



Mount
Werner
Water District



Mt. Werner Water and Sanitation District

and

The City of Steamboat Springs

Request for Proposals for CMAR Services

RFP #2021-2A_2B-RFP

Fish Creek Filtration Plant Improvements Project

Phase 2A and Phase 2B

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Section 1: Background

1.1 Introduction

This Request for Proposals (RFP) for construction manager at-risk (CMAR) services for the **Mt. Werner Water and Sanitation District and City of Steamboat Springs, Fish Creek Filtration Plant (FCFP) Improvements Project Phase 2A & Phase 2B** (Project) invites Proposals according to the requirements set forth in this RFP, formatted pursuant to the guidelines in Section 5. The Proposals are reviewed and evaluated as described in Section 6, to select a short list of up to three (3) Respondents who will have the opportunity to interview.

At completion of the Proposal evaluation process, the Mt. Werner Water and Sanitation District and the City of Steamboat Springs (Owners) will communicate the resulting short list of Respondents selected for interviews. Information on the interview process and selection criteria will be provided to the short-listed respondents. At the completion of the interview process the Owners will select a Proposer to award The CMAR Contract. See Attachment C (Draft CMAR Preconstruction Services Agreement); negotiations for the Project construction contracts will occur during the preconstruction stage of each project phase (see below).

The Project will be designed by an independent engineering firm (Carollo Engineers, Inc., Design Engineer) contracted with the Owners. Using the CMAR delivery method, the Project is to be designed and constructed in two phases: Phase 2A (disinfection improvements and motor control center [MCC] replacement) and Phase 2B (chemical building and carbon dioxide storage systems construction). Both of these Project phases will include preconstruction and construction stages:

- **Preconstruction stage:** The CMAR Firm will provide preconstruction services (as further described in Attachment C: Draft CMAR Preconstruction Services Agreement) to support the Design Engineer in developing the designs for Phase 2A and Phase 2B (design of these Project phases may overlap but will not be concurrent). The CMAR Firm will be responsible for providing cost estimating, constructability reviews, and scheduling throughout the design (i.e., preconstruction services).

The Design Engineer will advance the design for each phase to the level of completion necessary to define the Project—between 60% and 90% complete—and will provide procurement-ready documents to the Owner and the CMAR Firm. Based on these documents, the CMAR Firm will present to the Owner a construction schedule and an open-book guaranteed maximum price (GMP) for each Project phase, which includes the cost of the work through commissioning and start-up, a general conditions price, overhead and profit as a percent mark-up, and a negotiated contractor contingency. Two GMPs will be developed for this Project: one for Phase 2A and one for Phase 2B.

When the Owner and CMAR Firm have agreed on the construction price, the construction stage for a given Project phase (Phase 2A or Phase 2B) begins. If the Owner and the CMAR Firm are unable to agree on a price for construction-stage services for either Phase 2A or Phase 2B, the Owner reserves the right to terminate the existing CMAR Contract and begin negotiating with another

CMAR Firm, or direct the Design Engineer to complete the design and prepare construction documents for bidding of the Project.

- **Construction stage:** Upon successful agreement between the Owner and CMAR Firm on a price for construction-stage services for each Project phase (Phase 2A or Phase 2B), the CMAR Firm will procure all subcontractors and vendors and will be responsible for the construction, startup, commissioning, operator training and support, performance testing, and warranty services as agreed to in the CMAR Contract. The Owners and the selected CMAR Firm will negotiate the construction contract documents during the preconstruction stage of each project phase; these will be based on Engineers Joint Contract Documents Committee (EJCDC) standards and general conditions as well as the Owners' supplemental requirements.

This RFP is subject to revision after the date of issuance via addenda.

In no event will the Owners be liable for any costs incurred by any Respondent or any other party in developing or submitting a Proposal or participating in an interview.

The capitalized terms in this RFP have the meanings as first used in the text of this RFP and as defined in Attachment A (Definition of Terms).

1.2 RFP Organization

This RFP consists of seven Sections and seven Attachments:

- Section 1: Background
- Section 2: Project Overview
- Section 3: Construction Management-at Risk Services
- Section 4: Procurement Process
- Section 5: Proposal Submission Requirements
- Section 6: Proposal Evaluation and Shortlist Selection
- Section 7: Conditions for Respondents
- Attachment A: Definition of Terms
- Attachment B: Fee and Rate Proposal Form
- Attachment C: Draft CMAR Preconstruction Services Agreement

The contents of the RFP Attachments take priority over any conflicting statements in the RFP Sections.

1.3 Owners' Objectives and Project Priorities

The Owners' objectives for delivery of the Project are as follows:

- **Schedule:** Achieve the scheduled substantial completion date of November 30, 2022 for Project Phase 2A components. Achieve the scheduled substantial completion date of April 26, 2023 for Project Phase 2B components. These substantial completion dates are defined by CDPHE and are paramount to the success of the project.
- **Quality:** Provide facilities constructed to be lasting assets that have low operation and maintenance requirements and meet the long-term needs of the FCFP operations staff.
- **Minimize Community Impact:** Minimize disturbance to the neighboring community. This Project is located in a mountain community, adjacent to a popular recreation path and residences and site access is through a residential neighborhood.
- **Cost:** Best value alternative using a cost-conscious approach. The Project team will collaborate to identify life cycle costs to facilitate decision making, design with constructability in mind, as well as encouraging competition among trades and subcontractors.
- **Risk:** Achieve an optimal balance of risk allocation between the Owner and the CMAR Firm. The Project team will collaborate to identify, quantify, and manage risk throughout the Project timeline.
- **Safety:** Implement an effective safety program incorporating industry's best practices, with a goal of zero lost-time incidents on the Project.

By selecting the CMAR delivery method for the Project, the Owners are committed to working with the CMAR Firm to achieve the Project objectives and to obtain mutually agreeable GMPs for the delivery of each Project phase at the FCFP.

Section 2: Project Overview

2.1 Project Scope

The Fish Creek Filtration Plant (FCFP) is jointly owned by the Mt. Werner Water and Sanitation District (District) and the City of Steamboat Springs (City), herein, collectively referred to as the Owners. The facility has a treatment capacity of 7.5 million gallons per day (MGD) and utilizes a conventional filtration treatment process of pre-sedimentation, influent flow control, coagulation, flocculation, sedimentation, filtration, and free chlorine disinfection. Under the partnership structure, both entities own a portion of the treatment infrastructure, and the District is responsible for the operation, maintenance, and management of the FCFP.

The 2021 Water Treatment Facility Master Plan developed a phased, long-term capital improvement plan for improving the existing water treatment infrastructure to meet growth and regulatory requirements over a 20-year planning period through 2045.

The Master Plan identified improvements to the facility's disinfection process and the construction of a new chemical building as critical projects to be completed in the next two years – driven by Colorado Department of Public Health and Environment (CDPHE) regulatory mandates. Replacement of the existing MCC was also identified as a critical project because it is an essential component of the FCFP and has reached the end of its useful life. The following Scope of Work (SOW) elements are split into two phases:

- Phase 2A:
 - Erecting PVC baffle curtains between the existing structural columns of the facility's 2 Million Gallon (MG) Tank to increase the disinfection process hydraulic retention time. The baffle curtain system shall be provided by ABASCO™.
 - Moving the chlorine residual measurement sample location to the outlet of the 2 MG Tank and providing a new sample pump to feed the chlorine residual analyzer.
 - Modifying the existing 2 MG Tank access hatch so that it meets CDPHE sanitary survey requirements.
 - Adding a new access hatch to the 2 MG Tank roof.
 - Providing a new combined filter effluent turbidity sample location in the Clearwell, located within the filter building. The new combined filter effluent turbidimeter will also require a new sample pump to feed it.
 - Replacing the facility's existing MCC with new gear capable of supporting current and anticipated future plant electrical loads. The new MCC shall include surge suppression, power monitoring capabilities, and a transfer switch for a future standby generator (new generator not included in the Project).

- Phase 2B:
 - Installation of a new CO₂ storage tank.
 - Construction of a new chemical building and raw water pipe gallery to house sodium hydroxide storage tanks and feed equipment, aluminum sulfate (alum) storage tanks and

- feed equipment, CO₂ feed equipment, building mechanical and electrical equipment, and raw water piping and flow control/metering equipment.
- Construction of a new chemical delivery access driveway and associated site grading.
 - Installation of a sodium hydroxide storage and feed system at the Yampa River Wells Filtration Plant (YRWFP). This system will be located within the existing facility and will consist of metering pumps and either tote(s) or a small storage tank.

