

August 23, 2023

Melissa Battite, CPRP
Director of Recreation and Community Programs
Town of Lexington
Community Center
39 Marrett Road
Lexington, MA 02421
mbattite@lexingtonma.gov

Re: Purchase/Install Advanced Water Chemistry Controllers at Town Pool Complex, RFQ 24-27

Dear Melissa:

As requested, **Weston & Sampson CMR, Inc. (W&S CMR)** is pleased to present this proposal to install Advanced Water Chemistry controllers, at the Irving Mabee Town Pool Complex, as described herein.

Scope of Services –

1. Furnish and install four (4) BECSys chemical controllers, with EZ-Connect.
2. Furnish labor to remove existing controllers.
3. Furnish training on new controllers.

Notes -

1. Weston and Sampson will remove old controllers.
2. Materials and labor needed for additional repairs, outside the above referenced scope of services, will be invoiced as an extra cost, on a time and materials basis.
3. Weston & Sampson CMR, Inc. reserves the right to stop all work until unforeseen extra work has been approved by owner.
4. Owner to provide free parking for the pool or repair technician near or adjacent to the building. If parking is unavailable, parking fees will be invoiced, to the on-call contract.

Schedule -

We will initiate work under this Agreement following formal acceptance by Town of Lexington (Owner).

Please Note: Due to current market conditions, installation date is subject to manufactures shipping availability. Presently, lead time for equipment is approximately 6 weeks.

Fee -

The cost associated with Task 1 through 3 of the Scope of Services is a lump sum of **\$31,280.00***

***Price provided is based on prevailing wage rates.**

Fees for this project will be billed monthly as they accrue based upon the services performed. The Owner agrees to make payment to Weston & Sampson within thirty (30) days of the invoice date. If applicable, Owner is responsible for all costs associated with third party payment processing and/or compliance fees. Invoices paid via credit card, will be charged an additional processing fee (4% of the total invoice cost).

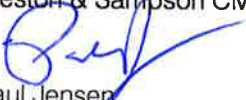
Services will be provided as described herein and in accordance with the attached General Terms and Conditions, which are a part of our Agreement with you. This proposal is valid for 30 days.

If you agree with this Agreement and wish to retain us to provide the proposed services, please sign and return one copy of this Agreement, to us, as authorization to proceed with performance of the services. Please initial and date the enclosed Terms and Conditions.

We are pleased to submit this proposal and look forward to continuing our work with you and your staff. If you have any questions, please contact Rich Stuart at (978) 380-2500 or email him at stuartr@wseinc.com.

Sincerely,

Weston & Sampson CMR, Inc.



Paul Jensen
General Manager

Accepted By:

<hr/>	
Signed - Town of Lexington (Owner)	Date
<hr/>	
Printed Name	Title
<hr/>	
Purchase Order No. If Applicable <hr/>	

