CONTRACT BETWEEN OWNER & CONSTRUCTION MANAGER AT RISK

ARIZONA STATE UNIVERSITY

ASU PROJECT NO:

ASU PROJECT NAME:

OWNER

ARIZONA BOARD OF REGENTS

for and on behalf of

ARIZONA STATE UNIVERSITY

CMAR

DESIGN PROFESSIONAL

OPERATING MANUAL FOR MANAGER AT RISK PROJECTS

OCTOBER, 2003 EDITION
Construction Contract Between Owner and Construction Manager at Risk

Date: ________________________________

Project Name: ________________________________

ASU Project Number: ________________________________

Construction Manager at Risk: ________________________________

Owner: Arizona Board of Regents for and on behalf of Arizona State University

CMAR and Owner hereby agree as follows:

1. General.

1.1 The General Conditions, the Operating Manual for Construction Manager at Risk Projects (“Operating Manual”) and the Owner’s General Project Requirements are attached hereto as Exhibits A, B and C.

1.2 Please see the Operating Manual for definitions of several defined terms. All terms defined in the Operating Manual or in any of the other CMAR Construction Contract Documents will have the same meanings when used herein. If not specifically defined, terms, words and phrases in the CMAR Construction 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 Construction Contract as defined in the Operating Manual.

1.4 The CMAR Construction Contract Documents are listed in the Operating Manual.

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

2. Construction Work.

2.1 The Owner hereby engages the CMAR to perform the Construction Work in accordance with the Construction Documents and the other CMAR Construction Contract Documents. The Owner will perform all obligations of the Owner in the CMAR Construction Contract Documents. The Owner will comply with all terms and conditions of the CMAR Construction Contract Documents applicable to Owner.

2.2 The CMAR agrees to perform the Construction Work in accordance with the Construction Documents and the other CMAR Construction Contract Documents. The CMAR will provide such construction services and will also provide all material, equipment, tools, and labor necessary to satisfactorily complete all Construction Work described in and reasonably inferable from the Construction Documents and the other CMAR Construction Contract Documents. The CMAR will perform all obligations of the CMAR in the CMAR Construction Contract Documents. The CMAR will comply with all terms and conditions of the CMAR Construction Contract Documents applicable to CMAR.

2.3 The Guaranteed Maximum Price (GMP) for the Construction Work is: ________________________________ Dollars ($______________________________). The GMP is all inclusive of all amounts to be paid by Owner.
for the Construction Work and includes, without limitation, all sales, franchise privilege, use, consumer and other taxes, all fees, all general conditions, all bond and insurance premiums, and all costs of complying with applicable Legal Requirements, all of which will be paid by CMAR without reimbursement by Owner.

2.4 The GMP Schedule is Exhibit D hereto. The GMP Schedule uses the elemental systems allocation of all costs and fees of the Construction Work.

2.5 The Schedule of Values is Exhibit E hereto.

2.6 The GMP Setting Drawings, Specifications, Assumptions and Clarifications are Exhibit F hereto.

2.7 The detailed CPM Schedule for the Construction Work is Exhibit G hereto.

[NOTE TO USERS OF THIS DOCUMENT: Please fill in the blanks below.]

2.8 The Owner will pay the CMAR a fee for the Construction Phase ("CMAR Construction Phase Fee"). The CMAR Construction Phase Fee is included in the GMP and the GMP Schedule. The CMAR Construction Phase Fee will be _________________ Dollars ($__________). The percentage used to compute the CMAR Construction Phase Fee is ___________ percent (__________) of the CMAR Construction Phase Fee Base Amount. The "CMAR Construction Phase Fee Base Amount" means the sum the amounts in line items in the GMP Schedule covering Construction Work to be performed by Subcontractors or to be self-performed by the CMAR, if the CMAR is permitted to self-perform any Construction Work, as such amounts may be modified from time to time due to changes in the GMP.