Figure 1 shows an overall site aerial image with the Project components. Figure 2 shows the 2 MG Tank baffling configuration. Figure 3 shows the conceptual design of the chemical building.

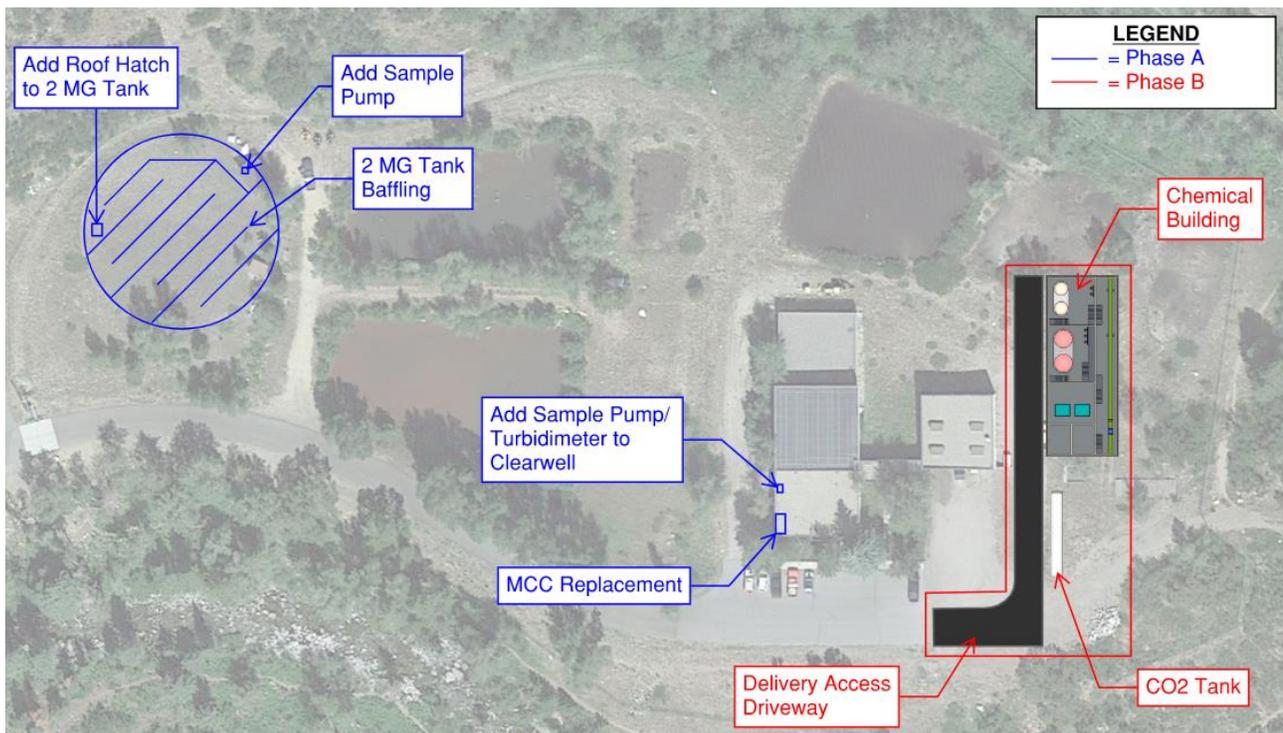


Figure 1 – Site Aerial Overview with Project Components Emphasized (YRWFP sodium hydroxide system not shown).

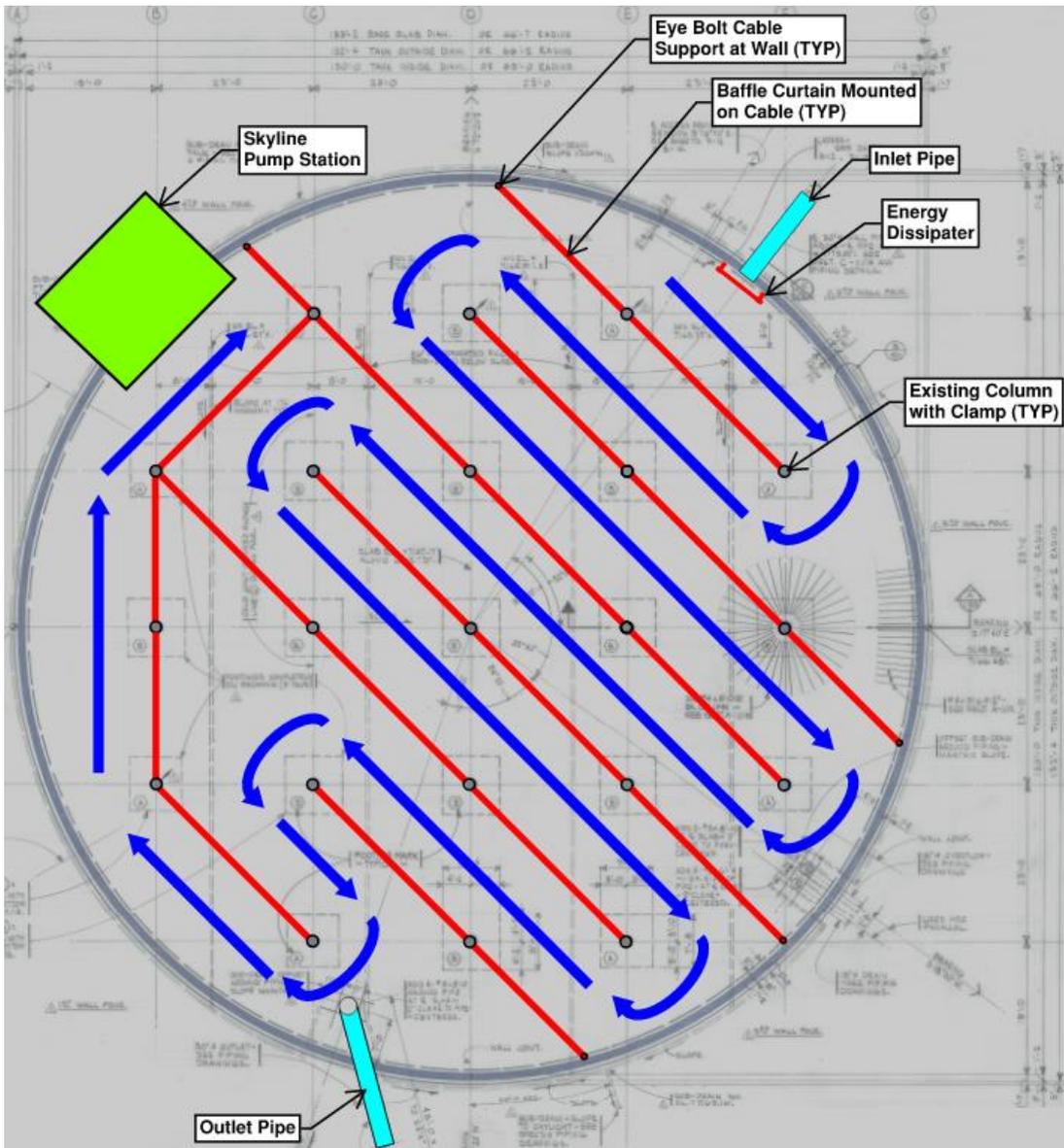


Figure 2 – 2 MG Tank Baffling (Phase 2A)

