIPE TBE	1	149.509	EA	149.51
PFXT300P	LF 4 BRS 200# THRD NRS GATE VLV	1	195.350	EA	195.35
IGNPCL	4XCLOSE GALV STL NIP	1	42.115	EA	42.12
IGCAPP	4 GALV MI 150# CAP	1	85.072	EA	85.07
E1116DEC	16 MEGALUG EBAASEAL ACCY PKG F/ DI	1	269.300	EA	269.30
DMJSCAPLA16	DOM 16 MJ C153 SLD CAP L/A STOCK IN CA	1	519.300	EA	519.30
	EAST END TOTAL =====				1473.56
	EAST END 16 RECONNECT TO EXISTING 16" =====				
DMJLSLA16	DOM 16X15 MJ C153 LONG SLV L/A STOCK IN CA	2	933.300	EA	1866.60
E1116DEC	16 MEGALUG EBAASEAL ACCY PKG F/ DI EAST END RECONN TOTAL =====	4	269.300	EA	1077.20
					2943.80
	EX. 8 WTR ABANDONMENT =====				
E1108DEC	8 MEGALUG EBAASEAL ACCY PKG F/ DI	2	85.750	EA	171.50
DMJSCAPLAX	DOM 8 MJ C153 SLD CAP L/A	2	107.350	EA	214.70
	EX 8 WTR ABAND TOTAL =====				386.20

Net Total: \$33273.00
Tax: \$2745.01
Freight: \$0.00
Total: \$36018.01



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Scan the QR code or use the link below to
complete a survey about your bids:

<https://survey.medallia.com/?bidsorder&fc=3302&on=415685>

Fax: 209-529-6520

17:54:56 SEP 27 2022

Reference No: B467320

Item Code	Description	Notice
FNW7005EP1600	16 EPOX PLTD ADJ STD CLEVIS HGR	⚠ WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov
IGS9P	4 GALV MI 150# ST 90 ELL	⚠ WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov
PFXT300P	LF 4 BRS 200# THRD NRS GATE VLV	⚠ WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov
IGCAPP	4 GALV MI 150# CAP	⚠ WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov

Quoted prices are based upon receipt of the total quantity for immediate shipment (48 hours). SHIPMENTS BEYOND 48 HOURS SHALL BE AT THE PRICE IN EFFECT AT TIME OF SHIPMENT UNLESS NOTED OTHERWISE. QUOTES FOR PRODUCTS SHIPPED FOR RESALE ARE NOT FIRM UNLESS NOTED OTHERWISE.

CONTACT YOUR SALES REPRESENTATIVE IMMEDIATELY FOR ASSISTANCE WITH DBE/MBE/WBE/SMALL BUSINESS REQUIREMENTS.

Seller not responsible for delays, lack of product or increase of pricing due to causes beyond our control, and/or based upon Local, State and Federal laws governing type of products that can be sold or put into commerce. This Quote is offered contingent upon the Buyer's acceptance of Seller's terms and conditions, which are incorporated by reference and found either following this document, or on the web at <https://www.ferguson.com/content/website-info/terms-of-sale>
Govt Buyers: All items are open market unless noted otherwise.

LEAD LAW WARNING: It is illegal to install products that are not "lead free" in accordance with US Federal or other applicable law in potable water systems anticipated for human consumption. Products with "NP" in the description are NOT lead free and can only be installed in non-potable applications. Buyer is solely responsible for product selection.
WATER FLOW RATE NOTICE: Lavatory Faucets with flow rates over 0.5 GPM are not allowed for 'public use' in California.
COVID-19 ORDER: ANY REFERENCE TO OR INCORPORATION OF EXECUTIVE ORDER 14042 AND/OR THE EO-IMPLEMENTING FEDERAL CLAUSES (FAR 52.223-99 AND/OR DFARS 252.223-7999) IS EXPRESSLY REJECTED BY SELLER AND SHALL NOT APPLY AS SELLER IS A MATERIALS SUPPLIER AND THEREFORE EXEMPT UNDER THE EXECUTIVE ORDER.



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<https://survey.medallia.com/?bidsorder&fc=3302&on=415685>