[NOTE TO USERS OF THIS DOCUMENT: Please fill in the blanks below.]

2.9 The daily amount payable by Owner to CMAR in accordance with the CMAR Contract Documents for general conditions for agreed to Owner-caused delays in the Project is _________________ Dollars ($__________). This amount includes any amount CMAR believes necessary to cover possible general conditions claims of Subcontractors arising from agreed to Owner-caused delays. In setting the amount to be paid by Owner to CMAR for Owner-caused construction delays, CMAR has taken into account any amount CMAR anticipates that it might need to deal with possible Subcontractor claims for extended general conditions relating to Owner-caused delays. CMAR will be solely responsible and Owner will have no responsibility for claims by Subcontractors for extended general conditions relating to Owner-caused delays. For agreed-to Owner-caused construction delays CMAR will provide all the necessary extended general conditions for the foregoing daily amount. Owner-caused construction delays do not include delays resulting from suspension of the Construction Work by Owner under Section 7.1 of the General Conditions.

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 DP. CMAR shall have no right or interest in such documents, except for the right to use them in rendering services during the Construction Phase.

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

4. Contract Time

4.1 Owner and CMAR mutually agree that time is of the essence with respect to the dates and times set forth in the CMAR Construction Contract Documents. CMAR agrees that it will complete the Construction Work within the applicable Contract Times (defined below), as adjusted in accordance with the CMAR Construction Contract Documents. CMAR understands that the time(s) for completion(s) set forth in these documents are essential to the Owner and a material consideration to the Owner in executing this CMAR Construction Contract.

"Contract Time(s)" means, as to the entire Construction Work and as to any portion of the Construction Work that the Owner has agreed to accept separately, (I) the Date of Commencement, (II) any interim milestone dates
agreed to by Owner and CMAR, (III) the time for Substantial Completion, and (IV) the time for Final Completion, as specified in this Section 4.

4.2 Date of Commencement. The Construction Work shall commence (hereinafter referred to as the “Date of Commencement”) within five (5) days of CMAR’s receipt of Owner’s notice to proceed for the entire Construction Work, for the first Work Package if the Construction Work is to be done in Work Packages or for a portion of the Construction Work if the Owner has agreed to accept any portion separately, unless the parties mutually agree otherwise in writing. If the Construction Work is done in Work Packages or portions, the Date of Commencement for the entire Construction Work is the Date of Commencement of the first Work Package or first portion.

4.3 Substantial Completion.

[NOTE TO USERS OF THIS DOCUMENT: In the blank below, please insert the date that is 30 days before Owner’s date for Final Completion for the Project. This allows 30 days between Substantial Completion and Final Completion]

4.3.1 Substantial Completion (defined in the Operating Manual) of the entire Construction Work shall be achieved no later than ________________ subject to adjustments in accordance with the CMAR Construction Contract Documents

4.3.2 If the Owner has agreed to accept one or more portions of the Construction Work separately, there will be a separate Substantial Completion Date for each portion. The Substantial Completion Date for each portion will be established by the Owner.

4.3.3 The date for Substantial Completion of the entire Construction Work or for a portion of the Construction Work is referred to as the “Substantial Completion Date”.

4.3.4 To the extent specified below in this Section 4.3.4, interim milestones shall be achieved as follows, subject to adjustments in accordance with the CMAR Construction Contract Documents:

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<tr>
<th>Part of the Work</th>
<th>Interim Milestone Date</th>
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[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”.]

4.4 Final Completion. Final Completion of the entire Construction Work or portion thereof that Owner has agreed to accept separately shall be achieved within thirty (30) calendar days after the date established for Substantial Completion of the entire Construction Work or the portion of the Construction Work, respectively.

4.5 Requirement for Changes to Contract Time(s). Changes to Contract Time(s) may be made only by written Change Order executed by CMAR and Owner.

[NOTE TO USERS: Insert the liquidated damages amounts in paragraph below.]

