

SUPPLY AGREEMENT NO. 5930

Sludge Dewatering Polymer

THIS **Sludge Dewatering Polymer Supply Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and Polydyne Inc. ("Contractor"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Contractor has bid to provide Sludge Dewatering Polymer in response to Request for Bid No. **5930** ("RFB"), which RFB includes the required scope of work and all specifications and which RFB and the Contractor's bid response are incorporated by reference in this Agreement as Exhibits 1 and 2, respectively, as if each were fully set out here in its entirety.

NOW, THEREFORE, City and Contractor agree as follows:

1. Scope. Contractor will provide Sludge Dewatering Polymer in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. "Goods," "products", and "supplies", as used in this Agreement, refer to and have the same meaning.

2. Term.

(A) The Term of this Agreement is one year beginning on the date provided in the Notice to Proceed from the Contract Administrator or the City's Procurement Division. The parties may mutually extend the term of this Agreement for up to two additional one-year periods ("Option Period(s)"), provided, the parties do so in writing prior to the expiration of the original term or the then-current Option Period.

(B) At the end of the Term of this Agreement or the final Option Period, the Agreement may, at the request of the City prior to expiration of the Term or final Option Period, continue on a month-to-month basis for up to six months with compensation set based on the amount listed in Attachment B for the Term or the final Option Period. The Contractor may opt out of this continuing term by providing notice to the City at least 30 days prior to the expiration of the Term or final Option Period. During the month-to-month term, either Party may terminate the Agreement upon 30 days' written notice to the other Party.

3. Compensation and Payment. This Agreement is for an amount not to exceed \$1,007,845.00, subject to approved extensions and changes. Payment will be

made for goods delivered and accepted by the City within 30 days of acceptance, subject to receipt of an acceptable invoice. All pricing must be in accordance with the attached Bid/Pricing Schedule, as shown in Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. Any amount not expended during the initial term or any option period may, at the City's discretion, be allocated for use in the next Option Period.

Invoices must be mailed to the following address with a copy provided to the Contract Administrator:

City of Corpus Christi
Attn: Accounts Payable
P.O. Box 9277
Corpus Christi, Texas 78469-9277

- 4. Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Name: Amanda Howard
Department; Utilities Department
Phone: (361) 826-1894
Email: AmandaC@cctexas.com

- 5. Insurance.** Before performance can begin under this Agreement, the Contractor must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, the COI must state that the City will be given at least 30 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in Attachment C, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.
- 6. Purchase Release Order.** For multiple-release purchases of products to be provided by the Contractor over a period of time, the City will exercise its right to specify time, place and quantity of products to be delivered in the following manner: any City department or division may send to Contractor a purchase release order signed by an authorized agent of the department or division. The purchase release order must refer to this Agreement, and products will remain with

the Contractor until such time as the products are delivered and accepted by the City.

7. Inspection and Acceptance. City may inspect all products supplied before acceptance. Any products that are delivered but not accepted by the City must be corrected or replaced immediately at no charge to the City. If immediate correction or replacement at no charge cannot be made by the Contractor, a replacement product may be bought by the City on the open market and any costs incurred, including additional costs over the item's bid price, must be paid by the Contractor within 30 days of receipt of City's invoice.

8. Warranty.

(A) The Contractor warrants that all products supplied under this Agreement are new, quality items that are free from defects, fit for their intended purpose, and of good material and workmanship. The Contractor warrants that it has clear title to the products and that the products are free of liens or encumbrances.

(B) In addition, the products purchased under this Agreement shall be warranted by the Contractor or, if indicated in Attachment D by the manufacturer, for the period stated in Attachment D. Attachment D is attached to this Agreement and is incorporated by reference into this Agreement as if fully set out here in its entirety.

9. Quality/Quantity Adjustments. Any quantities indicated on the Bid/Pricing Schedule are estimates only and do not obligate the City to order or accept more than the City's actual requirements nor do the estimates restrict the City from ordering less than its actual needs during the term of the Agreement and including any Option Period. Substitutions and deviations from the City's product requirements or specifications are prohibited without the prior written approval of the Contract Administrator

10. Non-Appropriation. The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.

11. Independent Contractor. Contractor will perform the work required by this Agreement as an independent contractor and will furnish such products in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Contractor be considered an employee of the City.

