

**CONTRACT BETWEEN THE LARAMIE COUNTY COMMUNITY COLLEGE  
AND DELTA CONSTRUCTION INC. D/B/A  
VENDOR**

**AGREEMENT NO.: 18109**

1. **Parties.** This Contract is made and entered into by and between the Laramie County Community College, (LCCC) whose address is 1400 E. College Dr., Cheyenne, WY 82007; and VENDOR, a "Construction Manager at Risk", (CMAR), whose address for the purposes of this Contract is ADDRESS.
  
2. **Purpose of Contract.** The purpose of this Contract is to obtain preconstruction consultation services from CMAR, as per RFQ-19033 (Attachment B), to complete the preconstruction phase of the New Residence Hall at Laramie County Community College, in Cheyenne, Wyoming. Preconstruction CMAR services shall entail evaluation of the design, planning, budgeting, scheduling, logistics, cost-estimating and other services set forth herein. Further services shall be as per Exhibit B, CMAR Fee Proposal Form, which is attached to and incorporated into this Contract by this reference. CMAR shall propose a "Guaranteed Maximum Price" (GMP) as part of preconstruction services. LCCC may either accept the proposed GMP for the entire project or may request CMAR to provide individual GMP Proposals for specific construction phases of the Project. However, CMAR shall not begin construction phase services until such time as the parties choose to enter into a GMP amendment for the entire project or one or more individual GMP amendments for specific phases of construction.
  
3. **Delivery System.** This Contract is entered in accordance with LCCC's election to use a CMAR pursuant to Wyo. Stat. § 16-6-701(a)(vii).
  
4. **Term of Contract.** This Contract is effective when all parties have executed it and all required approvals have been granted.
  - A. **Time of Commencement and Substantial Completion.** The Work to be performed under this Contract shall be commenced within ten (10) days after receiving the notice to proceed, and subject to any authorized extension, substantial completion shall occur no later than July 27, 2020 ("Long Date"), provided construction start date is March/April, 2019. The Contract shall remain in effect until CMAR's services are completed to the satisfaction of the LCCC or the Contract is terminated.
    - (i) Performance under this Contract shall not begin prior to the date upon which the last required signature is affixed to this Contract or the date of CMAR's receipt of a notice to proceed, whichever occurs later.
  
    - (ii) Permitting CMAR to continue and finish the Work or any part of it after the time fixed for its completion or after the use of additional Contract time, will in no way operate as a waiver on the part of LCCC of any of its rights under this Contract.

**B. Extensions.** Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein. Any extension of this Contract shall be initiated by LCCC, and shall be effective only after it is reduced to writing and executed by all parties to the Contract. Any agreement to extend this Contract shall include, but not necessarily be limited to: an unambiguous identification of the Contract being extended; the term of the extension; the amount of any payment to be made during the extension, or a statement that no payment will be made during the extension; a statement that all terms and conditions of the original Contract shall, unless explicitly delineated in the exception, remain as they were in the original Contract; and, whether the duties of either party will be different during the extension than they were under the original Contract, a detailed description of those duties.

**5. Payment.** LCCC agrees to pay CMAR for the preconstruction phase services described herein. The total payment under this Contract shall not exceed **dollars (\$0.00)** for preconstruction services (as per Exhibit B), which shall constitute the full amount for preconstruction work as defined in this Contract. No payment shall be made for services performed before the date upon which the last required signature is affixed to this Contract. Payment shall be made in accordance with the terms set forth in Attachment A, Supplemental General Provisions, which is attached to and incorporated into this Contract by this reference.

**6. LCCC Project Supervisor**

**A. Project Supervisor.** The LCCC Project Representative is Bill Zink, 1400 E. College Dr., Cheyenne, WY 82007, and/or his designee.

