

CMAR REQUEST FOR PROPOSALS

Project Identification

Project Name: City of Fernley Community Response and Resource Center
Project Address: Fernley, NV 89408 bound by East Main Street (north), Lois Lane (east), Peppertree Lane (south), and a modular home community (west)

Owner

City of Fernley, Nevada
595 Silverlace Blvd.
Fernley, NV 89408
(775) 784-9858

City of Fernley Project Manager: Daphne Hooper

The CMAR shall be qualified to bid on public work in accordance with Nevada Revised Statutes Section 338.1379 prior to submitting a response to this Request for Proposals.

City of Fernley RFP/Interview Submittal Contact: Daphne, City Manager (775) 784-9858

All questions or comments pertaining to the RFP and/or the Interview Submittal shall be directed to the City of Fernley, Nevada RFP/Interview Submittal Contact listed above.

Architect

Firm Name: Tate Snyder Kimsey Architects
Address: 225 S. Arlington Avenue
City, State, Zip Code: Reno, NV 89501
Phone: (775) 857-2949

Delivery Deadline for Proposals

Proposal packages (7 copies required) from all interested parties will be accepted at the front desk of the City of Fernley, Nevada office (address listed above) until:

Date: December 8, 2021

Time: 2:00 PM (local time)

ARTICLE 1 PROJECT DESCRIPTION AND BUDGET

Building Name: City of Fernley Community Response and Resource Center

Gross Building Area: 50,000 square feet

Established Construction Budget: \$20,000,000

General Project Description:

This project will provide approximately 50,000sf inclusive of the Community Center, Gymnasium, Meeting Rooms, Kitchen, Youth Center and the complimentary spaces.

ARTICLE 2 PAYMENT TERMS AND DEFINITIONS

See CMAR General Conditions of the Contract (Section 7.5).

ARTICLE 3 CMAR PRE-CONSTRUCTION SERVICES

See Owner-CMAR Pre-Construction Agreement for description of required services.

The CMAR’s participation will commence at or near the date that the Schematic Design Phase documents are issued by the Architect.

ARTICLE 4 PROJECT AND RFP TIME SCHEDULE

See Baseline Project Schedule (Article 9). The Baseline Project Schedule includes a tentative schedule of events and dates. The Baseline Project Schedule is subject to change as deemed appropriate by the Owner.

ARTICLE 5 CMAR REQUEST FOR PROPOSALS SUBMITTAL REQUIREMENTS

The submittal shall be bound and indexed, shall be separated into the following specific categories, and the information within each category shall be ordered to match those listed in this request for proposals.

A cover letter shall be included that addresses pertinent general information as deemed appropriate by the CMAR. The cover letter shall also include the appropriate contact person at the CMAR firm, along with their phone number and e-mail address, and a list of 3 references with their contact information.

CMAR Firm General Information

Firm Information

Provide firm name, business address, year established, type of firm ownership (i.e., single source, joint venture), name and address of parent company, former parent company names, name and contact information for principal personnel, areas of responsibility, and total number of personnel.

Firm Organizational Chart

Indicate lines of responsibility and/or communication.

Current Workload

Provide a list and a summary paragraph describing the firm’s current workload, including a list of project names and the associated contract values.

1. Key Personnel Qualifications

- a. Provide a resume for each key person that will be assigned to this project. Include their name and title, project assignment, total years of construction experience, years of experience with CMAR, years of experience with this firm, education including degree(s), year and discipline, active registrations and licenses including the number and State, other qualifications, and experience. Also, provide a summary of any experience with CMAR pre-construction services.
- b. Describe the specific role performed on each project listed in the resume, highlighting projects of similar size and scope where the person's role was similar to their role on this project.
- c. As a minimum, provide resumes (that include qualifications and experience) for the Project Manager, Superintendent, Estimator, and Schedule Coordinator. Provide this information for both the Pre-Construction and Construction phases, if different personnel will be utilized.
- d. Provide a project-specific organizational chart.

2. Project Experience (Similar Projects)

- a. Include experience on up to 10 projects of similar size and scope in either public or private sector. Include project name, project description, client references for each project (including contact name, address, and telephone), completion date, project budget, type of services provided, and other pertinent information.
- b. Include any applicable experience in the State of Nevada.
- c. Include a statement as to whether the proposed key personnel were involved in any of the listed projects.
- d. Specify the delivery method utilized for each of the listed projects. Relevant project experience may include projects using any delivery method, including without limitation, CMAR, Design-Build, Design-Assist, Negotiated, or Value-Engineered work.

3. Past Performance

For each project listed under project experience (above) provide the following information:

- a. List the name, location, and a general description of each project.
- b. List your firm's record of cost performance (list contract award amount versus final construction cost). Explain any cost deviations.
- c. List your firm's record of schedule performance (list original schedule versus final completion date). Explain any schedule deviations.

4. Project Implementation Plan

- a. Describe your approach to performing pre-construction services.
- b. Describe your subcontractor qualification process.
- c. Describe how you will involve subcontractors in the pre-construction process.
- d. Describe how you will obtain subcontractor bids (in accordance with CMAR General Conditions Section 3.17 and with Nevada Revised Statutes Sections 338.16991 and 338.16995).
- e. Describe your approach to incorporating Virtual Construction and Building Information Modeling (BIM).
- f. Describe your approach to performing construction administration and management.
- g. Describe your approach to controlling the project construction budget and schedule.
- h. Describe your approach to performing quality assurance/quality control during construction.
- i. Describe your approach to achieving project close-out (commissioning, punch-list completion, and warranty work).

5. Safety Program
 - a. Provide a summary description of your safety program including sample documentation/forms.
 - b. Provide a summary description of your safety program implementation plan, including assigned personnel and the percentage of their time that will be allocated to this project.
 - c. Provide your safety record for the last 5 years.