12. **Subcontractors.** In providing the Goods, Contractor will not enter into subcontracts or utilize the services of subcontractors.
13. **Amendments.** This Agreement may be amended or modified only in writing executed by authorized representatives of both parties.
14. **Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.
15. **Taxes.** The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other applicable taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.
16. **Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

IF TO CITY:

City of Corpus Christi
Attn: Amanda Howard
Title: Contracts/Funds Administrator
Address: 2726 Holly Road, Corpus Christi, Texas 78415
Phone: (361) 826-1894
Fax: (361) 826-4495

IF TO CONTRACTOR:

Polydyne Inc.
Attn: Boyd Stanley
Title: Sr. Vice-President
Address: 1 Chemical Plant Road, Riceboro, GA 31323
Phone: 1-800-848-7659 x2
Fax: 912-880-2078

17. **CONTRACTOR SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS, AND CAUSES OF ACTION OF WHATEVER NATURE, CHARACTER, OR DESCRIPTION ON ACCOUNT OF PERSONAL INJURIES, PROPERTY LOSS, OR DAMAGE, OR ANY OTHER KIND OF INJURY, LOSS, OR DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES,**

WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH A BREACH OF THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT BY THE CONTRACTOR OR RESULTS FROM THE NEGLIGENT ACT, OMISSION, MISCONDUCT, OR FAULT OF THE CONTRACTOR OR ITS EMPLOYEES OR AGENTS. CONTRACTOR MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING OR RESULTING FROM ANY SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, SUITS, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

18. Termination.

(A) The City may terminate this Agreement for Contractor's failure to comply with any of the terms of this Agreement. The City must give the Contractor written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City may terminate this Agreement immediately thereafter.

(B) Alternatively, the City may terminate this Agreement for convenience upon 30 days advance written notice to the Contractor. The City may also terminate this Agreement upon 24 hours written notice to the Contractor for failure to pay or provide proof of payment of taxes as set out in this Agreement.

19. Owner's Manual and Preventative Maintenance. Contractor agrees to provide a copy of the owner's manual and/or preventative maintenance guidelines or instructions if available for any equipment purchased by the City pursuant to this Agreement. Contractor must provide such documentation upon delivery of such equipment and prior to receipt of the final payment by the City.

20. Limitation of Liability. The City's maximum liability under this Agreement is limited to the total amount of compensation listed in Section 3 of this Agreement. In no event shall the City be liable for incidental, consequential or special damages.

21. Assignment. No assignment of this Agreement by the Contractor, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.

- 22. Severability.** Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.
- 23. Order of Precedence.** In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:
- A. this Agreement (excluding attachments and exhibits);
 - B. its attachments;
 - C. the bid solicitation document including any addenda (Exhibit 1); then,
 - D. the Contractor's bid response (Exhibit 2).
- 24. Certificate of Interested Parties.** Contractor agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement if required by said statute.
- 25. Governing Law.** Contractor agrees to comply with all federal, Texas, and City laws in the performance of this Agreement. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.
- 26. Public Information Act Requirements.** This paragraph applies only to agreements that have a stated expenditure of at least \$1,000,000 or that result in the expenditure of at least \$1,000,000 by the City. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 27. Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.
- 28. Consent Decree Requirements.** This Agreement is subject to certain requirements provided for by the Consent Decree entered into as part of Civil Action No. 2:20-cv-00235, *United States of America and State of Texas v. City of Corpus Christi* in the United States District Court for the Southern District of Texas, Corpus Christi Division (the "Consent Decree"). A set of Wastewater Consent Decree Special

Conditions has been attached as Attachment E, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. The Contractor must comply with Attachment E while performing the Services.

CONTRACTOR

Signed by:
Signature: Boyd Stanley
B74817AD4161847B...
Printed Name: Boyd Stanley
Title: Sr. Vice-President
Date: 8/6/2024

CITY OF CORPUS CHRISTI

Josh Chronley
Assistant Director of Finance – Procurement
Date: _____

Attached and Incorporated by Reference:

- Attachment A: Scope of Work
- Attachment B: Bid/Pricing Schedule
- Attachment C: Insurance Requirements
- Attachment D: Warranty Requirements
- Attachment E: Wastewater Consent Decree Special Conditions

Incorporated by Reference Only:

- Exhibit 1: RFB No. 5930
- Exhibit 2: Contractor's Bid Response

Attachment A: Scope of Work

1.1 General Requirements/Background Information

- A. Corpus Christi Water (CCW) uses the polymer for de-watering of digested sludge using belt filter presses at the City's Wastewater Treatment Plants.
- B. CCW uses the chemical known as organic polymer, which is synthetic, high molecular weight, water-soluble polyelectrolytes, manufactured specifically for use as flocculants for sludge conditioning.

