

## MEMORANDUM

**TO:** Board of Trustees

**THROUGH:** Indra Winqest  
General Manager

**FROM:** Nathan Chorey, P.E.  
Engineering Manager

**SUBJECT:** Review, discuss, and possibly select a project delivery method [Construction Manager-at-Risk (CMAR) versus design/ bid/build (DBB)] for the Burnt Cedar Swimming Pool Improvement Project – Fund: Beaches; Project 3970BD2601

**STRATEGIC PLAN:** Long Range Principle #5 – Assets and Infrastructure

**DATE:** August 19, 2020

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### **I. RECOMMENDATION**

That the Board of Trustees makes a motion to authorize Staff to deliver the Burnt Cedar Swimming Pool Improvement Project via the CMAR delivery method.

### **II. DISTRICT STRATEGIC PLAN**

Long Range Principle #5 – Assets and Infrastructure – The District will practice perpetual asset renewal, replacement, and improvement to provide safe and superior long term utility services and recreation activities.

- The District will maintain, renew, expand, and enhance District infrastructure to meet the capacity needs and desires of the community for future generations.
- The District will maintain, procure, and construct District assets to ensure safe and accessible operations for the public and the District’s workforce.

### **III. BACKGROUND**

The Burnt Cedar swimming pool is one of the most popular facilities operated by IVGID. From May to September, Incline Village residents and guests frequent Burnt Cedar beach property specifically to utilize the pool.

At the August 12, 2020 Board Meeting, the Trustees unanimously selected a conceptual design, with the intent of full pool replacement in the summer of 2021.

Before the Board of Trustees tonight, was a separate agenda item, is a request for authorization of schematic design services. To inform the design process, Staff recommends the Board of Trustees select a project delivery method this Project.

Nevada Revised Statutes (NRS) 338 allows three (3) project delivery methods:

1. Design – Bid – Build (DBB)
  - a. The traditional project delivery method utilized by IVGID
2. Construction Manager at Risk (CMAR), *NRS 338.169*
  - a. Last utilized by IVGID in 2018 to construct the Diamond Peak - Incline Creek Culvert Rehabilitation Project
3. Design Build (DB), *NRS 338.17*
  - a. Until the 2017 legislative session, this type of delivery method was limited to projects >\$5M

For the Burnt Cedar Swimming Pool Improvement Project, Staff would like the Board of Trustees to consider DBB and CMAR. These two project delivery methods were last discussed at a Board of Trustees Meeting on December 13, 2017 (starting at approximately 1:03:30). The applicable slides from this presentation are attached to this memo for reference.

### **IV. DESIGN – BID – BUILD (NRS 338.1385 Advertising for Bids)**

The DBB project delivery method is the traditional method of moving a project from conception to completion. It is a linear sequence of activities generally occurring in the following order: Project conception, design (including schematic and design development), construction documents, competitive bidding, and then construction.<sup>1</sup>

This is the project delivery method IVGID utilizes for the vast majority of our capital projects.

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<sup>1</sup> *The Project Resource Manual*, Fifth Edition, The Construction Specifications Institute, 2005

## V. CONSTRUCTION MANAGER AT RISK (CMAR), NRS 338.169

The Construction Manager-At-Risk project delivery method is the process of professional management applied to a construction project from conception to completion, with the goal of controlling project time, cost, and extent. IVGID would negotiate a contract with a CMAR who consults with the Design Team and IVGID, prepares a preliminary project schedule, makes recommendations for sequencing construction, prepares cost estimates, and, when this pre-construction phase is complete, proposes a Guaranteed Maximum Price (GMP) and executes the construction as Contractor.<sup>1</sup>

Below is an excerpt from NRS 338.1685 with regard to the CMAR method:

*The Legislature hereby declares that the provisions of NRS 338.1685 to 338.16995, inclusive, relating to contracts involving construction managers at risk:*

- 1. Are intended:
  - a. To promote public confidence and trust in the contracting and bidding procedures for public works established therein;*
  - b. For the benefit of the public, to promote the philosophy of obtaining the best possible value as compared to low-bid contracting; and*
  - c. To better equip public bodies to address public works that present unique and complex construction challenges.**
- 2. Are not intended to be used by the State or a political subdivision of this State to:
  - a. Limit competition;*
  - b. Discourage competitive bidding; or*
  - c. Engage in or allow bid-shopping.**

## VI. COMMENTS

The size and scope of the Burnt Cedar Swimming Pool Improvement Project make it a candidate for DBB or CMAR. The primary reasons IVGID Staff's recommendation is to utilize the CMAR method are:

- Schedule
  - DBB is a linear process that includes three distinct tasks: Design, Bidding, and Building or construction. Each task must be completed prior to moving to the next task. While this is a well-established, defined process that has proven to work, it takes a considerable amount of time to work through this process. Each step adds additional days to the project timeline; projects are typically advertised for 30 days, then approximately 2 weeks are required to review bid

results and recommend award at a Board of Trustee Meeting, followed by another 2 weeks to complete the contract, bonding and insurance requirements before issuing the Notice to Proceed. The contract documents also contain required project milestones that are developed based on experience with similar projects. These milestones attempt to balance sufficient time to complete the project and obtaining best bids.

- The CMAR bid process is fast-tracked, as portions of the project can be bid to subcontractors while design is still being completed. The Guaranteed Maximum Price will be awarded at a Board of Trustees meeting, but all the contract requirements will be addressed in advance, as the Contractor has been involved in the actual design of the project. The project duration is also determined with the CMAR Contractor during the design phase allowing certainty with the owner for the opening of the facility.
- Value Engineering/Constructability Review
  - The CMAR project delivery method involves the Contractor in the design phase of the project. This is important because they are ultimately responsible for delivering the project on time and on budget. We have full confidence in our Design Team (TSK Architects) delivering a quality set of construction documents. They were selected from a field of six (6) qualified applicants based on the quality of past designs and working with project owners and contractors to deliver successful projects. Staff believes there is additional value in partnering with a Contractor from the start to identify cost savings measures and review the details for constructability while in the design phase. For example, is it worth protecting a section of deck throughout construction or will the time and effort spent saving/protecting it cost us more than just replacing the deck. A contractor can also propose construction methods that can shorten time to complete which may have value to the owner in opening and operating the facility.