**B. Architect.** The Project Architect is Method Studio, Inc., 925 South West Template, Salt Lake City, UT 84101.

**7. Responsibilities of CMAR.** The services to be provided by CMAR are described herein, in Attachment A, Attachment B (RFQ-19033), and Exhibit B (CMAR Fee Proposal Form). By signing this Contract, CMAR acknowledges that its responsibilities under this Contract are further described in the Contract Documents which include the Attachments A-C.

**A. Preconstruction Services.** CMAR agrees to:

(i) Be an advocate for LCCC throughout the preconstruction phase. As an advocate, CMAR shall perform the following tasks, with the degree of care and skill as exercised by any member of CMAR's profession under similar circumstances, to LCCC's satisfaction:

(a) Project Evaluation. CMAR shall provide LCCC a comprehensive written evaluation of LCCC's Project plans and budget. CMAR shall discuss any comments, concerns or recommendations regarding the Project's plans and budget with LCCC.

- (b) Scheduling. CMAR shall work closely with the Design Professional and LCCC Project Representative to develop and finalize a preconstruction and construction schedule (Schedule). The Schedule will show each of the programming and design phases, identify critical milestone dates and outline decision making for LCCC. CMAR shall evaluate site constraints, regulatory requirements, material and equipment deliveries, and workforce availability in establishing the Schedule. CMAR shall acknowledge in writing that it has reviewed scheduled completion dates for all Project phases, and that such are reasonably achievable.
- (c) Cost Estimating. CMAR shall continuously provide cost modeling services during the preconstruction phase. CMAR will continuously evaluate the availability of labor, materials, equipment; cost sensitive aspects of the design, and other factors that may have a bearing on the GMP or Project Schedule. In CMAR's written evaluation, CMAR shall address and acknowledge that estimated costs for the Project are adequate to complete the Project under the construction conditions specified.
- (d) Construction Management Plan.
- (1) Preparation of a Construction Management Plan. CMAR, in collaboration with the Design Professional, LCCC Project Representative, will prepare a Construction Management Plan (Plan) which shall include, but not be limited to, the following:
- (i) Project milestone dates,
  - (ii) Investigations to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities,
  - (iii) Alternate strategies for fast-tracking and/or phasing the Construction,
  - (iv) Bidding documents for the procurement of equipment and materials,
  - (v) Separate agreements to be awarded to subcontractors and suppliers,
  - (vi) Permitting strategy,
  - (vii) Safety programs,
  - (viii) Construction quality control,
  - (ix) Commissioning programs,
  - (x) Value engineering, and

- (xi) Constructability and bidability strategies and procedures.
- (2) Updating the Construction Management Plan. CMAR will update the Plan with every Pay Application or as directed by LCCC during the preconstruction phase so that the Plan is ready for implementation in the construction phase. The updates will take into account the following:
  - (i) Revisions in the Drawings and Specifications,
  - (ii) CMAR's examination of any additional reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents of physical conditions of underground utilities, whether obtained by LCCC or CMAR,
  - (iii) Remaining issues concerning permitting,
  - (iv) Fast-tracking of the construction and the number of separate bidding documents to be advertised, and
  - (v) The status of the early procurement of equipment, materials, subcontractors, and suppliers.
- (e) Design Document Review. CMAR will continuously (as a minimum, weekly) meet with LCCC and Design Professional to review the design during development of the Project. CMAR shall make recommendations on construction costs, schedule, feasibility, constructability, bidability, functionality, and practicality of the designs to LCCC and Design Professional with respect to the selection of methods, materials, and systems and recommended cost reducing alternatives. CMAR will advise LCCC and Design Professional on the site improvements, excavation and foundation considerations and selection of materials, building systems and equipment. CMAR shall advise LCCC and Design Professional regarding concerns with respect to means and methods, labor and material availability and factors relating to the cost of the Project and coordination of the Drawings and Specifications.
- (f) Cost Model. CMAR shall, based upon a review of the Project plans and budget and any other relevant documentation or investigation, develop a Cost Model which will be updated continuously throughout the preconstruction phase until a GMP is agreed upon. The Cost Model will be the best representation from CMAR of what the complete functional facility will cost. The Cost Model shall include all cost allowances and/or contingencies for potential additional quantities and/or additional Work. CMAR shall indicate in writing any and all construction components or contingencies that are excluded from the Cost Model.

