

FORMAL COOPERATIVE PURCHASE AGREEMENT

THIS AGREEMENT (Agreement) is made and entered into EFFECTIVE _____, by and between CITY OF FRESNO, a California municipal corporation (City), and POLYDYNE INC, a Delaware Corporation (Vendor).

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. The Charter for the City allows for cooperative purchase agreements for materials, supplies, equipment, and public work of improvement. The City is allowed to piggyback an existing government agency's agreement, under Fresno City Charter 1208. The parties agree the Vendor was the lowest responsive and responsible bidder for Invitation for Bid (IFB) issued by City of Livermore. The IFB is attached hereto as **Exhibit A** and is incorporated herein by reference. The Parties agree that the Vendor has entered a Cooperative Purchase Contract with City of Livermore (Request for Bid No. 4254 for Liquid Cationic Polymer) (Original Government Contract).

2. Vendor's Obligation. Vendor shall provide those services and carry out that work described in the Original Government Contract, which is attached hereto as **Exhibit B** and is incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.

3. City's Obligation. City shall make to the Vendor those payments described in **Exhibits A and B**, subject to all the terms and condition contained or incorporated herein

4. Notwithstanding the requirements that the Original Government Contract is fully binding on the Parties, the parties have agreed to modify certain non-material provisions of the Original Government Contract as applied to this Agreement between the Vendor and the City, as follows:

- a) City's Insurance and Indemnity provisions attached as **Exhibit C**.
- b) Address change for the City: Notwithstanding the address and contract information for the government entity as set out in **Exhibit B**, the Vendor agrees that notices and invoices will be sent to:

City of Fresno
Attention: Cory Asher
5607 W Jensen Ave
Fresno, CA 93706
Phone: (559) 621-5170
FAX: Cory.Asher@fresno.gov

- c) Notwithstanding anything in **Exhibits A and B** to the contrary, this Agreement shall be governed by, and construed and enforced in accordance with , the

laws of the State of California, excluding however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

d) All other provisions in the Original Government Contract are fully binding on the parties and will represent the agreement between the City and the Vendor.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

POLYDYNE INC, a Delaware
Corporation

By: _____
Melissa Perales
Purchasing Manager,
General Services Department

DocuSigned by:
By: Boyd Stanley 11/2/2023
B7481AD4161847B...
Name: Boyd Stanley

No signature of City Attorney required.
Standard Document **#GSD-S Formal
Cooperative Purchase Agreement
(06-2023)** has been used without
modification, as certified by the
undersigned.

Title: Sr. Vice-President
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

DocuSigned by:
By: Mark Schlag 11/2/2023
3659CDFD28314F3...
Name: Mark Schlag

By: _____
James E. Jackson
Senior Procurement Specialist,
General Services Department

Title: Assistant-Secretary
(If corporation or LLC., CFO, Treasurer,
Secretary or Assistant Secretary)

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Deputy Date

Addresses:
CITY
City of Fresno
Attention: James E. Jackson
2101 G. Street, Bldg A.
Fresno, CA 93706
Phone: (559) 621-1165
E-mail: james.jackson2@fresno.gov

Vendor:
Polydyne Inc.
Attention: Boyd Stanley
Sr. Vice-President
One Chemical Plant Road
Riceboro, GA 31323
Phone: (800) 848-7659
E-mail: bids@polydyneinc.com

Attachments:
Exhibit A - Invitation For Bids
Exhibit B - Original Government Contract
Exhibit C - City's Insurance and Indemnity

EXHIBIT A

RFP #4254

**CITY OF LIVERMORE
BID NO. 4254
FOR: LIQUID CATIONIC POLYMER**



**City of Livermore
1052 S. Livermore Ave.
Livermore, CA 94550**

**REQUEST FOR BID #4254
FOR: LIQUID CATIONIC POLYMER**

PUBLISHED: JUNE 19, 2023

CLOSES: July 10, 2023

SUBMIT TO:

**CITY OF LIVERMORE
OLIVIA MAHEDY, PURCHASING SPECIALIST
1052 S. LIVERMORE AVE.
LIVERMORE, CA 94550
ON OR BEFORE: JULY 10TH, 2023 AT 2PM**

