



**CONSTRUCTION MANAGER AT RISK
DESIGN PHASE SERVICES AGREEMENT
(OPERATING MANUAL FORM)
(SINGLE PROJECT FORM)**

Date (type in) Issued:

Request for Qualifications Number _____

OWNER

**ARIZONA BOARD OF REGENTS
for and on behalf of
ARIZONA STATE UNIVERSITY**

CMAR

DESIGN PROFESSIONAL

**CONSTRUCTION MANAGER AT RISK DESIGN PHASE SERVICES AGREEMENT (SINGLE PROJECT
FORM) © JUNE 2006 EDITION**

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APPENDIX A

to

Design Phase Services Agreement Between Owner and Construction Manager at Risk

Specific Terms and Provisions of the Design Phase Services Agreement

1. Heading: Project name, location and general description:

2. Section 4.1.1: Substantial Completion date.

[NOTE TO USERS OF THIS DOCUMENT: Insert the substantial completion date in the blank. Please insert the date that is at least 30 days before Owner’s deadline for the Project. This allows 30 days between Substantial Completion and Final Completion]

_____, 2 _____

3. Section 4.1.2: Interim milestones.

[NOTE TO USERS OF THIS DOCUMENT: If there are interim milestones, fill in the information below as to each milestone. If there are no interim milestones, insert “None”.]

_____ _____
_____ _____

4. Section 4.1.3: Per Calendar Day liquidated damages.

_____ Dollars (\$ _____).

[NOTE TO USERS OF THIS DOCUMENT: If liquidated damages are to be applicable to any interim milestone dates set forth in Section 4.1.2, Section 4.1.3 in the Agreement and in this Appendix A must be modified accordingly.]

5. Section 4.2: Division of Project into Work Packages or not and applicability of provisions on Work Packages or not.

[NOTE TO USERS OF THIS DOCUMENT: Insert the applicable version of Section 4.2 and delete the other version.]

4.2 The **Owner** has determined that the design and construction of the Project will not be divided into Work Packages. Accordingly, the provisions in the Contract Documents relating to Work Packages do not apply. **[OR]**

4.2 The **Owner** has determined that the design and construction of the Project will be divided into Work Packages. The provisions on “Work Packages” in **Section 2.12** of the Operating Manual apply.

6. Section 5.1: CMAR Design Phase Services Fee.

_____ Dollars (\$ _____)

7. Section 6.1: Progress payments.

<u>Design Development Subphase</u>	<u>Allocated Portion of Design Phase Services Fee</u>
Program Development	\$ _____
Schematic Design	\$ _____
Design Development	\$ _____
Construction Documents	\$ _____

8. Article 8: Representatives of the Parties.

8.1 Owner's Representatives.

8.1.1 Owner designates _____
(Name, address and title)
as its Senior Representative ("**Owner's Senior Representative**"), which individual has the authority and responsibility for avoiding and resolving disputes under **Section 6.2** of the General Conditions.

8.1.2 Owner-designates _____
(Name, address and title)
as it's representative ("**Owner's Representative**" or "**OR**"), which individual has the authority and responsibility set forth in the CMAR Design Phase Services Contract Documents.

8.2 CMAR's Representatives.

8.2.1 CMAR designates _____
(Name, address and title)
as its Senior Representative ("**CMAR's Senior Representative**"), which individual has the authority and responsibility for avoiding and resolving disputes under **Section 6.2** of the General Conditions.

8.2.2 CMAR designates _____
(Name, address and title)
as its representative ("**CMAR's Representative**") which individual has the authority and responsibility set forth in the CMAR Design Phase Services Contract Documents.

8.2.3 CMAR designates _____
(Name, address and title)
as its construction superintendent ("**Construction Superintendent**"), which individual has the authority and responsibility set forth in the CMAR Design Phase Services Contract Documents and which individual will participate in the Design Phase as agreed by **CMAR** and **Owner**.