IVGID also consulted with the design architects to better understand their experiences with CMAR and DBB. TSK spoke highly of the CMAR delivery method and stated; *“TSK Architects believes that the Burnt Cedar Swim Center, with a tight budget and a short construction schedule (one season), would be an excellent candidate for a Construction Manager at Risk (CMAR) delivery.”* TSK Architect’s full email and a partial list of projects they have delivered via CMAR are attached to this memorandum.

Finally, Staff reached out to Scott McCullough, a Project Manager with Douglas County, to learn about his experiences with CMAR and DBB. Scott believes there is value in the CMAR delivery method; *“The method [CMAR] is highly collaborative and insures the Owner of an aligned scope to budget. Unlike design bid build, which offers no guarantee of delivering a project on budget. Factors that increase the bid day surprises are many. In CMAR, those factors are analyzed by the team of the Owner, Builder and Architect, and can accurately forecast cost for the project. The CMAR method estimates the project incrementally at Schematic Design, Design Documents and Construction Documents. These milestones are met and authorized to proceed to the next level of design and estimating. Once the design is complete, the CMAR bids the work competitively in accordance to NRS. The bidding is competitive and Owner input is given for selection.”* A copy of Scott McCullough’s full email and a list of projects he has delivered via CMAR are attached to this memorandum.

Staff believes the complexity of the Burnt Cedar Swimming Pool Improvement Project alone does not warrant using the CMAR project delivery method, but having opportunity to value engineer and review constructability with the Contractor during design, develop a firm construction schedule and the option to reduce the project timeline needed in advance of construction, make CMAR the recommended project delivery method.

## **VII. FINANCIAL IMPACT AND BUDGET**

The financial impact between the two project delivery methods is difficult to assess. The traditional DBB may potentially have the lowest construction bid price. However, not all lowest price bids result in the lowest total project construction cost and may not also result in the best value. This is very difficult to ascertain at the beginning of the project. IVGID has had projects performed with low change orders and high value that were awarded to the low bidder. IVGID has also had projects enter protracted legal action which resulted in higher costs and in some cases performed to a lower value with delayed completion dates.

The CMAR intent is to build a project team that is committed to working together to construct the best value project with budget and schedule constraints. Changes to project scope occur during the design development phase that modify total project cost. The expected total project cost is also known early in the design development phase to inform future decisions. If the cost is escalating, actions can be taken early to modify the project to control costs. Alternatively, cost savings can be otherwise utilized to provide additional features that were going to be bid as alternatives.

### **VIII. ALTERNATIVES**

That the Board of Trustees moves to authorize staff to deliver the Burnt Cedar Swimming Pool Improvement Project via the Design – Bid – Build delivery method.

### **IX. BUSINESS IMPACT**

This item is not a "rule" within the meaning of Nevada Revised Statutes, Chapter 237, and does not require a Business Impact Statement.

## CONTRACTS INVOLVING CONSTRUCTION MANAGERS AT RISK

**NRS 338.1685 Declaration of legislative intent. [Effective through June 30, 2021.]** The Legislature hereby declares that the provisions of NRS 338.1685 to 338.16995, inclusive, relating to contracts involving construction managers at risk:

1. Are intended:
    - (a) To promote public confidence and trust in the contracting and bidding procedures for public works established therein;
    - (b) For the benefit of the public, to promote the philosophy of obtaining the best possible value as compared to low-bid contracting; and
    - (c) To better equip public bodies to address public works that present unique and complex construction challenges.
  2. Are not intended to be used by the State or a political subdivision of this State to:
    - (a) Limit competition;
    - (b) Discourage competitive bidding; or
    - (c) Engage in or allow bid-shopping.
- (Added to NRS by 2013, 2958; A 2015, 453; 2017, 4026, 4035)

**NRS 338.169 Public body authorized to construct public work by selecting and entering into contracts with construction manager at risk; limitations. [Effective through June 30, 2021.]**

1. Subject to the provisions of subsection 2, a public body may construct a public work by:
  - (a) Selecting a construction manager at risk pursuant to the provisions of NRS 338.1691 to 338.1696, inclusive; and
  - (b) Entering into separate contracts with a construction manager at risk:
    - (1) For preconstruction services, including, without limitation:
      - (I) Assisting the public body in determining whether scheduling or constructability problems exist that would delay the construction of the public work;
      - (II) Estimating the cost of the labor and material for the public work; and
      - (III) Assisting the public body in determining whether the public work can be constructed within the public body's budget; and
    - (2) To construct the public work.
2. A public body in a county whose population is less than 100,000 may enter into contracts with a construction manager at risk pursuant to NRS 338.1685 to 338.16995, inclusive, for the construction of not more than two public works in a calendar year that are discrete projects.

(Added to NRS by 2007, 2891; A 2009, 437; 2011, 3694; 2013, 2974; R 2013, 2986; R 2017, 4035, effective July 1, 2021)

**NRS 338.1691 Qualifications for construction manager at risk. [Effective through June 30, 2021.]** To qualify to enter into contracts with a public body for preconstruction services and to construct a public work, a construction manager at risk must:

1. Not have been found liable for breach of contract with respect to a previous project, other than a breach for legitimate cause, during the 5 years immediately preceding the date of the advertisement for proposals pursuant to NRS 338.1692;

2. Not have been disqualified from being awarded a contract pursuant to NRS 338.017, 338.13895, 338.1475 or 408.333;

3. Be licensed as a contractor pursuant to chapter 624 of NRS; and

4. If the project is for the construction of a public work of the State, be qualified to bid on a public work of the State pursuant to NRS 338.1379.