**CITY OF LIVERMORE
BID NO. 4254
FOR: LIQUID CATIONIC POLYMER**

GENERAL TERMS & CONDITIONS

1. Notice is hereby given that the City of Livermore, Alameda County, California, will receive sealed bids for **LIQUID CATIONIC POLYMER**.
2. Each bid shall be in accordance with specifications and sample agreement on file in the office of the Purchasing Specialist, City of Livermore, 1052 S. Livermore Avenue, Livermore, California 94550, copies of said conditions and specifications may be obtained at: [www. Publicpurchase.com](http://www.Publicpurchase.com) website or <https://wwwpublicpurchase.com/gems/livermore.ca/buyer/public/hom> at no charge. Vendors must register to be a vendor under the City of Livermore and to receive all addendums.
3. Each bid shall be sealed and filed with the Purchasing Specialist at 1052 S. Livermore Avenue, Livermore, CA 94550 prior to 2:00 PM, July 10, 2023. It is the bidder's responsibility to ensure that bids are received prior to the 2:00 p.m. closing time. **LATE BIDS WILL NOT BE ACCEPTED!**
4. Each bid must be accompanied by a **complete copy** of these specifications and the proposed agreement. All blanks in specifications must be filled in or bid will be considered unresponsive. **Please submit a total TWO (2) sets – one (1) signed original and one (1) copy, mark on upper right-hand corner of coversheet.**
5. All prices must be typed or written in ink. Bids written in pencil will not be accepted. Mistakes may be crossed out and corrections inserted adjacent, but the correction must be initialed in ink by the person signing the proposal.
6. Any claim of error by a bidder must be made before the time of the bid opening, otherwise it shall be deemed waived.
7. Any deviation from the attached specifications or substitution of services or materials must be clearly indicated. Complete detailed specifications must accompany any substitutions so specified.

**CITY OF LIVERMORE
BID NO. 4254
FOR: LIQUID CATIONIC POLYMER**

8. The City reserves the right to reject any and all bids on any basis deemed to be in the best interest of the City. Any changes, omissions, or variations in specifications or conditions of bidding may be considered cause of rejection.
9. No bidder may withdraw their bid for a period of sixty (60) days after the date set for the opening thereof.
10. The bidder, by submitting their bid, agrees to save, defend, keep, bear harmless, and fully indemnify the said City and any of its officers, officials, agents, employees, or volunteers from all damages, claims for damages, costs, or expenses, whether in law or in equity, that may at any time arise or be set up for an infringement of the patent rights, copyrights, or trade-marks of any person or persons in consequence of the use by said City, or by any of its officers, officials, agents, employees, or volunteers or articles to be supplied under this bid.
11. This Bid will be awarded to the contractor whose bid represents the best value to the City of Livermore. Pursuant to Municipal Code Section 2.68.040 B. The determination of which proposal represents the Best Value shall be based upon but not limited to, the following considerations:
 - Cost
 - The ability, capacity, and skill of the contractor to perform the contract or provide the services or equipment required.
 - The ability of the contractor to provide the services or equipment promptly or within the time specified without delay or interference.
 - The character, integrity, reputation, judgment, experience, and efficiency of the contractor.
 - The quality of the contractor's performance on previous contracts with the City.
 - The ability of the contractor to provide future maintenance, repair, parts and services for the use of the supplies purchased.
12. All items in bid must comply with the SAE standards and meet all OSHA, State of California and Federal Industrial Safety Orders, and regulations in effect on the date of this invitation for bid.
13. The City of Livermore will furnish exemption certificates for all federal taxes, if required. California State, Alameda County, and City of Livermore taxes are applicable and shall be shown separately.

**CITY OF LIVERMORE
BID NO. 4254
FOR: LIQUID CATIONIC POLYMER**

14. Any questions regarding bidding procedures may be directed to the Acting Purchasing Specialist, Olivia Mahedy at (925) 960-43430. Any questions regarding the scope of the bid must be directed to the City through the online question and answer section of www.publicpurchase.com.
15. Bidder's attention is directed to the following Insurance Requirements. It is highly recommended that bidders confer with their respective insurance carriers or brokers to determine in advance of bid submission the availability of insurance certificates and endorsements as prescribed and provided herein. If an apparent awarded bidder fails to comply strictly with the insurance requirements, that bidder may be disqualified from award of the Bid and Contract.

**CITY OF LIVERMORE
BID NO. 4254
FOR: LIQUID CATIONIC POLYMER**

SPECIFICATIONS

Bids are requested for furnishing the annual requirements of the City of Livermore, Water Resources Division (WRD). Beginning upon the date of the award of contract and ending **thirty-six months after the contract award date**, for Cationic Polymers. Multiple polymers may be proposed for inclusion in the contract. Each year, contractor's representative shall repeat field testing results to ensure that the correct polymer and dosage rates are being used to minimize overall expenses.

DELIVERY ADDRESS

City of Livermore
Water Resources Division
101 Jack London Blvd.
Livermore, CA 94550

DELIVERY COST

Price quoted shall include all delivery and unloading charges.

PRODUCT TESTING

The objective is to find the best polymer for WRD processes, sludge makeup and overall budget. The least expensive polymer may not be the least expensive per pound; other factors such as required concentration for optimal effectiveness will be among the considerations. Field and lab testing to determine the optimal polymer will commence beginning **June 21, 2023**. The last day to conduct Field and lab testing is **June 28, 2023**. No requests will be considered after this date.

Contacts for scheduling Field and lab testing:
Kevin Kepler or Jimmie Truesdell (925) 960-8100

Consideration of submitted proposal will only be given to Bidders who complete BOTH field and lab testing. Samples should be provided at no cost to the City.

REFERENCES

Please provide contact information for three references from current customers.