8.2.4 CMAR's representatives and Construction Superintendent, as approved by the **Owner**, shall not be replaced without the **Owner's** prior written approval.

CMAR

OWNER:

ARIZONA BOARD OF REGENTS

For and on behalf of
ARIZONA STATE UNIVERSITY

(Signature)

(Printed Name)

(Title)

Date: _____

(Signature)

(Printed Name)

(Title)

Date: _____

OWNER PROJECT MANAGER

Approval by Owner's Facilities Capital Program Management Group project manager:

(Signature)

**CONSTRUCTION MANAGER AT RISK
DESIGN PHASE SERVICES AGREEMENT**

NOTE: The information or contract provisions that go in the numbered blank spaces in this contract are in the respective numbered paragraph in Appendix A attached hereto.

Agreement made this _____ day of _____ in the year _____, by and between
OWNER: _____, whose mailing address for notices is _____

_____ and whose facsimile number for receipt of notices is (_____) _____
and **CMAR:** _____, whose mailing address for notices is _____

_____ and whose facsimile number for receipt of notices is (_____) _____

for services in connection with the following Project: _____ **(1)** _____
(name, location, general description)

In consideration for the mutual covenants and obligations contained herein, **Owner** and **CMAR** agree as set forth herein.

**ARTICLE 1
General**

1.1 The General Conditions and the Operating Manual are attached hereto as **Exhibits A** and **B**.

1.2 All terms defined in the Operating Manual for Construction Manager at Risk Projects attached hereto as **Exhibit B** or in any of the other CMAR Design Phase Services Contract Documents will have the same meanings when used herein. If not specifically defined, terms, words and phrases in the CMAR Design Phase Services Contract Documents will have their ordinary and common meaning, with undefined words, phrases and abbreviations interpreted consistent with construction and design industry standards and technical and trade meanings.

1.3 This agreement is the CMAR Design Phase Services Contract as defined in the Operating Manual.

1.4 The CMAR Design Phase Services Contract Documents are listed in the Operating Manual.

1.5 The CMAR Design Phase Services Contract Documents are complementary and must be interpreted in harmony so as to avoid conflict. In the event of any inconsistency, conflict, or ambiguity, the CMAR Design Phase Services Contract Documents shall take precedence in the order in which they are listed in the definition of that term in the Operating Manual.

1.6 The CMAR Design Phase Services Contract Documents form the entire agreement between **Owner** and **CMAR** relating to the Design Phase of the Project and the CMAR Design Phase Services, are hereby incorporated herein by reference and by incorporation herein are as fully binding on the parties as if repeated herein. The CMAR Design Phase Services Contract Documents supersede all prior discussions and negotiations. The CMAR Design Phase Services Contract Documents may be amended or modified only in writing executed by **Owner** and **CMAR**.

ARTICLE 2
Design Phase Services

2.1 The **CMAR** agrees to perform the CMAR Design Phase Services and to perform its obligations and to comply with the other terms and conditions applicable to **CMAR** under the CMAR Design Phase Services Contract Documents. The **Owner** agrees to perform its obligations and to comply with the other terms and conditions applicable to **Owner** under the CMAR Design Phase Services Contract Documents.

2.2 This is a contract for CMAR Design Phase Services only. **CMAR** agrees to perform all CMAR Design Phase Services. This includes all services by **CMAR** under the CMAR Design Phase Services Contract Documents to be performed during the Design Phase (consisting of the traditional Program Development subphase, Schematic Design subphase, Design Development subphase and Construction Documents subphase of design development).

2.3 If and when **Owner** and **CMAR** agree to a Guaranteed Maximum Price and certain other matters concerning the Construction Phase, execute the CMAR Construction Contract, which must be in the form in **Attachment 2** to the Operating Manual and have all the required attachments thereto, and the other conditions described in the second bullet point in **Section 1.1** of the Operating Manual are satisfied, then and only then will there be a contract for construction services and for the **CMAR** to do the Construction Work. Until then, **Owner** has no obligation to obtain the Construction Work from the **CMAR**, and the **CMAR** has no obligation to perform the Construction Work.

