

XYZ Construction

HOME IMPROVEMENT CONTRACT

XYZ Construction
 "When you need it done right!"
 4444 Fifth St., Suite 666
 Lancaster, CA 93535
 Phone (661) xxx-xxxx
 Cell (661) xxx-xxxx
 Ca. Contr. Lic. #000000

Owner's Name: <u>JOHN Q. CUSTOMER</u>		Owner's Address: <u>949 GRANT ST</u>			
Owner's City: <u>BENICIA</u>	Owner's Zip Code: <u>94510</u>	Owner's Home Phone: <u>707-747-4735</u>	Owner's Work Phone: <u>800-820-5656</u>		
Project Address: <u>747 BOEING ST, SUITE 757</u>		Project City: <u>CONCORD</u>	Project Zip Code: <u>94556</u>	Project Phone: <u>510-015-1111</u>	Date: <u>8-10-03</u>
Construction Fund Holder Name (If any): <u>WASHINGTON MUTUAL</u>		Construction Fund Holder Address: <u>413 LOOT STREET</u>		Construction Fund Holder City, State, Zip: <u>BUCKTOWN, CA 99999</u>	

I/WE, the Owner(s) of the premises described above authorize XYZ Construction, hereinafter referred to as "Contractor", to furnish all materials and labor necessary to improve these premises in a good, workmanlike and substantial manner according to the following terms, specifications and provisions:

a. Description of the work and the materials to be used: Tear off old built-up roof down to deck. Apply Georgia Pacific dens-deck board to entire roof. Apply Polyglass Modified Bitumen Roofing system as per manufacturers recommendations.

b. Description of any areas that will NOT be worked on: Metal Roof over front logia

This list of specifications may be continued on subsequent pages (see page number below).

c. Payment: Contractor proposes to perform the above work, (subject to any additions and/or deductions pursuant to authorized change orders), for the

Total Sum of \$ 14,000.00

Down Payment (if any) \$ 1000.00

PAYMENT DUE WHEN

AMOUNT

- | | |
|--|------------------|
| 1. <u>After Tearout</u> | <u>\$3000.00</u> |
| 2. <u>After Dens-Deck applied.</u> | <u>\$2000.00</u> |
| 3. <u>After 50 % of roof completed</u> | <u>\$5000.00</u> |
| 4. <u>At completion of job</u> | <u>\$3000.00</u> |

Payments to be made in installments as follows:

By check upon receipt of invoice for the draws as described under "Payment Due When" to the left.

d. Commencement and Completion of Work: Per section 7159 (1) of the Calif. Business and Professions Code, failure, without lawful excuse, of any contractor to substantially commence work within (20) days after the approximate date specified below when the work will begin is a violation of the Contractors' License Law. Substantial commencement shall mean either the physical delivery of materials onto the premises or the performance of any labor.

Approximate Start Date: 8-21-03

Approximate Completion Date: 9-21-03

e. Acceptance: This contract is approved and accepted. I (we) understand there are no oral agreements or understandings between the parties of this agreement. The written terms, provisions, plans (if any) and specifications in this contract is the entire agreement between the parties. Changes in this agreement shall be done by written change order only and with the express approval of both parties. Changes may incur additional charges. As described in provision (1) on page two, this contract is subject to approval by Contractor who may cancel after refunding any down payment.

Additional Provisions Of This Contract Are On The Reverse Side And May Be Continued On Subsequent Pages (see page number below). Read Notice To Owner on page two (2) before signing. Read "Arbitration of Disputes" provision on page two (2), provision 17 and the NOTICE following this provision. If you agree to arbitration, initial on the line below the NOTICE where indicated. Also, initial in the same place on EACH COPY of this contract.

NOTE: This contract may be withdrawn after 30 days from 8-10-03 if not approved and signed by both parties.

<p>Field Representative</p> <p>In witness thereof the owner(s) have hereunto signed their name(s) this <u>30</u> day of <u>August</u> <u>2003</u> and acknowledges a true copy of this contract.</p> <p>By _____ <u>3355698</u></p> <p>company representative State Registration Number</p>
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_____	_____
approved and accepted (owner)	date
_____	_____
approved and accepted (owner)	date
_____	_____
reviewed and approved (contractor)	date

You, the Buyer, may cancel this transaction at any time prior to midnight of the third business day (in the case of disaster repairs, seventh business day) after the date of this transaction. See the attached Notice of Cancellation form for an explanation of this right. You, the Homeowner (Buyer) or Tenant have the right to require the Contractor to have a performance and payment bond, or funding control approved by the Registrar of Contractors. The cost of this bond may be paid by the Owner.