1.2 Product Specifications

- A. Polymers shall be emulsion-type only, readily and completely miscible in water at all dilutions and temperatures, and capable of being diluted to any ratio needed to meet dosage requirements.
- B. The product shall be a cationic copolymer of acrylamide. The product shall contain no formaldehyde. Active solids concentration must be a minimum of 40%.
- C. The polymer materials shall have a shelf life of at least six months at ambient temperatures.
- D. The polymer materials in both concentrated and diluted form shall not require special handling, nor shall they pose hazards to employees working with them.
- E. The polymer shall not contain any substances which are inhibitory or toxic to bacteria essential to wastewater treatment processes.
- F. The materials shall not cause corrosion problems to CCW's equipment. The polymers must be compatible with CCW's existing storage and handling facilities.
- G. The product must meet the following performance specifications for each of CCW's wastewater treatment plants. Failure to meet these specifications will result in that product being deemed non-conforming:

Plant	Min Feed Rate(gallons/min)	Min Feed Solids	Max Filtrate Solids	Min Cake Solids	Max Polymer Dosage (lbs./dry ton)
Broadway	100	2	200	24	15
Oso	160	2	200	16	15
Greenwood	100	4	200	24	15
Allison	70	2	200	16	15
Laguna Madre	70	2	200	16	15
Whitecap	70	2	200	16	15

1.3 Change of Product

If the Contractor desires to make any changes to the product during the term of the contract, the Contractor shall provide a sample to the point of contact for approval. The Contractor shall allow a minimum of 30 days for the point of contact to approve the new sample of polymer. The Contractor shall continue with the currently approved polymer until the new polymer is approved.

1.4 Performance Requirement for Polymer used at Broadway Centrifuges

The Broadway Wastewater Treatment Plant is the only plant using centrifuges. The polymer used for the centrifuges will comply with all other elements of the performance Specification, except as amended here:

1. Solid's concentration of waste activated sludge: Minimum 10,000 mg/l.
2. Volatile Content of Solids: Less than 74% (percent).
3. Total Sludge Feed Rate:
 - a. Design: 450 gallons per minute.
 - b. Minimum: 280 gallons per minute.
4. Total Diluted Polymer and Sludge Feed Rate:
 - a. Design: 500 gallons per minute.
 - b. Minimum: 300 gallons per minute.
5. Cake Dryness:
 - a. At Design Sludge Feed Rate: Minimum 18% (percent) total solids
 - b. At Minimum Sludge Feed Rate: Minimum 22% (percent) total solids
6. Maximum centrate total suspended solids: 200 mg/l
7. Maximum polymer dose: 15 lbs. polymer per dry ton solids

1.5 Delivery and Inspection

- A. The frequency of deliveries is dependent upon the requirement of keeping a minimum of two-week inventory of polymer for sludge de-watering.
- B. The Contractor shall deliver polymers in 250-gallon totes provided by the manufacturer and unloaded at the wastewater treatment plants.
- C. The Contractor shall provide any special equipment necessary for unloading.
- D. Deliveries shall be made between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays, unless otherwise instructed.
- E. Deliveries will be made to the following Wastewater Treatment Plants:

- Broadway WWTP - 801 Resaca, Corpus Christi, TX
- Oso WWTP - 601 Nile, Corpus Christi, TX
- Greenwood WWTP - 6541 Greenwood, Corpus Christi, TX
- Allison WWTP - 4101 Allison, Corpus Christi, TX
- Laguna Madre WWTP - 201 Jester, Corpus Christi, TX
- Whitecap WWTP - 13409 Whitecap, Corpus Christi, TX

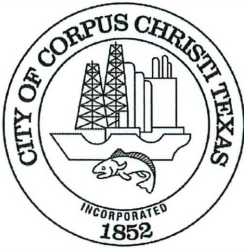
F. All materials supplied must comply with all requirements and standards of the Occupational Safety and Health Act (OSHA). All appropriate marking shall be in place before delivery. Items not meeting OSHA specifications will be refused. Safety Data Sheets (SDS) essentially similar to the U.S. Department of Labor form LSB-00 S-5 shall be furnished with the materials delivered.

1.6 Invoicing

The Contractor shall invoice each delivery separately. Invoice shall be based on pounds of product delivered.

