CONWAY SWIMMING POOL - STAGE 1

Conway Community Swimming Pool, Inc.
Construction Contract

CONTRACT entered into the ______ day of __________________, 2013 by and between the Conway Community Swimming Pool, Inc., (CCSPI), hereinafter called the Owner and ______ __________________________ hereinafter called the Contractor.

For repairs to the dam and dredging, commonly referred to as Stage 1, of the Conway Community Swimming Pool, located on Whately Road in Conway, Massachusetts.

Brief Scope of Work: The work of this Contract consists of removal and replacement of concrete dam inlet and control structure, earthwork and related piping for the dam outflow, emergency spillway, repairs to earthen dam, dredging of the pond to remove siltation, construction of siltation control structure at southern end of swimming area, beach nourishment area, improvements to the maintenance road to the dam, and all other work within the limits of Stage 1 as shown on the Contract Drawings.

Detailed drawings are included in this Contract as "Attachment A". Environmental and construction related Permits and Permitting compliance Documents are included in this Contract referred to as "Attachment B" in addition to the Construction Contract form, the General Conditions, and the Bid Form.

The Owner and Contractor agree as follows:

Article 1 Payments and Compensation to the Contractor

1.1 Subject to additions and deductions provided by approved change orders and by any cubic yard quantity adjustment of dredging excavation, the Contract Sum to furnish all labor, equipment, materials and incidentals necessary for the construction of the work described in "Attachment A" and "Attachment B" and shall be the amount of

$____________________ dollars ($____________________) as
Lump Sum adjusted by adding alternate 1, 2, or 3 addressing cubic yards of dredging excavation removed to the Bid Document's estimated quantity of 1,500 cubic yards.

1.2 Changes in the work to be performed must be approved by Owner in writing prior to Contractor proceeding with the work. Change orders shall be recorded on the form approved by the Conway Community Swimming Pool, Inc.

1.3 Payments are due and payable thirty (30) days from the date of receipt of the approved Contractor's application for payment.
Article 2  Time of Completion

2.1 The work to be performed under this Contract shall begin on or before July 17, 2013, but no earlier than July 1, 2013, and be completed on or before September 1, 2013. The window for construction work conducted within this environmentally protected site begins July 1, 2013. It is essential that all work be completed prior to September 1, 2013. The Contractor will be assessed $1,000 per day if work is not finally completed by September 1, 2013.

Article 3  Contractor's Responsibilities

3.1 The Contractor shall acquire all permits applicable for the work not specifically identified as provided by the Owner. Costs for Contractor-provided permits shall be included in the Contract Sum identified in section 1.1 above.

3.2 The Contractor shall comply with all laws and regulations applicable to this work.

3.3 The Contractor shall be responsible for all conditions noted in all environmental and public safety related permits related to this work, except as noted in Article 4.

Article 4  Owners Responsibilities

4.1 The Owner shall provide full information about the objectives, schedule, constraints and existing conditions of the Project. The Owner has established a budget with reasonable contingencies that meets the Project requirements. The Owner is responsible for all costs related to wood turtle monitoring and excavation testing for elevated levels of nickel.

Article 5  Termination

5.1 This Contract may be terminated in whole, or in part, whenever the Owner determines that such termination is in the best interest of the CCSPI. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the work under the Contract is terminated, and the date upon which such termination becomes effective.

Article 6  Miscellaneous Provisions

6.1 The Owner and Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to this Contract. Neither party to this Contract shall assign the Contract as a whole without written consent of the other party, which consent the Owner may withhold without cause.
Article 7  Indemnification

7.1 The Contractor agrees to indemnify and hold harmless the Owner and its officers, agents and employees from and against any and all claims, liabilities and costs, including reasonable attorney's fees for any or all injuries to persons or property, arising from the negligent acts or omissions of the Contractor, its employees, agents, officers or subcontractors in the performance of work under this Contract.

The Contractor shall notify the Owner promptly of all claims arising out of the performance of work under this Contract by the Contractor, its employees or agents, or officers or subcontractors.

This indemnity provision shall survive the termination of the Contract, completion of the Project, or expiration of the term of the Contract.

Article 8  Insurance Requirements

8.1 The certificates shall name the Owner as certificate holder and as additional insured for general liability and automobile liability coverages. The submitted forms shall contain a provision that coverage afforded under the insurance policies will not be canceled or materially change unless at least ten (10) days prior written notice by registered letter has been given to the Owner. The Owner does not warrant or represent that the insurance required constitutes an insurance portfolio which adequately addresses all risks faced by the Contractor. The Contractor is responsible for the existence, extent and adequacy of insurance prior to signing this Contract.

