

OWNER-CMAR PRE-CONSTRUCTION AGREEMENT

This Owner-CMAR Pre-Construction Agreement, between the Washoe County, hereinafter referred to as "Owner", and the Construction Manager at Risk, hereinafter referred to as "CMAR", is entered into as of the following date:

Execution Date: _____

Project Identification

Project Name: *South Truckee Meadows Water Reclamation Facility 2020 Expansion Project*

Contract No: *WR860109*

Owner

Washoe County

1001 East Ninth Street

Reno, Nevada 89512

CMAR

MWH Constructors and KG Walters

Broomfield, CO 80021

(720) 547-5403

ARTICLE 1 CMAR FEE

For furnishing all labor, materials, equipment, tools and services, and for doing everything required by this Agreement including, but not limited to, providing the required Guaranteed Maximum Price Proposal, the Owner will pay and the CMAR shall receive as full compensation therefore, a total sum not to exceed:

CMAR Pre-Construction Services Fee Amount: \$ 631,280.00

ARTICLE 2 INCORPORATED DOCUMENTS

The Owner and the CMAR mutually agree that the following documents comprise the Contract Documents and are incorporated into and made a part of this Agreement by reference:

1. CMAR Request for Proposals
2. CMAR's Fee Proposal, Article 2 and Article 4.1
3. General Conditions of the Contract

ARTICLE 3 AGREEMENT MODIFICATIONS

This Agreement constitutes the entire agreement between the parties and may be modified only by a written endorsement executed by the parties.

ARTICLE 4 CMAR PRE-CONSTRUCTION SERVICES

In consideration of the mutual covenants and conditions provided herein, the Owner does hereby employ the CMAR to perform Pre-Construction Services, and the CMAR agrees to expeditiously perform such services for the referenced project. The scope of the CMAR's Pre-Construction Services includes, but is not limited to the following:

1. Participation in regularly scheduled design progress review meetings with the Design Consultant and the Owner. The CMAR shall provide ongoing input with respect to constructability, construction cost estimates in a format acceptable to the Owner, construction duration/scheduling, sequence of construction, and construction means and methods. CMAR shall account for both phases of construction.
2. Conduct investigations, with participation by appropriate subcontractors, of all existing site conditions (above and below ground). CMAR shall review all investigations and reports then provide recommendations and discuss concerns with Design Team.
3. Assessment and advisement regarding schedule impacts related to long lead submittals and long lead equipment procurement. Incorporation of all long lead items in the project schedule.
4. Development of questions (RFI's), review comments, suggestions, and cost estimates at each of the stipulated phases of design (see Baseline Project Schedule in Request for Proposals for conceptual, 30%, 60% and 90% reviews) for both phases of the contract.
5. Assistance with identifying and reconciling differences between third party cost estimating, consultants' cost estimates and the CMAR's cost estimates. Estimating software shall be approved by the Owner to avoid differing Work Breakdown Structures.
6. Assistance with developing bid alternates as may be appropriate to accommodate the project budget and the current cost estimates.
7. Development of constructability and value engineering suggestions at each phase of design (30%, 60% and 90%), including final CMAR constructability and value engineering suggestions based upon 100% Construction Documents. CMAR constructability and value engineering suggestions shall be based on relevant first cost, life cycle cost, schedule impact, and constructability issues.
8. Advertisements, pre-qualification procedures, and contracts with all subcontractors shall be conducted in accordance with NRS Sections 338.16991 and 338.16995. Advertisement for subcontractor applications must comply with NRS 338. 1385 (1) (a). Subcontractor qualifications and involvement shall also be coordinated as described in Request for Proposals Article 5, Section 4 'Project Implementation Plan'.
9. The CMAR shall develop potential bidder lists for all trades where the estimated value of the subcontract is at least 1% of the total cost of the public work, or \$50,000, whichever is greater. The complete list of subcontractors that the CMAR intends to solicit bids from shall be provided to the Owner prior to issuing the request for proposals to subcontractors.
10. Distribution of documents to potential bidders, coordination of pre-bid conferences and bid openings, and determination of the best bids in each category. Prior to issuing requests for proposals to subcontractors, the CMAR shall provide the Owner with a copy of the CMAR's request for subcontractor proposals, including the form that the subcontractors must utilize to submit their proposals, along with all associated instructions.
11. The CMAR shall coordinate the date and time of the bid opening with the Owner to ensure that the Owner is represented at the bid opening. The CMAR shall provide the Owner with a bound copy of all documentation submitted by subcontractors and suppliers immediately after the bid opening concludes. The bound copy shall also include the CMAR's summary tabulation of the bid results.
12. Coordination of input and questions from subcontractors with regard to each of the items described in this section/article.