1.7 Quality Control and Technical Support

- A. The Contractor shall establish and maintain a complete Quality Control Program that is acceptable to the Contract Administrator to assure that the requirements of the Contract are provided as specified.
- B. The Contractor shall provide technical assistance as needed to ensure that the polymer is performing as per the specifications and that the polymer is being used in the most cost-effective manner.



Attachment B: Bid/Pricing Schedule
CITY OF CORPUS CHRISTI
CONTRACTS AND PROCUREMENT
BID FORM
RFB No. 5930
Sludge Dewatering Polymer

Date: 7/18/24

Bidder: Polydyne Inc.

Authorized Signature: 
 Boyd Stanley, Sr. Vice-President

1. Refer to "Instructions to Bidders" and Contract Terms and Conditions before completing bid.
2. Quote your best price for each item.
3. In submitting this bid, Bidder certifies that:
 - a. the prices in this bid have been arrived at independently, without consultation, communication, or agreement with any other Bidder or competitor, for the purpose of restricting competition with regard to prices.
 - b. Bidder is an Equal Opportunity Employer, and the Disclosure of Interest information on file with City's Contracts and Procurement office, pursuant to the Code of Ordinances, is current and true.
 - c. Bidder is current with all taxes due and company is in good standing with all applicable governmental agencies.
 - d. Bidder acknowledges receipt and review of all addenda for this RFB.

Item	Location	UOM	Est. 1-year usage	Unit Price	Total Price
1	Sludge Dewatering Polymer for Broadway WWTP CLARIFLOC C-6266	Lbs.	138,000	\$ 1.67/Lb.	\$ 230,460.00
2	Sludge Dewatering Polymer for Oso WWTP CLARIFLOC CE-1323	Lbs.	241,500	\$ 1.67/Lb.	\$ 403,305.00
3	Sludge Dewatering Polymer for Greenwood WWTP CLARIFLOC CE-454	Lbs.	97,500	\$ 1.67/Lb.	\$ 162,825.00
4	Sludge Dewatering Polymer for Allison WWTP CLARIFLOC C-6266	Lbs.	92,000	\$ 1.67/Lb.	\$ 153,640.00
5	Sludge Dewatering Polymer for Laguna Madre WWTP CLARIFLOC C-6266	Lbs.	17,250	\$ 1.67/Lb.	\$ 28,807.50
6	Sludge Dewatering Polymer for Whitecap WWTP CLARIFLOC C-6266	Lbs.	17,250	\$ 1.67/Lb.	\$ 28,807.50
Total					\$ 1,007,845.00

Attachment C: Insurance Requirements

CONTRACTOR'S LIABILITY INSURANCE

1. Contractor must not commence work under this agreement until all insurance required herein has been obtained and approved by the City's Risk Manager or designee. Contractor must not allow any subcontractor to commence work until all similar insurance required of the subcontractor has been so obtained.

2. Contractor must furnish to the City's Risk Manager and Contract Administrator, one (1) copy of Certificate of Insurance with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City Risk Manager. The City must be listed as an additional insured for the General Liability and Auto Liability policies **by endorsement**, and a waiver of subrogation **endorsement** is required on GL, AL and WC if applicable. **Endorsements** must be provided with Certificate of Insurance. Project name and/or number must be listed in Description Box of Certificate of Insurance.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
Commercial General Liability including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 Per Occurrence
AUTOMOBILE LIABILITY (including) 1. Owned 2. Hired & Non-owned 3. Rented & Leased	\$1,000,000 Combined Single Limit
WORKERS' COMPENSATION (All States Endorsement if Company is not domiciled in Texas)	Statutory
Employer's Liability	\$500,000 / \$500,000 / \$500,000
POLLUTION LIABILITY	\$1,000,000 Per occurrence

3. In the event of accidents of any kind related to this project, Consultant must furnish the Risk Manager with copies of all reports of such accidents within 10 days of the accident.

Additional Requirements –

1. Applicable for paid employees, Contractor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in an amount sufficient to assure that all workers' compensation obligations incurred by the Contractor will be promptly met. An All States endorsement shall be required if consultant is not domiciled in the State of Texas.
2. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.
3. Contractor shall be required to submit replacement Certificate of Insurance to City at the address provided below within 10 days of any change made by the Contractor or as requested by the City. Contractor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Management
P.O. Box 9277
Corpus Christi, TX 78469-9277

4. **Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
 - List the City and its officers, officials, employees, and volunteers, as additional insureds by endorsement with regard to operations, completed operations and activities of or on behalf of the named insured performed under contract with the City, with the exception of the workers' compensation policy.
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and

- Provide 30 calendar days advance written notice directly to City of any cancellation, non-renewal, material change or termination in coverage and not less than ten calendar days advance written notice for nonpayment of premium.
5. Within five calendar days of a cancellation, non-renewal, material change or termination of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
 6. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Contractor demonstrates compliance with the requirements hereof.
 7. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this contract.
 8. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Corpus Christi for liability arising out of operations under this contract.
 9. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.

