

AGREEMENT BETWEEN THE COUNTY OF ALBANY
AND POLYDYNE, INC.
TO SUPPLY LIQUID MANNICH POLYMER
TO THE ALBANY COUNTY WATER PURIFICATION DISTRICT

PERSUANT TO RES. NO. 391 FOR 2023, ADOPTED OCT. 10, 2023
(CONTRACT NO. 2023-1340)

This is an Agreement made by and between the County of Albany, a municipal corporation, acting by and through its County Executive, with a principal place of business located at 112 State Street, Albany, New York 12207 (hereinafter, the "County") and Polydyne, Inc., a Delaware corporation registered to do business in New York, with its principal place of business located at One Chemical Plant Road, P.O. Box 279, Riceboro, Georgia 31323 (hereinafter, the "Contractor," and with the County, may be referred to herein individually as a "[P]arty," or together as the "[P]arties").

WITNESSETH:

WHEREAS, the Albany County Water Purification District (hereinafter, the "ACWPD" or "District") requires liquid mannich polymer; and

WHEREAS, the Albany County Purchasing Division (hereinafter, the "Purchasing Division") has issued a request for bids for the aforesaid polymer, said request having been denominated RFB #2023-098, issued on August 8, 2023, and published on August 17, 2023 (hereinafter, the "RFB"); and

WHEREAS, the Purchasing Division has issued an addendum to the RFB on August 24, 2023 (hereinafter, the "Addendum"); and

WHEREAS, the Contractor submitted a bid on August 30, 2023 to provide the aforesaid polymer for the ACWPD (hereinafter, the "Bid"); and

WHEREAS, the County has accepted the Bid of the Contractor to provide the aforesaid polymer as the lowest responsible bidder; and

WHEREAS, the Albany County Legislature has authorized the County Executive to enter into an agreement with the Contractor to provide the aforesaid polymer to the ACWPD by Resolution No. 391 for 2023, adopted October 10, 2023, as the lowest responsible bidder; and

WHEREAS, this Agreement sets forth the understanding reached by the parties herein;

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY COVENANT AND AGREE AS FOLLOWS:

ARTICLE 1. THE CONTRACT DOCUMENTS; INTERPRETATION

1.1 The Contract Documents consist of the following: 1) this Agreement; 2) the RFB, incorporated by reference and made a part hereof; 3) the Addendum, incorporated by reference and made a part hereof; and 4) the Bid, incorporated by reference and made a part hereof (collectively, may be referred to herein as "the Agreement").

1.2 In the event of any discrepancy, disagreement or ambiguity among the Contract Documents, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity: 1) this Agreement; 2) the Addendum; 3) the RFB; 4) the Bid.

ARTICLE 2: SCOPE OF SERVICES

Consistent with the Addendum, the Contractor shall supply Liquid Mannich Polymer to the ACWPD on an as needed basis pursuant to the Specifications For Liquid Polymer described in the RFB at pages SPC1 through SPC3.

ARTICLE 3. COMPENSATION

3.1 In consideration of the terms and obligations contained in the Agreement, the County agrees to pay, and the Contractor agrees to accept, compensation in the amount of TWENTY FIVE CENTS (\$0.25) per pound, total compensation not to exceed FOUR HUNDRED THOUSAND AND 00/100 DOLLARS (\$400,000.00), for all the goods and services rendered under this Agreement.

3.2 The price per pound described in Paragraph 3.1 includes freight and F.O.B. destination.

ARTICLE 4. PAYMENT

4.1 The County operates on a formal Claim Form System. The Contractor shall deliver only the items specified on the order and shall not be paid without one. If the Contractor delivers items the ACWPD did not order, or duplicates or over ships items, it does so entirely at its own expense. Said shipments shall be at no cost to or the responsibility of the County.

4.2 All deliveries shall be made within three (3) business days of the Contractor's receipt of order, unless otherwise specified by the County, or as otherwise agreed upon between the Contractor and the ACWPD.

4.3 Unless otherwise specified by the County, inside delivery is required. Some delivery locations are not equipped with loading docks and no additional compensation shall be paid to the Contractor for inside delivery at those locations.

4.4 ACPWD shall place orders on an "as-needed" basis. There shall be no minimum order amounts required.

4.5 Prior to payment, the items furnished shall be inspected by ACWPD to determine their conformity to specification. No payment shall be made for any Liquid Mannich Polymer not meeting specification.

4.6 The County is not subject to Federal, State, or Local taxes.

ARTICLE 5. TERM OF AGREEMENT

5.1 This Agreement shall commence on January 1, 2024 and shall continue in effect through December 31, 2024.

5.2 The County reserves the right to extend the Agreement for two (2) additional one (1) year periods upon the mutual consent of the parties. If extended, the same terms, conditions, and pricing will remain in effect for those additional terms.