Attachments: OSHA Training Form

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WESTON & SAMPSON CMR, INC. GENERAL TERMS AND CONDITIONS

1. It is understood that the Proposal dated August 16, 2023 is valid for a period of thirty (30) days. Upon the expiration of that period of time or the delay or suspension of the services of thirty (30) or more days, WESTON & SAMPSON CMR, INC. (the CONTRACTOR) reserves the right to review and adjust the proposed basis of payment and fees, to allow for changing costs as well as to adjust the period of performance to conform to work loads. References herein to CONTRACTOR are understood to refer to WESTON & SAMPSON CMR, INC.
2. Invoices will be submitted periodically (customarily on a monthly basis), and terms are net cash, due and payable upon receipt of invoice. If OWNER fails to make any payment due to CONTRACTOR for services and expenses within thirty (30) days after receipt of CONTRACTOR'S statement therefor, the amounts due CONTRACTOR will be increased at the rate of 1.5% per month from said thirtieth day, and in addition, CONTRACTOR may, after giving seven (7) days' written notice to OWNER, suspend services under this Agreement. Unless CONTRACTOR receives payment within seven (7) days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, CONTRACTOR shall have no responsibility to OWNER for delay or damage caused OWNER because of such suspension of services.
3. CONTRACTOR will serve as the representative of OWNER as defined by the Proposal or under any Agreement and will provide services to OWNER in accordance with generally accepted construction and/or operation and maintenance service practice. Therefore, recommendations and opinions by CONTRACTOR are made on the basis of CONTRACTOR'S experience, qualifications and judgment. The CONTRACTOR's professional services shall be performed in a manner consistent with that degree of skill and care ordinarily exercised by professionals practicing in the same field, performing similar services in the same locality, at the same site and under the same or similar circumstances and conditions. The CONTRACTOR makes no other representations, or warranties, whether expressed or implied, with respect to the operation and maintenance services rendered hereunder. CONTRACTOR makes no warranty or guarantee, express or implied, regarding the operation and maintenance services or work to be provided under the Proposal or any related Agreement.
4. CONTRACTOR and its consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous waste in any form at the site(s). Accordingly, OWNER agrees to assert no claims against CONTRACTOR, its agents, servants, officers, directors, employees and subconsultants, if such claim is based, in whole or in part, upon the negligence, breach of contract, breach of warranty, indemnity or other alleged obligation of CONTRACTOR or its subconsultants, and arises out of or in connection with the detection, assessment, abatement, identification or remediation of hazardous materials, pollutants or asbestos at, in, under or in the vicinity of the project site(s) identified in the Proposal. OWNER shall defend, indemnify and hold harmless CONTRACTOR, its agents, servants, employees, directors, officers and subconsultants and each of them, harmless from and against any and all costs, liability, claims, damages or expenses, including reasonable attorneys' fees, with respect to any such claim or claims described in the preceding sentence, whether asserted by OWNER or any other person or entity.
5. CONTRACTOR agrees to purchase at its own expense, Worker's Compensation insurance, Comprehensive General Liability insurance and Engineer's Professional Liability Insurance (when the scope of Weston & Sampson's services includes design) and will, upon request, furnish insurance certificates to OWNER. CONTRACTOR agrees to purchase whatever additional insurance is requested by OWNER (presuming such insurance is available, from carriers acceptable to CONTRACTOR) provided OWNER reimburses the premiums for additional insurance.
6. As a part of this Agreement, OWNER agrees to do the following:
 - a. Designate in writing a person to act on OWNER's behalf with respect to work to be performed under this Agreement, such person to have complete authority to transmit instructions, receive information, interpret and define OWNER'S policies and decisions with respect to materials, equipment elements and systems pertinent to the work covered by the Agreement.
 - b. Through its officials and other employees who have knowledge of pertinent conditions, confer with CONTRACTOR regarding both general and special considerations relating to the Project.
 - c. Assist CONTRACTOR by placing at the disposal of CONTRACTOR, all available information pertinent to the Project including previous reports and other data relative to design, construction, operation and maintenance of Project.
 - d. Furnish or cause to be furnished to CONTRACTOR all documents and information known to OWNER that relate to the identity, location, quantity, nature or characteristics of any hazardous waste at, on or under the site(s). In addition, OWNER will furnish or cause to be furnished such other reports, data, studies, plans, specifications, documents and other information on site conditions required by CONTRACTOR for proper performance of its services.
 - e. The CONTRACTOR shall be entitled to rely, without liability, on the accuracy and completeness of information and documents provided by the OWNER, OWNER'S CONSULTANTS AND CONTRACTORS and information from public records, without the need for independent verification. CONTRACTOR assumes no responsibility or liability for the

accuracy or completeness of such information. OWNER-provided documents will remain the property of the OWNER.

f. Pay for all sales taxes for professional services and all costs associated with approvals and permits for all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

g. Arrange for and make all provisions for CONTRACTOR and its agents to enter upon public and private lands as required for CONTRACTOR to perform its work under this Agreement

h. Furnish CONTRACTOR with all necessary topographic, property boundary and right-of-way maps.

i. Cooperate with and assist CONTRACTOR in all additional work that is mutually agreed upon.

j. Pay CONTRACTOR for work performed in accordance with terms specified herein.

7. To the fullest extent permitted by law, the total liability in the aggregate, of CONTRACTOR and their officers, directors, employees, agents, and independent professional associates, and any of them, to Owner and any one claiming by, through or under Owner, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of in any way related to CONTRACTOR'S services, the project, or this Agreement, from any cause or causes whatsoever, including but not limited to, the negligence, errors, omissions, strict liability, breach of contract, misrepresentation, or breach of warranty of CONTRACTOR or CONTRACTOR's officers, directors, employees, agents or independent professional associates, or any of them, shall not exceed the total compensation received by CONTRACTOR under this agreement.

8. Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the CONTRACTOR'S services are substantially completed.

9. The obligation to provide further services under this Agreement may be terminated by either party upon thirty day's written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. If the Project is suspended or abandoned in whole or in part for more than three (3) months, CONTRACTOR shall be compensated for all services performed prior to receipt of written notice from OWNER of such suspension or abandonment, together with the other direct costs then due. If the Project is resumed after being suspended for more than three (3) months, CONTRACTOR's compensation shall be equitably adjusted. If services are not

resumed after three (3) months the CONTRACTOR shall have the option of terminating this Agreement by not less than seven (7) days written notice.

10. The OWNER and CONTRACTOR waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent covered by any property or other insurance in effect whether during or after the project. The OWNER and CONTRACTOR shall each require similar waivers from their contractors, consultants and agents.

11. All drawings, diagrams, plans, specifications, calculations, reports, processes, computer processes and software, operational and design data, and all other documents and information produced in connection with the project as instruments of service, regardless of form, shall be confidential and the proprietary information of CONTRACTOR, and shall remain the sole and exclusive property of CONTRACTOR whether the project for which they are made is executed or not. The Client shall not have or acquire any title to or ownership rights in any of the documents or information prepared by CONTRACTOR. Provided that OWNER is current its payments to CONTRACTOR, OWNER may make and retain copies for information and reference in connection with the use and occupancy of the Project by the OWNER and others; however, such documents are not intended or represented to be suitable for reuse by OWNER or others on any other Projects. Any reuse without written verification or adaptation by CONTRACTOR for the specific purpose intended will be at OWNER'S sole risk and without liability or legal exposure to CONTRACTOR or to CONTRACTOR subconsultants, and OWNER shall defend, indemnify and hold harmless CONTRACTOR and CONTRACTOR subconsultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle CONTRACTOR to further compensation at rates to be agreed upon by OWNER and CONTRACTOR.