## **B. Guaranteed Maximum Price [GMP] and Contract Time**

- (i) GMP is the maximum amount due from the LCCC to the CMAR for construction services. It includes the cost of the Work, contingencies, allowances, and the CMAR's Fee. The GMP allows for reasonably expected changes and refinements in the drawings and specifications through completion of all Construction Documents. All costs which exceed the GMP which are not authorized by change order will be paid by the CMAR.
- (ii) The GMP proposal shall include, within the estimated cost of the Work, a contingency amount. The contingency is part of the GMP. The contingency shall only be used to cover costs for labor, materials, equipment and similar costs for items or Work to be furnished during the construction phase of the Project. It is not the intent of the Contract to use the contingency for cost incurred during the preconstruction phase or bidding phase or for costs to correct errors, omissions, mistakes or rejected Work caused by subcontractors. The contingency may be used to cover CMAR's following costs:
  - (a) Arising from estimating cost overruns in the costs of allowance schedule other than estimate errors.
  - (b) Unexpected additional trade coordination costs incurred for Work directly performed by CMAR that could not have been reasonably contemplated.
  - (c) Items required and reasonably inferable from the Contract Documents which the CMAR can show were not specifically called out within estimates or bid documents of CMAR or any subcontractor.
  - (d) Losses or damages to property related to the Work not covered by insurance provided by CMAR, but not including any insurance deductible(s).
  - (e) Arising from expediting or acceleration of the Project schedule where such cost is not a basis for an increase in the GMP.
  - (f) Bid package buyout overrun costs for additional bid packages that were not part of anticipated bid packages, but only if required bidding procedures were followed and the bidding contingency, as defined by the GMP, has been exhausted.
  - (g) Other costs incurred not reasonably to have been expected that are approved by the LCCC Representative, so long as these costs are not recovered under any insurance policy provided pursuant to this Contract and so long as the total costs under this Contract do not exceed the GMP.
- (iii) No expenditure from the contingency for any matters or work activities shall be made without the prior written approval of the LCCC Representative, which approval, with the exception of item (g) above, shall not be unreasonably

withheld. Expenditures from the contingency shall be made only by Change Order.

(iv) Upon final completion of the Work, all savings shall be distributed to the LCCC. Savings returned to the LCCC shall not include return of CMAR's fee for the amount of the savings. Allocations to the GMP for allowance and contingency items that remain unused upon final completion shall be returned to the LCCC.

(a) If the allowable, final, verified, audited amount of the cost of General Conditions, Cost of the Work, Allowance items, and Contingency is less than the amount established for all of those categories in the originally approved GMP, the entire difference shall be credited to the LCCC as savings and the final Contract amount shall be adjusted accordingly. When buyout of the Project is at least 85% complete, LCCC may recognize any savings achieved to that point by issuing a deductive change order for the saved amount.

(b) The LCCC shall be entitled to deduct amounts for balances remaining on any allowance, contingency, or any other identified Contract savings from any Application for Payment or from the Request for Final Payment submitted by CMAR.

(c) LCCC shall be entitled to recover any savings realized between the GMP and the buyout price for subcontracting work, provided, however, that CMAR may use such savings to offset other buyout packages that exceed the amounts identified in the initial GMP, so long as the total cost of Work proposed in the GMP does not increase. CMAR general conditions costs are included in any savings recovery or offset with the exception of supervision included within the aforementioned.

(d) LCCC shall be entitled to recognize and recover 100% of any savings identified by cost review or audit at any time, before or after Final Payment.

**C. GMP Proposal.** The proposed GMP for the Work will be presented in a format acceptable to LCCC and consistent with LCCC's "Request for GMP Proposal", when issued.