**CITY OF LIVERMORE
BID NO. 4254
FOR: LIQUID CATIONIC POLYMER**

SPECIFICATIONS/TECHNICAL INFORMATION:

PURPOSES OF POLYMER: For waste activated sludge thickening and the de-watering of anaerobically digested domestic sludge using belt filter presses.

AVERAGE MONTHLY AMOUNT OF SOLIDS TO BE PROCESSED: 1.6 to 1.9 million gallons.

MATERIAL CODE: Liquid, Cationic Polymer, or equivalent.

ESTIMATE ANNUAL USAGE: 198,000 LBS (Wet Wt.)

Bidders shall provide the following information on the **BIDDERS PROPOSAL** form:

Brand name quoted: _____

Price per pound (Wet Wt): _____ \$/LB

FOB Destination

Price to include De-scaling Agent, if required

Dosage: _____

DELIVERY

The City requires delivery within fourteen (14) calendar days after receipt of order. In no case will bids be considered that take exception to the delivery requirements.

ILLUSTRATIVE AND TECHNICAL DATA

Bidder is to submit with proposal, complete Illustrative and Technical Data on materials or equipment proposed to be furnished. Failure to furnish such data may void bid.

ESTIMATED QUANTITIES

The quantities stated herein are estimates only of the City's requirements. Contractor agrees to furnish more or less than the estimates in accordance with actual needs as they occur throughout the contract period at the unit price quoted.

**CITY OF LIVERMORE
BID NO. 4254
FOR: LIQUID CATIONIC POLYMER**

HAZARDOUS SUBSTANCE

This specification includes products that may contain hazardous substances shown on the list prepared by the Director of Industrial Relations of the State of California pursuant to California Labor Code Sections 6380-6386. Safety Data Sheet(s) (SDS) prepared in compliance with Title 8, California Code of Regulations, Section 5194, shall accompany this bid.

If any of the ingredients of the product bid is a Carcinogen as shown on the most current list prepared by the International Agency for Research on Cancer (IARC), bidder shall separately identify such ingredients as a Carcinogen. Bidder is advised that the product will not be accepted unless (1) the product may be used safely and (2) No acceptable Non-Carcinogenic Substitute is available.

The selected Polymer(s) shall not create any problem with reuse options for the City's biosolids wet cake nor pose any health threats to operations personnel. Use of Polymer shall not cause excessive concentrate foaming or result in scale formation in polymer distribution lines. Addition by the vendor of the appropriate scale inhibitor may be required at no cost to the City.

A copy of the SDS shall accompany each shipment of the product to a city facility.

The following information must be provided on the invoice for each delivered shipment of Polymer.

1. Order date, time, and person placing order.
2. Delivery date and time.
3. Liquid pounds of Polymer delivered.
4. Total solids concentration of Polymer delivered.
5. Wet tons of Polymer delivered.
6. Price of Polymer, based on dry pounds.
7. Total charge for Polymer delivery.

Each Polymer delivery shall be accompanied by one representative sample of the delivered batch (500ml) which is to be given to the Duty Operator accepting the shipment. The sample shall include the name of the vendor, polymer brand, date, and batch number.

**CITY OF LIVERMORE
BID NO. 4254
FOR: LIQUID CATIONIC POLYMER**

BIDDER'S PROPOSAL

The undersigned bidder declares that he/she has carefully examined the General Conditions and Specifications and agrees to furnish the services so covered to the City of Livermore. The undersigned further declares that this proposal is made according to the provisions and under the terms of the "Notice to Bidders" which document is made a part of this proposal.

**PURCHASING SPECIALIST
City of Livermore
1052 South Livermore Avenue
Livermore, California 94550**

LIQUID CATIONIC POLYMER

Brand name quoted: _____

Price per pound (Wet wt.): _____ \$/LB

FOB Destination

Price to include De-scaling Agent, if required

Dosage: _____

DATE: _____

BY: _____
(PLEASE SIGN) (PRINT NAME & TITLE)

COMPANY: _____

ADDRESS: _____

PHONE: _____ E-MAIL: _____

ALL BLANKS IN SPECIFICATIONS MUST BE FILLED IN OR BID WILL BE CONSIDERED UNRESPONSIVE. EACH BID MUST BE ACCOMPANIED BY A COMPLETE COPY OF THESE SPECIFICATIONS, INCLUDING ANY ADDENDA ISSUED (IF ANY).