ADDITIONAL PROVISIONS- Unless otherwise specified herein, the following additional provisions are expressly incorporated into this contract:

- 1. Contractors Right to Cancel.** Owner understands that final approval of this contract rests with Contractor and Contractor's installation and estimation departments. In the event this contract is not approved by Contractor, any payment made hereunder shall be refunded to Owner and this contract shall be null and void of no effect. Contractor's commencement of work as scheduled or Contractor's signature herein shall constitute approval of this contract by Contractor.
- 2. Contract, Plans, Specifications, Permits and Fees.** The work described in this contract shall be done according to the plans and the plan specifications (if any) except in the case of conflict when the provisions of this contract shall have control over both the plans and the plan specifications. All required building permits will be paid for by owner and obtained by Contractor. All other charges, taxes, assessments, fees etc., of any kind whatsoever, required by any government body, telephone or utility company or the like shall be paid for by Owner.
- 3. Property Lines.** Owner is responsible to locate and inform Contractor of the location of all property lines. At the discretion and direction of Contractor, Owner may be required to provide at Owner's expense, a licensed surveyor's map of the property showing the property lines.
- 4. Installation.** Contractor has the right to subcontract any part of, or all of, the work herein.
- 5. Change Orders.** Should Owner, construction lender, or any government body or inspector require any modification to the work covered under this contract, any cost incurred by Contractor shall be added to the contract price as extra work and Owner agrees to pay Contractor his normal selling price for such extra work. All extra work as well as any other modifications to the original contract shall be specified and approved by both parties in a written change order. All change orders shall become a part of this contract and shall be incorporated herein.
- 6. Owner's Responsibility: Insurance etc.** Owner is responsible for the following: (1) to see all necessary water, electrical power, access to premises, and toilet facilities are provided on the premises. (2) to provide a storage area on the premises for equipment & materials. (3) to relocate and protect any item that prevents Contractor from having free access to the work areas such as but not limited to TV or radio antennas, vehicles, tools, clothing, furniture, draperies, or garden equipment. If Owner fails to relocate such items, Contractor may relocate these items as needed but in no way is Contractor responsible for damage to these items during their relocation and during the performance of the work. (4) to obtain permission from the owner(s) of adjacent property(ies) that Contractor must use to gain access to work areas. Owner agrees to be responsible and to hold Contractor harmless and accept any risks resulting from the use of adjacent property(ies) by Contractor. (5) to correct any existing defects which are recognized during the course of the work. Contractor shall have no liability for correcting existing defects in such, but not limited to, dry rot, structural defects, or code violations. (6) to maintain property insurance with Fire, Course of Construction, all Physical Loss with Vandalism and Malicious Mischief clauses attached, in a sum at least equal to the contract price, prior to and during performance of this contract. If the project is destroyed or damaged by accident, disaster, calamity, theft or vandalism, work materials supplied by Contractor in reconstructing or restoring the project shall be paid for by Owner as extra work.
- 7. Delay.** Contractor shall not be held responsible for any damage occasioned by delays resulting from: work done by Owner's subcontractors, extra work, acts of owner, or owner's agent including failure of owner to make timely progress payments or payments for extension of shortages of material and/or labor, bad weather, fire, strike, war, governmental regulations or any other contingencies unforeseen by Contractor or beyond Contractor's reasonable control.
- 8. Surplus Materials and Salvage.** Any surplus materials left over after this contract is completed are the property of Contractor and no credit is to be given to Owner for any surplus materials. All salvage resulting from work under this contract is the property of Contractor.
- 9. Cleanup & Advertising.** Upon completion, and after removing all debris and surplus materials, wherever possible, Contractor will leave premises neat, broom clean condition. Owner hereby grants to Contractor the right to display signs at the job site for the period of time starting at the date of signing of this contract and continuing uninterrupted for a period of (14) days past the date the job is completed and payment in full is made. Owner grants Contractor the right to publish the project street address on a "references" list which may be given to prospective customers.
- 10. Unanticipated Conditions & Concealed Damage.** Expense incurred because of unusual or unanticipated conditions shall be paid for by owner as extra work (conditions such as, but not limited to, ground conditions that require fill, or unusually hard soil, rocky soil, or the presence of ground water). Contractor will inform Owner of any dry rot or other deterioration of anticipated condition which is concealed and is discovered during the course of the work. Contractor is not responsible to repair any such discovered deterioration or condition and any work to be done by Contractor to remedy such will only be done as extra work in a written change order.
- 11. Hazardous Substances.** Owner understands that Contractor is not qualified as a Hazardous Material Handler or Inspector or as a Hazardous Material Abatement contractor. Should any hazardous substances as defined by the government be found to be present on the premises, it is the Owners' responsibility to arrange and pay for abatement of these substances.
- 12. Right to Stop Work and to Withhold Payment on Labor and Materials.** If any payment is not made to Contractor as per this contract, Contractor shall have the right to stop work and keep the job idle until all past due progress payments are received. Contractor is further excused by Owner from paying any material, equipment and/or labor suppliers or any subcontractors (hereinafter collectively called "suppliers"), during the period that Owner is in arrears in making payments to Contractor for bills received during that same period. If these same "suppliers" make demand upon Owner for payment, Owner may make such payment on behalf of Contractor and Contractor shall reimburse Owner for this amount at such time that Owner becomes current with Contractor for all past due payments. Owner is responsible to verify the true amounts owed by Contractor to these same "suppliers", prior to making payment on behalf of Contractor. Owner shall not be entitled, under any circumstances, to collect as reimbursement from Contractor any amount greater than that exact amount actually and truly owed by Contractor to these same "suppliers", for work done or materials supplied on Owner's job.
- 13. Payment.** Payments shall be made per Sec. 7159 (e) and (f) of the California Business and Professions Code. Pursuant to Sec. 7159 (f) of the California Business and Professions Code, upon satisfactory payment being made for any portion of the work performed, the contractor shall, prior to any further payment being made, furnish to the person contracting for this home improvement, a full and unconditional release from any claim or mechanic's lien pursuant to Section 3114 of the Civil Code, for that portion of the work for which payment has been made.
- 14. Completion.** When applicable, Owner agrees to record a Notice Of Completion within five days after project completion and after the project passes final building inspection. Should owner fail to sign and record a Notice Of Completion within this five day period, the owner authorizes Contractor to be Owner's agent to sign and record a Notice Of Completion on the behalf of Owner. This agency is irrevocable and Contractor is acknowledged to be a party of interest in this matter by Owner. Contractor may use any necessary force to deny occupancy of the project until Contractor has received all payments that are due Contractor under this contract, excluding any retention payment, and until recording of the Notice Of Completion.
- 15. Collection.** Owner agrees to pay all collection fees and charges including but not limited to all legal and attorney fees that result should Owner default in payment of this contract. Overdue accounts are subject to interest charged at the rate of 10% per annum.