6. Miscellaneous Submittal Requirements
 - a. CMAR shall include a copy of his current Certificate of Eligibility (when/if applicable).
 - b. CMAR shall include a copy of the signed Affidavit of Compliance (when/if applicable).
 - c. CMAR shall include a copy of his current Nevada Contractor’s License.
 - d. CMAR shall include a copy of his current Qualified Bidder Status letter (per NRS 338.1379).
 - e. CMAR shall submit a statement as to whether his firm has been found liable for breach of contract with respect to a previous project, other than breach for legitimate cause, during the 5 years preceding the date of this Request for Proposals.
 - f. CMAR shall submit a statement as to whether his firm has been disqualified from being awarded a contract pursuant to Nevada Revised Statutes Sections 338.017 or 338.13895.

7. Insurance and Bonding Capacity
 - a. Submit evidence of ability to obtain all insurance as stipulated in the CMAR General Conditions of the Contract.
 - b. Submit evidence of the financial capability of your bonding company.
 - c. Submit evidence that your bonding company is listed by the United States Treasury.
 - d. Submit written certification or other appropriate evidence from your bonding company confirming that your firm will have bonding capacity if this project, estimated at the value listed in Article 1 of this Request for Proposals, is added to your current and anticipated workload.
 - e. Submit evidence that your firm is covered by workers compensation insurance as stipulated in the CMAR General Conditions of the Contract.

ARTICLE 6 CMAR SELECTION SCHEDULE

The following dates are tentative and are subject to revision by the Owner:

| | <u>Date</u> |
|---|-------------------|
| Notification Letter Issued to Short-Listed CMAR Firms | December 13, 2021 |
| CMAR Interview at City of Fernley, Nevada Office | January 4, 2022 |
| Notification of Selected CMAR Firm | January 7, 2022 |

ARTICLE 7 CMAR SELECTION PROCESS

The CMAR selection process will be conducted in accordance with all of the requirements stipulated in Nevada Revised Statutes Chapter 338.

A short-list of between 2 and 5 CMAR firms will be determined based on proposals only. The final selection will be based on the interview (see Final Selection Criteria and Weighting listed in Article 8).

ARTICLE 8 CMAR EVALUATION AND SELECTION CRITERIA

Evaluation of the CMAR firms will be based on the information requested and provided in the CMAR’s Proposal. The defined categories will be evaluated on a percentage score or on a pass/fail basis, as may be applicable. All proposers understand and accept that the weighted selection criteria are both subjective and objective by nature and that the weight factor of each category is intended to define its relative importance. The final ranking of each firm will be based on a combined evaluation of all applicable criteria. By submitting a Proposal, the proposer acknowledges that the State Public Works Division has sole and absolute discretion in determining the selection criteria and in evaluating the proposer based on the selection criteria in each category.

Short-List Selection Criteria and Weighting

| | |
|--|-----------------|
| 1. Key Personnel Qualifications | 25 Points |
| 2. Project Experience (Similar Projects) | 20 Points |
| 3. Past Performance | 20 Points |
| 4. Project Implementation Plan | 25 Points |
| 5. Safety Program | 5 Points |
| 6. Certificate of Eligibility | <u>5 Points</u> |
| Short-List Selection Point Subtotal | 100 Points |
| Nevada Licensed Contractor | Pass/Fail |
| Qualified Bidder Status | Pass/Fail |
| Prior Breach of Contract | Pass/Fail |
| Prior Disqualification | Pass/Fail |

Final Selection Criteria and Weighting

| | |
|--|------------------|
| 1. Key Personnel Qualifications | 25 Points |
| 2. Project Experience (Similar Projects) | 15 Points |
| 3. Past Performance | 10 Points |
| 4. Project Implementation Plan | 30 Points |
| 5. Safety Program | 5 Points |
| 6. Certificate of Eligibility | 5 Points |
| 7. Interview | <u>10 Points</u> |
| Final Selection Point Total | 100 Points |

ARTICLE 9 SAMPLE CMAR PROJECT SCHEDULE

Attached with this agreement is an example project schedule with example durations for tasks expected with this project.

PROJECT SCHEDULE (CMAR PROJECT FORMAT)