ARTICLE 6. TERMINATION OF AGREEMENT; REMEDY FOR BREACH

6.1 This Agreement may be terminated by the County or the Contractor as follows:

6.1.1 Dosage rates higher than the quarterly dosage rates listed in the RFB's Specifications at Section 10.0 shall be cause for investigation by the Contractor, within 48 hours of receiving notice. The Contractor shall have 15 days to correct the problem at no additional cost to the District. If after corrective action the dosage still exceeds the quarterly dosage for a two-week period, the District reserves the right to cancel the Agreement. The District also reserves the right to cancel this Agreement if the liquid polymer proves to be incompatible with the chemical feed equipment or any sludge dewatering or incineration equipment in the solids disposal building. Economics of the dewatering operations will be compared with quarterly dosages and costs per ton of the dry solids treated. The District will take no action against the Contractor if after investigation, the high dosage rate is attributed to sludge characteristics.

6.1.2 Additionally, the County may, without cause, order the Contractor in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the County may determine.

6.1.3 The Contractor may terminate this Agreement if the County is substantially in breach of it.

6.2 If the County determines that the quality of services rendered by the Contractor is not satisfactory, and/or that the Contractor is not meeting the specifications' requirement, the County may terminate this Agreement and employ another contractor to fulfill its requirements.

6.3 In the event of a breach by the Contractor, the Contractor shall pay to the County all direct and consequential damages caused by such breach, including, but not limited to, all sums

expended by the County to procure a substitute contractor to satisfactorily complete the work, together with the County's own costs incurred in procuring a substitute vendor.

ARTICLE 7. ASSIGNMENT

7.1 The Contractor specifically agrees as required by Section 109 of the N.Y. GENERAL MUNICIPAL LAW that the Contractor is prohibited from assigning, transferring, conveying, subcontracting or otherwise disposing of this Agreement, or of the Contractor's right, title, or interest therein, without the prior written consent of the County.

7.2 The Contractor shall not subcontract for any portion of the services required under this Agreement without the prior written approval of the County. Any such subcontractor shall be subject to the terms and conditions of this Agreement and any additional terms and conditions the County may deem necessary or appropriate.

ARTICLE 8. AVAILABLE DATA

All technical or other data relative to this Agreement in the possession of the County or in the possession of the Contractor shall be made available to the other party to this Agreement without expense to the other party.

ARTICLE 9. COOPERATION

The Contractor shall cooperate with representatives, agents and employees of the County and the County shall cooperate with representatives, agents and employees of the Contractor to the end that work may proceed expeditiously and economically.

ARTICLE 10. NON-DISCRIMINATION

In accordance with Article 15 of N.Y. EXECUTIVE LAW (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor agrees that neither it nor any of its County-approved subcontractors shall, by reason of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence, refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

ARTICLE 11. RELATIONSHIP

The Contractor is, and shall function as, an independent contractor under the terms of this Agreement and shall not be considered an agent or employee of the County for any purpose. The employees and agents of the Contractor shall not in any manner be, or be held out to be, agents or employees of the County.

ARTICLE 12. INDEMNIFICATION

The Contractor shall defend, indemnify and save harmless the County, its employees and agents, from and against all claims, damages, losses and expenses (including, without limitation, reasonable attorney's fees) arising out of, or in consequence of, any negligent or intentional act or omission of the Contractor, its employees or agents, to the extent of its responsibility for such claims, damages, losses and expenses.

ARTICLE 13. NON-APPROPRIATIONS

Notwithstanding anything contained herein to the contrary, no default shall be deemed to occur in the event no funds or insufficient funds are appropriated and budgeted by or are otherwise unavailable to the County for payment under this Agreement. The County will immediately notify the Contractor of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the County of any kind whatsoever, except as to those portions herein agreed upon for which funds shall have been appropriated and budgeted.

ARTICLE 14. APPLICABLE LAW

The laws of the State of New York shall govern this Agreement. The designated venue is Albany, New York.

ARTICLE 15. RECORDS

15.1 The Contractor shall maintain complete and proper accounting records that shall clearly identify all costs associated with and revenue derived from the work performed under this Agreement. Such records shall be subject to periodic and final audit by the County upon request.

15.2 The Contractor shall provide the County and authorized State and/or Federal personnel access to any and all books, documents, records, charts, software or any other information relevant to performance under this Agreement, immediately upon request.

15.3 The Contractor shall retain all of the above information for six (6) years after final payment or the termination of this Agreement, and shall make such information available to the County, and authorized State and/or Federal personnel during such period.