4.6 Liquidated Damages. CMAR understands that if Substantial Completion of the entire Construction Work or of any portion of the Work that the Owner has agreed to accept separately is not attained by the applicable Substantial Completion Date provided in Section 4.3, as adjusted in accordance with the CMAR Construction Contract Documents (a “Scheduled Substantial Completion Date”), Owner will suffer damages, which are difficult to specify accurately and ascertain. CMAR agrees that if Substantial Completion of the entire Construction Work or of any portion of the Construction Work that the Owner has agreed to accept separately is not attained by the respective Scheduled Substantial Completion Date, CMAR shall pay Owner __________ dollars ($_______) as liquidated damages for each calendar day that Substantial Completion of the entire Construction Work or the portion of the Construction Work that the Owner has agreed to accept separately extends beyond the respective Scheduled Substantial Completion Date. In addition, if Final Completion of the entire Construction Work or of any portion of the Construction Work that the Owner has agreed to accept separately is not attained within the time period prescribed by Section 4.4, CMAR shall pay Owner
Dollars ($________________________) as liquidated damages for each calendar day that Final Completion extends beyond the required date. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Substantial Completion or Final Completion or both of the entire Construction Work or of any portion of the Construction Work that the Owner has agreed to accept separately on or after the respective established date. [NOTE TO USERS OF THIS DOCUMENT: If liquidated damages are to be applicable to any interim milestone dates set forth in Section 4.3.4, this Section 4.5 will need to be modified accordingly.]

[NOTE TO USERS OF THIS DOCUMENT: Insert the applicable version of Section 4.7 and delete the other version.]

4.7 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]

4.7 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 2.13 of the Operating Manual apply.

5. Record Keeping and Financial Controls. With respect to all Construction Work performed by CMAR and its Subcontractors, CMAR and its 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 Construction Work and for five (5) years after final payment for the entire Construction Work, 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 Construction Work. 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 Construction Work as the Owner may request. The CMAR shall submit to the Owner upon request all payrolls, reports, estimates, records and any other data concerning Construction Work performed or to be performed and concerning materials supplied or to be supplied, as well as Subcontractor payment applications or invoices and such Subcontractor’s progress payment checks. The requirements of this Section 5.0 shall be included in all contracts between the CMAR and its Subcontractors.

6. Termination and Suspension. The rights of Owner and the CMAR to terminate and suspend this CMAR Construction Contract are in Article 7 of the General Conditions. Among other rights, the Owner has the right to terminate or suspend this CMAR Construction Contract for convenience.

[NOTE TO USERS OF THIS DOCUMENT: Please fill in the blanks below.]

7. Representatives of the Parties.

7.1 Owner’s Representatives.

7.1.1 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.

7.1.2 Owner designates ____________________________ (Name, address and title) as its representative (“Owner’s Representative” or “OR”), which individual has the authority and responsibility set forth in the CMAR Construction Contract Documents.

7.2 CMAR’s Representatives.

7.2.1 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.

7.2.2 CMAR designates ____________________________

(Name, address and title)

as its representative ("CMAR’s Representative") which individual has the authority and responsibility set forth in the CMAR Construction Contract Documents.

7.2.3 CMAR designates ____________________________

(Name, address and title)

as its construction superintendent ("Construction Superintendent"), which individual has the authority and responsibility set forth in the CMAR Construction Contract Documents.

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

8. Bonds and Insurance.

8.1 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.

8.2 Bonds. CMAR shall provide performance and payment bonds as provided in Section 4.1 of the General Conditions. The bonds shall be in the forms in Exhibit A to the General Conditions.


9.1 Any Subcontractors submitted and approved as pre-qualified by Owner, any Subcontractors selected by bidding, and any Early Selected Subcontractors shall not be replaced without the Owner’s prior written approval. Any additional costs due to an approved change of Subcontractor without a change in the scope of the Project or a change in the Construction Documents shall be the CMAR’s responsibility and shall not be the Owner’s responsibility and will not increase the Guaranteed Maximum Price or extent the Contract Time(s).