| | |
|---|--|
| Project Name: | City or Fernley Community Response and Resource Center |
| Project Location: | Fernley, Nevada |
| Project No: | |
| Date: | 10/26/2021 |
| Professional Services Agreement Executed: | 12/09/2021 |
| <i>Approximate Duration (between previous item and following item)</i> | 25 days |
| Begin Schematic Design Phase | 01/03/2022 |
| <i>Approximate Duration (between previous item and following item)</i> | 70 days |
| Schematic Design Delivery (to City of Fernley and CMAR) | 03/14/2022 |
| <i>Approximate Duration (between previous item and following item)</i> | 14 days |
| Schematic Design Presentation Meeting (With Reconciled Cost Estimates) | 03/28/2022 |
| <i>Approximate Duration (between previous item and following item)</i> | 0 day |
| Schematic Design Review Comments Issued | 03/28/2022 |
| <i>Approximate Duration (between previous item and following item)</i> | 1 day |
| Begin Design Development Phase | 03/29/2022 |
| <i>Approximate Duration (between previous item and following item)</i> | 77 days |
| Design Development Delivery (to City of Fernley and CMAR) | 06/14/2022 |
| <i>Approximate Duration (between previous item and following item)</i> | 14 days |
| Design Development Presentation Meeting (With Reconciled Cost Estimates) | 06/28/2022 |
| <i>Approximate Duration (between previous item and following item)</i> | 0 day |
| Design Development Review Comments Issued | 06/28/2022 |
| <i>Approximate Duration (between previous item and following item)</i> | 1 day |
| Begin 50% Construction Documents Phase | 06/29/2022 |
| <i>Approximate Duration (between previous item and following item)</i> | 42 days |
| 50% Construction Documents Delivery (to City of Fernley) | 08/10/2022 |
| <i>Approximate Duration (between previous item and following item)</i> | 14 days |
| 50% Construction Documents Presentation Meeting (With Reconciled Cost Estimates) | 08/24/2022 |
| <i>Approximate Duration (between previous item and following item)</i> | 0 day |
| 50% Construction Documents Review Comments Issued | 08/24/2022 |
| <i>Approximate Duration (between previous item and following item)</i> | 1 day |
| Begin 100% Construction Documents Phase | 08/25/2022 |
| <i>Approximate Duration (between previous item and following item)</i> | 27 days |
| 100% Construction Documents Delivery (to City of Fernley) | 09/21/2022 |
| <i>Approximate Duration (between previous item and following item)</i> | 7 days |
| 100% Construction Documents Presentation Meeting (With Reconciled Cost Estimates) | 09/28/2022 |
| <i>Approximate Duration (between previous item and following item)</i> | 7 days |
| 100% Construction Documents Delivery (to Plan Checking Firms/Agencies) | 10/05/2022 |
| <i>Approximate Duration (between previous item and following item)</i> | 84 days |
| Responses to Review Comments Incorporated and Bid Documents Issued | 12/28/2022 |
| <i>Approximate Duration (between previous item and following item)</i> | 7 days |
| Advertise for Subcontractor Bids | 01/04/2023 |
| <i>Approximate Duration (between previous item and following item)</i> | 42 days |
| Bid Opening | 02/15/2023 |
| <i>Approximate Duration (between previous item and following item)</i> | 14 days |
| CMAR Provides 1% Subcontractor List to the City of Fernley | 03/01/2023 |
| <i>Approximate Duration (between previous item and following item)</i> | 7 days |
| Guaranteed Maximum Price Proposal Due | 03/08/2023 |
| <i>Approximate Duration (between previous item and following item)</i> | 7 days |
| Owner-CMAR Construction Agreement Signed by All Parties | 03/15/2023 |
| <i>Approximate Duration (between previous item and following item)</i> | 7 days |
| Owner-CMAR Construction Agreement Executed and Distributed | 03/22/2023 |
| <i>Approximate Duration (between previous item and following item)</i> | 7 days |
| Notice to Proceed / Begin Construction | 03/29/2023 |
| <i>Approximate Duration (between previous item and following item)</i> | 365 days |
| Certificate of Substantial Completion / Certificate of Occupancy Issued | 03/29/2024 |
| <i>Approximate Duration (between previous item and following item)</i> | 7 days |
| Move-In | 04/05/2024 |
| <i>Approximate Duration (between previous item and following item)</i> | 7 days |
| Building Open for Intended Use | 04/12/2024 |

AFFIDAVIT OF COMPLIANCE

Affiant, _____ being first duly sworn, deposes and states upon personal
(Name)

knowledge and under penalty of perjury as follows:

1. I am the _____ of the _____ and have held
(Title) (Company Name)
that position since _____. I have the authority to make the representations contained herein on
(Year)
behalf of _____.
(Company Name)

2. I have personal knowledge of the matters set forth herein and if called upon to testify could and would competently testify consistent with the matters set forth in this Affidavit.

3. In connection with the bid for _____ (Public Work)
(Project Name/Project Number)

I certify on behalf of _____ that for the duration of this Public Work:
(Company Name)

a. At least 50% of all workers, collectively and not on any specific day, employed on this Public Work by _____, including any workers employed by any subcontractor
(Company Name)
engaged on this Public Work, will hold a valid driver's license or identification card issued by the Nevada Department of Motor Vehicles; and

b. All vehicles used primarily for this Public Work will be registered and partially apportioned to Nevada pursuant to the International Registration Plan, as adopted by the Department of Motor Vehicles pursuant to Nevada Revised Statutes Section 706.826; or will be registered in the State of Nevada; and

c. _____, as well as any subcontractor engaged on this Public Work,
(Company Name)
will maintain and make available for inspection within this State our records concerning payroll relating to this Public Work.

Further Affiant Saith Naught.

Dated this _____ day of _____, 20_____

Signature

Title (Print)

ACKNOWLEDGMENT

State of _____

County of _____

Subscribed and sworn to before me this

_____ day of _____, 20_____

My Commission Expires _____

(Notary Seal)

OWNER-CMAR PRE-CONSTRUCTION AGREEMENT

This Owner-CMAR Pre-Construction Agreement, between the City of Fernley, Nevada, represented by the listed Owner, 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: City of Fernley Community Response and Resource Center

Project Address: Fernley, NV 89408 bound by East Main Street (north), Lois Lane (east), Peppertree Lane (south), and a modular home community (west)

Project No.:

Contract No:

Owner

City of Fernley, Nevada

595 Silverlace Blvd.

Fernley, NV 89408

(775) 784-9858

CMAR

Firm Name

Address

City, State, Zip Code

Phone

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: \$

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 General Conditions of the Contract Dated:
3. City of Fernley ARPA 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 Architect and the Owner. The CMAR shall provide ongoing input with respect to constructability, construction cost, construction duration, sequence of construction, and construction means and methods.
2. Conducting investigations, with participation by appropriate subcontractors, of all existing site and building conditions, and all off-site conditions as appropriate for each project.
3. Assessment and advisement regarding schedule impacts related to long lead submittals and long lead equipment procurement.
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).
5. Assistance with identifying and reconciling differences between third party cost estimating consultant's and/or Architect's cost estimates and the CMAR's cost estimates.
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, 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. The CMAR shall utilize Virtual Construction and Building Information Modeling (BIM) throughout the design and construction process. The CMAR shall provide an implementation plan for review by the Owner and the Architect prior to commencing services on the project. Implementation and submittals of associated documentation related to Virtual Construction and Building Information Modeling shall begin during the Design Development phase of the project.
9. CMAR 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.'
10. 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.
11. 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.