12. To the extent they are inconsistent or contradictory, express terms of the Proposal take precedence over these General Terms and Conditions. It is understood and agreed that the services or work performed under the Proposal or any Agreement are not subject to any provision of any Uniform Commercial Code. Any terms and conditions set forth in OWNER'S purchase order, requisition, or other notice or authorization to proceed are inapplicable to the services under the Proposal or any related Agreement, except when specifically provided for in full on the face of such purchase order, requisition or notice or authorization and specifically accepted in writing by CONTRACTOR. CONTRACTOR'S acknowledgement of receipt of any purchase order requisition, notice or authorization or CONTRACTOR'S performance of work subsequent to receipt thereof does not constitute acceptance of any terms or conditions other than those set forth herein.

13. The substantive laws of the Commonwealth of Massachusetts shall govern any disputes between CONTRACTOR and the OWNER arising out of the interpretation and performance of this Agreement.

14. CONTRACTOR and the OWNER agree that any disputes arising under this Agreement and the performance thereof shall be subject to nonbinding mediation as a prerequisite to further legal proceedings.

15. CONTRACTOR shall not be required to sign any documents, no matter by whom requested, that would result in CONTRACTOR having to certify, guaranty, or warrant the existence of conditions that would require knowledge, services or responsibilities beyond the scope of this Agreement.

16. Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the OWNER or CONTRACTOR. CONTRACTOR's services hereunder are being performed solely for the benefit of the OWNER, and no other entity shall have any claim against CONTRACTOR because of this Agreement or CONTRACTOR's performance of services hereunder.

17. If any provision of this Agreement shall be finally determined to be invalid or unenforceable in whole or in part, the remaining provisions hereof shall remain in full force and effect, and be binding upon the parties hereto. The parties agree to reform or re-execute this Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision.

18. MA. Data Security Regulations 2010 - The parties to this contract recognize their obligations under the Massachusetts Data Security Law and Regulations, G. L. c. 93H and 93I and 201 CMR 17.00, to safeguard "personal information" as defined below. Both parties hereby represent that they have adopted the required Written Information Security Program, have taken the other steps required to safeguard personal information and are in full compliance with the law. The parties agree that in furtherance of their legal obligations, they will not transmit, communicate or otherwise provide to each other any personal information, unless it is necessary to comply with their obligations under this Agreement. The parties also agree that when it is not necessary for them to transmit, communicate or otherwise provide to each other any personal information as part of their obligations hereunder, they will take active steps to prevent

such transmission, communication, or transfer. For purposes of this Agreement, "personal information" means a Massachusetts residents first name and last name or first initial and last name in combination with any one or more of the following data elements that relate to such resident: (a) Social Security number; (b) driver's license number or state-issued identification card number; or (c) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a resident's financial account.

19. If delays or failures of performance of the CONTRACTOR are caused by occurrences beyond the reasonable control of the CONTRACTOR, the CONTRACTOR shall not be in default of this AGREEMENT. Said occurrences shall include Acts of God or the public enemy; expropriation or confiscation; compliance with any quarantine or other order of any governmental authority; pandemic; epidemic; public health crisis; labor or materials shortage; changes in law; act of war, rebellion, terrorism or sabotage or damage resulting therefrom; fires, floods, explosions, accidents, riots, strikes or other concerted acts of workmen, whether direct or indirect; delays in permitting; OWNER's failure to provide data in OWNER's possession or provide necessary comments in connection with any required reports prepared by the CONTRACTOR, or any other causes which are beyond the reasonable control of the CONTRACTOR. CONTRACTOR's scheduled completion date shall be adjusted to account for any force majeure delay and CONTRACTOR shall be compensated for all costs incurred in connection with or arising from a force majeure event or in the exercise of reasonable diligence to avoid or mitigate a force majeure event.

GT&C Accepted By:

Owner

Printed Name & Title

Date

OSHA Training

As of July 1, 2006, per Massachusetts General Law, Chapter 30, §39S(a), as amended by Chapter 306 of the Acts of 2004, any person submitting a bid for, or signing a contract to work on, the construction, reconstruction, alteration, remodeling or repair of any building or public works project by the Town of Lexington, and estimated by the Town to cost more than \$10,000, shall certify herein, as part of this bid/contract, under penalties of perjury, as follows (As used in this section the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity):

1. That he/she is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in/at the work;
2. That all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and
3. That all employees to be employed in the work subject to this bid have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration.

By signing below, the bidder attests that the above is true for his/her employees to be employed on this project;



Signature of Authorized Agent

Weston & Sampson CMR, Inc.

Company Name (Please Type)

Paul Jensen, General Manager

Printed Name & Title

August 23, 2023

(Date)