ARTICLE 16. INSURANCE

16.1 The Contractor shall procure and maintain for the entire term of this Agreement, without additional expense to the County, insurance policies of the kinds and in the amounts provided in the Schedule A attached hereto and made a part hereof. The insurance policies shall name the "County of Albany" as certificate holder and primary/non-contributory additional insured. Such policies may only be changed upon thirty (30) days prior written approval by the County.

16.2 The Contractor shall, prior to commencing any of the services outlined herein, furnish the County with Certificates of Insurance showing that the requirements of this article have been met. The Contractor shall also provide the County with updated Certificates of Insurance prior to the expiration of any previously-issued certificate. No work shall be commenced under this Agreement until the Contractor has delivered the Certificates of Insurance to the County. Upon failure of the Contractor to furnish, deliver and maintain such insurance certificates as provided above, the County may declare this Agreement suspended, discontinued or terminated.

16.3 As required by Section 108 of the N.Y. GENERAL MUNICIPAL LAW, this Agreement shall be of no force and effect unless the Contractor shall secure compensation for the benefit of, and keep insured during the life of this Agreement, all employees engaged thereon in compliance with the provisions of the N.Y. WORKERS' COMPENSATION LAW. The Contractor shall require any subcontractor authorized by the County to do likewise for all of their employees engaged thereon, all in compliance with the provisions of the N.Y. WORKERS' COMPENSATION LAW and of Schedule A of this Agreement.

ARTICLE 17. NO WAIVER OF PERFORMANCE

Failure of the County to insist upon strict and prompt performance of the provisions of this Agreement, or any of them, and the acceptance of such performance thereafter shall not constitute or be construed as a waiver or relinquishment of the County's right thereafter to enforce the same strictly according to the tenor thereof in the event of a continuous or subsequent default on the part of the Contractor.

ARTICLE 18. MODIFICATION

This Agreement may only be modified by a formal written amendment executed by the parties.

ARTICLE 19. EXECUTION OF DOCUMENTS

This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement, but all of which together shall constitute one and the same instrument.

ARTICLE 20. HEADINGS – CONSTRUCTION

The headings appearing in this Agreement are for the purpose of easy reference only and shall not be considered a part of this Agreement or in any way to modify, amend or affect the provisions hereof.

ARTICLE 21. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties and no representations or promises have been made except as herein expressly set forth.

ARTICLE 22. COMPLIANCE WITH MacBRIDE PRINCIPLES

The Contractor hereby represents that it is in compliance with the MacBride Principles of Fair Employment as set forth in Albany County Local Law No. 3 for 1993, in that the Contractor either (a) has no business operations in Northern Ireland or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of its compliance with such principles. In the event of a violation of this stipulation, the County reserves all rights to take remedial measures as authorized under section 4 of Local Law No. 3 in 1993, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the Contractor in default and/or seeking debarment or suspension of the Contractor.

ARTICLE 23. NON-INTERRUPTION OF WORK

The Contractor agrees that it will not intentionally engage in any course of conduct or activity, or employ for the purposes of performing the public work, any subcontractors, employees, labor or materials which will or may result in the interruption of the performance of the public work due to labor strife or unrest by workmen employed by the Contractor or by any of the trades working in or about the public works and/or premises where the work is being performed.

ARTICLE 24. EXTRA WORK/SERVICES

If the Contractor is of the opinion that any work/services it has been directed to perform is beyond the scope of this Agreement and constitutes extra work/services, the Contractor shall promptly notify the County of that opinion. The County shall be the sole judge as to whether or not such work/services is in fact beyond the scope of this Agreement and whether or not it constitutes extra work/services. In the event the County determines such work/services does constitute extra work, it shall provide extra compensation to the Contractor on a negotiated basis.

ARTICLE 25. PREVAILING WAGE RATES AND SUPPLEMENTS

The Contractor shall at all times remain in compliance with Sections 220.3 and 220-d of the N.Y. LABOR LAW, which concern the payment of not less than the prevailing hourly wage rate for a legal day's work to each laborer, workman or mechanic employed by the Contractor in the provision of the services required under this Agreement. The Contractor shall submit payroll records to the County every thirty (30) days after issuance of its first payroll in accord with N.Y. LABOR LAW 220 [3-a]a.