(Added to NRS by 2007, 2891; A 2009, 438; 2011, 3694; R 2013, 2986; R 2017, 4035, effective July 1, 2021)

**NRS 338.1692 Advertising for proposals for construction manager at risk; contents of request for proposals; requirements for proposals; availability of names of applicants; substitution of employees. [Effective through June 30, 2021.]**

1. A public body or its authorized representative shall advertise for proposals for a construction manager at risk in the manner set forth in paragraph (a) of subsection 1 of NRS 338.1385.

2. A request for proposals published pursuant to subsection 1 must include, without limitation:

(a) A description of the public work;

(b) An estimate of the cost of construction;

(c) A description of the work that the public body expects a construction manager at risk to perform;

(d) The dates on which it is anticipated that the separate phases of the preconstruction and construction of the public work will begin and end;

(e) The date by which proposals must be submitted to the public body;

(f) If the project is a public work of the State, a statement setting forth that the construction manager at risk must be qualified to bid on a public work of the State pursuant to NRS 338.1379 before submitting a proposal;

(g) The name, title, address and telephone number of a person employed by the public body that an applicant may contact for further information regarding the public work;

(h) A list of the selection criteria and relative weight of the selection criteria that will be used to rank proposals pursuant to subsection 2 of NRS 338.1693;

(i) A list of the selection criteria and relative weight of the selection criteria that will be used to rank applicants pursuant to subsection 7 of NRS 338.1693; and

(j) A notice that the proposed form of the contract to assist in the preconstruction of the public work or to construct the public work, including, without limitation, the terms and general conditions of the contract, is available from the public body.

3. A proposal must include, without limitation:

(a) An explanation of the experience that the applicant has with projects of similar size and scope in both the public and private sectors by any delivery method, whether or not that method was the use of a construction manager at risk, and including, without limitation, design-build, design-assist, negotiated work or value-engineered work, and an explanation of the experience that the applicant has in such projects in Nevada;

(b) The contact information for references who have knowledge of the background, character and technical competence of the applicant;



(c) Evidence of the ability of the applicant to obtain the necessary bonding for the work to be required by the public body;

(d) Evidence that the applicant has obtained or has the ability to obtain such insurance as may be required by law;

(e) A statement of whether the applicant has been:

(1) Found liable for breach of contract with respect to a previous project, other than a breach for legitimate cause, during the 5 years immediately preceding the date of the advertisement for proposals; and

(2) Disqualified from being awarded a contract pursuant to NRS 338.017, 338.13895, 338.1475 or 408.333;

(f) The professional qualifications and experience of the applicant, including, without limitation, the resume of any employee of the applicant who will be managing the preconstruction and construction of the public work;

(g) The safety programs established and the safety records accumulated by the applicant;

(h) Evidence that the applicant is licensed as a contractor pursuant to chapter 624 of NRS;

(i) The proposed plan of the applicant to manage the preconstruction and construction of the public work which sets forth in detail the ability of the applicant to provide preconstruction services and to construct the public work and which includes, if the public work involves predominantly horizontal construction, a statement that the applicant will perform construction work equal in value to at least 25 percent of the estimated cost of construction; and

(j) If the project is for the design of a public work of the State, evidence that the applicant is qualified to bid on a public work of the State pursuant to NRS 338.1379.

4. The public body or its authorized representative shall make available to the public the name of each applicant who submits a proposal pursuant to this section.

5. An applicant shall not substitute a different employee for an employee whose resume was submitted pursuant to paragraph (f) of subsection 3, unless:

(a) The employee whose resume was submitted is no longer employed by the applicant or is unavailable for medical reasons; or

(b) The public body enters into a contract with the applicant for preconstruction services pursuant to NRS 338.1693 more than 90 days after the date on which the final ranking of applicants was made pursuant to subsection 7 of NRS 338.1693.

(Added to NRS by 2007, 2891; A 2009, 438; 2011, 3694; 2013, 2974; R 2013, 2986; A 2017, 4027; R 2017, 4035, effective July 1, 2021)

**NRS 338.16925 Confidentiality of documents and other information submitted in response to request for proposals. [Effective through June 30, 2021.]** Except as otherwise provided in subsection 4 of NRS 338.1692:

1. Any document or other information submitted to a public body in response to a request for proposals pursuant to NRS 338.1692 by a contractor seeking a contract between the public body and a construction manager at risk pursuant to NRS 338.1685 to 338.16995, inclusive, is confidential and may not be disclosed until notice of intent to award the contract is issued.

2. As used in this section, the term "document or other information" means any submittal by a contractor to a public body in response to a request for proposals pursuant

to NRS 338.1692 and includes, without limitation, a proposal made pursuant to NRS 338.1692.

(Added to NRS by 2015, 453; A 2017, 4035)

**NRS 338.1693 Procedure for selection of most qualified applicants; minimum number of proposals required; negotiation of contract for preconstruction services; availability of certain information to applicants and public; provision of explanation to unsuccessful applicant upon request. [Effective through June 30, 2021.]**

1. The public body or its authorized representative shall appoint a panel consisting of at least three but not more than seven members, a majority of whom must have experience in the construction industry, to rank the proposals submitted to the public body by evaluating the proposals as required pursuant to subsections 2 and 3.

2. The panel appointed pursuant to subsection 1 shall rank the proposals by:

(a) Verifying that each applicant satisfies the requirements of NRS 338.1691; and

(b) Evaluating and assigning a score to each of the proposals received by the public body based on the factors and relative weight assigned to each factor that the public body specified in the request for proposals.

3. When ranking the proposals, the panel appointed pursuant to subsection 1 shall assign a relative weight of 5 percent to the applicant's possession of a certificate of eligibility to receive a preference in bidding on public works if the applicant submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of this subsection, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that work.

4. After the panel appointed pursuant to subsection 1 ranks the proposals, the public body or its authorized representative shall, except as otherwise provided in subsection 8, select at least the two but not more than the five applicants whose proposals received the highest scores for interviews.

5. The public body or its authorized representative may appoint a separate panel to interview and rank the applicants selected pursuant to subsection 4. If a separate panel is appointed pursuant to this subsection, the panel must consist of at least three but not more than seven members, a majority of whom must have experience in the construction industry.

