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) © NOVEMBER 2008 EDITION
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>APPENDIX A</th>
<th>SPECIFIC TERMS AND PROVISIONS OF THE DESIGN PHASE SERVICES AGREEMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARTICLE 1.</td>
<td>GENERAL</td>
</tr>
<tr>
<td>ARTICLE 2.</td>
<td>DESIGN PHASE SERVICES</td>
</tr>
<tr>
<td>ARTICLE 3.</td>
<td>OWNERSHIP OF DOCUMENTS</td>
</tr>
<tr>
<td>ARTICLE 4.</td>
<td>CONTRACT TIME</td>
</tr>
<tr>
<td>ARTICLE 5.</td>
<td>CMAR DESIGN PHASE SERVICES FEE</td>
</tr>
<tr>
<td>ARTICLE 6.</td>
<td>PROCEDURE FOR PAYMENT</td>
</tr>
<tr>
<td>ARTICLE 7.</td>
<td>TERMINATION OR SUSPENSION OF THE CMAR DESIGN PHASE SERVICES CONTRACT DOCUMENTS</td>
</tr>
<tr>
<td>ARTICLE 8.</td>
<td>REPRESENTATIVES OF THE PARTIES</td>
</tr>
<tr>
<td>ARTICLE 9.</td>
<td>INSURANCE AND BONDING</td>
</tr>
<tr>
<td>ARTICLE 10.</td>
<td>OTHER PROVISIONS</td>
</tr>
<tr>
<td>ARTICLE 11.</td>
<td>ADDITIONAL APPROVALS OF ARIZONA BOARD OF REGENTS AND OTHERS</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EXHIBIT A</th>
<th>OPERATING MANUAL FOR CONSTRUCTION MANAGER AT RISK PROJECTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>EXHIBIT B</td>
<td>GENERAL CONDITIONS</td>
</tr>
</tbody>
</table>

Page 2 of 12
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.
7. **Section 6.1**: Progress payments.

<table>
<thead>
<tr>
<th>Design Development Subphase</th>
<th>Allocated Portion of Design Phase Services Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program Development</td>
<td>$_________________________</td>
</tr>
<tr>
<td>Schematic Design</td>
<td>$_________________________</td>
</tr>
<tr>
<td>Design Development</td>
<td>$_________________________</td>
</tr>
<tr>
<td>Construction Documents</td>
<td>$_________________________</td>
</tr>
</tbody>
</table>

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 its 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)                                                                 (Signature)
(Printed Name) ____________________________   (Printed Name) ____________________________

(Title) ____________________________   (Title) ____________________________

Date: ____________________________   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 Operating Manual for Construction Manager at Risk Projects (“Operating Manual”) and the General Conditions are attached hereto as Exhibits A and B.

1.2 All terms defined in the Operating Manual 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, phrases and abbreviations in the CMAR Design Phase Services Contract Documents will have their ordinary and common meaning 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. The CMAR Design Phase Services Contract Documents are hereby incorporated by reference and 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 applicable terms and conditions of 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 There will be a contract for construction services and the for CMAR to complete the construction work only after 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 of Attachment 2 to the Operating Manual and must contain all the required attachments; and the other conditions described in the second bullet of Section 1.1 of the Operating Manual are all satisfied. 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 own any and all Construction Cost Estimates, and all other estimates, 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:

<table>
<thead>
<tr>
<th>Part of the Work</th>
<th>Interim Milestone Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4.1.3 The amount of liquidated damages for each Calendar Day will be __________ (4) ____________ Dollars ($__________ (4) ________).
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:

<table>
<thead>
<tr>
<th>Design Development Subphase</th>
<th>Allocated Portion of Design Phase Services Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program Development</td>
<td>$ (7)</td>
</tr>
<tr>
<td>Schematic Design</td>
<td>$ (7)</td>
</tr>
<tr>
<td>Design Development</td>
<td>$ (7)</td>
</tr>
<tr>
<td>Construction Documents</td>
<td>$ (7)</td>
</tr>
</tbody>
</table>

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**. For 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** and all **Subcontractors** shall 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 any other evidence concerning all communications, direct and indirect costs and all other matter related to the Design Phase Services. Upon request by the **Owner**, at any time during or after the Design Phase Services, a legible copy or the original of any or all such records shall be timely produced by the **CMAR**. Upon request by the **Owner**, the **CMAR** shall timely submit to **Owner** 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
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. As of the date of this CMAR Design Phase Services Contract, CMAR represents and warrants to Owner that it 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 would be equal to the portion of Owner’s Project Budget available for payment 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 prequalified 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. If Owner agrees to execute and deliver the CMAR Construction Contract, CMAR represents it has the necessary financial resources to fulfill its obligations under the CMAR Construction Contract Documents (including, without limitation, the financial capacity to obtain and deliver the required Payment Bond and Performance Bond). Further, CMAR represents it 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. Notwithstanding anything in the CMAR Design Phase Services Contract Documents to the contrary, 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

____________________________________

(Owner)

__________________________

(Signature)

__________________________

(Printed Name)

__________________________

(Title)

____________________________________

Date: __________________________

__________________________

(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