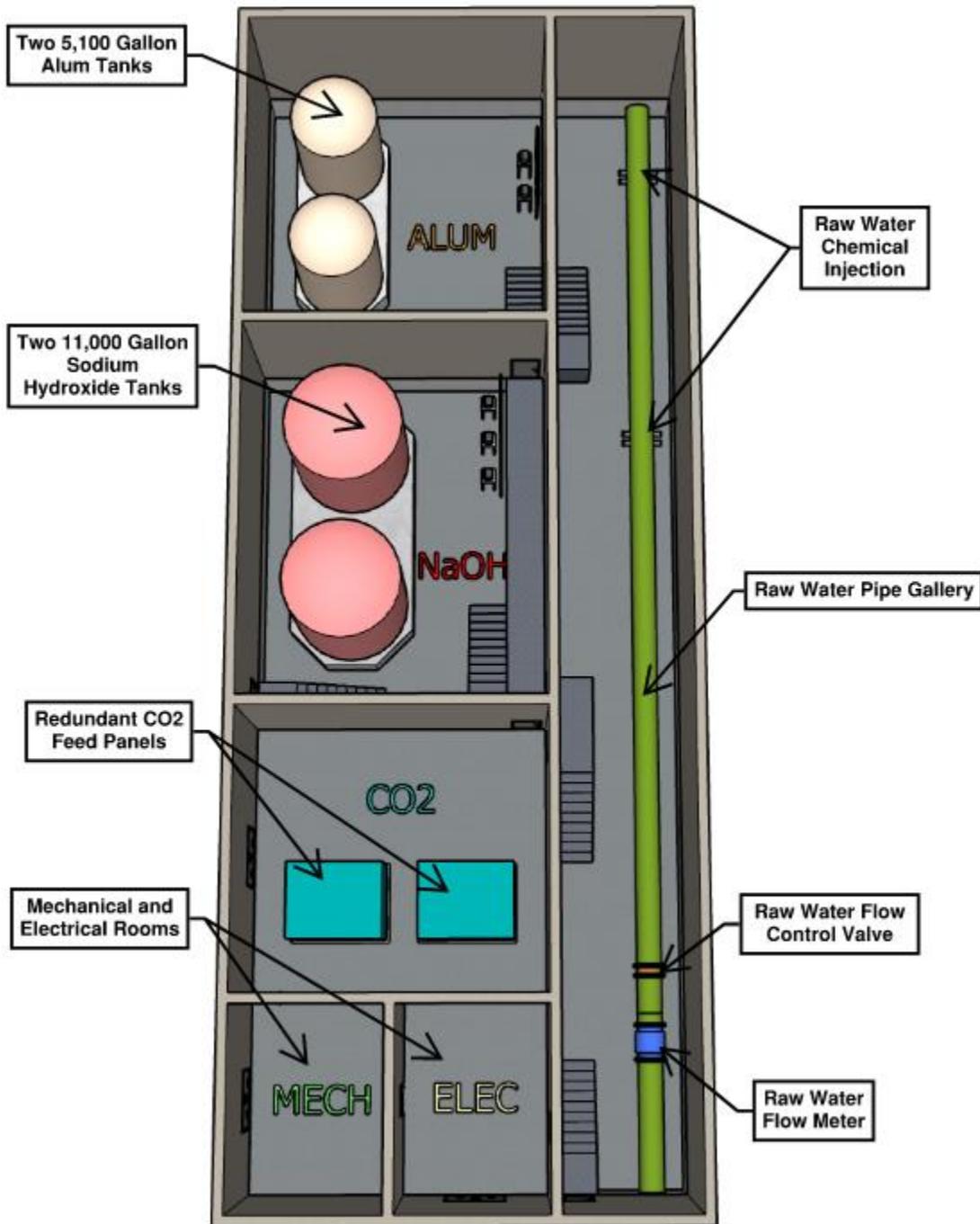


Figure 3 – Conceptual Layout of New Chemical Building (Phase 2B)

The CMAR Firm will be responsible for completing preconstruction services for both Phase 2A and Phase 2B preconstruction and construction activities. Upon execution of the Phase 2A construction contract, the Owners reserve the right to terminate the existing CMAR Contract for Phase 2B and begin negotiating with another CMAR Firm, or direct the Design Engineer to complete the design and prepare construction documents for bidding of the Project, should the CMAR Firm's Phase 2A work be deemed unsatisfactory.

The CMAR Firm will be responsible for actively tracking project cost, or estimated costs to provide confirmation that the design and construction for each Project phase is completed with the Owners' budget.

2.2 Project Schedule

It is anticipated that the CMAR Contract will be executed on or about **July 23, 2021**. Phase 2A construction must be completed during a plant shutdown. There are two shutdown windows each year: one from approximately **April 1st to May 15th** and from approximately **September 15th to November 30th**. Exact shutdown dates will depend on system demands and will be coordinated between the Owners and the CMAR Firm. Substantial completion of Phase 2A construction must be achieved no later than **November 30, 2022**.

Phase 2B design will commence in the fall of 2021 and is planned to be completed by the end of **May 2022**. Construction for Phase 2B can start in the spring of 2022, in coordination with the Design Engineer and Owners, and will only require short shut down periods for tie-ins which will be coordinated between the CMAR Firm and the Owners. Phase 2B substantial completion must be achieved no later than **April 26, 2023** in order to comply with CDPHE regulatory mandates for corrosion control system implementation.

Section 3: Construction Management-at Risk Services

3.1 General

As noted in Section 2.1 , the CMAR Firm will provide services in two phases, each of which has preconstruction and construction stages.

Preconstruction services generally consist of actively participating in the Project design process by supporting constructability, cost estimating, and schedule input. Construction services generally encompass performance of the Project's construction, management of sub-contractors and vendors, and start up and commissioning of the Project.

Preconstruction Services (applies to both Phase 2A and Phase 2B designs)

- Develop a Preliminary Project Implementation Schedule which identifies all key elements of construction, critical path activities, and equipment procurement.
- Provide constructability/best-value added reviews of the Project design at each milestone.
- Develop and update both a Project cost model and a critical path method (CPM) schedule to meet Project restrictions.
- Provide preconstruction services as defined in Attachment B.
- Develop, submit, and negotiate GMP proposals to complete Construction services for each Project phase.

Construction Services (applies separately to Phase 2A and Phase 2B)

- Provide input to the final design.
- Establish a value engineering process.
- Procure equipment and subcontractors.
- Secure necessary construction related permits.
- Construct the Project.
- Conduct performance testing, startup, and commissioning.
- Provide operator training for new equipment.
- Provide warranty coverage.
- Provide operations and maintenance manuals and as-built drawings to the Owners.

3.2 Roles and Responsibilities

Owners: The Owners will cooperate with the CMAR Firm and will fulfill its own responsibilities in a timely manner to facilitate the CMAR Firm's timely and efficient performance of services. Owner responsibilities include:

- Coordinate between Design Engineer and selected CMAR Firm.
- Coordinate with other utility companies and outside agencies as necessary.
- Review submissions and provide comments to CMAR Firm.

- Furnish existing studies and provide complete, accurate and reliable data and information regarding the Project, including record drawings, preliminary studies, etc.
- Provide information and provide (or engage CMAR Firm or Design Engineer to perform) additional studies that may be necessary to complete the Project.
- Provide adequate funding.
- Provide access to the Project site and any necessary easements.
- Provide any necessary licensed personnel for start-up services.
- Cover the cost of regulatory approvals and permits. The Owner and Design Firm will be responsible for and will assist the CMAR Firm in obtaining regulatory approvals and permits it is responsible for.
- Provide necessary data and inputs (e.g. testing water, plant operations personnel, etc.) for Project startup and performance testing.
- Provide public relations support to the community/customers for the duration of the project

CMAR Firm: The CMAR Firm will cooperate with the Owners and will actively participate in each phase of the project to provide in a timely manner the preconstruction and construction services necessary to complete the Project scope specified in this RFP. The CMAR Firm responsibilities include:

- Attend, schedule, and lead various partnering, design review, and progress meetings and workshops
- Provide written notes/minutes from meetings and workshops
- Provide input to the design engineer.
- Collaborate with Owner and Design Engineer as required to meet Project objectives.
- Select subcontractors, trade contractors, and material and equipment suppliers with Owner input.
- Provide cost estimates and schedule updates as required.
- Supervise subcontractors and CMAR Firm personnel.
- Obtain certain governmental approvals and permits.
- Coordinate site access with Owner.
- Conduct performance testing.
- Implement quality-management procedures.
- Implement Project health and safety practices.
- Warranty guarantees and Insurance.
- Provide operations and maintenance manuals and as-built drawings.

Design Engineer: The Design Engineer will work with the Owners and CMAR Firm during the preconstruction stages for the appropriate development of design detail. Design Engineer responsibilities include:

- Coordinate with Owners and selected CMAR Firm.
- Provide design development of drawings and specifications for all Project design components.
- Coordinate with design subconsultants, including geotechnical engineering, site surveying, and architect.