**CITY OF LIVERMORE
BID NO. 4254
FOR: LIQUID CATIONIC POLYMER**

ACKNOWLEDGEMENT FORM

Bidder's acknowledgement and submittal of acceptance of the City of Livermore's terms and conditions of Bid #4254:

Date _____

Company Name: _____

Address: _____

Phone Number: _____ Fax: _____

Cell: _____

E-mail Address: _____

Authorized Signature of Bidder:

Print Name of Bidder:

*** Bid responses must be received either by mail or hand delivered to:
City of Livermore, Attn: , 1052 S. Livermore Ave., Livermore, CA 94550
By 2PM, Monday, July 10, 2023. ***

Information Deleted: Deleted
Information Added: Added

Bid RFB #4254 - LIQUID CATIONIC POLYMER
Addendum #1 - Addendum

Bid Type **RFB**

Bid Number **4254**

Title **LIQUID CATIONIC POLYMER**

Start Date **Jun 19, 2023 7:00:43 AM PDT**

End Date **Jul 10 17, 2023 2:00:00 PM PDT**

Agency **City of Livermore (CA)**

Bid Contact **Olivia Mahedy**
(925) 960-4328
osmahedy@livermoreca.gov
1052 S. Livermore Ave.
Livermore, CA 94550

Description

Notice is hereby given that the City of Livermore invites sealed bids for LIQUID CATIONIC POLYMER. Each bid shall be in accordance with the conditions and specifications on file in the office of the Purchasing Specialist, 1052 South Livermore Avenue, Livermore, California 94550, copies of said conditions and specifications may be obtained at: www.publicpurchase.com website or <https://www.publicpurchase.com/gems/livermore,ca/buyer/public/home> at no charge.



Each bid shall be in accordance with the conditions and specifications on file in the Purchasing Office, 1052 South Livermore Avenue, Livermore, California 94550, where copies of said conditions and specifications may be inspected or obtained at no charge. All bids must be on the form provided, enclosed in a sealed envelope and clearly identified with bid title, name of bidder and date of bid opening to preclude premature opening of bid.

PRODUCT TESTING
Field and lab testing to determine the optimal polymer will commence beginning June 21, 2023. The last day to conduct Field and lab testing is June 28, 2023. No requests will be considered after this date.

Delivery Information

***** Responses must be received either by mail or hand delivered to; City of Livermore, Attn: Olivia Mahedy, Acting Purchasing Specialist, 1052 S. Livermore Ave., Livermore, CA 94550 by 2PM, on Monday July 10, 2023.*****
NO LATE BIDS ACCEPTED.

Documents

Name	Posting Date	Acceptance
 Bid 4254 -Poly Bid Spec 20	Jun 16, 2023 4:04:09 PM PDT	No
 Attachment A - Sample GS	Jun 16, 2023 3:46:33 PM PDT	No

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Bid RFB #4254 - LIQUID CATIONIC POLYMER Addendum #2 - Addendum

Bid Type **RFB**Bid Number **4254**Title **LIQUID CATIONIC POLYMER**Start Date **Jun 19, 2023 7:00:43 AM PDT**End Date **Jul 17, 2023 2:00:00 PM PDT**Agency **City of Livermore (CA)**

Bid Contact **Olivia Mahedy**
(925) 960-4328
osmahedy@livermoreca.gov
1052 S. Livermore Ave.
Livermore, CA 94550

Description

6/23/23 PLEASE NOTICE UPDATE TO SCHEDULE:

Due to unforeseen issues with equipment we have extended the testing and closing dates.

Testing ends on **7/5/23**

Closing date is **7/17/23 at 2PM**

Notice is hereby given that the City of Livermore invites sealed bids for LIQUID CATIONIC POLYMER. Each bid shall be in accordance with the conditions and specifications on file in the office of the Purchasing Specialist, 1052 South Livermore Avenue, Livermore, California 94550, copies of said conditions and specifications may be obtained at: www.publicpurchase.com website or <https://www.publicpurchase.com/gems/livermore,ca/buyer/public/home> at no charge.

Each bid shall be in accordance with the conditions and specifications on file in the Purchasing Office, 1052 South Livermore Avenue, Livermore, California 94550, where copies of said conditions and specifications may be inspected or obtained at no charge. All bids must be on the form provided, enclosed in a sealed envelope and clearly identified with bid title, name of bidder and date of bid opening to preclude premature opening of bid.

PRODUCT TESTING

Field and lab testing to determine the optimal polymer will commence beginning June 21, 2023. The last day to conduct Field and lab testing is ~~June 28~~ July 5, 2023. No requests will be considered after this date.

Delivery Information

***** Responses must be received either by mail or hand delivered to; City of Livermore, Attn: Olivia Mahedy, Acting Purchasing Specialist, 1052 S. Livermore Ave., Livermore, CA 94550 by 2PM, on Monday July 10 2023.*****
NO LATE BIDS ACCEPTED.

Documents

Name	Posting Date	Acceptance
 Bid 4254 -Poly Bid Spec 2(Jun 16, 2023 4:04:09 PM PDT	No
 Attachment A - Sample GS	Jun 16, 2023 3:46:33 PM PDT	No
 EXHIBIT B - INSURANCE E	Jun 16, 2023 2:59:20 PM PDT	No
 Bid 4254 Notice to Bidders	Jun 16, 2023 3:20:14 PM PDT	No

[Return to Bid](#)

Customer Support: vendorsupport@publicpurchase.com | Copyright 1999-2023 © | The Public Group, LLC. All rights reserved.

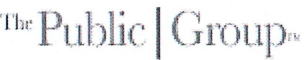


EXHIBIT B

ORIGINAL GOVERNMENT CONTRACT

AGREEMENT FOR SERVICES

THIS AGREEMENT is made and entered into this 27th day of September, 2023, by and between the City of Livermore ("City"), a municipal corporation, and SNF Polydyne, Inc. ("Contractor"), a Delaware corporation.