12. 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.
13. Coordination of input and questions from subcontractors with regard to each of the items described in this section/article.
14. 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.
15. 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 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) as 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 constitutes the CMAR's representation that he has examined the contents of all contract documents, including the CMAR 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. Any action brought by either party arising out of or related to this Agreement shall be brought in a court located in Lyon County, and not elsewhere.

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. Any legal action brought by the CMAR or his representatives shall be made in Lyon County. 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

To the fullest extent permitted by law, the CMAR shall defend, indemnify, and hold harmless the Owner, the Architect, the Architect's consultants, 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 negligent 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.

ARTICLE 12 ASSIGNMENT RIGHTS

The CMAR shall neither assign, transfer, nor delegate any rights, obligations, monies or duties under this Agreement without the prior written consent of the Owner.

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.

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

The parties agree that the CMAR is an independent contractor and that this Agreement is entered into in accordance with Nevada Revised Statutes Section 333.700, which in pertinent part provides that the CMAR is not a State employee and that the CMAR will not be entitled to any State insurance or benefits.

ARTICLE 16 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, or 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. 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 FEDERAL FUNDING

In the event federal funds are used for payment of all or part of this Contract:

- A. Consultant certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.
- B. Consultant and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.
- C. Consultant and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap

condition (including AIDS and AIDS-related conditions.)

D. American Rescue Plan Act: The Contractor shall comply with all ARPA requirements and all required provisions to be adhered to in accordance with Federal Uniform Guidance. Costs incurred as a result of this contract shall only be for actions taken in response to the COVID-19 public health emergency, the impacts of COVID-19 on the community, residents and businesses and for the efforts to contain COVID-19. These expenditures shall be a direct response to the emergency and include but are not limited to addressing medical or public health needs, as well as expenditures incurred in response to second-order effects of the emergency.

- i. This contract provides for the CMAR pre-construction services, outline in Article 4, for the Community Resource and Response Center. The Community Resource and Response Center will provide a venue for responding to the pandemic with the delivery of vaccines, testing, and other public health needs. Further, the Center will provide programs and resources that address the negative economic impacts from the pandemic including, but not limited to food insecurity, emergency shelter/quarantine, childcare, educational needs, and mental health support.
- ii. The parties agree that timeliness of billing is of the essence to this Contract and recognize that the City is on a fiscal year. The parties further understand that all billing must be submitted by the 15th day of the subsequent month. Should contractor fail to submit timely bills, Contractor hereby agrees to be liable to the City for any costs of the project not covered by the ARPA Act due to contractor's negligence in billing. All billings for dates of service prior to July 1 must be submitted to the City no later than the first Friday in August of the same year. Contractor as a contractor shall also maintain the following for tracking purposes:
 1. Chart of accounts, written accounting procedures, internal and administrative controls, accounting journals and ledgers.
 2. Payment requests and source documentation (vendor invoices, bills of lading, purchase orders, payment vouchers, payrolls, bank statements and reconciliations); and
 3. Financial statements, correspondence, and audit files.
 4. In addition to these cost accounting and record-keeping requirements, contractors are also expected to comply with the following list of required flow-down terms. These terms include:
 - a. Equal Employment Opportunity requirements.
 - b. Davis Bacon Act (40 U.S.C. §§ 3141-3148);
 - c. Anti-Kickback Act (40 U.S.C. § 3145);
 - d. Contract Work Hours and Safety Standards (40 U.S.C. §§ 3701-3708);
 - e. Rights to Inventions Made Under a Contract or Agreement (37 C.F.R. Part 401);
 - f. Clean Air Act (42 U.S.C. §§ 7401-7671q) and Water Pollution Control Act (33 U.S.C. §§ 1251-1387);
 - g. Debarment and Suspension (Executive Orders 12549 and 12689);
 - h. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352);
 - i. Procurement of recovered materials (2 C.F.R. § 200.323) (pursuant to section 6002 of the EPA's Solid Waste Disposal Act);
 - j. Prohibition on certain telecommunications and video surveillance services or equipment (2 C.F.R. § 200.216); and
 - k. Domestic preferences for procurements (2 C.F.R. § 200.322).

- iii. Failure to comply with ARPA and other federal, state or local requirements may result in the City of Fernley taking one of the following actions:
 - 1. Temporarily withholding cash payments pending correction of the deficiency or more severe enforcement action by the Federal awarding agency;
 - 2. Denying both use of funds and any applicable matching credit for all or part of the cost of the activity or action not in compliance;
 - 3. Wholly or partly suspending or terminating the contract;
 - 4. Initiating suspension or debarment proceedings;
 - 5. Requesting reimbursement for ineligible costs;
 - 6. Withholding further funds for the project or program; or
 - 7. Taking other remedies that may be legally available.

ARTICLE 19 PAYMENT SCHEDULE

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

| | |
|---|--------------|
| Schematic Design Phase | 20% of Total |
| Design Development Phase | 20% of Total |
| 50% Construction Documents | 20% of Total |
| 100% Construction Documents | 20% of Total |
| Submittal of GMP Proposal | 10% of Total |
| Submittal of Final CMAR Review Comments | 10% of Total |

Construction Manager at Risk

Firm Name

By: _____

Print: _____

Title: _____

Date: _____

Owner

City of Fernley, Nevada

By: _____

Print: _____

Title: _____

Date: _____

CMAR GMP PROPOSAL

Project Identification

Project Name: City of Fernley Community Response and Resource Center

Project Address: Fernley, NV 89408 bound by East Main Street (north), Lois Lane (east), Peppertree Lane (south), and a modular home community (west)

The CMAR GMP Proposal shall be submitted at the following location, date, and time:

City of Fernley, Nevada

595 Silverlace Blvd.

Fernley, NV 89408

(775) 784-9858

Date: March 8, 2023

Time: 2:00 PM (local time)