8.2 The Contractor shall procure and maintain insurance for the duration of the Project and, if written on a claim made basis, shall maintain such insurance for the duration of time that the claims insured against may be brought within the applicable statute of repose. The Contractor shall ensure that all subcontractors the Contractor engages carry and maintain similar insurance in form and amount acceptable to the Owner. Insurance shall be the types and limits set forth herein and such insurance as will protect the Contractor from claims which may result from the Contractor's execution of the Work, whether such execution by the Contractor or by those employed by the Contractor or by those whose acts they may be liable. Insurance coverage provided by the Contractor will be primary coverage. All required insurance coverages shall be placed with carriers authorized to conduct business in the Commonwealth of Massachusetts by the Massachusetts Division of Insurance.

8.3 The Contractor shall have workers compensation insurance for all employees on the Project site in accordance with statutory Worker's Compensation law of the Commonwealth of Massachusetts.
Minimum acceptable limits for Employer's Liability are:

- Bodily Injury by Accident ......................... $100,000
- Bodily Injury by Disease ....................... $100,000 Each Employee
- Bodily Injury by Disease ....................... $500,000 Policy Limit

8.4 The Contractor shall have **general liability** insurance providing sufficient coverage not less than that indicated by best practices for liability insurance coverage in the Commonwealth of Massachusetts. This insurance shall cover bodily injury and property damage liability for all hazards of the Project including but not limited to premises operations, products and completed operations, contractual, and personal injury liabilities.

Minimum acceptable limits are:

- General aggregate limit ............................................... $2,000,000
- Products and completed operations aggregate ................. $1,000,000
- Each occurrence limit ................................................. $1,000,000
- Personal injury aggregate .............................................. $1,000,000

8.5 The Contractor shall have automobile liability insurance against claims for bodily injury, death or property damage resulting from the maintenance, ownership or use of all owned and hired automobiles, trucks, trailers, heavy equipment, and other motorized vehicles.

Minimum acceptable limit is:

- Any one accident or loss ............................................. $1,000,000

8.6 The Contractor shall have **Property** insurance. The Contractor shall procure and maintain Builders Risk Insurance naming The Owner, Contractor, and any subcontractor as insureds as their interest may appear. Covered causes of loss form shall be all Risks of Direct Physical Loss, endorsed to include flood, earthquake, and any other natural or other causes. Unless specifically authorized in writing by the Owner, the limit of insurance shall not be less than the initial Contract amount in coverage and shall apply during the entire Contract and until the work is accepted by the Owner.

8.7 The Contractor shall provide a **Construction Performance Bond and Payment Bond** in the amount of the Bid price, to be adjusted to reflect any change orders. The bonding company shall be certified in the Commonwealth of Massachusetts by the Massachusetts Division of Insurance.

**Article 9  Equal Employment Opportunity**

9.1 The Contractor shall not discriminate against any employee or applicant for appointment relating to this Contract because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Contractor shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.
Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

9.2 The Contractor shall, in all solicitations or advertising for employees placed by or on behalf of the Contractor relating to this Contract, state that all qualified applicants should receive consideration for appointment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.

Article 10 Dispute Resolution

10.1 Mediation In the event of a dispute between the parties which arises under this Contract and the dispute cannot be resolved through informal negotiation; the dispute shall be submitted to a neutral mediator jointly selected by the parties.

10.2 Arbitration If the dispute is not resolved through mediation, the dispute shall be settled by binding arbitration. The arbitration shall be conducted before a panel of three (3) arbitrators. Each party shall select one arbitrator. The third arbitrator shall be appointed by the arbitrators selected by the parties. The arbitration shall be conducted in accordance with best arbitration practices, except as otherwise provided in this section.

The decision of the arbitrators shall be final and binding upon all parties. The decision may be entered in court as provided articles agreed upon.

Costs of the arbitration, including arbitrator's fees shall be borne equally by the parties to the arbitration, unless the arbitrator orders otherwise.

In any arbitration between the Owner and the Contractor, the Owner shall have the right to consolidate Related Claims between the Owner and the Engineer.

Article 11 Waiver The waiver by Owner of any Contract provision shall not affect or waive any other provisions, which will remain in full force and effect.
This Contract entered into as of the day and year first written above.

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