RECITALS

City requires services to supply and deliver dewatering polymer to the Livermore Water Reclamation Plant.

Contractor warrants it possesses the distinct skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Contractor acknowledges City has relied upon these warranties to retain Contractor.

AGREEMENT

NOW, THEREFORE, City and Contractor hereby agree that the aforementioned recitals are true and correct and further agree as follows:

1. **Retention as Contractor.** City hereby retains Contractor, and Contractor hereby accepts such engagement, to perform the services described in Section 3 below subject to the terms and conditions in this Agreement.
2. **Relationship of Parties – Independent Contractors.** The relationship of the parties shall be that of independent contractors. Contractor and its employees are not City officers or employees. Contractor is responsible for the supervision and management of its employees, including any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the delivery of the services contemplated by this Agreement.
3. **Description of Services.** Contractor shall provide services to supply and deliver dewatering polymer to the Livermore Water Reclamation Plant as more particularly set forth in Exhibit "A" (collectively "the Services").
4. **Contractor's Responsibilities.** Contractor shall:
 - (a) Diligently perform the Services in a manner commensurate with industry, professional, and community standards;
 - (b) Provide the resources necessary to complete the Services in a timely manner;
 - (c) Obtain a business license from the City of Livermore, and keep it in effect for the term of this Agreement;
 - (d) Obtain and keep in effect all necessary licenses, permits, qualifications, insurance, and approvals legally and professionally required for Contractor to practice its profession and to provide the Services;

- (e) Comply with all laws in effect that are related to Contractor and the Services;
- (f) Coordinate the Services with Jimme Truesdell, Water Resources Operations Manager ("Project Manager"), or such other person designated as the Project Manager by City;
- (g) Be available to the Project Manager, and other parties referred to Contractor by the Project Manager, to answer questions or inquiries related to the Services;
- (h) Only invoice City for the Services rendered. Contractor's invoice shall be in writing and describe the Services performed for the payment requested. Contractor shall not submit an invoice to City more frequently than once a calendar month;
- (i) Keep and maintain invoices and records related to the Services in an organized manner. At a minimum, the records must be kept for at least 3 years from the date of final payment to Contractor and must include time sheets, work progress reports, and other documentation to adequately explain all the Services invoiced for payment. Contractor shall make the invoices and records immediately available to City upon delivery of a written request to examine, audit, or copy them at City's place of business during normal business hours. Contractor shall give City 30 calendar-days' written notice prior to destroying the invoices and records and allow City an opportunity to take possession. If City wants them, Contractor and City shall coordinate their delivery to City in the most efficient manner possible;
- (j) Prepare and submit a written report to the Project Manager, within 3 business-days of the Project Manager's written request, that identifies the Services completed and in progress, the charges incurred to date, and the anticipated cost to complete the remaining Services;
- (k) Contractor shall correct, at its own expense, all errors in the Services. Should Contractor fail to make such correction in a timely manner, City may make the correction and charge the cost thereof to Contractor;
- (l) If applicable, Contractor shall ensure that all work for compensation is taken in compliance with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, worker's compensation and prevailing wages. If applicable, Contractor shall comply with all prevailing wage laws, such as sections 1773, 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the California Labor Code and any other applicable wage and hour law. If any violation of prevailing wage law associated with this Agreement is deemed to have occurred by any court or administrative authority, Contractor shall forfeit to the City, as a penalty, the sum of fifty dollars (\$50.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the applicable prevailing rates for any work done to accomplish the purposes of this Agreement; and,
- (m) Contractor's services provided pursuant to this Agreement shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as applicable regulations and guidelines issued pursuant to the ADA.

5. Compensation and Payment.

(a) The total compensation payable by City to Contractor for the Services **SHALL NOT EXCEED** the sum of \$ 1,111,000 ("not-to-exceed amount"). City shall compensate Contractor for the Services rendered at the hourly rates or task amounts set forth in Exhibit "A" up to the not-to-exceed amount. Except as provided in the body of this Agreement, the hourly rates or task amounts are intended to be Contractor's only compensation for the Services and is inclusive of all costs of labor, licensing, permitting, travel expenses, overhead and administrative costs, and any-and-all other costs, expenses, and charges incurred by Contractor, its agents, and employees to provide the Services.

(b) City shall pay Contractor no later than 30 days after City receives a written invoice from Contractor and verifies the Services were performed for the payment requested.

6. Term. The term of this Agreement commences on October 1, 2023, and terminates upon the completion of the Services or September 30, 2026, whichever occurs first.

7. Termination by City. City may terminate any portion or all of the Services by giving Contractor at least 30 calendar-days written notice. Upon receipt of a termination notice, Contractor shall immediately stop all work in progress on the Services except where necessary to preserve the benefit of the work, and assemble the work on the Services for delivery to City on the termination date. All compensation for Services performed prior to the termination date shall be payable to Contractor in accordance with Section 5.