ARTICLE 1 GUARANTEED MAXIMUM PRICE

In accordance with the CMAR GMP Proposal Instructions, which are attached and incorporated herein by this reference, The CMAR shall provide its Guaranteed Maximum Price (GMP) for the entire Work on the referenced Project:

- | | |
|--|-------------------------|
| 1) Cost of the Work (excluding General Conditions) | _____ |
| 2) CMAR's General Conditions | _____ |
| 3) CMAR's Fee | _____ |
| 4) CMAR's Contingency | _____ |
| 5) Owner's Contingency | <u>(Value by Owner)</u> |
| 6) Total Guaranteed Maximum Price | _____ |

ARTICLE 2 SPLIT OF POTENTIAL SAVINGS

| | <u>Owner</u> | <u>CMAR</u> |
|--|--------------|-------------|
| Percentage Split of Cost of Work Savings | 90% | 10% |
| Percentage Split of CMAR's Contingency Savings | 90% | 10% |
| Percentage Split of unused Owner's Contingency | 100% | 0% |
| Percentage Split of unused Allowance (when applicable) | 100% | 0% |

ARTICLE 3 CONTRACT TIME

Contract Time: Calendar Days

ARTICLE 4 LIQUIDATED DAMAGES

Liquidated Damages: \$

ARTICLE 5 ADDENDA ACKNOWLEDGEMENT

Receipt of the following addenda acknowledged:

Addenda Numbered: _____

ARTICLE 6 GMP PROPOSAL AFFIRMATION

In accordance with the Contract Documents as defined in Article 2 of the Owner-CMAR Pre-Construction Agreement, and the CMAR GMP Proposal Instructions, and the drawings and specifications for the Project, the undersigned CMAR, being duly licensed to perform such work by the Nevada State Contractor's Board, and being thoroughly familiar with all local conditions affecting the cost of the Project, having carefully examined the site, the Contract Documents, drawings, specifications, and any addenda thereto, the CMAR proposes to provide, and to furnish for the costs set forth in Article 1 (Guaranteed Maximum Price), all labor and material, tools, utilities, transportation, equipment, and services required to perform and to complete in a workmanlike manner, all of the Work from the date of the Notice to Proceed, within the established Contract Time, subject to liquidated damages for any excess calendar days as established under Article 3 (Contract Time).

By affixing his signature, the CMAR certifies that this GMP Proposal is submitted in accordance with all of the provisions contained in the CMAR GMP Proposal Instructions, which shall be deemed applicable to the guaranteed maximum price proposed herein.

CMAR SIGNATURE

Construction Manager at Risk

Firm Name: _____

By: _____

Print: _____

Title: _____

Date: _____

CMAR GMP PROPOSAL INSTRUCTIONS

SECTION 1 DEFINITIONS

- 1.1 CMAR: The firm or organization submitting a GMP Proposal to the City of Fernley, Nevada in response to a GMP Request for Proposals. The term CMAR means the Construction Manager at Risk or his authorized representatives.
- 1.2 Work: The term Work includes all labor, materials, services, equipment, tools, transportation, power, water, permanent and temporary utilities, utility connections, provisions for safety, and all incidental and other things necessary to produce the finished construction as described by the 100% Construction Documents.
- 1.3 GMP Delivery Date: The day established in the CMAR GMP Proposal Form for the submission of the proposal to the City of Fernley, Nevada.
- 1.4 GMP Delivery Time: The time established in the CMAR GMP Proposal Form for the submission of the proposal to the City of Fernley, Nevada.
- 1.5 Contract Documents: The CMAR shall base the Guaranteed Maximum Price upon the Contract Documents, including, the CMAR Fee Proposal, the CMAR GMP Proposal, the Owner-CMAR Construction Agreement, the Performance and Payment Bonds, the CMAR General Conditions of the Contract, the Supplemental General Conditions, the 100% Construction Documents (Drawings and Specifications), the Wage Scales, the Addenda, and these CMAR GMP Proposal Instructions.
- 1.6 Owner: The Owner is the Agency listed in the CMAR Request for Proposals, and shall include his authorized representatives.
- 1.7 Architect: The Architect is the person or organization identified as such in the CMAR Request for Proposals, and shall include his authorized representatives.
- 1.8 Joint Venture GMP: A GMP submitted by two or more contractors who propose to perform the work jointly.
- 1.9 CMAR Acknowledgement: The CMAR acknowledges that the GMP Proposal is based on the Contract Documents listed in the Owner-CMAR Construction Agreement.
- 1.10 Owner's Contingency: The Owner's Contingency belongs solely to the Owner for the purpose of being allocated towards stipulated additional work (as itemized in an executed Change Order). Any portion of the Owner's Contingency that remains when the Work is completed belongs to the Owner.
- 1.11 CMAR's Contingency: The CMAR's Contingency is an approved amount that may be utilized by the CMAR, at his discretion to cover the Cost of the Work described in the Contract Documents (Cost of the Work defined in Section 7.5.1 of the CMAR General Conditions) and/or to cover the cost of the CMAR's General Conditions (defined in Section 7.5.2 of the CMAR General Conditions) subject to the limitations in Section 7.5.4 of the CMAR General Conditions.
- 1.12 Owner Oversight of CMAR Bidding Procedures: The CMAR acknowledges all of the requirements of Section 3.17 of the CMAR General Conditions of the Contract (Owner Oversight of CMAR Bidding Procedures), the requirements of Nevada Revised Statutes Sections 338.16991 and 338.16995, and the requirements of Nevada Administrative Code Section 338.
- 1.13 First Tier Subcontractor: A person or organization who has a direct contract with the prime contractor to perform any of the Work.