- Prepare and submit the Basis of Design Report for each Project phase to the CDPHE to obtain an approval to construct.
- Prepare agendas and minutes for all coordination meetings and workshops during the preconstruction stage.
- Work with the Owners and CMAR Firm to develop maintenance of plant operations and process sequence/start-up plans and requirements.
- Assist with best value selection for equipment and subcontractors, as requested by the Owners.
- Provide Engineering Services During Construction for each construction phase.
- Electronic and Paper Copies of equipment O&M Manuals
- Redline construction drawings (District Engineer will be responsible for producing record drawings).

Section 4: Procurement Process

4.1 Acknowledgement of RFP

Each Respondent should provide the Owners, within 10 days of receipt of this RFP, an acknowledgement that they have received the RFP and intend to submit a Proposal. Such acknowledgement shall identify and provide full contact information for the Respondent Representative, who shall be the Respondent's single point of contact for the receipt of any future documents, notices, and addenda associated with this RFP. Such acknowledgement must be sent in writing and transmitted electronically to the Owners' Contact.

4.2 Communications and Owner Contact

All official communication from the Owners to Respondents will be transmitted electronically.

On behalf of the Owners, Frank Alfone will act as the sole point of contact for this RFP and shall administer the RFP process. Prospective Respondents may make written inquiries by email before the written inquiry deadline concerning this RFP to obtain clarification of requirements. There will also be an opportunity to make informal inquiries at the pre-proposal meeting. No inquiries will be accepted after the deadline. All questions or comments should be directed to the Owners' Contact as follows:

**Frank Alfone, General Manager
Mt. Werner Water and Sanitation District
3310 Clearwater Trail
PO Box 880339
Steamboat Springs, CO 80488-0339
970-879-2424
falfone@mwwater.com**

Response to Respondents inquiries will be published as addenda which will be emailed to CMAR Firms that have confirmed their intent to Propose.

Should any interested Respondent find any part of the listed terms and conditions to be discrepant, incomplete or otherwise questionable in any respect, it shall be the responsibility of the concerned party to notify the Owners' Contact of such matters immediately upon discovery.

No oral communications from the Owners' Contact or other individual is binding. No contact with Owner staff, Board members, Design Engineer, or any public official concerning the Project during the procurement process is allowed. A violation of this provision may result in disqualification of the Respondent.

4.3 Procurement Schedule

The current procurement schedule is as follows:

- Issue/Advertise RFP on or by 6/4/2021
- Pre-submittal Meeting (mandatory) 6/9/2021
- Treatment Plant Site Tour (optional) 6/9/2021
- Deadline for questions 6/22/2021
- Submit Proposals 6/30/2021
- Shortlist Selection 7/08/2021
- Interviews 7/15/2021
- Award Construction Management-at Risk Contract 7/23/2021

4.4 Pre-Submittal Meeting and Site Tour

The Owners will conduct a pre-submittal meeting for those interested in responding to the RFP.

Attendance at this meeting is mandatory. The meeting will be held virtually as well as in-person at **FCFP** on **6/9/2021** starting at **10:00 am**. At this meeting, the Owner will offer information about the Project and the procurement process. A pre-submittal tour of the plant is optional and will be held **immediately after the meeting**. Only those who attend the pre-submittal meeting in person will have the opportunity to tour the Project site following the meeting to familiarize themselves with site conditions and constraints. Respondents shall advise the Owner Contact by **6/8/2021** of the names of individuals who will attend the pre-submittal meeting. Due to space constraints, each firm is limited to **2** attendees at the meeting and site tour. All attendees are required to wear facemasks and maintain social distancing, if required by local COVID-19 mandates.

Section 5: Proposal Submission Requirements

5.1 Submittal Place and Deadline

One (1) electronic version of the Proposal on USB in PDF (searchable) format, must be received no later than **6/30/2021 at 4:00 pm MDT**, addressed to:

**Frank Alfone
Mt. Werner Water and Sanitation District
3310 Clearwater Trail
PO Box 880339
Steamboat Springs, CO 80488-0339**

Each Respondent assumes full responsibility for timely delivery of its Proposal at the required location. Any Proposal received after the submittal deadline will be deemed non-responsive and returned. The delivered packaging containing the Proposal documents must note the following on its face:

**Request for CMAR Qualifications
RFP #2021-2A_2B-RFP
FCFP Improvements Project Phase 2A and Phase 2B**

Proposals may be modified or withdrawn by the Respondent prior to the established due date and time.

5.2 Submission Format

The Proposal must not exceed **20** total pages (most or all 8½ x 11 inch with 1-inch or greater margins), excluding the transmittal letter, index or table of contents, front and back covers, title pages/separation tabs, and appendices. A maximum of **2** of the total pages may be 11 x 17-inch tri-fold format. Each 11 x 17-inch page will count as 2 pages. Eleven-point font or larger must be used. The Proposal shall be typed or printed double-sided to the extent possible, with each double-sided page continuing as two pages, and shall have continuously numbered pages.

5.3 Submission Content

The content requirements set forth in this RFP represent the minimum content requirements for the Proposal. It is the Respondent's responsibility to include information in its Proposal to present all relevant qualifications and other materials. The Proposal, however, should not contain standard marketing or other general materials. It is the Respondent's responsibility to modify such materials so that only directly relevant information is included in the Proposal.

The Proposal must include the following information in the order listed:

- Transmittal Letter
- Part 1 – CMAR Firm Profile

- Part 2 – Project Team
- Part 3 – Relevant Experience of the Project Team
- Part 4 – Project Approach
- Appendix A – Resumes
- Appendix B – Preconstruction Services Fee and Rate Proposal
- Appendix C – CMAR Contract Proposed Edits
- Appendix D – Supporting Documentation

The outside of the package must include the following information in the order listed:

- Company Name
- RFP Number
- RFP Title
- Due Date and Time

5.3.1 Transmittal Letter

Respondents must submit a transmittal letter (maximum two pages) on the Respondent's letterhead. It must be signed by a representative of the Respondent who is authorized to sign such material and to commit the Respondent to the obligations contained in the Proposal. The transmittal letter must include the name, address, phone number and e-mail address for the Respondent Contact, and must specify who would be the CMAR Firm's signatory to any contract documents executed with the Owners. The transmittal letter may include other information deemed relevant by the Respondent.

5.3.2 Part 1 – CMAR Firm Profile

A detailed and complete description of the CMAR Firm proposed must be provided in Part 1 of the Proposal. (The term "CMAR Firm" can refer to either a single entity or a joint venture). Information concerning Key Personnel and other firms that may be included on the Project Team, such as sub-consultants and subcontractors, should be provided in Part 2 of the Proposal. The CMAR Firm Profile must include the following information.

- **General**
Provide general information about the CMAR Firm, such as lines of business and service offerings, locations of home and other offices, number of employees (professional and non-professional), and years in business. Provide licenses in Appendix D (Supporting Documentation) of the Proposal.
- **Legal structure**
Identify whether the CMAR Firm is organized as a corporation, limited liability company (LLC), general partnership, joint venture, limited partnership, or other form of legal entity.
- **Project office location**

Identify where the CMAR Firm intends to maintain its project office(s) and the location of where the construction management work will be performed.

- **Payment and performance bonds**

In Proposal Appendix D, provide a letter from the CMAR Firm's surety to verify the availability of a CMAR to bond at least \$10 million per individual project for this Project. The CMAR Firm shall also indicate their individual project and aggregate bonding capacities. Such bonds shall be executed by the contractor and a corporate bonding company licensed to transact such business in the state in which the work is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570

- **Insurance**

In Proposal Appendix D, provide a letter or Certificate of Insurance from the CMAR Firm's insurance company stating its ability to acquire and provide the following limits for the required insurance:

- Statutory worker's compensation insurance (as required by state law)
- General Public Liability and Property Damage Insurance including vehicle coverage: \$1 million per occurrence
- Excess liability insurance above the employer's general and automobile insurance: \$10 million aggregate

The Proposal must provide the following additional information pertaining to factors or events that have the potential to adversely impact the CMAR Firm's ability to perform its contractual commitments.

