

# Pre-Build Design Agreement

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## DESIGN-BUILD PRECONSTRUCTION SERVICES AGREEMENT

### CAPROCK CUSTOM CONSTRUCTION, INC. :

P.O. Box 2439 Rockwall, TX 75087

PHONE: 469.774.4041

FAX: 972.722.7994

EMAIL: joe@caprockcustomhomes.com

DATE:

OWNER'S NAME:

PROJECT ADDRESS:

### I. PARTIES

This contract (hereinafter referred to as "Agreement") is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between \_\_\_\_\_ and \_\_\_\_\_, (hereinafter referred to as "Owner"); and Caprock Custom Construction, Inc., (hereinafter referred to as "Contractor"). In consideration of the mutual promises contained herein, Contractor agrees to perform the following work:

### II. GENERAL BACKGROUND INFORMATION AND ANTICIPATED SCOPE OF WORK

Owner and Contractor have been discussing Owner's project referred to above. Owner does not yet have a fully detailed set of plans for this project which are generally suitable for bidding or construction by a Contractor.

Owner agrees to meet with Contractor from time to time in order to provide information to Contractor regarding design, cost, function, and aesthetics of the project.

Owner would like Contractor to develop plans and certain specifications which are generally suitable for construction by Contractor.

## A. ANTICIPATED SCOPE OF WORK

The scope of the plans and specifications to be provided by Contractor is strictly limited to the following (both parties initial the appropriate items):

- \_\_\_\_\_ Conceptual Design Sketches
- \_\_\_\_\_ Complete New Architectural Plan
- \_\_\_\_\_ Foundation Plan\*\*\*\* not performed until ready for construction
- \_\_\_\_\_ Framing Plan
- \_\_\_\_\_ Exterior Elevations
- \_\_\_\_\_ Interior Elevations (including elevations for kitchen and baths)
- \_\_\_\_\_ Interior Finish Schedule For Doors, Hardware and Trim
- \_\_\_\_\_ Retaining wall Schedule
- \_\_\_\_\_ Drainage Elevation Schedule
- \_\_\_\_\_ Project Budget
- \_\_\_\_\_ Engineering Details and Outside Consultants Listed Below

1. Architect
2. Foundation Engineer
3. Interior Designer
4. HVAC
5. Septic
6. City of \_\_\_\_\_ Building Department
7. Surveyor

Owner expressly authorizes Contractor to rely on the accuracy of any existing reports (e.g., surveys, engineering reports, etc.) furnished to Contractor by Owner.

**1. TARGET BUDGET RANGE:** The target budget range for the construction phase of the project is: \$\_\_\_\_\_, *inclusive of the following:* plans, permits, outside consultant fees, Change Orders after the initial plans have been prepared, public and private utility company hook-up fees, any work inconsistent with the design criteria set forth below.

**2. DESIGN CRITERIA FOR ESTABLISHING TARGET BUDGET RANGE:** Due to the fact that the plans and specifications are not fully developed at the time this Agreement is entered into, the target budget price for construction is based on the following design criteria:

- a. \_\_\_\_\_ square footage of living area
- b. \_\_\_\_\_ square footage of garage areas \_\_\_\_\_ # of garages
- c. \_\_\_\_\_ square footage of porches
- d. \_\_\_\_\_ total square footage under roof
- e. \_\_\_\_\_ # of stories
- f. \_\_\_\_\_ type of driveway
- g. \_\_\_\_\_ type of roofing
- h. \_\_\_\_\_ type of windows and doors

### **III. GENERAL CONDITIONS**

#### **A. TIME TO COMPLETE INITIAL DESIGN WORK ABOVE**

The date when plans suitable for Contractor's bidding purposes will be ready is estimated to be: \_\_\_\_\_, 2012.

#### **B. CONTRACTOR'S COMPENSATION AND BILLING**

Owner agrees to pay Contractor in one of the methods set forth below:

**1. LUMP SUM AMOUNT:** Owner agrees to pay Contractor the Lump Sum Amount of \_\_\_\_\_ for pre-construction services (exclusive of the cost of Architectural plans, fees of outside consultants, material design takeoffs, Engineering costs, a foundation engineering study). However, as the scope of the design work is performed, then Contractor will bill as needed for payment for the cost of Architectural plans, fees of outside consultants, Engineering costs, a foundation engineering study. Contractor will bill for items on a periodic basis. Payment is due within seven (7) days of receipt of Contractor's invoice.