6. During the interview process, the panel conducting the interview may require the applicants to submit a preliminary proposed amount of compensation for managing the preconstruction and construction of the public work, including, without limitation, the cost of general overhead and profit, but in no event shall the proposed amount of compensation be less than 5 percent or more than 20 percent of the scoring for the selection of the most qualified applicant. All presentations made at any interview conducted pursuant to this subsection or subsection 5 may be made only by key personnel employed by the applicant, as determined by the applicant, and the employees of the applicant who will be directly responsible for managing the preconstruction and construction of the public work.

7. After conducting such interviews, the panel that conducted the interviews shall rank the applicants by using a ranking process that is separate from the process used to

rank the applicants pursuant to subsection 2 and is based only on information submitted during the interview process. The score to be given for the proposed amount of compensation, if any, must be calculated by dividing the lowest of all the proposed amounts of compensation by the applicant's proposed amount of compensation multiplied by the total possible points available to each applicant. When ranking the applicants, the panel that conducted the interviews shall assign a relative weight of 5 percent to the applicant's possession of a certificate of eligibility to receive a preference in bidding on public works if the applicant submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of this subsection, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that work.

8. If the public body did not receive at least two proposals, the public body may not contract with a construction manager at risk.

9. Upon receipt of the final rankings of the applicants from the panel that conducted the interviews, the public body or its authorized representative shall enter into negotiations with the most qualified applicant determined pursuant to the provisions of this section for a contract for preconstruction services, unless the public body required the submission of a proposed amount of compensation, in which case the proposed amount of compensation submitted by the applicant must be the amount offered for the contract. If the public body or its authorized representative is unable to negotiate a contract with the most qualified applicant for an amount of compensation that the public body or its authorized representative and the most qualified applicant determine to be fair and reasonable, the public body or its authorized representative shall terminate negotiations with that applicant. The public body or its authorized representative may then undertake negotiations with the next most qualified applicant in sequence until an agreement is reached and, if the negotiation is undertaken by an authorized representative of the public body, approved by the public body or until a determination is made by the public body to reject all applicants.

10. The public body or its authorized representative shall:

(a) Make available to all applicants and the public the following information, as determined by the panel appointed pursuant to subsection 1 and the panel that conducted the interviews, as applicable:

- (1) The final rankings of the applicants;
- (2) The score assigned to each proposal received by the public body; and
- (3) For each proposal received by the public body, the score assigned to each factor that the public body specified in the request for proposals; and

(b) Provide, upon request, an explanation to any unsuccessful applicant of the reasons why the applicant was unsuccessful.

(Added to NRS by 2007, 2892; A 2009, 439; 2011, 50, 3696; 2013, 2976; 2015, 454; R 2013, 2986; A 2017, 4028; R 2017, 4035, effective July 1, 2021)

**NRS 338.16935 Contract between construction manager at risk and subcontractor for certain preconstruction services. [Effective through June 30, 2021.]**

1. Notwithstanding the provisions of NRS 338.16991 and 338.16995, and subject to the provisions of subsection 2, if a public body enters into a contract with a construction manager at risk for preconstruction services pursuant to NRS 338.1693, the construction manager at risk may enter into a contract with a subcontractor licensed pursuant to chapter 624 of NRS to provide any of the following preconstruction services, the basis of payment for which is a negotiated price:

(a) Assisting the construction manager at risk in identifying and selecting materials and equipment to be provided by each subcontractor;

(b) Assisting the construction manager at risk in creating a schedule for the provision of labor, materials or equipment by each subcontractor;

(c) For the purpose of enabling the construction manager at risk to establish a budget for the construction of the public work, estimating the cost of labor, materials or equipment to be provided by each subcontractor; and

(d) Providing recommendations to the construction manager at risk regarding the design for the public work, as the design pertains to the labor, materials or equipment to be provided by each subcontractor.

2. A subcontractor may not provide preconstruction services pursuant to this section in an area of work outside the field or scope of the license of the subcontractor.

(Added to NRS by 2011, 3680; R 2013, 2986; R 2017, 4035, effective July 1, 2021)

**NRS 338.1696 Negotiation of contract for construction of public work or portion thereof with construction manager at risk; awarding of contract if public body unable to negotiate satisfactory contract with construction manager at risk; provision by construction manager at risk of information concerning public work and subcontractors. [Effective through June 30, 2021.]**

1. If a public body enters into a contract with a construction manager at risk for preconstruction services pursuant to NRS 338.1693, after the public body has finalized the design for the public work, or any portion thereof sufficient to determine the provable cost of that portion, the public body shall enter into negotiations with the construction manager at risk for a contract to construct the public work or the portion thereof for the public body for:

(a) The cost of the work, plus a fee, with a guaranteed maximum price;

(b) A fixed price; or

(c) A fixed price plus reimbursement for overhead and other costs and expenses related to the construction of the public work or portion thereof.

2. If the public body is unable to negotiate a satisfactory contract with the construction manager at risk to construct the public work or portion thereof, the public body shall terminate negotiations with that applicant and:

(a) May award the contract for the public work:

(1) If the public body is not a local government, pursuant to the provisions of NRS 338.1377 to 338.139, inclusive.

(2) If the public body is a local government, pursuant to the provisions of NRS 338.1377 to 338.139, inclusive, or 338.143 to 338.148, inclusive; and

(b) Shall accept a bid to construct the public work from the construction manager at risk with whom the public body entered into a contract for preconstruction services.

3. Before entering into a contract with the public body to construct a public work or a portion thereof pursuant to subsection 1, the construction manager at risk shall:

(a) Provide the public body with a list of the labor or portions of the work which are estimated by the construction manager at risk to exceed 1 percent of the estimated cost of the public work; and

(b) Select each subcontractor who is to provide labor or a portion of the work which is estimated by the construction manager at risk to exceed 1 percent of the estimated cost of the public work in accordance with NRS 338.16991 and 338.16995 and provide the names of each selected subcontractor to the public body.