SECTION 2 QUALIFICATIONS OF CMAR AND SUBCONTRACTORS

- 2.1 The CMAR shall be properly licensed by the Nevada State Contractors Board.
- 2.2 The CMAR shall ensure that all sub-bids utilized in preparing his GMP Proposal have been obtained from subcontractors who are properly qualified to perform their portion of the Work pursuant to Nevada Revised Statutes Sections 338.16991 thru 338.16995. A subcontractor named by the CMAR who is not properly qualified for that portion of the work shall be deemed to be unacceptable. No additional compensation shall be paid to the CMAR if the CMAR must substitute a qualified subcontractor for an unqualified subcontractor. See CMAR General Conditions Section 3.17 (CMAR Bidding Procedures).
- 2.3 Any CMAR proposing to submit a Joint Venture proposal shall obtain the written approval of the Nevada State Contractors Board prior to submitting such a proposal.
- 2.4 The CMAR shall demonstrate to the satisfaction of the Owner that he has adequate previous experience in any work that he intends to self-perform and shall also provide evidence that his proposed cost for such work is lower than the other bids received for that work.
- 2.5 Prior to receiving or accepting any payment, each subcontractor must have a valid Nevada business license, pursuant to Nevada Revised Statutes Section 338.072.

SECTION 3 PREPARATION OF GMP PROPOSAL

- 3.1 The CMAR is solely responsible for the proper, complete, and accurate preparation of his GMP Proposal. The failure of the CMAR to comply with these CMAR GMP Proposal Instructions or with the requirements of the other Contract Documents may result in the rejection of the GMP Proposal by the Owner.
- 3.2 The CMAR shall submit a complete, itemized and detailed list of all General Conditions consistent with their Fee Proposal, with their GMP Proposal.
- 3.3 The GMP Proposal shall be submitted on the GMP Proposal Form provided by the Owner.
- 3.4 Where indicated on the GMP Proposal Form the CMAR shall:
 - A. Print or type his name and address.
 - B. List the number of each Addendum received and acknowledged.
 - C. Clearly and legibly print or type the amount of the Guaranteed Maximum Price.
 - D. Sign and date the GMP Proposal Form. Print or type the title of the authorized representative(s) signing the form. The signature(s) must be of an authorized officer of the firm. Refer to Section 5 (Joint Venture) regarding joint venture proposals.
 - E. The CMAR shall submit a printed or typed list naming each subcontractor who will provide labor or a portion of the Work to the CMAR and a description of the portion of the Work which each subcontractor named in the GMP Proposal will complete, with an estimated value of at least 1% of the total cost of the public work, or \$50,000, whichever is greater, and the number of the license issued to the subcontractor by the Nevada State Contractors Board. The CMAR shall also list any portion of the work with an estimated value of at least 1% of the total cost of the public work or \$50,000, whichever is greater, that the CMAR intends to self-perform.
 - F. The CMAR shall not substitute a subcontractor who is named in the GMP Proposal, unless such substitution complies with Nevada Revised Statutes Section 338.16995.

- 3.5 Within 10 working days after the bid opening the CMAR shall submit a complete list of the subcontractors with a scope of work with an estimated value that is at least 1% of the total cost of the public work or \$50,000, whichever is greater. Within 15 working days after the bid opening the CMAR shall submit the GMP Proposal. See Article 4 in the Owner-CMAR Pre-Construction Agreement for additional information and requirements related to submission of the GMP Proposal and the list of subcontractors.
- 3.6 The GMP shall be based on providing the materials and equipment specified in the Contract Documents. The determination of whether material or equipment is equal to that specified is the responsibility of the Architect or Engineer, and the CMAR agrees to abide with his decision if his GMP Proposal is accepted. The CMAR shall not prepare a GMP Proposal in anticipation of substitutions to specified materials or equipment being accepted.
- 3.7 Materials and equipment for which there is no installation procedure noted in the Contract Documents shall be installed in conformance with the manufacturer's written instructions.
- 3.8 The CMAR may request interpretations or clarifications of the 100% Construction Documents at any time prior to seventy-two hours before the GMP Delivery Time by making a written request to the Architect, who may then issue a written addendum to the CMAR prior to the stipulated GMP Proposal Delivery Time. No interpretation, clarification, or change in the 100% Construction Documents will be binding on the Owner unless it is included in an addendum. It is the sole responsibility of the CMAR to ensure that he has received all addenda issued, and he shall acknowledge receipt of each addenda on the GMP Proposal Form.
- 3.9 The CMAR shall be solely responsible to inform himself fully of all conditions relating to the Contract Documents and the Work prior to submitting his GMP Proposal.
- 3.10 All applicable State laws, County ordinances, and the rules and regulations of local and State authorities having jurisdiction over the Work, shall apply to the Work as if repeated in full in the Contract Documents. The CMAR's attention is directed to those portions of the Contract Documents which govern insurance, wage rates, allowances, equal employment opportunity, inspection and testing of materials, liquidated damages, and contract time.
- 3.11 Prevailing wage rates as established by the Office of the Nevada Labor Commissioner shall be paid on this Project. The applicable wage rates must be posted at the site of the Project in a place generally visible to the workmen.

SECTION 4 JOINT VENTURE

- 4.1 In the event that a GMP Proposal is made by two or more firms as a joint venture, such proposals shall be submitted in strict accordance with Nevada Revised Statutes Section 624.290, State Contractor License Law, and the Rules and Regulations of the State Contractors Board.
- 4.2 All proposals submitted as a joint venture must be signed by an authorized officer of each firm to the joint venture and shall include the Nevada State Contractors license number of each party to the joint venture.

SECTION 5 SUBMISSION OF GMP PROPOSAL

- 5.1 The GMP Proposal shall consist of the properly completed GMP Proposal Form and the required Subcontractor list.
- 5.2 In submitting a GMP Proposal, the CMAR represents that:
- A. He has carefully checked the GMP Proposal, and will enter into the Owner-CMAR Construction Agreement in accordance with its terms and conditions and in accordance with the terms and conditions of the other Contract Documents.
 - B. The GMP Proposal is genuine and not a sham or collusive bid, or made in the interest or on behalf of any person other than the CMAR.
 - C. He has read and understands the Contract Documents, and is thoroughly familiar with all requirements of the Work.
 - D. He has informed himself fully of the conditions relating to the construction of the Project. Failure to do so will not relieve the CMAR of his obligation to furnish all material and labor necessary to carry out the Work in accordance with the Contract Documents.
 - E. He has informed himself fully that his Nevada State Contractors License is acceptable to the Nevada State Contractors Board for the type of work covered by the GMP Proposal.
- 5.3 The right is reserved by the Owner to reject the GMP Proposal should it be deemed not to be best for the interest of the City of Fernley, Nevada.