- **Material adverse changes in financial position.** Describe any material historical, existing or anticipated changes in financial position, including mergers, acquisitions, takeovers, joint ventures, bankruptcies, divestitures, or any material changes in the mode of conducting business.
- **Legal proceedings and judgments.** List and briefly describe any pending or past (within 10 years) legal proceedings and judgments, or any contingent liability that could adversely affect the financial position or ability to perform contractual commitments to the Owners. If no such proceedings or judgments are listed, provide a sworn statement to that effect from the CMAR Firm's legal counsel.
- **Completion of contracts.** Has the CMAR Firm failed to complete any contract, or has any contract been terminated due to alleged poor performance or default within the past 10 years? If so, describe the circumstances.
- **Violation of laws.** Has the CMAR Firm been convicted of any criminal conduct or been found in violation of any federal, state, or local statute, regulation, or court order concerning antitrust, public contracting, employment discrimination or prevailing wages within the past 10 years? If so, describe the circumstances.

- **Debarred from bidding.** Has the CMAR Firm been debarred within the past 10 years, or is it currently under consideration for debarment, on any public (municipal, state or federal) contracts? If so, describe the circumstances.

If any of the above questions are answered in a manner that indicates that any of these unfavorable factors or events are present, it is the Respondent's responsibility to: (1) describe in detail the unfavorable factor or event; and (2) provide sufficient information to demonstrate that the unfavorable factor or event will not adversely impact the CMAR Firm's ability to perform its contractual commitments. Include these responses in Appendix D of the Proposal.

The Respondent must notify the Owners of any changes subsequent to submission of the Proposal and before the selection process is completed (and, in the case of the selected Respondent, before executing the Construction Management-at Risk Contract).

5.3.3 Part 2 – Project Team

Describe the composition, organization, and management of the CMAR Project Team in two separate subsections.

CMAR Firm/other firms:

- Identify any other firms (such as subcontractors and sub-consultants) included on the Project Team and describe the scope of the CMAR Firm's and each firm's services and responsibilities during the preconstruction and construction stages for Phase 2A and Phase 2B.
- Provide preconstruction and construction organizational charts showing the reporting relationships and responsibilities of the CMAR Firm. Identify any other firms and describe the CMAR Firm's approach to the management of said firms. If the CMAR Firm's/other firms organizational structure will change between Phase 2A and Phase 2B, clearly indicate this is the case and provide two sets of organizational charts (one for each Project phase), otherwise it will be assumed that the preconstruction and construction organization will be consistent for both Project phases (this is the Owners' preference).

Key Personnel:

- Identify all Key Personnel (and their firm affiliations) as defined in Attachment A and describe their specific responsibilities during the preconstruction and construction phases of the Project.
- Provide preconstruction and construction organizational charts showing the reporting relationships and responsibilities of all Key Personnel (along with their firm affiliations) and describe the CMAR Firm's approach to the management of such Key Personnel. If the Key Personnel's organizational structure will change between Phase 2A and Phase 2B, provide two sets of organizational charts (one for each Project phase), otherwise it will be assumed that the preconstruction and construction organization will be consistent for both Project phases (this is the Owners' preference).
- Indicate the commitment of all Key Personnel in terms of an estimated percentage of time committed to each phase of the Project.

- Provide resumes for all Key Personnel in Proposal Appendix A (Resumes). Resumes must be limited to **two** pages per individual and include their experience as it relates to the Project and to the individual's specified role on the Project.

5.3.4 Part 3 – Relevant Experience of the Project Team

The Proposal must describe the performance history and experience of the Project Team on similar projects and provide information concerning safety.

Reference Projects:

The Respondent shall submit descriptions of at least three (3) reference projects completed in the last 10 years to demonstrate relevant experience.

Each project description shall contain at least the following information:

- Name of Owner.
- Owner reference and contact information.
- Role of respondent.
- Project delivery method.
- Contract value.
- Year started and year completed.
- Description of the project showing relevance to this Project.
- If the project was delivered via CMAR or other alternate delivery model, define specific pre-construction services and benefits provided.
- Names of firms and Key Personnel that participated in project and are included in the Proposal, along with a clear description of the roles and responsibilities of each.

In addition, a one-page summary table should be provided to cross-reference the Project Team (firms and Key Personnel) highlighting participation in the reference projects.

Safety:

Provide a summary description of the CMAR Firm's corporate safety program and include safety statistics or records indicating categories of accidents and their incidence or frequency rates for the past three years. The following safety records must be provided for the CMAR Firm for the current (2021) and past three years (2018 – 2020):

- The experience modification rate (EMR) calculated by the National Council on Compensation Insurance or similar rating bureau. The EMR is also referred to as the experience modification rating, experience modification factor, experience modifier or X-mod.
- The days-away-from-work injury incident rate (DART - days away, restricted or transferred). A day-away-from-work injury is an injury that prevents an employee from returning to his or her next regularly scheduled shift, one or more restricted days or that resulted in an employee transferring to a different job within the company. The incidence rate is calculated by multiplying the number of days-away-from-work, restrictions or job transfers for the particular year by 200,000 and then dividing the product by the total hours worked by employees during the year covered.

Contract Compliance

If the Respondent answers yes to any of the following, provide the date of the termination order, or payment, describe the project involved, and explain the circumstances relating to same, including the names, addresses and phone numbers of persons who might be contacted for additional information in Appendix D.

- Has your organization ever been terminated on a contract for cause?
- Has your organization made payment of actual and/or liquidated damages for failure to complete a project by the contracted date within the last five years?
- Has your organization in the last three years, received a final order or willful and/or repeated violation(s) for failure to abate issued by the United States Occupational Safety and Health Administration or any other government agency?
- Have any Performance or Payment Bond claims ever been paid by any surety on behalf of your organization?
- Has your organization been more than thirty (30) days late, without good cause, in achieving the contracted substantial completion date where there was no liquidated damages provision on more than two (2) projects in the last three (3) years?
- Has your organization received cure notices on any project in the past five (5) years?

5.3.4 Part 4 – Project Approach

Provide a conceptual description (maximum five pages) of the CMAR Firm's approach for managing and performing its services during the preconstruction and construction phases for both phases of the Project, addressing the following topics.

- Present how the proposed collaborative working relationship with the Owners and Design Engineer would be established during the design development preconstruction stage.
- Discuss the approach to developing and updating the cost and schedule models throughout the preconstruction process.
- Provide a description of how you intend to bring best-value solutions, constructability, and implementation solutions to the Project.
- Discuss how the preconstruction and construction processes will interface (including how constructability and value engineering issues will be addressed).
- Identify the work components critical to the Project's success and how these components would be achieved.
- Discuss your company's ability to self-perform construction activities and define what activities you anticipate self-performing on this Project.
- Describe the process that will be used to include local sub-contractor participation, while maintaining Project quality.
- Describe the process for developing the GMP proposals.
- Discuss how key risk factors will be identified, managed, and mitigated.
- Project Procurement plan
- Project specific safety plan.
- Project specific quality plan.

- Discuss approach to development and collaboration with the Owners on Project schedule, including coordination with maintenance of plant operations during construction, sequencing, and necessary Project shutdowns.

5.3.7 Appendices – Additional Information and Forms of Affirmation of Compliance

As described in the previous sections, the Appendices shall be part of the Proposal, but do not count against the page limitation described in section 5.2 of this Proposal. Respondents are responsible for presenting the following information in the appendices section of their Proposal:

- Appendix A – Resumes
- Appendix B – Preconstruction Services Fee and Rate Proposal
- Appendix C – CMAR Contract Proposed Edits
- Appendix D – Supporting Documentation

CMAR Contract Proposed Edits

The Proposal may include in Appendix C (CMAR Contract Proposed Edits) a detailed markup of the Draft CMAR Contract (including attachments), setting forth any and all revisions requested by the Proposer. Although the Owners will undertake negotiations of the CMAR Contracts, the CMAR Contract Proposed Edits will be treated as a *de facto* offer that the Owners can accept as is, which would result in a binding contract between the CMAR Firm without further negotiations or revision. Note that the CMAR Contract covers preconstruction services for both Phase 2A and Phase 2B; construction contract documents for each of these phases will be negotiated during preconstruction.

Appendix C shall include an explanation of the rationale for such revisions and the associated benefits to the Owners. Proposers are encouraged to suggest revisions that would more efficiently allocate risk, improve the parties' understanding of risk allocation, and improve clarity of any terms of the Draft CMAR Contract where ambiguities or uncertainties may arise in their application or interpretation.

The Owners are not obligated to accept any of the requested exceptions, modifications, additions, etc. submitted by the Proposer in the CMAR Contract Proposed Edits when negotiating and finalizing the CMAR Contract. Furthermore, the Owners may request additional revisions during negotiations and before finalizing the CMAR Contract.