ARTICLE 3
Ownership of Documents

3.1 The **Owner**, through its separate agreement with the **Design Professional**, shall own all drawings, specifications, and other documents and electronic data furnished by **Design Professional**. **CMAR** shall have no right or interest in such documents, except for the right to use them in rendering services during the Design Phase and the Construction Phase.

3.2 The **Owner** shall also own any and all of **CMAR's** Estimates of Construction Costs, **DP's** Estimates of Probable Construction Costs and other estimates and all schedules, value engineering submissions or other work product furnished by **CMAR** or **Design Professional** to **Owner**.

ARTICLE 4
Contract Time

4.1 This CMAR Design Phase Services Contract applies only to the Design Phase. However, **Owner** desires to obtain **CMAR's** understanding and agreement to certain matters relating to Contract Time that will apply if and when **Owner** engages **CMAR** to perform the Construction Work and the CMAR Construction Contract is executed by **Owner** and **CMAR**. This is because Contract Time is of the essence for **Owner**. Therefore, **CMAR** understands and agrees that if **Owner** engages **CMAR** to perform the Construction Work, then the provisions on Contract Time in the CMAR Construction Contract attached to the Operating Manual will be completed as follows:

4.1.1 The date for Substantial Completion of the entire Construction Work will be (2)

4.1.2 The interim milestones will be:

<u>Part of the Work</u>	<u>Interim Milestone Date</u>
<u> (3) </u>	<u> (3) </u>

4.1.3 The amount of liquidated damages for each Calendar Day will be _____ (4)
Dollars (\$ _____ (4) _____).

4.2 _____ (5) _____

ARTICLE 5
CMAR Design Phase Services Fee

5.1 **Owner** shall pay **CMAR** a fee for CMAR Design Phase Services. The **CMAR** fee for CMAR Design Phase Services will be _____ (6)
_____ Dollars (\$ _____ (6) _____) ("**Design Phase Services Fee**").

5.2 **CMAR's** Pre-construction Phase Services Fee is all inclusive of all amounts to be paid by Owner for the CMAR Design Phase Services and includes, without limitation, all sales, franchise privilege, use, consumer, income and other taxes, all fees, all insurance premiums, and all costs of complying with applicable Legal Requirements, all of which will be paid by **CMAR** without reimbursement by **Owner**.

ARTICLE 6
Procedure for Payment

6.1 Progress Payments. For CMAR Design Phase Services, **CMAR** shall submit to **Owner** on the last business day of each month **CMAR's** application for payment based on the percentage completed for each Design Phase subphase as agreed to by the **Owner**. The **CMAR's** Design Phase Services Fee is broken down among the Design Phases subphases as follows:

<u>Design Development Subphase</u>	<u>Allocated Portion of Design Phase Services Fee</u>
Program Development	\$ _____ (7) _____
Schematic Design	\$ _____ (7) _____
Design Development	\$ _____ (7) _____
Construction Documents	\$ _____ (7) _____

6.2 Interest. Payments due and unpaid by **Owner** to **CMAR** shall bear interest as provided by law.

6.3 Record Keeping and Financial Controls. With respect to all Design Phase Services performed by **CMAR** and **Subcontractors**, **CMAR** and **Subcontractors** shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems approved by the **Owner**. During performance of the Design Phase Services and for five (5) years after final payment for the Design Phase Services, the **CMAR** shall retain and shall also require all **Subcontractors** to retain for review and/or audit by the **Owner** all correspondence, meeting minutes, memoranda, electronic media, books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all communications, direct and indirect costs and all other matter related to the Design Phase Services. Upon request by the **Owner**, a legible copy or the original of any or all such records shall be produced by the **CMAR** at any time during or after the Design Phase Services as the **Owner** may request. The **CMAR** shall submit to the **Owner** upon request all payrolls, reports, estimates, records and any other data concerning Design Phase Services performed or to be performed. The requirements of this **Section 6.3** shall be included in all contracts between the **CMAR** and its **Subcontractors**.