**D. GMP Review and Approval.** CMAR shall meet with LCCC and Design Professional to review the GMP Proposal and the written statement of its basis. In the event that LCCC or Design Professional discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify CMAR, who shall make appropriate adjustments to the GMP Proposal, its basis or both.

(i) Upon receiving the GMP Proposal from CMAR, LCCC may submit the same documents that were used by CMAR in developing the GMP to an independent third party for review and verification. The third party shall develop an independent cost of the Work estimate and review the Construction Schedule

for the Project.

- (ii) If CMAR's GMP Proposal is greater than Project budget or otherwise not acceptable as originally submitted, LCCC may require CMAR to reconfirm its GMP. If CMAR's original GMP or revised GMP is within LCCC's budget and is found to be otherwise acceptable, LCCC may accept CMAR's GMP Proposal without comment and amend this Contract to include construction.
- (iii) Phased GMP's. CMAR may be requested to provide individual GMP Proposals for specific construction phases of this Project. These individual phase GMP Proposals shall be based on the specific phases of construction and will be prepared in accordance with the procedures identified in this Contract.

**8. Responsibilities of the LCCC.** LCCC agrees to:

- A. Furnish CMAR with all available data and information relative to policies, standards, criteria, and studies.
- B. Contract separately with one or more design professionals to provide architectural and engineering design services for the Project.
- C. Supply, without charge, all necessary copies of programs, reports, drawings, and specifications in existence required by CMAR.
- D. Give prompt written notice to CMAR when LCCC becomes aware of any default or defect in the Project or non-conformance with the Drawings and Specifications.
- E. Authorize The LCCC Representative to approve the Project Budget and schedules, and render decisions and furnish information to CMAR.
- F. Provide CMAR with adequate information regarding LCCC's requirements for CMAR's management of construction, construction of and delivery of the Ludden Library in Cheyenne, Wyoming.
- G. Comply with all of LCCC's other obligations identified herein.

**9. Special Provisions**

**A. This Section has been removed.**

**B. Information required of the LCCC.** LCCC shall make available a legal description and all surveys in LCCC's possession, describing the physical characteristics, easements and utility locations for the project site.

- (i) Information or services under LCCC's control shall be furnished by the LCCC with reasonable promptness to avoid delay in the orderly progress of the Work.

- (ii) LCCC will furnish copies of drawings and specifications reasonably necessary for the execution of the Work.

**C. Review of Contract Documents and Field Conditions by CMAR.** Since the Contract Documents are complementary, before starting each portion of the Work, CMAR shall carefully study and compare the various drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by LCCC, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by CMAR and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the CMAR shall be reported promptly to the Design Professional and LCCC Project Representative.

- (i) Any design errors or omissions noted by CMAR during this review shall be reported promptly to the Design Professional and LCCC Project Representative, , but it is recognized that CMAR's review is made in CMAR's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.
- (ii) If CMAR believes that additional cost or time is involved because of clarifications or instructions issued by the Design Professional and LCCC Project Representative in response to CMAR's notices or requests for information pursuant to Section 8G, the CMAR may seek a change order in accordance with the Supplemental General Provisions. If CMAR fails to perform the obligations based on clarifications or instructions issued as described above, CMAR shall pay such costs and damages to LCCC as would have been avoided if CMAR had performed such obligations. CMAR shall not be liable to LCCC for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless CMAR recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Design Professional and LCCC Project Representative.

**D. Required Resident Labor.** CMAR acknowledges that it shall employ only Wyoming laborers on the Project except other laborers may be used when Wyoming laborers are not available for the employment form within the state or are not qualified to perform the work involved as provided by Wyo. Stat. § 16-6-203. CMAR acknowledges that failure to comply with the Required Resident Labor Statute is punishable pursuant to Wyo. Stat. § 16-6-206. The CMAR shall comply with all resident and other preference requirements, including but not limited to those applicable to labor, materials and subcontractors pursuant to Wyo. Stat. § 16-6-1001.