Proposers are encouraged to carefully review RFP Attachments B and C and to submit written questions and comments by the deadline specified in Section 2. Based on its assessment of the comments submitted, the Owners (at their sole discretion) may modify the Draft CMAR Contract via addenda. The Owners expect that this review and comment process will substantially reduce the need for extensive post-selection negotiation.

Fee and Rate Proposal Basis

The Proposer must complete RFP Attachment B (Fee and Rate Proposal Form) – with all required

pricing information – and include it as Appendix B – Preconstruction Services Fee and Rate Proposal. The Proposal should describe the basis for the Fee and Rate Proposal and discuss its viability from the CMAR Firm's perspective.

Please be advised that the Owners are not interested in proposed fees or rates that provide excessive discounts from the CMAR's anticipated actual costs for the requested services. If the Owners determine (at their sole discretion) that the fees and rates included in a Proposal are unacceptably below industry norms or that a Proposer's fees and rates are substantially or unacceptably below other Proposals, the Owners may (at their sole discretion) either declare that Proposal to be non-responsive or seek additional detailed information from that Proposer concerning the cost basis for its fee and rate proposal, prior to rendering a decision on the Proposal's responsiveness.

Section 6: Proposal Evaluation and Selection

6.1 General

The Proposals will be reviewed and evaluated by the Owners' selection committee (with assistance provided by the Design Engineer) according to the requirements and criteria outlined in this Section 6. During the Proposal evaluation process, written questions or requests for clarifications may be submitted to one or more Respondents regarding its Proposal or related matters. Failure to respond in a timely manner (maximum of 3 business days) to any such questions or requests may be grounds for elimination of the Respondent from further consideration. The Owners will select a short list of up to three (3) Respondents to interview, but also reserves the right to waive the interview process and award the CMAR Contract to a selected Respondent without an interview.

6.2 Responsiveness

Each Proposal will be reviewed to determine whether it is responsive to the RFP. Failure to comply with the requirements of this RFP may result in rejection of the Proposal as non-responsive. At its sole discretion, however, the selection committee may waive any such failure to meet a requirement of this RFP and may request clarification or additional information to remedy a failure.

6.3 Minimum Mandatory Qualifications and Comparative Evaluation Criteria

Each responsive Proposal will be reviewed to determine whether it meets the Minimum Qualification Requirements and the Comparative Evaluation Requirements outlined in this subsection. At the selection committee's sole discretion, the selection committee may waive any failure to satisfy such requirements and may request clarification or additional information to address any questions that may arise in this regard.

Minimum Qualification Requirements Include:

- **Performance and Payment Bonds.** Ability of the CMAR Firm to provide a CMAR performance bond in the amount of \$10 million.
- **Material Adverse Condition.** The CMAR Firm must not be subject to a material adverse condition, such as pending litigation, insufficient liquidity, weak operating net income or cash flow, or excessive leverage, that gives rise to reasonable doubt concerning its ability to continue to operate as an ongoing concern, to provide performance bonds or insurance, or to maintain sufficient financial strength to undertake and successfully complete the Project and to mitigate/absorb Project risks.
- **CMAR Firm Experience.** At least three (3) water or wastewater treatment plant projects of construction value equal to or greater than \$5 million and of similar scope for municipal clients in the United States in the last ten years (Colorado and mountain projects preferred).

- **Safety Record.** The CMAR Firm must have achieved an experience modification rate (EMR) of not greater than 1.25 for the past three years.

If the Minimum Qualification Requirements are met, the selection committee will evaluate and rank the responsive Proposals on the Comparative Evaluation Requirements. The responsive Proposals will be scored by applying the weighted comparative evaluation criteria set forth below.

Comparative Evaluation Requirements:	Points Available
Part 1 – CMAR Profile	10
Part 2 – Project Team	25
Part 3 – Relevant Project Experience	25
Part 4 – Project Approach	40
Appendix B – Fee and Rate Proposal*	--
Total	100
*The fee and rate proposal will be considered in the comprehensive evaluation of proposals but will not be directly scored in the evaluation requirements.	

6.4 Selection

All submissions in response to this RFP will be evaluated by a committee in accordance with the criteria described below. If Respondents have been found responsive and meet the minimum qualifications set forth in this RFP, the total evaluation scores will be tabulated, and the highest ranked firms will be short listed.

If the Owners request additional information by the short-listed Respondents, committee members may revise their initial scores based upon additional information and clarification received in this phase. After the evaluation process is complete, the Owners will notify Respondents of the short list. The short list respondents will be offered the opportunity to participate in an interview. Information on the interview requirements, evaluation criteria, and selection process will be provided to the short-listed respondents.

Section 9: Conditions for Respondents

9.1 Owner Authority

The Mt. Werner Water and Sanitation District is a quasi-municipal corporation and political subdivision, each duly organized and existing as a special district pursuant to Title 32, Colorado Revised Statutes. The City of Steamboat Springs is a Home Rule Municipality in the State of Colorado as set forth in Article 20, Section 6 of the Colorado Constitution.

9.2 Ineligible Firms and Individuals

The following firms and individuals are serving in an advisory capacity to the Owners for this Project and are therefore not eligible to assist or participate with any Respondent that submits a Proposal for the Project.

- Carollo Engineers, Inc.
- Short and Brennan Architects

9.3 Conflict of Interest

Section 18-8-308, Section 32-1-902 and Section 24-18-101, *et seq.* of the Colorado Revised Statutes mandate the public disclosure of certain information concerning persons doing business or seeking to do business with the Owners, including affiliations and business and financial relationships such persons may have with the Owners' officers.

9.4 Proprietary Information

All materials submitted to the Owners become public property and may be subject to disclosure pursuant to the Colorado Open Record Act, Section 24-72-201, *et seq.*, C.R.S. If the Proposal contains proprietary information that the Respondent does not want disclosed, each page containing such information must be identified and marked "PROPRIETARY" at the time of submittal. The Owners will, to the extent provided by law, endeavor to protect such information from disclosure. The final decision on what information must be disclosed, however, lies with the Owners. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available on public request. Respondents shall not be permitted to mark the entire Proposal as proprietary.

9.5 Rights of the Owners

In connection with this procurement process, including the receipt and evaluation of Proposals, and development of the interview short list, the Owners reserve to itself (at their sole discretion) all rights available to it under applicable law, including without limitation, with or without cause, and with or without notice, the right to:

- Cancel, withdraw, postpone, or extend this procurement process, in whole or in part, at any time prior to the execution of the Construction Management-at Risk Contract, without incurring any obligations or liabilities.
- Modify the procurement schedule.
- Waive deficiencies, informalities and irregularities in a Proposal and accept and review a non-conforming Proposal.
- Suspend and terminate the procurement process or terminate evaluations of Proposals received.
- Permit corrections to data submitted with any Proposal.
- Hold meetings and interviews, and conduct discussions and correspondence, with one or more of the Respondents to seek an improved understanding of any information contained in a Proposal.
- Seek or obtain, from any source, data that has the potential to improve the understanding and evaluation of the Proposals.
- Seek clarification from any Respondent to fully understand information provided in the Proposal and to help evaluate and rank the Respondents.
- Reject a Proposal containing exceptions, additions, qualifications, or conditions not called for in the RFP or otherwise not acceptable to the Owner.
- Conduct an independent investigation of any information, including prior experience, included in a Proposal by contacting project references, accessing public information, contacting independent parties, or any other means.
- Request additional information from a Respondent during the evaluation of its Proposal.
- Negotiate the award for services with a sole Respondent in lieu of accepting the Proposal as is, in the event only one (1) responsive Proposal is received by the District .

9.6 Obligation to Keep Project Team Intact

Respondents are advised that all firms and Key Personnel identified in the Proposal shall remain on the Project Team for the duration of the Project. If extraordinary circumstances require a change, it must be submitted in writing to the Owners Contact, who, at their sole discretion, will determine whether to authorize a change, recognizing that certain circumstances (such as termination of employment) may occur that are beyond the CMAR Firm's control. Unauthorized changes to the Project Team at any time during the procurement process may result in elimination of the Respondent from further consideration.

9.7 Addenda

If any revisions to the RFP or procurement process become necessary or desirable (at the Owners' sole discretion), the Owner may issue written addenda. The Owners will distribute addenda to the Respondent Representatives.