ARTICLE 7
Termination or Suspension of the CMAR Design Phase Services Contract Documents

The rights of **Owner** and the **CMAR** to terminate or suspend this CMAR Design Phase Services Contract are in **Article 7** of the General Conditions. Among other rights, the **Owner** has the right to terminate or suspend this Agreement for convenience.

ARTICLE 8
Representatives of the Parties

(8)

ARTICLE 9
Insurance and Bonding

9.1 Insurance. **CMAR** shall procure the insurance coverages required by **Article 4** of the General Conditions. Insurance certificates shall be submitted to **Owner** at the times specified in **Section 4.5** of the General Conditions.

9.2 Bonding. **CMAR** represents and warrants to Owner that as of the date of this CMAR Design Phase Services Contract **CMAR** has the financial capacity needed to obtain and deliver the Payment Bond and the Performance Bond that would be required if and when **Owner** and **CMAR** execute and deliver the CMAR Construction Contract Documents, assuming for this purpose only that the Guaranteed Maximum Price were to be equal to the portion of Owner's Project Budget available for payment of costs of the Construction Work. **CMAR** agrees that it will maintain this bonding capacity continuously until such time as **Owner** determines whether to enter into the CMAR Construction Contract with **CMAR**. **CMAR** shall continuously monitor its bonding capacity to assure that it complies with this provision. If at any time **CMAR** becomes aware that it does not have this bonding capacity, **CMAR** shall promptly notify **Owner** in writing addressed to the **Owner Representative**.

ARTICLE 10
Other Provisions

10.1 Any **Subcontractors** submitted and approved as pre-qualified by **Owner** and any Early Selected Subcontractors shall not be replaced without the **Owner's** prior written approval.

10.2 **CMAR** represents that it has the necessary financial resources to fulfill its obligations under the CMAR Design Phase Contract Documents and, if Owner agrees to execute and deliver the CMAR Construction Contract, under the CMAR Construction Contract Documents (including, without limitation, the financial capacity to obtain and delivery the required Payment Bond and Performance Bond) and has the necessary corporate approvals to execute the CMAR Design Phase Services Contract Documents and perform the CMAR Design Phase Services.

ARTICLE 11
Additional Approvals of Arizona Board of Regents and Others

The Project has been given an initial approval by the Arizona Board of Regents ("**ABOR**"). This approval permits the **Owner** to proceed through a portion of the design phase of the Project. A second ABOR approval will be required to authorize completion of the design phase. A third ABOR approval is required before **Owner** may legally obligate itself to construct and pay for the construction of the Project. In addition to the ABOR approvals, approvals by legislative bodies or others may also be required. Anything in the CMAR Design Phase Services Contract Documents to the contrary notwithstanding, any obligation of **Owner** under the CMAR Design Phase

Services Contract Documents to complete the Design Phase and to construct and pay for construction of the Project is subject to **Owner** obtaining the above-described approvals.

CMAR

(Signature)

(Printed Name)

(Title)

Date: _____

OWNER:

ARIZONA BOARD OF REGENTS

For and on behalf of

ARIZONA STATE UNIVERSITY

(Signature)

(Printed Name)

(Title)

Date: _____

APPLIES TO EACH PROJECT

**EXHIBIT A
TO
CONSTRUCTION MANAGER AT RISK DESIGN PHASE SERVICES AGREEMENT
OPERATING MANUAL FOR CONSTRUCTION MANAGER AT RISK PROJECTS**

APPLIES TO EACH PROJECT

**EXHIBIT B
TO
CONSTRUCTION MANAGER AT RISK DESIGN PHASE SERVICES AGREEMENT
GENERAL CONDITIONS**