13. The CMAR shall review all subcontractor proposals to determine completeness of scope, adherence to project schedule, and commitment to quality and safety before making the final recommendation to the Owner. The CMAR's recommendation shall be based on what is deemed to be the best value for the Owner.
14. Development of a GMP Proposal based on bids obtained from all necessary subcontractors after reviewing and coordinating the bid results with the Owner. Along with the GMP Proposal, the CMAR shall submit a bound set of documents that includes all subcontractor proposals for which the estimated value is at least 1% of the total cost of the public work, or \$50,000, whichever is greater, and narratives as necessary to describe any changes to the submitted subcontractor proposals.

ARTICLE 5 CONTRACT TIME

Time shall be of the essence of this Agreement and the CMAR agrees to satisfactorily complete all professional services and work within the time limits established in the incorporated documents. Failure to comply with the time schedule set forth in this Agreement shall be deemed adequate cause for termination of this Agreement.

ARTICLE 6 STATUTORY REQUIREMENTS

The CMAR agrees to all terms and conditions of the Nevada Revised Statutes (NRS) and the Nevada Administrative Code (NAC), including without limitation, NRS Chapter 38 and NAC 38 as they may apply to this Agreement and to the work performed under this Agreement and agrees to comply with all such applicable portions of the NRS and the NAC.

ARTICLE 7 OBLIGATION LIMITATION

The Owner and the CMAR mutually agree that the fee described herein is for Pre-Construction services only and in no manner obligates the Owner to enter into a construction contract with the CMAR.

ARTICLE 8 EXAMINATION OF DOCUMENTS

Execution of this Agreement by the CMAR shall constitute the representation by the CMAR that he has examined the contents of all contract documents, including the General Conditions of the Contract, that he has read and understands the same, and specifically agrees to be bound thereby.

ARTICLE 9 LEGAL ACTIONS

This Agreement shall be construed and interpreted according to the laws of the State of Nevada without resort to conflict of laws principles. Any action brought by either party arising out of or related to this Agreement shall be brought in a court located in Washoe County.

ARTICLE 10 DISPUTE RESOLUTION

In the event of a dispute between the Owner and the CMAR that cannot be resolved satisfactorily between the parties, third party mediation shall be commenced and concluded utilizing a mediator acceptable to the Owner and the CMAR prior to pursuing either arbitration or legal action. Fees for mediation shall be shared equally between the Owner and the CMAR. In the event of either arbitration or litigation the prevailing party shall be entitled to an award of attorney's fees and costs.

ARTICLE 11 INDEMNIFICATION AND LIMITS ON LIABILITY, PUNITIVE DAMAGES.

To the fullest extent permitted by law, the CMAR shall defend, indemnify, and hold harmless the Owner, the Design Consultant, and the agents and employees of all of them from and against all claims, damages, losses, and expenses, including, but not limited to attorneys' fees arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) but only to the extent caused by the acts or omissions of the CMAR, a Subcontractor, a supplier, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.

Owner will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability shall not be subject to punitive damages. To the extent applicable actual Agreement damages for any breach shall be limited by NRS 354.626.

ARTICLE 12 ASSIGNMENT RIGHTS

This Contract is not assignable by either party.

ARTICLE 13 TERMINATION

This Agreement may be amended or terminated by mutual written consent of the parties hereto. The Owner, however, specifically reserves the right at any time to terminate this Agreement for convenience seven calendar days after having served the CMAR with a written notice of termination.

Further, Owner reasonably believes that funds can be obtained sufficiently to make all payments during the term of this Agreement. If Owner does not allocate funds to continue the function performed by the CMAR under this Agreement, this Agreement shall be terminated when appropriated funds expire, without penalty, charge or sanction to Owner.