9.2 CMAR represents that it has the necessary financial resources to fulfill its obligations under the CMAR Construction Contract Documents and has the necessary corporate approvals to execute the CMAR Construction Documents and perform the Construction Work.

10. 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 Construction Contract Documents to the contrary notwithstanding, any obligation of Owner under the CMAR Construction 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.

The GMP Schedule, the Schedule of Values, the GMP Setting Drawings, Specifications, Assumptions and Clarifications, and the CPM Schedule attached hereto are intended to supplement and not to modify or change any of the other CMAR Construction Contract Documents. Nothing in the GMP Schedule, the Schedule of Values, the GMP Setting Drawings, Specifications, Assumptions and Clarifications, and the CPM Schedule attached hereto shall or shall be construed to replace or supersede any other provision of any of the other CMAR Construction Contract Documents. If there is a conflict between anything in the GMP Schedule, the Schedule of Values, the GMP Setting Drawings, Specifications, Assumptions and Clarifications, or the CPM Schedule
attached hereto and any provision of any other CMAR Construction Contract Document, the provision of the other CMAR Construction Contract Document shall be given effect and the conflicting material in the GMP Schedule, the Schedule of Values, the GMP Setting Drawings, Specifications, Assumptions and Clarifications, or the CPM Schedule attached hereto will not be given effect. Without affecting the generality of the foregoing:

- All costs and expenses of completing the Construction Work in accordance with the Construction Documents and the other CMAR Construction Contract Documents and all costs and expenses of performing the CMAR’s obligations under the CMAR Construction Contract Documents during the Construction Phase are included in the Guaranteed Maximum Price, and

- Nothing in the GMP Schedule, the Schedule of Values, the GMP Setting Drawings, Specifications, Assumptions and Clarifications, or the CPM Schedule attached hereto shall or shall be construed to relieve CMAR of its obligation to complete the Construction Work in accordance with the Construction Documents and the other CMAR Construction Contract Documents or to relieve CMAR of any of its obligations under any of the other CMAR Construction Contract Documents.

CMAR

OWNER:
ARIZONA BOARD OF REGENTS
For and on behalf
ARIZONA STATE UNIVERSITY

(Signature)
(Printed Name & Title)
Date Signed:________________________

(Signature)
(Printed Name & Title)
Date Signed:________________________

OWNER PROJECT MANAGER

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

(Signature)

(Printed Name)
Exhibit A

to

Construction Contract Between Owner and Construction Manager at Risk

Operating Manual for Construction Manager at Risk Projects

[NOTE: Attach a copy of the Operating Manual, which will be in the same form as attached to the CMAR Design Phase Services Contract]
Exhibit B
to
Construction Contract Between Owner and Construction Manager at Risk

General Conditions

[NOTE: Attach a copy of the General Conditions, which will be in the same form as attached to the CMAR Design Phase Services Contract]
Exhibit C

to

Construction Contract Between Owner and Construction Manager at Risk

Owner's General Project Requirements

[NOTE: Attach a copy of the Owner's General Project Requirements, which will be in the same form as attached to the CMAR Design Phase Services Contract]
Exhibit D
to
Construction Contract Between Owner and Construction Manager at Risk

GMP Schedule

[NOTE TO USERS: Attach the GMP Schedule]
Exhibit E
to
Construction Contract Between Owner and Construction Manager at Risk

Schedule of Values

[NOTE TO USERS: Attach the Schedule of Values]
Exhibit F

to
Construction Contract Between Owner and Construction Manager at Risk

GMP Setting Drawings, Specifications, Assumptions and Clarifications

[NOTE TO USERS: Attach the GMP Setting Drawings, Specifications, Assumptions and Clarifications]
Exhibit G

to
Construction Contract Between Owner and Construction Manager at Risk

CPM Schedule

[NOTE TO USERS: Attach the CPM Schedule]