4. Except as otherwise provided in subsection 13 of NRS 338.16995, a public body shall not interfere with the right of the construction manager at risk to select the subcontractor whom the construction manager at risk determines to have submitted the best proposal pursuant to NRS 338.16995.

(Added to NRS by 2007, 2893; A 2009, 440; 2011, 3697; 2013, 2977; R 2013, 2986; R 2017, 4035, effective July 1, 2021)

**NRS 338.1697 Authorized provision in contract with construction manager at risk for construction of public work or portion thereof for guaranteed maximum price. [Effective through June 30, 2021.]** A contract entered into pursuant to NRS 338.1696 that is for a guaranteed maximum price may include a provision that authorizes the construction manager at risk to receive all or part of any difference between the guaranteed maximum price set forth in the contract and the actual price of construction of the public work, if the actual price is less than the guaranteed maximum price.

(Added to NRS by 2007, 2894; R 2013, 2986; R 2017, 4035, effective July 1, 2021)

**NRS 338.1698 Required and authorized provisions in contract for construction of public work or portion thereof awarded to construction manager at risk. [Effective through June 30, 2021.]** A contract awarded to a construction manager at risk pursuant to NRS 338.1696:

1. Must comply with the provisions of NRS 338.020 to 338.090, inclusive.
2. Must specify a date by which performance of the work required by the contract must be completed.
3. May set forth the terms by which the construction manager at risk agrees to name the public body, at the cost of the public body, as an additional insured in an insurance policy held by the construction manager at risk.
4. Must require that the construction manager at risk to whom a contract is awarded assume overall responsibility for ensuring that the preconstruction or construction of the public work, as applicable, is completed in a satisfactory manner.
5. May include such additional provisions as may be agreed upon by the public body and the construction manager at risk.

(Added to NRS by 2007, 2894; A 2009, 441; 2011, 3698; R 2013, 2986; R 2017, 4035, effective July 1, 2021)

**NRS 338.16985 Duties and powers of construction manager at risk who enters into contract for construction of public work or portion thereof. [Effective through June 30, 2021.]** A construction manager at risk who enters into a contract for the construction of a public work pursuant to NRS 338.1696:

1. Is responsible for contracting for the services of any necessary subcontractor, supplier or independent contractor necessary for the construction of the public work and

for the performance of and payment to any such subcontractors, suppliers or independent contractors.

2. If the public work involves predominantly horizontal construction, shall perform construction work equal in value to at least 25 percent of the estimated cost of construction himself or herself, or using his or her own employees.

3. If the public work involves predominantly vertical construction, may perform himself or herself or using his or her own employees as much of the construction of the building or structure that the construction manager at risk is able to demonstrate that the construction manager at risk or his or her own employees have performed on similar projects.

(Added to NRS by 2007, 2894; A 2013, 2978; R 2013, 2986; R 2017, 4035, effective July 1, 2021)

**NRS 338.16991 Contract between construction manager at risk and subcontractor to provide labor, materials or equipment on project: Eligibility; procedure for determination of qualification of subcontractor to submit proposal. [Effective through June 30, 2021.]**

1. To be eligible to provide labor, materials or equipment on a public work, the contract for which a public body has entered into with a construction manager at risk pursuant to NRS 338.1696, a subcontractor must be:

(a) Licensed pursuant to chapter 624 of NRS; and

(b) Qualified pursuant to the provisions of this section to submit a proposal for the provision of labor, materials or equipment on a public work.

2. Subject to the provisions of subsections 3, 4 and 5, the construction manager at risk shall determine whether an applicant is qualified to submit a proposal for the provision of labor, materials or equipment on the public work for the purposes of paragraph (b) of subsection 1.

3. Not earlier than 30 days after a construction manager at risk has been selected pursuant to NRS 338.1693 and not later than 10 working days before the date by which an application must be submitted, the construction manager at risk shall advertise for applications from subcontractors in the manner set forth in paragraph (a) of subsection 1 of NRS 338.1385. The construction manager at risk may accept an application from a subcontractor before advertising for applications pursuant to this subsection.

4. The criteria to be used by the construction manager at risk when determining whether an applicant is qualified to submit a proposal for the provision of labor, materials or equipment must include, and must be limited to:

(a) The monetary limit placed on the license of the applicant by the State Contractors' Board pursuant to NRS 624.220;

(b) The financial ability of the applicant to provide the labor, materials or equipment required on the public work;

(c) Whether the applicant has the ability to obtain the necessary bonding for the work required by the public body;

(d) The safety programs established and the safety records accumulated by the applicant;

(e) Whether the applicant has breached any contracts with a public body or person in this State or any other state during the 5 years immediately preceding the application;

(f) Whether the applicant has been disciplined or fined by the State Contractors' Board or another state or federal agency for conduct that relates to the ability of the applicant to perform the public work;

(g) The performance history of the applicant concerning other recent, similar public or private contracts, if any, completed by the applicant in Nevada;

(h) The principal personnel of the applicant;

(i) Whether the applicant has been disqualified from the award of any contract pursuant to NRS 338.017 or 338.13895; and

(j) The truthfulness and completeness of the application.

5. The public body or its authorized representative shall ensure that each determination made pursuant to subsection 2 is made subject to the provisions of subsection 4.

6. The construction manager at risk shall notify each applicant and the public body in writing of a determination made pursuant to subsection 2.

7. A determination made pursuant to subsection 2 that an applicant is not qualified may be appealed pursuant to NRS 338.1381 to the public body with whom the construction manager at risk has entered into a contract for the construction of the public work.

(Added to NRS by 2011, 3681; A 2013, 2979; R 2013, 2986; A 2017, 4030; R 2017, 4035, effective July 1, 2021)

**NRS 338.16995 Contract between construction manager at risk and subcontractor to provide labor, materials or equipment on project: Authority to enter into; procedure for awarding subcontracts of certain estimated value; substitution of subcontractor on such subcontracts; availability of certain information to applicants and public. [Effective through June 30, 2021.]**

1. If a public body enters into a contract with a construction manager at risk for the construction of a public work pursuant to NRS 338.1696, the construction manager at risk may enter into a subcontract for the provision of labor, materials and equipment necessary for the construction of the public work only as provided in this section.

