



Rice Construction Company

P.O. Box 445
Johnson City TX 78636
(830) 868-4108 Fax (830) 868-4208
www.riceconstructioncompany.com

DESIGN/BUILD COST PLUS CONTRACT - PERCENTAGE

THIS AGREEMENT, Made as of **(Current Date)**, In the Year of **(Current Year)**,

Between the Owner: **Contact Name**
Street Address
City, State Postal Code
Contact Telephone

And the Contractor: **Rice Construction Company**
TRCC #8015

For the Project: **Project Name**
Project Address

Construction Lender: **Lender Name**
Lender Address

ARTICLE 1. CONTRACT DOCUMENTS

1.1 The contract documents consist of this agreement, general conditions, construction documents, specifications, allowances, finish schedules, application for payment, information disclosure statement, all addenda issued prior to execution of this agreement and all change orders or modifications issued and agreed to by both parties. These contract documents represent the entire agreement of both parties and supersede any prior oral or written agreement.

ARTICLE 2. SCOPE OF WORK

2.1 The Owner agrees to purchase and the Contractor agrees to prepare a set of **CAD** design documents and construct the above mentioned structure and fixtures attached thereto in **Johnson City, Blanco County, Texas** according to the construction documents, allowances, finish schedules, all addenda, change orders, modifications and specifications set forth in the specification booklet.

ARTICLE 3. DESIGN DEVELOPMENT

3.1 Based upon the mutually agreed upon program and layout established in the Initial Meeting, the contractor/designer/architect, shall prepare a set of schematic design documents for review by the owner. These documents shall include basic floor plans and a front elevation, as well as any specific information requested by the owner and agreed to by contractor/designer/architect in the Initial Meeting. These are usually hand drawings to show room sizes and adjacencies.

3.2 The owner and contractor/designer/architect will review the drawings and discuss changes, options, questions or general concerns they may have regarding the design. The contractor/designer/architect will then prepare a set of **CAD** design development documents showing the modified floor plans, elevations and electrical layouts.

3.3 Upon final approval of the design, the production of the plans shall take approximately **(number of days)** business days to complete.

3.4 The final meeting shall consist of the owner receiving the completed plans. The final construction documents shall consist of **5 (five)** complete sets of the following documents; floor plans, all elevations, typical details and sections, foundation plans, electrical layouts, framing plans, and roof plans.

3.5 The cost of the plans will be calculated at **\$2.25** per square foot of area under roof.

3.6 At the receipt of the design development documents, a payment of half the total design fees will be due.

3.7 At the receipt of final plans the owner shall pay contractor/designer/architect, for the final amount due plus any additional services and/or reimbursable expenses accrued. Complete payment is due upon receipt of the design documents.

ARTICLE 4. THE CONTRACT PRICE

4.1 The construction contract shall be calculated on a cost plus coordination basis, with all labor, materials, permits and insurance figured as costs.

Construction coordination services shall be charged at 30% of costs. (Calculated at 19% overhead and 10% profit)

4.2 Pre-construction estimates for construction costs and coordination are approximately **(written Dollars, (\$000,000.00))**, Closing costs shall be paid by the Owner.

4.3 The Owner and the Contractor acknowledge that the Owner will pay a sum of **(written Dollars, (\$000,000.00))**, upon signing of this contract and before construction begins as a deposit and part of the purchase price of the project. **(Usually around 15% of project)**

ARTICLE 5. PROGRESS PAYMENTS

5.1 The Owner will make payments to the contractor every two weeks based on invoices for labor and materials submitted. Construction coordination fees shall also be paid with those draws. Owner shall make payments to contractor within **5 days** after request by contractor. Should the owner fail to make payment, contractor may charge a penalty of 12% annually upon the unpaid amount until paid.

5.2 If payment is not received by the Contractor within **10** days after delivery of payment demand for work satisfactorily completed, contractor shall have the right to stop work or terminate the contract at his option. Termination by Contractor under the provisions of this paragraph shall not relieve the Owner of the obligations of payments to Contractor for that part of the work performed prior to such termination. Termination by Owner under the provisions of this paragraph shall not relieve the Owner of the obligations of payments to Contractor for that part of the work performed prior to such termination.

ARTICLE 6. DUTIES OF THE CONTRACTOR

- 6.1** All work shall be in accordance to the provisions of the plans and specifications. All systems shall be in good working order.
- 6.2** All work shall be completed in a workman like manner, and shall comply with all applicable national, state and local building codes and laws.
- 6.3** All work shall be performed by licensed individuals to perform their said work, as outlined by law.
- 6.4** Contractor shall obtain all permits necessary for the work to be completed.
- 6.5** Contractor shall remove all construction debris and leave the project in a broom clean condition.
- 6.6** Upon satisfactory payment being made for any portion of the work performed, Contractor shall furnish a full and unconditional release from any claim or mechanics' lien for that portion of the work for which payment has been made.