**E. Preference for Wyoming Materials.** Pursuant to Wyo. Stat. § 16-6- 104, Wyoming made materials and products, and Wyoming suppliers of products and materials of



equal quality and desirability shall have preference over materials or products produced or supplied outside the state.

## **10. General Conditions**

**A. Contract Documents.** The Contract Documents shall consist of this Contract, Attachment A, Supplemental General Provisions, Exhibit B, CMAR Fee Proposal, Attachment B (RFQ-19033), the drawings, the specifications, duly issued change orders, construction change directives, addenda, and all properly executed amendments or written modifications issued after execution of this Contract. The Contract Documents are as fully a part of this Contract as if hereto attached or herein repeated. The Contract Documents are complementary and what is required by one shall be binding as if required by all.

CMAR warrants that it has carefully examined and understands all of the Contract Documents listed above, including the Drawings and Specifications, prior to starting any Work under this Contract.

**B. Counterpart(s).** This Contract may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute but one and the same Contract. Delivery by the CMAR of an originally signed counterpart of this Contract by telecopy or PDF shall be followed up immediately by delivery of the originally signed counterpart to the LCCC. Failure by the Contractor to deliver, either personally or via US Mail, postage prepaid, the originally signed counterpart within five (5) business days to the LCCC shall be considered a material breach and may result in immediate termination of this Contract by the LCCC.

**C. Entirety of Contract.** This Contract consisting of eleven (11) pages; Contract Documents: **Attachment A, Supplemental General Provisions consisting of thirty-nine (39) pages; Exhibit B, consisting of one (1) page; and Attachment B, consisting of eleven (11) pages**, represent the entire and integrated Contract between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral. This Contract along with the General Provisions provided in Attachment A shall constitute one and the same Contract and shall be construed as one document. In the event of a conflict between language contained in any documents that comprise this contract, the Contract and Attachment A shall control, followed by Exhibit B, and then any Contract Documents or other supporting documents.

**D. Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.

- E. Notice of Sale or Transfer.** The CMAR shall provide the LCCC with notice of any sale, transfer, merger, or consolidation of the assets of the CMAR. Such notice shall be provided in accordance with the notices provision of this Contract and, when possible and lawful, in advance of the transaction. If the LCCC determines that the sale, transfer, merger, or consolidation is not consistent with the continued satisfactory performance of the CMAR's obligations under this Contract, then the LCCC may, at its discretion, terminate or renegotiate the Contract.
- F. Ownership and Destruction of Documents/Information.** LCCC owns all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the CMAR in the performance of this Contract. Upon termination of services, for any reason, CMAR agrees to return all such original and derivative information/documents to the LCCC in a useable format. In the case of electronic transmission, such transmission shall be secured. The return of information by any other means shall be by a parcel service that utilizes tracking numbers. Upon LCCC's verified receipt of such information, CMAR agrees to physically and electronically destroy any residual LCCC-owned data, regardless of format, and any other storage media or areas containing such information. CMAR agrees to provide written notice to LCCC confirming the destruction of any such residual LCCC-owned data.
- G. Patent or Copyright Protection.** The CMAR recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license, or other similar restrictions, and warrants that no work performed by the CMAR or its subcontractors will violate any such restriction. The CMAR shall defend and indemnify the LCCC for any violation or alleged violation of such patent, trademark, copyright, license, or other restrictions.
- H. Publicity.** Any publicity given to the projects, programs or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the CMAR, shall identify the LCCC as the sponsoring LCCC and shall not be released without prior written approval from the LCCC.

**REMAINDER INTENTIONALLY LEFT BLANK**

**11. Signatures.** The parties to this Contract, either personally or through their duly authorized representatives, have executed this Contract on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Contract.

The effective date of this Contract is the date of the signature last affixed to this page.

**VENDOR**

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Date

**LARAMIE COUNTY COMMUNITY COLLEGE**

\_\_\_\_\_  
Dr. Joe Schaffer, President

\_\_\_\_\_  
Date