2. The provisions of this section apply only to a subcontract for which the estimated value is at least 1 percent of the total cost of the public work or \$50,000, whichever is greater.

3. After the design and schedule for the construction of the public work is sufficiently detailed and complete to allow a subcontractor to submit a meaningful and responsive proposal, and not later than 21 days before the date by which a proposal for the provision of labor, materials or equipment by a subcontractor must be submitted, the construction manager at risk shall notify in writing each subcontractor who was determined pursuant to NRS 338.16991 to be qualified to submit such a proposal of a request for such proposals and shall provide to each such subcontractor a form prepared by the construction manager at risk and approved by the public body on which any proposal in response to the request for proposals must be submitted. A copy of the notice required pursuant to this subsection must be provided to the public body.

4. The notice required pursuant to subsection 3 must include, without limitation:

(a) A description of the design for the public work and a statement indicating where a copy of the documents relating to that design may be obtained;

(b) A description of the type and scope of labor, equipment and materials for which subcontractor proposals are being sought;

(c) The dates on which it is anticipated that construction of the public work will begin and end;

(d) If a preproposal meeting regarding the scope of the work to be performed by the subcontractor is to be held, the date, time and place at which the preproposal meeting will be held;

(e) The date and time by which proposals must be received, and to whom they must be submitted;

(f) The date, time and place at which proposals will be opened for evaluation;

(g) A description of the bonding and insurance requirements for subcontractors;

(h) Any other information reasonably necessary for a subcontractor to submit a responsive proposal; and

(i) A statement in substantially the following form:

Notice: For a proposal for a subcontract on the public work to be considered:

1. The subcontractor must be licensed pursuant to chapter 624 of NRS;

2. The proposal must be submitted on the form provided by the construction manager at risk and be timely received;

3. If a preproposal meeting regarding the scope of the work to be performed by the subcontractor is held, the subcontractor must attend the preproposal meeting; and

4. The subcontractor may not modify the proposal after the date and time the proposal is received.

5. A subcontractor may not modify a proposal after the date and time the proposal is received.

6. To be considered responsive, a proposal must:

(a) Be submitted on the form provided by the construction manager at risk pursuant to subsection 3;

(b) Be timely received by the construction manager at risk; and

(c) Substantially and materially conform to the details and requirements included in the proposal instructions and for the finalized bid package for the public work, including, without limitation, details and requirements affecting price and performance.

7. The opening of the proposals must be attended by an authorized representative of the public body. The public body may require the architect or engineer responsible for the design of the public work to attend the opening of the proposals. The opening of the proposals is not otherwise open to the public.

8. At the time the proposals are opened, the construction manager at risk shall compile and provide to the public body or its authorized representative a list that includes, without limitation, the name and contact information of each subcontractor who submits a timely proposal.

9. Not more than 10 working days after opening the proposals and before the construction manager at risk submits a guaranteed maximum price, a fixed price or a fixed price plus reimbursement pursuant to NRS 338.1696, the construction manager at risk shall:



- (a) Evaluate the proposals and determine which proposals are responsive.
- (b) Select the subcontractor who submits the proposal that the construction manager at risk determines is the best proposal. Subject to the provisions of subparagraphs (1), (2) and (3), if only one subcontractor submits a proposal, the construction manager at risk may select that subcontractor. The subcontractor must be selected from among those:
  - (1) Who attended the preproposal meeting regarding the scope of the work to be performed by the subcontractor, if such a preproposal meeting was held;
  - (2) Who submitted a responsive proposal; and
  - (3) Whose names are included on the list compiled and provided to the public body or its authorized representative pursuant to subsection 8.
- (c) Inform the public body or its authorized representative which subcontractor has been selected.

10. The public body or its authorized representative shall ensure that the evaluation of proposals and selection of subcontractors are done pursuant to the provisions of this section and regulations adopted by the State Public Works Board.

11. A subcontractor selected pursuant to subsection 9 need not be selected by the construction manager at risk solely on the basis of lowest price.

12. Except as otherwise provided in subsections 13 and 15, the construction manager at risk shall enter into a subcontract with a subcontractor selected pursuant to subsection 9 to provide the labor, materials or equipment described in the request for proposals.

13. A construction manager at risk shall not substitute a subcontractor for any subcontractor selected pursuant to subsection 9 unless:

- (a) The public body or its authorized representative objects to the subcontractor, requests in writing a change in the subcontractor and pays any increase in costs resulting from the change; or

- (b) The substitution is approved by the public body after the selected subcontractor:
  - (1) Files for bankruptcy or becomes insolvent;
  - (2) After having a reasonable opportunity, fails or refuses to execute a written contract with the construction manager at risk which was offered to the selected subcontractor with the same general terms that all other subcontractors on the project were offered;

- (3) Fails or refuses to perform the subcontract within a reasonable time;

- (4) Is unable to furnish a performance bond and payment bond pursuant to NRS 339.025, if required for the public work; or

- (5) Is not properly licensed to provide that labor or portion of the work.

14. If a construction manager at risk substitutes a subcontractor for any subcontractor selected pursuant to subsection 9 without complying with the provisions of subsection 13, the construction manager at risk shall forfeit, as a penalty to the public body, an amount equal to 1 percent of the total amount of the contract.

15. If a construction manager at risk does not select a subcontractor pursuant to subsection 9 to perform a portion of work on a public work, the construction manager at risk shall notify the public body that the construction manager at risk intends to perform that portion of work. If, after providing such notification, the construction manager at risk substitutes a subcontractor to perform the work, the construction manager at risk shall

forfeit, as a penalty to the public body, the lesser of, and excluding any amount of the contract that is attributable to change orders:

(a) An amount equal to 2.5 percent of the total amount of the contract; or

(b) An amount equal to 35 percent of the estimate by the engineer of the cost of the work the construction manager at risk selected himself or herself to perform on the public work.

16. The construction manager at risk shall make available to the public the name of each subcontractor who submits a proposal.

