

Purch - 10/14/08

CONTRACT
DEWATERING POLYMER
CITY OF SPARKS, NEVADA

C-1090
10/13/08
A.I. 5.11

THIS AGREEMENT made and entered into on this 13 day of October, 2008, by and between the City of Sparks, Nevada, a municipal corporation, existing under and by virtue of the laws of the State of Nevada, hereinafter called "City", and Polydyne Inc., a qualified Bidder in the class of work required, hereinafter called "Bidder".

WITNESSETH

WHEREAS, the City has awarded a contract to Bidder for performing the work hereinafter mentioned in accordance with the sealed proposal of said Bidder;

WHEREAS, the Bidder will perform the work for the compensation stated in said proposal, an amount which has been arrived at after negotiations between the parties;

WHEREAS, each party is willing to and does assume joint liability for the contents of this Agreement, and each party accordingly agrees that it shall not be construed against any party as a drafting party;

NOW, THEREFORE, IT IS AGREED as follows:

1. Scope of Work. The City of Sparks, Dewatering Polymer, Bid No. 08/09-002 and Bidder's Entire Bid (Contract Documents) are on file with the City of Sparks. All terms, conditions and requirements contained in these Contract Documents, including any and all addenda issued by the City, are hereby incorporated into this Agreement.

The Bidder shall perform within the time stipulated, the Contract as herein defined, of which this Agreement is a component part and shall provide and furnish any and all of the labor, materials, methods or processes, equipment implements, tools, machinery and equipment, and all utility, transportation and other services required to construct, install and put in complete order for use in a good and workmanlike manner all of the work covered by the Contract in connection with strict accordance with the plans and specifications therefore, which were approved by said City and are on file in the office of the Sparks City, including any and all addenda issued by the City, and with the other contract documents hereinafter enumerated.

The supplier will furnish the Dewatering Polymer for an initial (6) six month period beginning November 1, 2008 through April 30, 2009, at \$ 97.905 per ton feed, with an option for (9) nine additional (6) six month extensions. The Supplier will be responsible for hook up, purging of lines, and disconnection of polymer tankers. Proper safety procedures will be followed at all times. Bid price includes the demurrage charge for trailers and all applicable EPA or other mandated charges. Deliveries shall be made by the Supplier upon order by the City at any time during the Contract period. Deliveries will be made in bulk, F.O.B. Reno, Nevada PREPAID, Treatment Plant Site, including applicable charges. Delivery shall be made to the Truckee Meadows Water Reclamation Facility, 8500 Clean Water Way, Reno, Nevada. The Truckee Meadows Water Reclamation Facility will make no guarantees as to the quantities to be purchased throughout the firm price contract period. The Supplier will be responsible for making deliveries within 7 days maximum, weekends and holidays inclusive, or time agreed to after notification of need for delivery by authorized Truckee Meadows Water Reclamation Facility Plant personnel. The Truckee Meadows Water Reclamation Facility/City of Sparks is a 24 hours facility, the

truck driver will call to let the operations staff know the approximate day time the polymer delivery will take place within 24 hours of delivery by calling 775-861-4100. During the winter season it is preferred to have daytime deliveries because the product flows better when it is warmer.

The City reserves the right to void the contract and demand removal of the rejected product by Supplier at no cost to the Truckee Meadows Water Reclamation Facility/City of Sparks within forty-eight (48) hours if at any time it fails to meet our specifications. If any of the aforementioned should occur, the Supplier will supply product of required grade and compatibility within ten (10) hours of notification.

2. Time of Performance. The award is for an initial (6) six month period beginning November 1, 2008 through April 30, 2009 with an option for (9) nine additional (6) six month extensions provided both parties agree, funding availability, satisfactory performance and specified bid pricing but not later than June 30, 2013.

Truckee Meadows Water Reclamation Facility/City of Sparks reserves the right to cancel resultant agreement upon ten days written notice in the event the type and quality of the product or work performance is unsatisfactory or in default, subject to contractor's right to cure as outlined in termination clause.

3. No Unlawful Discrimination. In connection with the performance of work under this contract, the Bidder agrees to abide by all State and Federal laws and not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, age, handicap or military service. The Bidder further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials. Any violation of these provisions by Bidder shall constitute a material breach of contract.