Upon termination, for other than a breach of this Agreement by the CMAR, the Owner shall make payments to the CMAR of all fees due but unpaid for services or work completed to the satisfaction of the Owner as of the time of the notice of termination. The making of such payments by the Owner shall constitute a complete release of all the responsibilities of the Owner under the terms of this Agreement. The CMAR waives any claim for overhead and profit on the services or work remaining at the time of termination.

ARTICLE 14 OWNERSHIP AND USE OF DOCUMENTS

Any drawings, reports, studies, photographs, negatives, or other documents prepared by the CMAR in the performance of his obligations under this Agreement shall be the exclusive property of the Owner and all such materials shall be remitted to the Owner by the CMAR upon completion, termination, or cancellation of this Agreement. The CMAR shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of the CMAR's obligations under this Agreement, without the prior written consent of the Owner.

ARTICLE 15 INDEPENDENT CONTRACTOR

By their signatures, the parties agree the CMAR is an independent contractor, is not a County employee, has the right to perform services for others during the term of this agreement, shall be responsible for withholding of income taxes, and responsible for providing industrial insurance coverage as required by law and Article 16 of this Agreement.

Consistent with the CMAR's independent contractor status, CMAR shall not be entitled to the benefits of County employment including, but not limited to, participation in group insurance plans which may be available to County employees, participation in or contribution to the Public Employees Retirement System, accumulation of vacation leave or sick leave, or unemployment compensation coverage, or any other County employment benefit.

ARTICLE 16 NRS 338.125 FAIR EMPLOYMENT PRACTICES

In connection with the performance of work under this Agreement, the CMAR agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, gender identity or expression, age. Such agreement shall include, but not be limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. As used in this article, sexual orientation means having or being perceived as having an orientation for heterosexuality, homosexuality, or bi-sexuality. Sexuality and gender identity or expression means a gender-related identity, appearance, expression, or behavior of a person, regardless of the person's assigned sex at birth.

The CMAR further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

Any violation of such provision by the CMAR shall constitute a material breach of this Agreement.

ARTICLE 17 WORKERS COMPENSATION/EMPLOYERS LIABILITY INSURANCE

The Owner is not liable for the payment of any premiums, deductibles, or any assessments on any insurance policies purchased by the CMAR. A certificate of insurance evidencing the required coverage shall be filed with the Owner prior to the CMAR commencing any work under this Agreement.

In consideration of the award of this Contract, the CMAR agrees to waive all rights of subrogation against the Owner, the Owner's officers, officials, agents and employees, for losses arising from the work performed by the CMAR for the Owner.

Workers Compensation/Employers Liability Insurance

Provide Workers Compensation/Employers Liability insurance in the amounts listed. Provide additional coverage as may be required by applicable federal or state laws.

Part One	Statutory Limits	Nevada Revised Statutes Chapters 616A thru 618
Part Two	Each Accident	\$1,000,000
Disease	Policy Limit	\$1,000,000
Disease	Each Employee	\$1,000,000

ARTICLE 18 PAYMENT SCHEDULE

Payment for pre-construction services for both phases will be made in accordance with the following schedule:

Conceptual/Schematic Design Phase	10% of Total
30% Design Phase Review	20% of Total
60% Design Phase Review	20% of Total
90% Design Phase Review	20% of Total
Submittal of GMP Proposal	20% of Total
Submittal of Final CMAR Review Comments	10% of Total

ARTICLE 19 - SEVERABILITY

If any provision of this Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the parties shall, if possible, agree on a legal, valid, and enforceable substitute provision that is as similar in effect to the deleted provision as possible. The remaining portion of the Agreement not declared illegal, invalid, or unenforceable shall, in any event, remain valid and effective for the term remaining unless the provision found illegal, invalid, or unenforceable goes to the essence of this Agreement.

CONSTRUCTION MANAGER AT RISK:

Dated this ____ day of _____, 2020

By _____
Blair Lavoie, CEO/President,
MWH Constructors

By _____
Walt Johnson, President
KG Walters Construction

WASHOE COUNTY:

Dated this ____ day of _____, 2020

By _____
Chair,
Washoe County Commission