8. Ownership of Documents. All drawings, designs, data, photographs, reports and other items prepared or obtained by Contractor in the performance of the Services are City's property and Contractor shall deliver them to City upon demand.

9. Copyright and Right of Use. All items created by Contractor for City under this Agreement are works made for hire, and Contractor shall give City the copyright and all intellectual property rights to all items developed, prepared, and delivered as part of the Services. Contractor agrees that all aspects of the Services and items created thereby will be original works of creation and will not use, in whole or in part, any work created by any other party, except when expressly disclosed by Contractor to City and Contractor obtains a license to such items for the benefit of City. All licenses must be perpetual, world-wide, non-exclusive, and royalty free sufficient in scope to permit City's full use and enjoyment of its ownership rights in the items created by the Services.

10. Confidentiality. Contractor shall not disclose any confidential or proprietary information received from City to anyone except Contractor's employees who require access to the information to perform the Services. This obligation shall survive termination and remain in full force and effect until the information, and any copies thereof, are destroyed or returned to City.

11. Defense, Indemnity, and Hold Harmless. To the fullest extent permitted by law, Consultant shall hold harmless, indemnify, and defend with counsel selected by the City or otherwise acceptable to the City, the City and its elected and appointed officials, officers, directors, employees, agents and designated volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the services contemplated by this Agreement, or in connection with Consultant's failure to comply with any of its obligations contained in this Agreement, except for such Liability caused by the sole active negligence or willful misconduct of City. Consultant's obligations to hold harmless, indemnify, and defend shall not be excused because of Consultant's inability to evaluate Liability or because Consultant evaluates Liability and determines that Consultant is not liable to the claimant. These obligations are independent of, and shall not in any way be limited by, the minimum insurance obligations contained in this Agreement. These obligations shall survive the completion or termination of this Agreement. Consultant must respond within 30 days to the tender of any claim for defense and indemnity by the City.

- (a) Modification for Construction Contracts. To the extent this Agreement is a "construction contract" covered by California Civil Code section 2782, then Consultant's duty to indemnify shall not apply in a manner prohibited by California Civil Code section 2782.
- (b) Modification for Design Professional Services. To the extent this Agreement is for "design professional services" defined in California Civil Code section 2782.8, then Consultant's duties to defend and indemnify shall only apply to the extent provided for in California Civil Code section 2782.8(a), unless section 2782.8(a) is not applicable for one of the reasons set forth in 2782.8(e).

12. Insurance. Contractor shall procure and maintain insurance during the term of this Agreement in the amounts and under the terms set forth in Exhibit "B" against claims that may arise from or in connection with this Agreement and performance of the Services. Upon reasonable written notice, Contractor shall comply with any changes in the amounts and terms of insurance as may be required from time-to-time by City's Risk Manager.

13. Acceptance of Final Payment. Contractor's acceptance of final payment will release City from any and all claims and liabilities for compensation under this Agreement.

14. Acceptance of Work. City's acceptance of, or payment to Contractor for, the Services does not release Contractor from its responsibility for the accuracy, completeness, or competency of the Services, nor do the actions constitute an assumption of Contractor's responsibility or liability by City for any defect or error in the Services.

15. Conflict of Interest. Contractor represents that no City employee or official has a financial interest in Contractor. Contractor shall not offer, encourage, or accept any financial interest in any part of Contractor's business by or from a City employee or official

during the term of this Agreement or as a result of being awarded this Agreement. If any of the Services are paid by reimbursement from an agreement between City and a private party, Contractor represents that it has not performed any work for that private party during the 12-month period prior to the execution of this Agreement, and that it shall not negotiate, offer or accept any contract for services from that party during the term of this Agreement.

16. Economic Disclosure. Contractor shall comply with City's local conflict of interest code and the Political Reform Act, and prepare and file an economic disclosure statement if the Services involve making, or participation in making, decisions which may have a material effect on the Contractors' financial interest. While it is Contractor's sole responsibility to evaluate its conflicts of interest, the Contractor nevertheless agrees to prepare and file an economic disclosure statement if requested by City.

17. Non-Exclusive Agreement. This is a non-exclusive agreement. City reserves the right to provide, and to retain other Contractors to provide, services that are the same or similar to the Services described in this Agreement.

18. No Assignment. Contractor shall not assign or subcontract any of the Services without City's prior written consent. For the purposes of this section, a change of fifty-percent or more in the ownership or control of Contractor constitutes an assignment.

19. Remedies. All remedies permitted or available under this Agreement, or at law or in equity, are cumulative and alternative, and the invocation of a right or remedy will not be construed to waive or elect a remedy with respect to any other available right or remedy. As a condition precedent to commencing legal action involving a claim or dispute against City arising from this Agreement, the Contractor must present a written claim to City in accordance with Chapter 3.42 of the Livermore Municipal Code.