No Illegal Harassment. Violation of the City's illegal harassment policy, which is incorporated by reference and available from the Human Resource Department, by the Bidder, its officers, employees, agents, consultants, subcontractors and anyone from whom it is legally liable, while performing or failing to perform Bidder's duties under this Agreement shall be considered a material breach of contract.

4. Acceptance by the City. It is expressly understood and agreed that all work done by the Bidder shall be subject to inspection and acceptance by the Project Coordinator in his or her discretion, and that any progress inspections and approval by the City of any item or work shall not forfeit the right of the City to require the correction of faulty workmanship or material at any time during the course of the work, although previously approved by oversight, and nothing herein contained shall relieve the Bidder of the responsibility for proper construction and maintenance of the work, materials and equipment required under the terms of this Agreement until all work has been completed and accepted by the City.

5. Waiver. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or shall be construed as a further or continuing waiver of any such term, provision or condition of this Agreement. No waiver shall be effective unless it is in writing and signed by the party making it.

6. Notices.

All notices required to be given in writing by this Agreement shall be deemed to be received (i) upon delivery if personally delivered, or (ii) when receipt is signed for if mailed by certified or registered mail,

postage prepaid, or by express delivery service or courier, when addressed as follows (or sent to such other address as a Party may specify in a notice to the others):

CITY OF SPARKS
431 PRATER WAY
PO BOX 857
SPARKS, NV 89432-0857

BIDDER:

7. Arbitration.

Any and all disputes, controversies or claims arising under or in connection with this Agreement, including without limitation, fraud in the inducement of this Agreement, or the general validity or enforceability of this Agreement, shall be governed by the laws of the State of Nevada without giving effect to conflicts of law principles, may be submitted to binding arbitration before one arbitrator, and shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association in a private manner in Washoe County, Nevada. This award shall be final and judgment may be entered upon it in any court having jurisdiction thereof. In reaching this final award, the arbitrator shall have no authority to change or modify any provision of this Agreement. All other expenses of arbitration shall be borne equally by the parties. All fees, including legal fees, shall be borne by the party who incurred them. All costs of enforcement shall be borne by the losing party. Each party shall have the right to discovery in accordance with the Nevada Rules of Civil Procedure.

8. Jurisdiction and Venue. In the event the arbitration award is challenged, any action or proceeding seeking to do so must be brought in the courts of the State of Nevada, County of Washoe, or if the party can acquire subject-matter jurisdiction, in the United States District Court for the District of Nevada in the City of Reno. Each of the parties consents to the personal jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on either party by sending it certified mail to the respective addresses designated for notice.

9. Indemnity. Bidder agrees to indemnify, hold harmless, protect and defend the City, its agents, employees, Bidders and/or representatives, from and against any liability, claim, loss, cost, expense or damage, including reasonable attorney's fees and court costs, claimed against the City resulting from, arising out of, or in any manner relating to any act or failure to act by the Bidder, its agents, employees, subcontractors and/or representatives in connection with the performance of its obligations hereunder.

10. Licenses and Permits. The Bidder shall procure at his own expense all necessary licenses and permits and shall adhere to all the laws, regulations and ordinances applicable to the performance of this Agreement.

11. Insurance. The Bidder shall take out and keep in force during the period of the Contract, at his own expense, a General Liability Insurance Policy with a Minimum Limit of \$2,000,000 Combined Single Limit (BI/PD) to protect him from claims for damages and personal injury, including death, which may arise from operation under this Contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them. There shall be no exclusions of coverage for premises-operations, products-completed operations, blanket contractual, broad form property, independent Bidders, personal injury, explosion and underground collapse hazard

or \$2,000,000 vehicle liability insurance including owned, non-owned and hired vehicles coverage requirements.

The successful Bidder shall file a Certificate of Insurance followed by an Additional Insured Endorsement to the Policy, naming the City of Sparks as an additional insured as respects the specific project or program. The insurance shall be subject to approval for adequacy of protection prior to commencing work. Nevada State law requires that the BIDDER provide a Certificate of Worker's Compensation Insurance approved by the State of Nevada for employees working in the State of Nevada. The BIDDER shall pay for and maintain such insurance at his sole cost and expense. The Bidder shall reimburse the City for any premiums paid in behalf of the Bidder by deducting said amount from compensation due the BIDDER.