SECTION 6 PRINTING OF DOCUMENTS FOR CMAR'S USE

- 6.1 The CMAR will be responsible for all costs associated with printing and distributing sets of the documents for his use and for the use of all subcontractors and suppliers. Determining the appropriate number of sets will be the CMAR's responsibility (to ensure appropriate distribution as required for successful completion of the work).

OWNER-CMAR CONSTRUCTION AGREEMENT

This Owner-CMAR Construction Agreement, between the City of Fernley, Nevada, represented by the listed Owner, 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: City of Fernley Community Response and Resource Center

Project Address: Fernley, NV 89408 bound by East Main Street (north), Lois Lane (east), Peppertree Lane (south), and a modular home community (west)

Project No.:

Contract No:

Labor Commission PWP No.:

Owner

City of Fernley, Nevada

595 Silverlace Blvd.

Fernley, NV 89408

(775) 784-9858

CMAR

Firm Name

Address

City, State, Zip Code

Phone

ARTICLE 1 GUARANTEED MAXIMUM PRICE

For furnishing all labor, materials, equipment, tools and services and for doing everything required by this Agreement and the other Contract Documents, the Owner will pay and the CMAR shall accept a total sum (Guaranteed Maximum Price) not to exceed:

The CMAR's Guaranteed Maximum Price (GMP) for the entire Work on the referenced Project:

- | | |
|--|----------|
| 1) Cost of the Work (excluding General Conditions) | \$ _____ |
| 2) CMAR's General Conditions | \$ _____ |
| 3) CMAR's Fee | \$ _____ |
| 4) CMAR's Contingency | \$ _____ |
| 5) Owner's Contingency | \$ _____ |
| 6) Total Guaranteed Maximum Price | \$ _____ |

| <u>Savings Split</u> | <u>Owner</u> | <u>CMAR</u> |
|--|--------------|-------------|
| Percentage Split of Cost of Work Savings | 90% | 10% |
| Percentage Split of CMAR's Contingency Savings | 90% | 10% |
| Percentage Split of Owner's Contingency | 100% | 0% |
| Percentage Split of Unused Allowances | 100% | 0% |

ARTICLE 2 INCORPORATED DOCUMENTS

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

1. CMAR GMP Proposal
2. CMAR General Conditions of the Contract Dated:
3. Supplemental CMAR General Conditions (when applicable)
4. Wage Rates County Dated:
5. Performance and Payment Bonds
6. Drawings Dated:
7. Specifications Dated:
8. Addenda
9. Change Orders

ARTICLE 3 CONTRACT TIME

The CMAR shall commence the work on the Project as directed by the Owner in a written Notice to Proceed. After the referenced date of commencement, all work shall be substantially completed and accepted by the State within the number of calendar days stipulated below and as set forth in the Notice to Proceed, after which time, the stipulated liquidated damages provisions shall apply.

Calendar Days:

ARTICLE 4 LIQUIDATED DAMAGES

The CMAR agrees that time is of the essence of this Agreement and further agrees to satisfactorily complete the Work in accordance with the Contract Documents and achieve Substantial Completion within the specified contract time plus any adjustments to the Contract Time resulting from approved Change Orders, and failing to do so, agrees to pay, not as a penalty but as liquidated damages, the sum stipulated below for each calendar day in excess of the Contract Time stipulated in this Agreement. Upon Substantial Completion, liquidated damages will not be assessed on the date of Substantial Completion provided the CMAR completes all punch-list work within the time limit stipulated in the Certificate of Substantial Completion. Liquidated damages shall resume if the CMAR does not complete all punch-list work within the time limit stipulated in the Certificate of Substantial Completion.

Liquidated Damages: \$

ARTICLE 5 AGREEMENT MODIFICATIONS

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

ARTICLE 6 AGREEMENT TERMS AND CONDITIONS

The term Work includes all labor, materials, services, equipment, tools, transportation, power, water, permanent and temporary utilities, connections, provisions for safety, and all incidental and other things necessary to produce the finished construction as described by the Contract Documents.

The CMAR agrees to provide all labor materials, equipment, tools and services necessary, and to do everything required by this Agreement and by the Contract Documents, as necessary to complete all Work required for the Project.

ARTICLE 7 CONTRACT DOCUMENTS

The Contract Documents form the agreement between the Owner and the CMAR and are comprised of those documents listed in Article 2 herein. The Contract Documents are complementary and what is required by any one shall be as binding as if required by all.

ARTICLE 8 EXAMINATION OF CONTRACT DOCUMENTS

Execution of this Agreement by the CMAR shall constitute the CMAR's representation that the CMAR has examined the contents of the Contract Documents, including, but not limited to, the CMAR General Conditions of the Contract, that he has read and understands the same, and specifically agrees to be bound thereby.

ARTICLE 9 FINAL PAYMENT

When the Work and all requirements of the Contract Documents are fully and satisfactorily completed, the Owner will pay to the CMAR a final payment consisting of the remaining unpaid balance of the Contract Sum due the CMAR. The acceptance of the final payment by the CMAR shall constitute a full and final release and waiver of all CMAR claims and rights of claim against the Owner relating or pertaining to the Work.

Acceptance of the final payment by the CMAR shall terminate the Owner-CMAR Construction Agreement after which time the applicable terms and conditions for Warranties and Insurance shall continue to apply. The CMAR indemnification obligation continues after final payment.