16. Legal Fees. In the event litigation arises out of this contract, prevailing party(ies) are entitled to all legal, arbitration, and attorney fees.

17. Arbitration of Disputes. Any controversy or claim arising out of or relating to this proposal/contract, or the breach thereof, shall be settled by arbitration in accordance with the applicable Construction Industry Arbitration Rules of the American Arbitration Association which are in effect at the time the demand for arbitration is filed. A judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any arbitration award shall be subject to correction and/or vacation for the reasons stated in the Code of Civil Procedure. The arbitrator shall award reasonable attorneys fees and expenses to the prevailing party. After being given due notice, should any party fail to appear at or participate in the arbitration proceedings, the arbitrator shall make an award based upon the evidence presented by the party(ies) who do (does) appear and participate. Notwithstanding Contractor's right to arbitrate, Contractor does not waive any of its lien rights.

NOTICE: By initialing in the space below you are agreeing to have any dispute arising out of the matters included in the "arbitration of disputes" provision decided by neutral arbitration as provided by California law and you are giving up any rights you might possess to have the dispute litigated in a court or jury trial. By initialing in the space below you are giving up your judicial rights to discovery and appeal, unless those rights are specifically, included in the "arbitration of disputes" provision. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of the Business and Professions Code or other applicable laws. Your agreement to this arbitration provision is voluntary.

We have read and understand the foregoing and agree to submit disputes arising out of the matters included in the "arbitration of disputes" provision to neutral arbitration.

