OWNER-CMAR PRE-CONSTRUCTION AGREEMENT

This Owner-CMAR Pre-Construction Agreement, between the Douglas County Lake Tahoe Sewer Authority, 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:

Contract No:

Owner

Douglas County Lake Tahoe Sewer Authority

P.O. Box 578

1 Sewer Plant Road / Highway 50

Zephyr Cove, Nevada 89448

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 compromise 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
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, construction duration, sequence of construction, and construction means and methods.
2. Conducting investigations, with participation by appropriate subcontractors, of all existing site conditions.
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 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. 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 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 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. 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. Any legal action brought by the CMAR or his representatives shall be made in Washoe 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 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 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

This Contract is not assignable.

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.

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, 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 will be made in accordance with the following schedule:

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

Construction Manager at Risk

Firm Name

By: _____

Print: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Title:

Date: _____

Owner

DCLTSA

By: _____

Date: _____

ATTEST:

By: _____