2021 Insurance Requirements

Ins. Req. Exhibit **1-B**

Purchase Contracts – Supply Agreements – Equipment Leases

Hazardous Chemicals Delivered to City

05/10/2021 Risk Management – Legal Dept.

Attachment D - Warranty Requirements

The Contractor warrants that all products supplied under this Agreement are new, quality items that are free from defects, fit for their intended purpose, and of good material and workmanship. The Contractor warrants that it has clear title to the products and that the products are free of liens or encumbrances.

ATTACHMENT E

WASTEWATER CONSENT DECREE

Special Conditions

Special Project procedures are required from the CONTRACTOR as specified herein. The CONTRACTOR shall implement and maintain these procedures at the appropriate time, prior to and during performance of the work.

The following special conditions and requirements shall apply to the Project:

I. Consent Decree Notice Provision – The City of Corpus Christi (“City”), the United States of America and the State of Texas have entered into a Consent Decree in Civil Action No. 2:20-cv-00235, United States of America and State of Texas v. City of Corpus Christi in the United States District Court for the Southern District of Texas, Corpus Christi Division (the “Consent Decree”). A copy of the Consent Decree is available at

<https://www-cdn.cctexas.com/sites/default/files/CC-Consent-Decree.pdf>

By signature of the Contract, CONTRACTOR acknowledges receipt of the Consent Decree.

II. Performance of work. CONTRACTOR agrees that any work under this Contract is conditioned upon CONTRACTOR’s performance of the Work in conformity with the terms of the Consent Decree. All Work shall be performed in accordance with the Design Criteria for Wastewater Systems under Title 30 Chapter 217 of the Texas Administrative Code, 30 Tex. Admin. Code Ch. 217, and using sound engineering practices to ensure that construction, management, operation and maintenance of the Sewer Collection System complies with the Clean Water Act. Work performed pursuant to this contract is work that the City is required to perform pursuant to the terms of the Consent Decree. In the event of any conflict between the terms and provisions of this Consent Decree and any other terms and provisions of this Contract or the Contract Documents, the terms and provisions of this Consent Decree shall prevail.

III. Retention of documents – CONTRACTOR shall retain and preserve all non-identical copies of all documents, reports, research, analytical or other data, records or other information of any kind or character (including documents, records, or other information in electronic form) in its or its sub-contractors’ or agents’ possession or control, or that come into its or its sub-contractors’ or agents’ possession or control, and that relate in any manner to this contract, or the performance of any work described in this contract (the “Information”). This retention requirement shall apply regardless of any contrary

city, corporate or institutional policy or procedure. CONTRACTOR, CONTRACTOR's sub-contractors and agents shall retain and shall not destroy any of the Information until five years after the termination of the Consent Decree and with prior written authorization from the City Attorney. CONTRACTOR shall provide the City with copies of any documents, reports, analytical data, or other information required to be maintained at any time upon request from the City.

IV. Liability for stipulated penalties – Article IX of the Consent Decree provides that the United States of America, the United States Environmental Protection Agency and the State of Texas may assess stipulated penalties including interest against the City upon the occurrence of certain events. To the extent that CONTRACTOR or CONTRACTOR's agents or sub-contractors cause or contribute to, in whole or in part, the assessment of any stipulated penalty against the City, CONTRACTOR agrees that it shall pay to City the full amount of any stipulated penalty assessed against and paid by City that is caused or contributed to in whole or in part by any action, failure to act, or failure to act within the time required by any provision of this contract. CONTRACTOR shall also pay to City all costs, attorney fees, expert witness fees and all other fees and expenses incurred by City in connection with the assessment or payment of any such stipulated penalties, or in contesting the assessment or payment of any such stipulated penalties. In addition to any and all other remedies to which City may be entitled at law or in equity, CONTRACTOR expressly authorizes City to withhold all amounts assessed and paid as stipulated penalties, and all associated costs, fees, or expenses from any amount unpaid to CONTRACTOR under the terms of this contract, or from any retainage provided in the contract.