I Agree to Arbitration: _____ (Initials of Owner)
I Agree to Arbitration _____ (Initials of Contractor)

NOTICE TO OWNER

"Unless the California Mechanics' Lien Law, any contractor, subcontractor, laborer, supplier, or other person or entity who helps to improve your property, but is not paid for his or her work or supplies, has a right to place a lien on your home, land, or property where the work was performed and to sue you in court to obtain payment.

This means that after a court hearing, your home, land, and property could be sold by a court officer, and the proceeds of the sale used to satisfy what you owe. This can happen even if you have paid your contractor in full if the contractor's subcontractors, laborers, or suppliers remain unpaid.

To preserve your right to file a claim of lien against your property, certain claimants such as subcontractors and material suppliers are required to provide you with a document called a preliminary notice. Contractors and laborers who contract with owners directly do not have to provide such notices since you are aware of their existence as an owner. A preliminary notice is not a lien against your property. Its purpose is to notify you of persons or entities that may have a right to file a lien against your property if they are not paid. It does not perfect their lien rights, a contractor or subcontractor, laborer, or laborer must file a mechanics lien with the county recorder which then becomes a recorded claim against your property. Generally, there is a minimum time allowed for filing a mechanics' lien against your property is 90 days after substantial completion of your project.

TO INSURE YOUR PROTECTION FOR YOURSELF AND YOUR PROPERTY, YOU MAY WISH TO TAKE ONE OR MORE OF THE FOLLOWING STEPS:

(1) Require that you contractor supply you with a payment and performance bond (not a license bond), which proves that the bonding company will either complete the project or pay damages up to the amount of the bond. The payment and performance bond, as well as a copy of the construction contract should be filed with the county recorder for your future protection. The payment and performance bond will usually cost from 1 to 5 percent of the contract amount depending on the contractor's bonding ability. If a contractor cannot obtain a bond, it may indicate his or her financial incapacity.

(2) Require that payments be made directly to subcontractors and material suppliers through a joint control. Funding services may be available, for a fee in your area, which will establish voucher or other means of payment to your contractor. These services may also provide you with lien waivers and other forms of protection. Any joint control agreement should include the addition of approval by the registrar.

(3) Issue joint checks for payment, made out to both your contractor and subcontractors or material suppliers involved in the project. The joint checks should be made payable to the persons or entities which send preliminary notices to you. Those persons or entities have indicated that they may have lien rights on your property, therefore you need to protect yourself. This will help to insure that all persons due payment are actually paid.

(4) Upon making payment on any completed phase of the project, and before making any further payments, require your contractor to provide you with unconditional "Waiver and Release" forms signed by each material supplier, subcontractor, and laborer involved in that portion of the work for which payment was made. The statutory lien releases are set forth in exact language in Section 3262 of the Civil Code. Most stationary stores will sell the "Waiver and Release" forms if your contractor does not have them. The material suppliers, subcontractors, and laborers that you obtain releases from are those persons or entities who have filed preliminary notices with you. If you are not certain of the material suppliers, subcontractors, and laborers working on your project, you may obtain a list from your contractor. On projects involving improvements to a single-family residence or a duplex owned by the individuals, the person signing these releases lose the right to file a mechanic's lien claim against your property. In other types of construction, this protection may still be important, but may not be as complete.

To protect yourself under this option, you must be certain that all material suppliers, subcontractors, and laborers have signed the "Waiver and Release" form. If a mechanics' lien has been filed against your property, it can only be voluntarily released by a recorded "Release of Mechanics' Lien" signed by the person or entity that filed the mechanics' lien against your property unless the lawsuit to enforce the lien was not timely filed. You should not make final payments until any and all such liens are removed. You should consult an attorney if a lien is filed against your property."

Contractors are required by law to be licensed and regulated by the contractors state license board, which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board, P.O. Box 26000, Sacramento CA 95826-0026. State law requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board in the license category in which the contractor is going to be working- If the total price of the job is \$500 or more (including labor and materials). Licensed contractors are regulated by laws designed to protect the public. If you contract with someone who does not have a license, the Contractors' State License Board may be unable to assist you with a complaint. Your only remedy against an unlicensed contractor may be in civil court, and you may be liable for damages arising out of any injuries to the contractor or his or her employees. You may contact the Contractors' State License Board to find out if this contractor has a valid license. The board has complete information on the history of licensed contractors, including any possible suspensions, revocations, judgments, and citations. The Board has offices throughout California. Please check the government pages of the White Pages for the office nearest you or call 1-800-321-CSLB for more information.