#### **C. FUTURE CONSTRUCTION WORK AND CREDIT FOR DESIGN WORK**

Owner has indicated a willingness to work with Contractor in the construction phase of the project, if the project can be built for a cost that is within Owner's budget. Owner and Contractor will enter into a new and separate agreement covering the construction phase of the project. Contractor agrees to credit back to Owner 100% of the total fees paid to Contractor for his time spent performing work under this preconstruction services agreement. All work performed shall be included in the total cost of work and monies expended shall be credited in the residential construction contract.

#### **D. USE OF PLANS AND SPECIFICATIONS**

The plans and specifications are being developed for the sole use of the Contractor named in this Agreement. Owner may furnish these plans and specifications to an architect or other competent design / Build professional. **Owner's new architect or design professional will then take complete responsibility for the accuracy, suitability of all plans and building cost estimates.**

#### **E. INDEMNIFICATION**

If the Contractor who is a party to this Agreement does not build this project, then he is fully released, held harmless, and indemnified by Owner from liability and claims of every kind (including attorney's fees) related to the use of these drawings, budget estimates, specifications and engineering by any and all persons subsequently engaged by Owner or a future Owner of this property to design or build the project.

The Contractor named in this Agreement is hereby released, held harmless, and indemnified from all claims of every kind whatsoever (including attorney's fees) brought by any person or entity that result from alleged errors or omissions existing in the plans or specifications of Contractor *if* these plans are relied on in any way by anyone other than this Contractor and his designated agents in building or designing the project.

#### **F. TERMINATION**

Owner may terminate this Agreement at any time during the design phase by giving Contractor written notice of the termination and providing payment to Contractor for all services rendered (if any beyond initial payment) through the date of termination. Upon termination and payment for all work performed to date, all drawings, details, and estimates performed through the termination date by Contractor will be delivered to Owner, subject to the limitations in the "Use of Plans and Specifications" clause above. Contractor may terminate this Agreement if payments are not made to Contractor in accordance with the terms of this Agreement.

#### **G. DISPUTE RESOLUTION**

Any controversy or claim arising out of or related to this Agreement involving an amount of *less* than \$5,000 (or the maximum limit of the court) must be heard in the Small Claims Division of the Municipal Court in the county where the Contractor's office is located. Any controversy or claim arising out of or related to this Agreement which is over the dollar limit of the Small Claims Court must be settled by binding arbitration administered by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules. Judgment upon the award may be entered in any Court having jurisdiction thereof. The prevailing party in any legal proceeding related to this Agreement shall be entitled to payment of reasonable attorney's fees, costs, and expenses.

## **H. ENTIRE AGREEMENT**

This Agreement represents and contains the entire agreement between the parties. Prior discussions or verbal representations by the parties that are not contained in this Agreement are *not* a part of this Agreement.

## **I. ADDITIONAL LEGAL NOTICES REQUIRED BY STATE OR FEDERAL LAW**

See page(s) attached: \_\_\_\_ Yes XX No

## **J. ADDITIONAL TERMS AND CONDITIONS**

See page(s) attached: \_\_\_\_ Yes XX No

I have read and understood, and I agree to, all the terms and conditions contained in the Agreement above.

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### *Summation*

**During the pre-building design stage, the builder should take the time to slow the process down and allow you to absorb what is happening. This is the stage that the details of your dreams start to come to reality on a plan.**

**The builder should be a very important partner in the design of your home. It will be the builders job to create the projects final budget based on the specifications that are created with you. The builder should attend the architectural meetings with you to ensure the project , the builder, the budget and the owner are all on the same page.**

**The overall outside consultant expenditures at this time will be based on the size of the plan, the engineering plan required by lot topography, the engineering plan of the foundation, the soils test and the design fee of the plan itself. Depending on the home, the average cost is around \$10,000. These fees are part of the cost of building a house and will be honored by the bank as part of your down payment.**

**The price of construction is set by you and your builder. The initial budget you give the builder in the pre-build design phase will be adhered to during the entire design phase. Setting a low price here will result in a lower price home that has lower price (materials and construction) used to design the home. You cannot make a silk purse out of a sow's ear! Tract homes are designed and built at tract prices! If you want a quality built home, give the builder a budget that will allow a design and materials for a custom quality home. It does not need to be an exorbitant budget, but it does need to be sufficient. A better quality home that is smaller in square footage will hold its value and be easier, cheaper to maintain. It is more fun to have a house that you can afford to heat and cool than not!**