ARTICLE 7. OWNER

- 7.1** The Owner shall communicate with subcontractors only through the Contractor.
- 7.2** The Owner will not assume any liability or responsibility, nor have control over or charge of construction means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the project, since these are solely the Contractor's responsibility.

ARTICLE 8. TIME OF COMPLETION

- 8.1** The projected completion date shall be approximately **300** days from the first day of construction, however any change orders and/or unusual weather might delay or otherwise affect the completion date. The contract execution date shall be **(date)**.

ARTICLE 9. CHANGE ORDERS AND FINISH SCHEDULES

- 9.1** A Change Order is any change to the original plans and/or specifications. All change orders need to be agreed upon in writing, including cost, additional time considerations, approximate dates when the work will begin and be completed, a legal description of the location where the work will be done and signed by both parties. 50% of the cost of each change order will be paid prior to the change, with the final 50% paid upon completion of the change order. A 30% fee shall be added to all change orders and overages in excess of initial allowances. Additional time needed to complete change orders shall be taken into consideration in the project completion date.
- 9.2** Completed Finish Selection Schedules shall be submitted to the Contractor prior to the first day of construction.
- 9.3** Any delays or changes in finish selection schedules will delay the projected completion date.

ARTICLE 10. INSURANCE

10.1 The Owner will keep in force a Builder's Risk Insurance Policy on the said property to protect both owner's and contractor's interests until construction is completed. Construction will not begin until proof of coverage is in place, and construction may be halted upon notification of a lapse of this coverage.

10.2 The Owner will purchase and maintain property insurance to the full and insurable value of the project, in case of a fire, vandalism, malicious mischief or other instances that may occur.

10.3 The Contractor shall purchase and maintain General Liability and needed Workman's Compensation insurance coverage as required by law and deemed necessary for his own protection.

ARTICLE 11. GENERAL PROVISIONS

11.1 If conditions are encountered at the construction site which are subsurface or otherwise concealed physical conditions or unknown physical conditions of an unusual nature, which differ naturally from those ordinarily found to exist and generally recognized as inherent in construction activities, the Owner will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, and/or time required for, performance of any part of the work, will negotiate with the Contractor an equitable adjustment in the contract sum, contract time or both.

ARTICLE 12. HAZARDOUS MATERIALS, WASTE AND ASBESTOS

12.1 Both parties agree that dealing with hazardous materials, waste or asbestos requires specialized training, processes, precautions and licenses. Therefore, unless the scope of this agreement includes the specific handling, disturbance, removal or transportation of hazardous materials, waste or asbestos, upon discovery of such hazardous materials the Contractor shall notify the Owner immediately and allow the Contractor to contract with a properly licensed and qualified hazardous material contractor. Any such work shall be treated as a Change Order resulting in additional costs and time considerations.

ARTICLE 13. ARBITRATION OF DISPUTES

13.1 Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

ARTICLE 14. WARRANTY

14.1 At the completion of this project, Contractor shall execute an instrument to Owner warranting the project against defects in workmanship or materials utilized as provided by the Texas Residential Construction Commission. The manufacturers warranty will prevail. No legal action of any kind relating to the project, project performance or this contract shall be initiated by either party against the other party after **10 years** beyond the completion of the project or cessation of work.

ARTICLE 15. TERMINATION OF THE CONTRACT

15.1 Should the Owner or Contractor fail to carry out this contract, with all of its provisions, the following options and stipulations shall apply:

15.1.1 If the Owner or the Contractor shall default on the contract, the non-defaulting party may declare the contract is in default and proceed against the defaulting party for the recovery of all damages incurred as a result of said breach of contract, including a reasonable attorney’s fee. In the case of a defaulting Owner, the Earnest money herein mentioned shall be applied to the legally ascertained damages.

15.1.2 In the event of a default by the Owner or Contractor, the non-defaulting party may state his intention to comply with the contract and proceed for specific performance.

15.1.3 In the case of a defaulting Owner, the Contractor may accept, at his option the earnest money as shown herein as liquidated damages, should earnest money not cover the expenses to date, the Contractor may make claim to the Owner for all work executed and for proven loss with respect to equipment, materials, tools, construction equipment and machinery, including reasonable overhead, profit and damages applicable to the property less the earnest money.

ARTICLE 16. ATTORNEY FEES

16.1 In the event of any arbitration or litigation relating to the project, project performance or this contract, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses.

ARTICLE 17. ACCEPTANCE AND OCCUPANCY

17.1 Upon completion, the project shall be inspected by the Owner and the Contractor, and any repairs necessary to comply with the contract documents shall be made by the Contractor.

17.2 The Owner shall not occupy the property until final payment has been received by the Contractor and final inspections by the governing body have been completed.

17.3 Occupancy of the project by the Owner in violation of Article 17.2, shall constitute unconditional acceptance of the project and a waiver of any defects or uncompleted work.

WITNESS our hand and seal on this _____ day of _____, 20__.

Signed in the presence of:

Witness

Witness

Contractor Signature

Owner Signature