ARTICLE 10 STATUTORY REQUIREMENTS

This Agreement shall be construed and interpreted according to the laws of the State of Nevada.

ARTICLE 11 ASSIGNMENT

The CMAR shall neither assign, transfer, nor delegate any rights, obligations, monies, or duties under this Agreement without the prior written consent of the Owner.

ARTICLE 12 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 13 DISPUTE RESOLUTION

In the event of a dispute between the Owner and the CMAR, the parties shall follow the procedure set forth in Section 3.9 of the CMAR General Conditions. Any legal action brought by the CMAR or his representatives shall be made in Lyon County. In the event of either arbitration or litigation the prevailing party shall be entitled to an award of attorney's fees and costs.

ARTICLE 14 INDEMNIFICATION

To the fullest extent permitted by law, the CMAR shall defend, indemnify, and hold harmless the Owner, the Architect, the Architect's consultants, 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 negligent 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.

ARTICLE 15 INDEPENDENT CONTRACTOR

The parties agree that the CMAR is an independent contractor and that this contract is entered into in accordance with Nevada Revised Statutes Section 333.700, which in pertinent part provides that the CMAR is not a State employee, and that there shall be no:

1. Withholding of income taxes by the State,
2. Industrial insurance coverage provided by the State,
3. Participation in group insurance plans which may be available to employees of the State,
4. Participation or contribution by either the independent contractor or the State to the Public Employees Retirement System,
5. Accumulation of vacation leave or sick leave,
6. Unemployment compensation coverage provided by the State if the requirements of Nevada Revised Statutes Section 612.085 for independent contractors are met.

ARTICLE 16 FAIR EMPLOYMENT PRACTICES

In connection with the performance of the Work, 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, or 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. Any violation of such provision by the CMAR shall constitute a material breach of contract.

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

ARTICLE 17 INSURANCE PROVISIONS

A certificate of insurance evidencing the required coverage, as stipulated in the CMAR General Conditions of the Contract, shall be filed with the Owner prior to the CMAR mobilizing onto the project site and prior to commencement of any work on the Project.

ARTICLE 18 FEDERAL FUNDING

In the event federal funds are used for payment of all or part of this Contract:

- A. Consultant certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.
- B. Consultant and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.
- C. Consultant and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)
- D. **American Rescue Plan Act:** The Contractor shall comply with all ARPA requirements and all required provisions to be adhered to in accordance with Federal Uniform Guidance. Costs incurred as a result of this contract shall only be for actions taken in response to the COVID-19 public health emergency, the impacts of COVID-19 on the community, residents and businesses and for the efforts to contain COVID-19. These expenditures shall be a direct response to the emergency and include but are not limited to addressing medical or public health needs, as well as expenditures incurred in response to second-order effects of the emergency.
 - i. This contract provides for the CMAR Construction Services for the Community Resource and Response Center. The Community Resource and Response Center will provide a venue for responding to the pandemic with the delivery of vaccines, testing, and other public health needs. Further, the Center will provide programs and resources that address the negative economic impacts from the pandemic including, but not limited to food insecurity, emergency shelter/quarantine, childcare, educational needs, and mental health

support.

- ii. The parties agree that timeliness of billing is of the essence to this Contract and recognize that the City is on a fiscal year. The parties further understand that all billing must be submitted by the 15th day of the subsequent month. Should contractor fail to submit timely bills, Contractor hereby agrees to be liable to the City for any costs of the project not covered by the ARPA Act due to contractor's negligence in billing. All billings for dates of service prior to July 1 must be submitted to the City no later than the first Friday in August of the same year. Contractor as a contractor shall also maintain the following for tracking purposes:
 1. Chart of accounts, written accounting procedures, internal and administrative controls, accounting journals and ledgers.
 2. Payment requests and source documentation (vendor invoices, bills of lading, purchase orders, payment vouchers, payrolls, bank statements and reconciliations); and
 3. Financial statements, correspondence, and audit files.
 4. In addition to these cost accounting and record-keeping requirements, contractors are also expected to comply with the following list of required flow-down terms. These terms include:
 - a. Equal Employment Opportunity requirements.
 - b. Davis Bacon Act (40 U.S.C. §§ 3141-3148);
 - c. Anti-Kickback Act (40 U.S.C. § 3145);
 - d. Contract Work Hours and Safety Standards (40 U.S.C. §§ 3701-3708);
 - e. Rights to Inventions Made Under a Contract or Agreement (37 C.F.R. Part 401);
 - f. Clean Air Act (42 U.S.C. §§ 7401-7671q) and Water Pollution Control Act (33 U.S.C. §§ 1251-1387);
 - g. Debarment and Suspension (Executive Orders 12549 and 12689);
 - h. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352);
 - i. Procurement of recovered materials (2 C.F.R. § 200.323) (pursuant to section 6002 of the EPA's Solid Waste Disposal Act);
 - j. Prohibition on certain telecommunications and video surveillance services or equipment (2 C.F.R. § 200.216); and
 - k. Domestic preferences for procurements (2 C.F.R. § 200.322).
- iii. Failure to comply with ARPA and other federal, state or local requirements may result in the City of Fernley taking one of the following actions:
 1. Temporarily withholding cash payments pending correction of the deficiency or more severe enforcement action by the Federal awarding agency;
 2. Denying both use of funds and any applicable matching credit for all or part of the cost of the activity or action not in compliance;
 3. Wholly or partly suspending or terminating the contract;
 4. Initiating suspension or debarment proceedings;
 5. Requesting reimbursement for ineligible costs;
 6. Withholding further funds for the project or program; or
 7. Taking other remedies that may be legally available.

Construction Manager at Risk

Firm Name

By: _____

Print: _____

Title: _____

Date: _____

Owner

City of Fernley, Nevada

By: _____

Print: _____

Title: _____

Date: _____