17. If a public work is being constructed in phases, and a construction manager at risk selects a subcontractor pursuant to subsection 9 for the provision of labor, materials or equipment for any phase of that construction, the construction manager at risk may select that subcontractor for the provision of labor, materials or equipment for any other phase of the construction without following the requirements of subsections 3 to 11, inclusive.

18. As used in this section, "general terms" has the meaning ascribed to it in NRS 338.141.

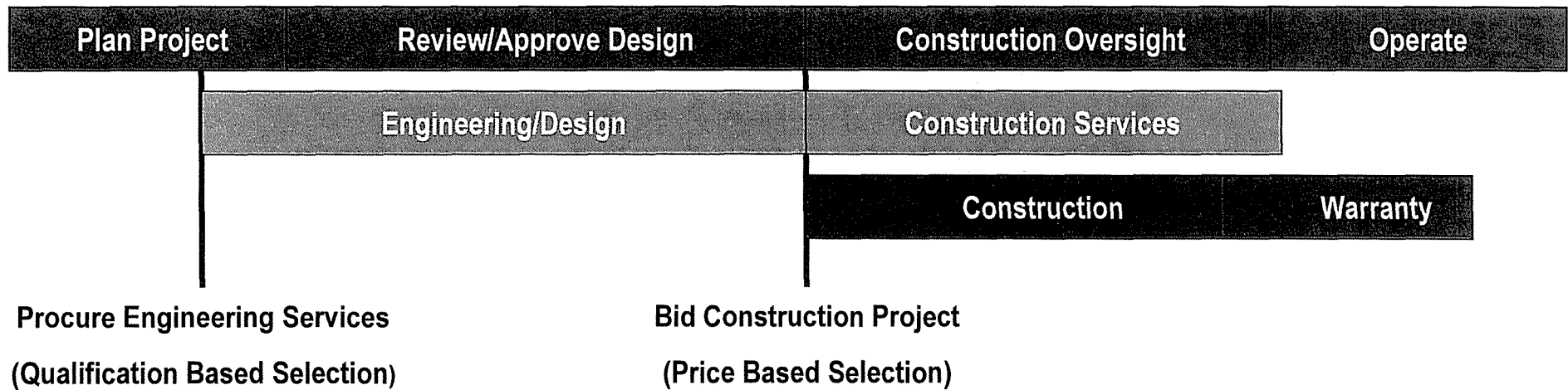
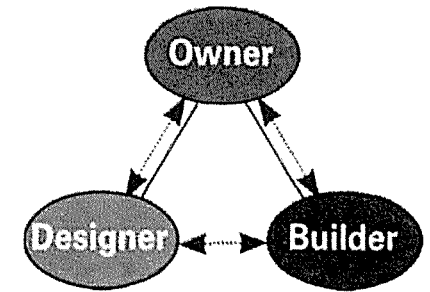
(Added to NRS by 2011, 3682; A 2013, 2980; R 2013, 2986; A 2017, 4031; R 2017, 4035, effective July 1, 2021)

# Project Delivery Methods

- Three public works project delivery methods allowed by NRS 338
- Design-Bid-Build (DBB)
  - Traditional project delivery method utilized by IVGID
- Construction Manager at Risk (CMAR)
  - Last utilized by IVGID in 2002-04 to construct Public Works Building and Chateau
  - Substantial revisions in statute and process since
- Design Build (DB)
  - Until recent 2017 legislative session was limited to projects >\$5M

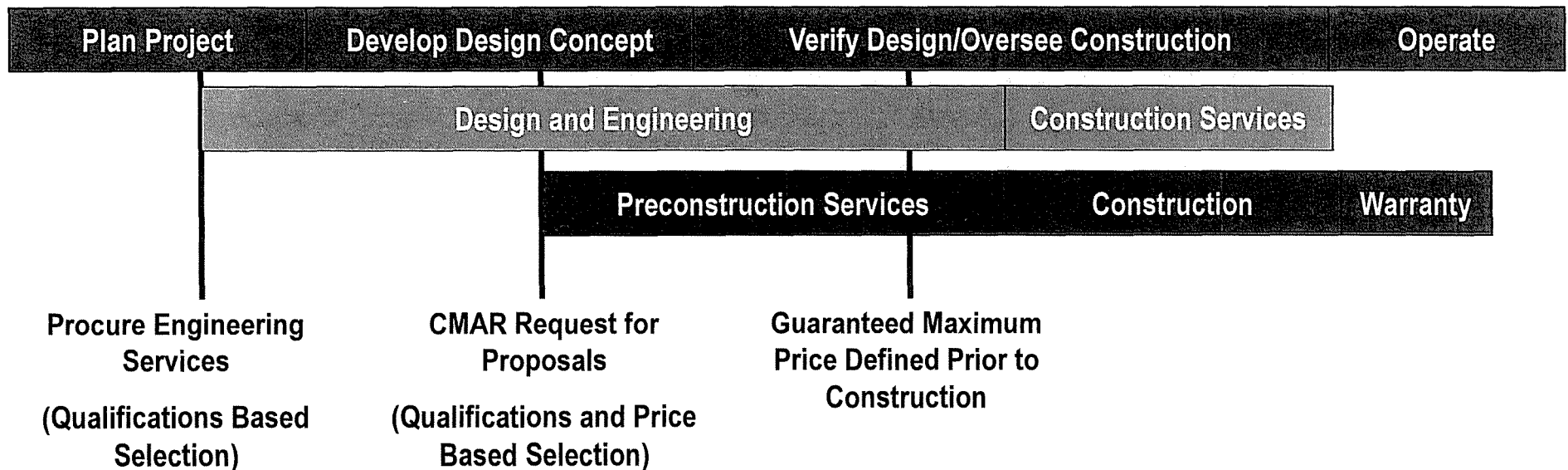
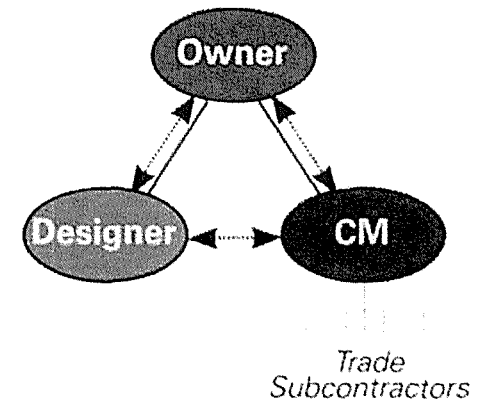
# Design-Bid-Build