ARTICLE 26. IRANIAN ENERGY SECTOR DIVESTMENT

The Contractor hereby represents that the Contractor is in compliance with N.Y. GENERAL MUNICIPAL LAW § 103-g entitled "Iranian Energy Sector Divestment," in that Contractor has not:

- a. Provided goods or services of \$20 Million or more in the energy sector of Iran including, but not limited to, the provision of oil or liquefied natural gas tankers or

products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran; or

b. Acted as a financial institution and extended \$20 Million or more in credit to another person for forty-five days or more, if that person's intent was to use the credit to provide goods or services in the energy sector in Iran.

ARTICLE 27. STORMWATER MANAGEMENT PROGRAM; GREEN INFRASTRUCTURE POLICY

Not applicable.

ARTICLE 28. MISCELLANEOUS PROVISIONS

28.1 In addition to the MacBride Principles of Fair Employment, Non Interruption of Work (per Res. No. 298 for 1986) and Iranian Energy Sector Divestment policies described above, the Contractor also acknowledges that it shall follow all of the other policies and procedures contained in the RFB.

28.2 During the term of this Agreement, the Contractor agrees that, in the event of its reorganization or dissolution as a business entity or change in business, the Contractor shall give the County thirty (30) days written notice in advance of such event.

28.3 The Contractor shall at all times obtain and maintain all licenses required by New York State, or other relevant regulating body, to perform the services required under this Agreement.

28.4 If any term, part, provision, section, subdivision, or paragraph of this Agreement shall be held to be unconstitutional, invalid or ineffective, in whole or in part, such determination shall not be deemed to invalidate the remaining terms, parts, provisions, sections, subdivisions or paragraphs.

28.5 The County shall bear no responsibility other than that set forth in this Agreement.

28.6 All notices, consents, waivers, directions, requests or other instruments or communications provided for under this Agreement shall be deemed properly given if, and only if, delivered personally, sent by registered or certified United States mail, postage prepaid, or, with the prior consent of the receiving party, dispatched via facsimile transmission.

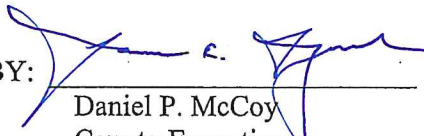
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SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed the day and year first indicated below.

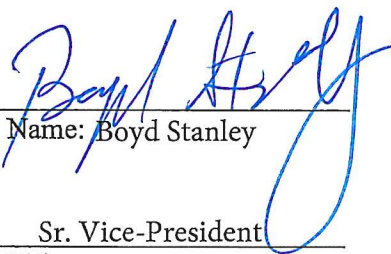
COUNTY OF ALBANY

DATED: 12/12/2023

BY: 
Daniel P. McCoy
County Executive
or
Daniel C. Lynch, Esq.
Deputy County Executive

POLYDYNE, INC.

DATED: 11/27/2023

BY: 
Name: Boyd Stanley
Sr. Vice-President
Title:

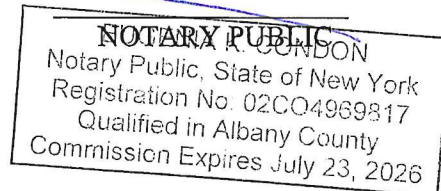
STATE OF NEW YORK)
COUNTY OF ALBANY) SS.:

On the ____ day of _____, 2023, before me, the undersigned, personally appeared Daniel P. McCoy personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

STATE OF NEW YORK)
COUNTY OF ALBANY) SS.:

On the 12th day of December, 2023, before me, the undersigned, personally appeared Daniel C. Lynch, Esq. personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



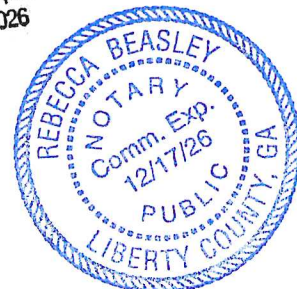
STATE OF ~~NEW YORK~~)
COUNTY OF LIBERTY) SS.:

On the 27th day of November, 2023, before me, the undersigned, personally appeared Boyd Stanley, Sr. Vice-President personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



NOTARY PUBLIC

My Commission Expires
December 17, 2026



SCHEDULE A
INSURANCE COVERAGE

1. Workers' Compensation and Employers' Liability Insurance: A policy or policies providing protection for employees in the event of job-related injuries.
2. Automobile Liability Insurance: A policy or policies with the limits of not less than \$500,000 combined for each accident because of bodily injury, sickness, or disease, sustained by any person, caused by accident, and arising out of the ownership, maintenance or use of any automobile for damage because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance, or use of any automobile.
3. General Liability Insurance: A policy or policies of comprehensive all-risk insurance, including coverage for demolition of structures, with limits of not less than:

Liability For:	Combined Single Limit
Property Damage	\$1,000,000
Bodily Injury	\$1,000,000
Personal Injury	\$1,000,000.