20. Construction of Language. The terms and conditions in this Agreement have been arrived at through negotiation and each party had a full and fair opportunity to review and revise this Agreement with legal counsel. Any ambiguity in this Agreement will not be resolved against either party as the drafting party. In the event of an inconsistency or conflict between the language in the body of the Agreement and an attachment hereto, the language in the body of the Agreement controls.

21. Entire Agreement; Modification. This Agreement supersedes all other agreements, whether oral or written, between the parties with respect to the Services. Any modification to this Agreement must be in writing and signed by both parties. In the event the original of this Agreement is lost or destroyed, an archival copy maintained by City can be used in place of the original for all purposes with the same effect as if it was the original.

22. Notice. Notices under this Agreement must be delivered to the addresses below by deposit in the United States mail or by overnight delivery service, with postage prepaid and delivery confirmation:

TO CITY: Attention: Water Resources Operations Manager
City of Livermore
101 W. Jack London Blvd.
Livermore, California 94551

TO CONTRACTOR: Attention: Boyd Stanley
Polydyne Inc.
One Chemical Plant Road
Riceboro, GA 31323

23. Waiver. Failure to insist upon the strict performance of any term or conditions in this Agreement, no matter how long the failure continues, is not a waiver of the term or condition and does not bar the right to subsequently demand strict performance. To be effective, a waiver must be in writing and signed by the non-breaching party.

24. Severability. If a court of competent jurisdiction determines a provision in this Agreement is invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired in any way.

25. Survival. The terms, conditions, and obligations in Sections 8, 9, 10, and 11 shall survive the completion or termination of this Agreement.

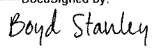
26. Electronic Signatures. By signing this document, you are agreeing that you have reviewed this disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

27. Counterparts. This Agreement may be executed and delivered in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, will be deemed to constitute one and the same agreement. The facsimile, email, or other electronically delivered signatures of the Parties shall be deemed to constitute original signatures, and facsimile or electronic copies hereof shall be deemed to constitute duplicate originals and shall be valid and effective for all purposes.

Signatures and Attachment List on the Next Page

In concurrence and witness whereof, and in recognition of the mutual consideration provided therefore, the parties have executed this Agreement, effective on the date first written above.

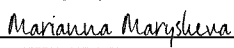
CONTRACTOR:

DocuSigned by:

2505B2DF99E6496
By: Boyd Stanley
Title: Vice President

Dated:

8/24/2023 | 12:36 PM PDT

CITY OF LIVERMORE:

DocuSigned by:

67FF33A39740458
Marianna Marysheva
City Manager

Dated:

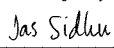
9/27/2023 | 8:22 PM PDT

APPROVED AS TO FORM:

DocuSigned by:

245f8B35F94C457
Assistant/City Attorney

APPROVED AS TO INSURANCE:

DocuSigned by:

4928399A373F4CA
Risk Manager/Analyst

Attachments:

- Exhibit A – Scope of Work
- Exhibit B – Insurance Requirements

EXHIBIT A

SCOPE OF WORK

SCOPE

CONTRACTOR shall provide all necessary labor. Equipment, vehicles, supplies, and materials to provide the following service:

1. Supply and deliver CLARIFLOC WE-1196 or CLARIFLOC WE-2614 dewatering polymer to the Livermore Water Reclamation Plant (WRP) located at 101 Jack London Boulevard in Livermore, California.

TERMS AND CONDITIONS

1. CONTRACTOR shall deliver polymer to the WRP within 14 days of order.
2. CONTRACTOR shall provide email confirmation to CITY whenever an order has been received.
3. CONTRACTOR or representative must notify CITY staff upon reaching the WRP so that the CITY staff may verify the product being delivered.
4. CONTRACTOR or representative shall connect the delivery truck to the WRP tank and safely discharge polymer into the WRP tank.
5. CONTRACTOR or representative shall clean any spillage of polymer generated during the filling process.
6. CONTRACTOR or representative shall provide a weight tag to CITY for each delivery.

COMPENSATION

1. City shall compensate CONTRACTOR at the rate of \$1.72 per wet pound.
2. Each year on July 1, beginning in 2024, unit prices will be adjusted by the percentage listed in the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-Hayward region (CPI-U) using the 12-month change in April. This adjustment will be documented each year through a signed letter from the City to the Contractor.
3. In no event shall a price increase result in more than a 10% increase from the prior annual not-to-exceed price and/or the prior annual unit price.
4. In the event that CONTRACTOR offers polymer to another governmental entity within a 100 mile radius of CITY as a lower price than set forth in this Agreement, CONTRACTOR shall notify the CITY within 30 days of the lower price and provide polymer to the CITY at the same lower price.

EXHIBIT B

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance

Consultant/Contractor shall maintain limits no less than:

1. Commercial General Liability, including operations, products, and completed operations, as applicable:
\$5,000,000 per occurrence/**\$10,000,000** aggregate for bodily injury, personal injury, and property damage. If Commercial General Liability or other form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability:
\$2,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability:
Statutory limits as required by the State of California including **\$2,000,000** Employers' Liability per accident, per employee for bodily injury or disease. A waiver of subrogation is required for Workers' Compensation insurance. If Consultant/Contractor is a sole proprietor, then they must sign "Contractor Release of Liability".
4. Professional Liability/Errors and Omissions:
\$1,000,000 per occurrence.
5. Pollution Liability:
\$2,000,000 per occurrence.