Pursuant to NRS 680(A).300 and 680(A).310, all Bonds and Certificates of Insurance must be countersigned by a Nevada Resident Agent if issued out of State (Excluding Bid Bond).

12. Liquidated Damages. If the Product is not delivered/Project is not completed within the time stipulated in the bid, the Bidder shall pay to the City of Sparks as fixed, agreed and liquidated damages for delay and not as a penalty (it being impossible to determine the actual damages occasioned by the delay) TWO HUNDRED FIFTY DOLLARS (\$250.00) for each calendar day of delay until delivery is completed; the Bidder shall be liable to the City of Sparks for the amount thereof. This amount may be deducted from money due or to become due to the Bidder as compensation under this bid in the event the Bidder fails to meet delivery schedules or product specifications.

13. Material Breach of Contract.

Breach and Contract Termination.

13.1. In the event Contractor fails to deliver the product and services as contracted for herein, to the satisfaction of the City of Sparks or otherwise fails to perform any provisions of this Contract, the City, after providing five (5) days written notice and contractor's failure to cure such breach, may without waiving any other remedy, make good the deficiencies and deduct the actual cost of providing alternative Services from payment due the Contractor, and the City shall, in addition to its other remedies and at the City's discretion, may deduct from the contract payment a sum equal to the full trailer load of delivery days missed. Non-performance after the first notice of non-performance shall be considered a material breach of contract.

13.2. The City may terminate the Contract for material breach of contract upon ten (10) days written notice and recover all damages, deducting any amount still due the Contractor from damages owed to the City, or seek other remedy including action against all bonds. The Contractor may terminate the Contract for material breach of contract upon thirty (30) days written notice to the City.

The City's Illegal Harassment Policy, is incorporated by reference and is available from the Human Resource Department. Violation by the Bidder, its officers, employees, agents, consultants, subcontractors and anyone for whom it is legally liable, while performing or failing to perform Bidder's duties under this Agreement shall be considered a material breach of contract.

14. Miscellaneous.

14.1. Assignment. All of the terms, conditions and provisions of this Agreement, and any amendments thereto, shall inure to the benefit of and be binding upon the parties hereto, and their

respective successors and assigns. The Bidder shall not assign this Agreement without the written consent of the City which may be withheld for any reason whatsoever.

14.2. Entire Agreement. This Agreement constitutes the entire agreement of the parties and shall supersede all prior offers, negotiations, agreements and contracts whether written or oral. Any modifications to the terms and conditions of this Agreement must be in writing and signed by both parties.

14.3. Severability. If any part of this Agreement is found to be void it will not affect the validity of the remaining terms of this Agreement which will remain in full force and effect.

14.4. Headings. Paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference only, and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision thereof.

14.5. Singular Includes the Plural; Gender. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the use of any gender, be it masculine, feminine or neuter, shall include all of the genders, and the word "person" or "entity" shall include corporation, firm, partnership, or any other combination or association.

15. Execution. The parties agree to execute such additional documents and to take such additional actions as are reasonably necessary or desirable to carry out the purposes hereof. They also agree, acknowledge and represent that all corporate authorizations have been obtained for the execution of this Agreement and for the compliance with each and every term hereof. Each undersigned officer, representative or employee represents that he or she has the authority to execute this Agreement on behalf of the party for whom he or she is signing.

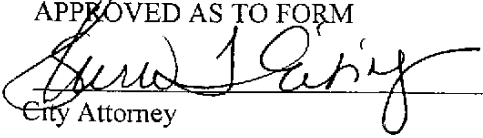
IN WITNESS WHEREOF, the City of Sparks has caused this Agreement to be executed by its officers thereunto duly authorized and the Bidder has subscribed same, all on the day and year first above written.

(Bidder)

By: _____

(Title)

APPROVED AS TO FORM



City Attorney


CITY OF SPARKS, NEVADA

A Municipal Corporation

By: 

Mayor

ATTEST:



City Clerk