- Well-established, defined, linear process that is proven to work
- Distinct milestones to ensure expected results
- Design completed before bidding
- Bidding completed before construction



# Construction Manager at Risk

- Similar to traditional delivery – but more collaborative
- Allows traditional selection of engineering services
- Design Build “light” – helps reduce risk
- Two contracts with Owner
- Design and construction pricing in parallel



# Benefits of CMAR

- Direct Lines of Accountability – *reduces finger pointing and disputes*
- Contractor Involvement in Design – *reduces change orders and disputes*
- Best Value Selection – *qualified contractor building the project*
- Schedule Certainty and Schedule Enhancement – *contractor is endorsing and agreeing to the schedule prior to construction*
- Early Cost Knowledge – *contractor develops costs early in design*
- Potential Cost Savings – *more opportunity for construction creativity, value engineering, and getting within Owner's budget*

**Chorey, Nathan P.**

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**From:** McCullough, Scott <SMcCullough@douglasnv.us>  
**Sent:** Tuesday, August 18, 2020 10:02 AM  
**To:** Chorey, Nathan P.  
**Subject:** RE: CMAR vs Design-Bid-Build

Nathan,

Find list as requested. The values are approximate.

Douglas County School District

2010 Pinion Hills Elementary, Expansion, CORE Construction, \$2.5M  
2012 Gardnerville Elementary, Expansion, CORE Construction, \$5.7M  
2014 Douglas High School, Expansion, Turner Construction, \$20M  
2016 Carson Valley Middle School, Revitalization, CORE Construction, \$3.7M  
2017 District Wide Improvements, Major Maintenance, CORE Construction, \$1M  
2018 Jacks Valley Elementary School, Revitalization, Q&D Construction, \$1.1M  
2020 CC Meneley Elementary, Revitalization, CORE Construction, \$1.7M

Douglas County

2015 Community and Senior Center, New Build, CORE Construction (Design-Build) \$20M  
2018 MEP Improvements, Major Maintenance, CORE Construction, \$1.7M  
2019 Old Senior Center Remodel, Revitalization, CORE Construction, \$1.1M  
2020 Cave Rock Water System Improvements, Major Maintenance and Expansion, CORE Construction, \$14M

East Fork Swimming Pool District

2018 Locker Room Improvements, Remodel, Q&D Construction \$0.7M  
2020 West Side Expansion and Boiler Replacement, Expansion and Major Maintenance, Q&D Construction, \$0.9M

Town of Genoa

2020 Town Hall and Office Improvements, Revitalization, CORE Construction, \$1M

Thanks,

Scott McCullough  
Project Manager  
Douglas County

**From:** Chorey, Nathan P. <npc@ivgid.org>  
**Sent:** Monday, August 17, 2020 2:50 PM  
**To:** McCullough, Scott <SMcCullough@douglasnv.us>  
**Subject:** RE: CMAR vs Design-Bid-Build

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Hi Scott,

Thanks for this. Do you have a list of projects you have utilized the CMAR project delivery method for?

**Nathan Chorey, PE**

IVGID Engineering Manager

P: 775-832-1372

**From:** McCullough, Scott [<mailto:SMcCullough@douglasnv.us>]

**Sent:** Monday, August 17, 2020 1:12 PM

**To:** Chorey, Nathan P. <[npc@ivgid.org](mailto:npc@ivgid.org)>

**Subject:** RE: CMAR vs Design-Bid-Build

Nathan,

I have managed CMAR projects for the Douglas County School District since 2010, delivering all either on or under budget and on schedule. I have introduced the method to Douglas County, East Fork Swimming Pool District and the Town of Genoa as well again achieving the same results in their projects.

The method is highly collaborative and insures the Owner of an aligned scope to budget. Unlike design bid build which offers no guarantee of delivering a project on budget. Factors that increase the bid day surprises are many. In CMAR those factors are analyzed by the team of the Owner, Builder and Architect, and can accurately forecast cost for the project. The CMAR method estimates the project incrementally at Schematic Design, Design Documents and Construction Documents. These milestones are met and authorized to proceed to the next level of design and estimating. Once the design is complete the CMAR bids the work competitively in accordance to NRS. The bidding is competitive and Owner input is given for selection.

Due to the fact the CMAR has actively participated in the design and fully understands the project a Guaranteed Maximum Price Contract is offered for acceptance to the Owner. The design bid build deals with unforeseen change through the change order process which offers less value to the Owner. The construction schedule is also tied to the GMP. The CMAR is aware and has prepared the schedule meeting the Owners constraints to deliver a project on time.

If you have any other questions please feel free to call to discuss. Best of luck on your project.

Sincerely,

Scott McCullough

Project Manager

Douglas County

**From:** Chorey, Nathan P. <[npc@ivgid.org](mailto:npc@ivgid.org)>

**Sent:** Friday, August 14, 2020 3:07 PM

**To:** McCullough, Scott <[SMcCullough@douglasnv.us](mailto:SMcCullough@douglasnv.us)>

**Subject:** CMAR vs Design-Bid-Build

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Hi Scott,

We are discussing project delivery methods with our Board of Trustees for a pool replacement project we are working on at Burnt Cedar Beach. Can you please briefly share your/Douglas County's experiences with CMAR vs. Design-Bid-Build?

Thank you.

**Nathan Chorey, PE**

Engineering Manager

Incline Village General Improvement District

1220 Sweetwater Road, Incline Village NV 89451

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F: 775-832-1331

M: 530-448-4895

[npc@ivgid.org](mailto:npc@ivgid.org)

<http://ivgidpublicworks.com>