Deductibles and Self-Insured Retention

All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or the City of Livermore. The City of Livermore reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII and accepted to do business in the State of California, unless otherwise acceptable to the City of Livermore.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Livermore, its officers, officials, employees, and designated volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Consultant/Contractor; or automobiles owned, leased, hired or borrowed by the Consultant/Contractor. The coverage shall contain no special

- limitations on the scope of protection afforded to the City of Livermore, its officers, officials, employees, or volunteers.
2. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. The additional insured coverage under the Consultant's/Contractor's policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 10 04 13. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Livermore before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
 3. Any failure to comply with reporting or other provisions of the policy, including breaches of warranties, shall not affect coverage provided to the City of Livermore, its officers, officials, employees, or volunteers.
 4. The Consultant's/Contractor's 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.
 5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party before expiration of the policy unless notice is delivered in accordance with policy provisions.
 6. It shall be a requirement under this agreement that any available insurance proceeds broader than, or in excess of, the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.
 7. Certificate Holder section of the insurance certificate should read: City of Livermore, 1052 S. Livermore Avenue, Livermore, CA 94550

Verification of Coverage

Consultant/Contractor shall furnish certificates of insurance and endorsement(s) effecting coverage to the City of Livermore for approval. The endorsements shall be on forms acceptable to the City of Livermore. All certificates and endorsements are to be received and approved by the City of Livermore before work commences. The City of Livermore reserves the right to require complete and certified copies of all insurance policies required by this Agreement.

EXHIBIT C

CITY'S INSURANCE AND INDEMNITY

Exhibit C

Insurance and Indemnity

INDEMNIFICATION

To the furthest extent allowed by law, VENDOR shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, VENDOR or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees, litigation expenses and cost to enforce this agreement), arising or alleged to have arisen directly or indirectly out of performance of this Contract. VENDOR'S obligations under the preceding sentence shall apply regardless of whether CITY or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of CITY or any of its officers, officials, employees, agents or volunteers.

If VENDOR should subcontract all or any portion of the work to be performed under this Contract, VENDOR shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Contract.

INSURANCE REQUIREMENTS

(a) Throughout the life of this Agreement, VENDOR shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, VENDOR or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to VENDOR shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this

Agreement. No action taken by CITY pursuant to this section shall in any way relieve VENDOR of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by VENDOR shall not be deemed to release or diminish the liability of VENDOR, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by VENDOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of VENDOR, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

1. PRODUCTS LIABILITY INSURANCE: VENDOR shall maintain, and provide the City of Fresno with verification of, manufacturer's products liability insurance policy in excess of \$1,000,000 by providing a certificate of insurance on said Bid Item(s) equipment. Certificates shall be issued by an insurance company meeting the requirements to conduct business in the state of California. City of Fresno is required to be an additional insured with primary and non- contributory coverage in favor of the City on this General Liability Policy.

If the scope of work includes delivery, the requirements below apply in addition to the above requirements.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

MINIMUM LIMITS OF INSURANCE

VENDOR shall procure and maintain for the duration of the contract, and for 5 years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. COMMERCIAL GENERAL LIABILITY

- (i) \$1,000,000 per occurrence for bodily injury and property damage;
- (ii) \$1,000,000 per occurrence for personal and advertising injury;
- (iii) \$2,000,000 aggregate for products and completed operations; and,
- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. COMMERCIAL AUTOMOBILE LIABILITY

\$1,000,000 per accident for bodily injury and property damage.

3. Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

UMBRELLA OR EXCESS INSURANCE

In the event VENDOR purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-

contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

VENDOR shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and VENDOR shall also be responsible for payment of any self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

- (i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to CITY, except ten (10) days for nonpayment of premium. VENDOR is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, VENDOR shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, VENDOR shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.
- (ii) The Commercial General and Automobile Liability insurance policies shall be written on an occurrence form.
- (iii) The Commercial General and Automobile Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured all ongoing and completed operations. Additional Insured endorsements under the General Liability policy must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.
- (iv) The Commercial General and Automobile Liability insurance shall contain, or be endorsed to contain, that VENDOR'S insurance shall be primary to and require no contribution from the City. Primary and Non Contributory language under the General Liability policy must be as broad as that contained in ISO Form CG 20 01 04 13. These coverages shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers.
- (v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

(vi) All insurance policies required herein shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.

PROVIDING OF DOCUMENTS

VENDOR shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein. All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, VENDOR shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of VENDOR shall also be required to provide all documents noted herein.

SUBCONTRACTORS

If VENDOR subcontracts any or all of the services to be performed under this Agreement, VENDOR shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, VENDOR will be solely responsible for ensuring that it's subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.