9.8 Protests

Any protests to an Owners' action in connection with this procurement must be filing in writing no later than 3 business days following such action and must be in strict accordance with the Owners' applicable procedures and with applicable law.

Attachment A Definition of Terms

The definitions of some of the capitalized terms used in this RFP are presented below:

CMAR Firm – The entity that will enter into the Construction Management-at Risk Contract with the Owner and that will be the single point of accountability to the Owner for delivery of the services and the Project.

Design Engineer – An independent engineering firm that provides professional design services and be in responsible charge of the design, leading to the completion of documents deemed ready for construction.

Key Personnel – The individuals, employed by CMAR or other firms included on the Project Team, who would fill certain key roles in delivery of the Project and related services by the CMAR Firm, including the following positions: project manager, safety manager, superintendent, cost estimator, and scheduler.

Minimum Qualification Requirements – The requirements set forth in Subsection 6.3 of this RFP that, at a minimum, must be satisfied (or waived by the Owner) in order for the Proposal to be evaluated and ranked according to the comparative evaluation criteria.

Owners – Mt. Werner Water and Sanitation District and the City of Steamboat Springs

Project – Fish Creek Filtration Plant Improvements Project Phase 2A and Phase 2B

Project Team – The CMAR Firm, Key Personnel and any additional firms (such as subcontractors and sub-consultants) included in the Proposal.

Respondent – The entity responding to this RFP by submitting the Proposal.

Attachment B

Fee and Rate Proposal Form

Preconstruction Services to include, but is not limited to:

- 1) Project Management
- 2) Meetings – Project Kick-off, Partnering, and Progress Meetings
- 3) Review of Design Documents
- 4) Project Scheduling
- 5) Cost Estimates
- 6) Risk Register
- 7) Procurement Plan
- 8) Systems Startup Workshop
- 9) Prepare Guaranteed Maximum Price (GMP) Proposals

Proposers shall include a work breakdown structure with these elements and other elements identified for the preconstruction services phase of the project as part of the fee and rate proposal.

- 1. Estimated Construction Budget
The Owner’s estimated construction budget is:
 - Phase 2A: \$940,000
 - Phase 2B: \$4,800,000

Note that these estimates are based off of Class 5 cost estimates (based on the American Association of Cost Engineers [AACE] International Cost Estimate Classification System) developed during preliminary design. The range of accuracy for this level of estimate is +100 percent to 50 percent of the actual project cost and include labor, materials, subcontractors, equipment, risk, overhead and profit, performance and bond, and contingency.

- 2. Preconstruction-phase Services Fee
The preconstruction-phase services fee shall not exceed (in number and words):
 - Phase 2A: \$ _____
 - Phase 2B: \$ _____

- 3. Construction-phase Services Fee
The construction-phase services fee for Contractor’s Overhead and Profit as defined in the Contract Documents shall be provided as a percentage of the cost of the Work. The Cost of Work will be limited to only those costs authorized

pursuant to Article 13.01 of the General Conditions (expressed in numbers and words).

- Phase 2A: _____% _____percent
- Phase 2B: _____% _____percent

Attachment C
Draft CMAR Preconstruction Services Agreement

AGREEMENT FOR SERVICES

THIS AGREEMENT (hereinafter the "AGREEMENT") is made this ____ day of _____, by and between Mount Werner Water and Sanitation District, a Colorado Special District, (hereafter referred to as "Owner" or "District"), and _____, "Contractor" whose address _____.

WHEREAS, Owner desires to have certain work done as described herein in Exhibit A;

WHEREAS, Owner requires contract services to complete the work described in the Scope of Work; and

WHEREAS, Contractor represents that Contractor is experienced in work of this type, and is ready, willing and able to perform the services called for herein.

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, the parties hereto agree as follows:

1. **TERM.** The term of this agreement is from _____ to _____. the date of signatures by the parties notwithstanding unless earlier terminated as provided herein.
2. **SCOPE OF WORK.** The Contractor's Scope of Work shall be as set forth in Exhibit "A" (the "Scope of Work" or the "Work").
3. **SCHEDULE.** The Contractor shall perform the Work in a timely manner consistent with sound professional practices and as more specifically set forth in Exhibit A, attached hereto.
4. **COMPENSATION.** Compensation for services performed hereunder shall be based on the rate as set forth in Exhibit "A".
5. **PAYMENTS TO CONTRACTOR.**
Payment and payment terms shall be based on the schedule as set forth in Exhibit "A". Contractor's invoices shall be in a form acceptable to Owner and shall be accompanied by such supporting data as may reasonably be required by Owner.
6. **KEY PERSONNEL.** Key personnel for this project are listed in Exhibit "A". Contractor shall not substitute the listed key personnel without good cause shown and without the consent of Owner, which consent shall not be unreasonably withheld by Owner. Contractor or his subcontractor shall not knowingly employ or contract with an illegal alien in compliance with C.R.S. 8-17.5-101 as set forth in Exhibit "B".
7. **RESPONSIBILITIES OF CONTRACTOR**
 - a. The Contractor shall apply a standard of care equal to the degree of skill and diligence normally employed by contractors performing the same or similar work. Contractor shall re-perform any work not meeting this standard without additional compensation.
 - b. Owner's review, approval, acceptance of, or payment for any of the Work required under the Agreement shall not be construed to operate as a waiver of any rights under the Agreement or of any cause of action arising out of the performance of the Agreement or the Work. Contractor shall be and remain liable to Owner in accordance with applicable law for all damages to Owner caused by Contractor's negligent performance of any of the Work performed under the Agreement.
 - c. Contractor shall assist Owner in the investigation and cooperate in the defense of any claims which arise from the Work performed by Contractor.

- d. Owner reserves the right to inspect Contractor's work in progress. Contractor shall not deviate from the Scope of Work approved by the Owner, unless previously authorized. Contractor shall revise Contractor's work in accordance with the written directions of the Owner. Whenever said work is revised, if the original work did in fact meet Owner's specifications and if the work sought to be revised had previously been performed pursuant to and consistent with the Scope of Work and was consistent with the standard of care as set forth in paragraph 7 (a.) of this Agreement, Contractor shall be entitled to additional compensation as agreed to in writing.
8. **CHANGES IN SCOPE OF WORK.** The parties hereto recognize and agree that it may be necessary for the Owner to change the Scope of Work provided for herein. Owner may change the Scope of Work by notifying Contractor of the change and the Notice shall become a part of this Agreement. Thereafter, the parties hereto shall agree upon changes to the Project schedule and compensation, if any, necessitated by the change in Scope of Work and shall execute a written amendment to the Agreement detailing these changes.
9. **SUBCONTRACTING.** Contractor shall not subcontract all or any portion of the Work called for in this Agreement without the written permission of Owner. Such permission shall not be unreasonably denied. Such permission, if any is granted, shall in no way lessen the responsibility of Contractor to perform in accordance with this Agreement and shall in no way create any relationship, contractual or otherwise, between Owner and any subcontractor.
10. **LIABILITY AND INDEMNIFICATION.** Having considered the potential liabilities that may exist during the performance of the Scope of Work, the benefits of the project, and Contractor's fee for the Scope of Work, and, in consideration of the promises contained in the Agreement, Owner and Contractor agree to allocate and limit such liabilities in accordance with this paragraph.

Contractor and Owner shall indemnify, and hold harmless, each other, their officers, employees and agents, from and against all damages, including reasonable costs, and liabilities to the extent caused by the negligent acts, errors, and omissions of Contractor or Owner or any other person directly employed by either party.

Upon completion of the entire Scope of Work, obligations, and duties provided for in this Agreement, or if this Agreement is terminated for any reason, the terms and conditions of this paragraph shall survive.

11. **INSURANCE.** While engaged in the performance of the Project or any activity associated therewith or relative thereto, Contractor shall supply Owner with Certificates of Insurance evidencing that all of the coverage set below will be in force throughout the term of the Agreement and that Owner will receive within a reasonable time period, advance notice of any change in liability limits or cancellation of any coverage:
- a. Comprehensive General Liability Insurance: up to \$1,000,000 per occurrence
 - b. Automobile Liability: combined single limit; each accident; \$1,000,000
 - c. Umbrella Liability; each occurrence \$1,000,000; \$1,000,000 aggregate
 - d. Workers Compensation; \$1,000,000
 - e. Professional Liability Claims; per claim; \$1,000,000.

Hereby required by this contract, the Contractor is required to Additionally Insure the District and its employees and agents. The Contractor shall provide and maintain Liability Insurance meeting the minimum limits as identified above or as may be indicated elsewhere in this document The contractor's insurance certificate shall stipulate that 'insurance is Primary and Non-Contributory'. A Waiver of Subrogation shall be provided in favor of the District and its agents and employees for all forms of General Liability and Workers Compensation Policies.

12. **DISPUTES.** All claims, disputes and other matters in question between the parties to the Agreement, arising out of or relating to the Agreement shall be resolved by negotiation between an

employee of Owner as determined by Owner and Contractor's Project Manager. If these people cannot resolve the matter, it shall be referred for negotiation and resolution by the Owner and Contractor. Nothing herein shall be construed to limit either party's right to pursue resolution of disputes through the judicial process.

13. **SUSPENSION OF WORK.**

- a. Owner may order Contractor, in writing, to suspend all or any part of the Work for such period of time as Owner may determine to be appropriate for its convenience.
- b. If the performance of all or any part of the Work is, for an unreasonable period of time, suspended or delayed by an act of Owner in the administration of this Agreement, or by its failure to act within the time specified in this Agreement (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this Agreement necessarily caused by such unreasonable suspension or delay, and this Agreement shall be modified in writing accordingly.
- c. No adjustments shall be made under this clause for any suspension or delay to the extent that performance would have been suspended or delayed by the fault or negligence of Contractor.

14. **TERMINATION.**

- a. **Termination for Convenience.** Owner may, by written notice to Contractor, terminate this contract in whole or in part at any time, for convenience. Upon receipt of such notice, Contractor shall immediately discontinue all Work (unless the notice directs otherwise). In the event termination for convenience occurs, the Owner shall compensate Contractor for all Work actually provided on a pro rata basis as of the date of termination. Payment for expenditures incurred solely as a result of the termination for convenience shall also be the subject of reimbursement by Owner.
- b. **Termination for Cause.** If either party fails to perform any of its duties or obligations hereunder for a period of ten (10) days after receipt of notice from the other party specifying such failure and requesting its cure, such party shall be in default and the non-defaulting party, in addition to its other rights and remedies may terminate this Agreement by notice to the defaulting party. Termination pursuant to this Agreement shall be without prejudice to any rights or remedies of the parties. If this Agreement is terminated by the Owner for Cause, Contractor will be paid for all Work rendered to the date of termination except those which in the Owner's judgment constituted the grounds, in whole or in part, for the termination. If this Agreement is terminated by Contractor, Contractor will be paid for all Work rendered to the date of termination.

15. **NO THIRD PARTY BENEFICIARIES.** This Agreement gives no rights or benefits to anyone other than the Owner, and Contractor has no third party beneficiaries to this Agreement.

16. **MISCELLANEOUS PROVISIONS.**

- a. **Force Majeure.** In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulation, riots, insurrections, war or other reason of like nature not the fault of the party delayed in performing Work or doing acts required under the terms of the Agreement, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for an equivalent period, and an adjustment will be made for any increase in cost of performance of this Agreement incurred by Contractor as a result of the delay.
- b. **Entire Agreement.** This Agreement and the exhibits and attachments hereto set forth all the covenants, provisions, agreements, conditions and understandings between the parties and

there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth.

- c. Exhibits. The exhibits referred to herein and attached hereto are incorporated herein by this reference and are made a part hereof.
- d. Governing Law. This Agreement shall be governed by the laws of the State of Colorado both as to interpretation and performance.
- e. Assignment. Neither party hereto may assign its interest or obligations hereunder without the written consent of the other.
- f. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, or to recover damages by reason of default, the prevailing party shall be entitled to recover reasonable attorney's fees from the other party, which fees may be set by the Court in the trial of such action, or may be enforced in a separate action and brought for that purpose, and which fee shall be in addition to any other relief which may be afforded. In performing this Agreement, Contractor shall comply with all applicable laws, ordinances, and rules of any governmental authority having jurisdiction. Any notice required or permitted under this Agreement shall be made in writing and shall be delivered either in person or mailed by certified mail, return receipt requested, addressed to the party to whom such notice is directed at the mailing address herein set forth. Either party may change the address for notice hereunder by giving notice of such change to the other party in accordance with the terms hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

OWNER: MOUNT WERNER WATER AND SANITATION DISTRICT

by: _____

ATTEST:

CONTRACTOR: _____

by: _____

ATTEST:

EXHIBIT A

SCOPE OF WORK

Contractor shall perform the following:

1. Complete the above work by _____.

The Contractor shall not leave vehicles or equipment in the driveway or parking area which may interfere with Owner's operations.

KEY PERSONNEL:

FEE FOR CONTRACT SERVICES

Contractor shall perform the entire Scope of Work at the rate of _____.

Payment shall be weekly upon receipt of invoice and upon satisfactory completion of work as defined in the Scope of Work.

Total payments may not exceed _____ without prior written authorization by the owner.

OWNER: MOUNT WERNER WATER AND SANITATION DISTRICT

by: _____

CONTRACTOR: _____

by: _____

EXHIBIT "B"

ADDENDUM TO CONTRACT NOTIFICATION OF IMMIGRATION COMPLIANCE REQUIREMENTS AND CERTIFICATION BY CONTRACTOR

MOUNT WERNER WATER AND SANITATION DISTRICT (the "District") has entered into a public contract for services (the "Contract") with the following named contractor (herein called "Contractor"):

The Contractor acknowledges that Contractor has been notified of the immigration compliance requirements of C.R.S. § 8-17.5-101, *et seq.* (House Bill 06-1343), hereby agrees with the District to add this Addendum to the Contract and incorporate this Addendum therein, and hereby further agrees and **CERTIFIES** that:

1. The Contractor shall comply with the provisions of C.R.S. 8-17.5-101 *et seq.*
2. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract, and shall not enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract.
3. The Contractor states that it (i) has verified, or attempted to verify through participation in the Basic Pilot Employment Verification Program administered by the Social Security Administration and/or the Department of Homeland Security, that it does not employ illegal aliens. If the Contractor has not been accepted into the said Basic Pilot Employment Verification Program prior to entering into this Contract, then the Contractor shall apply to participate in the said Basic Pilot Employment Verification Program every 3 months until the Contractor is accepted or this Contract has been completed, whichever is earlier.
4. The Contractor shall not use the said Basic Pilot Employment Verification Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.
5. If the Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Contractor shall be required to:
 - (A) Notify the subcontractor and the District within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
 - (B) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to subparagraph (A) of this Section 5 the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
6. Contractor is required to comply with any reasonable request by the State Department of Labor and Employment ("Department" herein) made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).
7. If Contractor violates any of the provisions of Paragraphs 2 of through 6 of this Addendum above, the District may terminate the Contract for a breach of the Contract. If the Contract is so terminated, the Contractor shall be liable for actual and consequential damages to the District.
8. The District is obligated to notify the office of the secretary of state if Contractor violates a provision of this Addendum and the District terminates this Contract for such breach. Based on this notification, the secretary of state shall maintain a list that includes the name of the Contractor, the name of District that terminated this Contract, and the date of the termination. Colorado law provides that the Contractor shall be removed from the list if two years have passed since the date this Contract was

terminated, or if a court of competent jurisdiction determines that there has not been a violation of any of Paragraphs 2 through 6 of this Addendum above. The District shall notify the office of the secretary of state if a court has made such a determination. The list shall be available for public inspection at the office of the secretary of state and shall be published on the internet on the website maintained by the office of the secretary of state.

9. The Department may investigate whether the Contractor is complying with the provisions of Paragraphs 2 through 6 of this Addendum. The Department may conduct on-site inspections where this Contract is being performed, request and review documentation that proves the citizenship of any person performing work on this Contract, or take any other reasonable steps that are necessary to determine whether Contractor is complying with the provisions of Paragraphs 2 through 6 of this Addendum. The Department shall receive complaints of suspected violations of a provision of Paragraphs 2 through 6 of this Addendum, and shall have discretion to determine which complaints, if any, are to be investigated. The results of any investigation shall not constitute final agency action. The Contractor is hereby notified that the Department is authorized to promulgate rules in accordance with article 4 of title 24, C.R.S., to implement the provisions of C.R.S. § 8-17.5-101, *et. seq.*

Dated this ____ day of _____, 20__.

CONTRACTOR: _____

By _____