

XYZ Construction

CONSTRUCTION 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 O. 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 construct and/or 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.

This is Form GC1,
 Construction Contract
 to ORDER
 CALL ACT Contractors Forms
 at 1-(800) 820-5656

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

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 \$ 75,000.00

Down Payment (if any) \$ 10,000.00

PAYMENT DUE WHEN

AMOUNT

Payments to be made in installments as follows:

- | | |
|--|-------------------|
| 1. <u>After Tearout</u> | <u>\$15000.00</u> |
| 2. <u>After Dens-Deck applied.</u> | <u>\$10000.00</u> |
| 3. <u>After 50 % of roof completed</u> | <u>\$15000.00</u> |
| 4. <u>At completion of job</u> | <u>\$25000.00</u> |
| 5. _____ | <u>\$</u> |

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

d. **Commencement and Completion of Work:** Commencement of work shall mean the physical delivery of materials onto the premises and/or the performance of any labor and commencement shall be subject to permissible delays as described in provision (5) on the reverse side..

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.

Additional Provisions Of This Contract Are On The Reverse Side And May Be Continued On Subsequent Pages (see page number below).

| | |
|-------------------------------------|------|
| _____ | date |
| approved and accepted (owner/agent) | |
| _____ | date |
| approved and accepted (owner/agent) | |
| _____ | date |
| approved (contractor) | |

OWNER/AGENT, see the "Arbitration of Disputes" provision on page two (provision 14) 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.

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

1. 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, utility company or the like shall be paid for by Owner.

2. 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 property lines.

3. Installation. Owner understands that Contractor may or may not install the materials. Contractor has the right to subcontract any part of, or all of, the work herein.

4. 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.

5. Owner's Responsibility: Insurance etc. Owner is responsible for the following: (1) to see that 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 and 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 furniture, appliances, draperies, clothing and other personal effects, TV or radio antennas, vehicles, tools or garden equipment. In the event that Owner fails to relocate such items, Contractor may relocate these items as required 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 the 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 any existing defects such as, 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 Malignous 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 an accident, disaster or calamity, or by theft or vandalism, any work or materials supplied by Contractor in reconstructing or restoring the project shall be paid for by Owner as extra work.

6. Delay. Contractor shall not be held responsible for any delays occasioned by delays resulting from: work done by Owner's subcontractors, extra work ordered by owner or owner's agent including failure of owner to make timely progress payments or payments for extra work, 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.

7. Surplus Materials and Salvage. Any surplus materials left over after this contract has been completed are the property of Contractor and will be removed by same. No credit is due Owner on returns for any surplus materials because this contract is based upon a complete job. All salvage resulting from work under this contract is the property of Contractor.

8. Cleanup & Advertising. Upon completion, and after removing all debris and surplus materials, wherever possible, Contractor will leave premises in a neat, broom clean condition. Owner hereby grants to Contractor the right to display signs and advertise at the job site for the period of time starting at the date of signing of this contract and continuing uninterrupted until fourteen (14) days past the date the job is completed and payment in full has been made. Owner grants Contractor the right to publish the project street address on a "references" list which may be given to prospective customers.

9. 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 or unanticipated 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 done by Contractor to remedy such will only be done as extra work in a written change order.

10. 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.

11. 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.

12. 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.

13. Legal Fees. In the event litigation arises out of this contract, prevailing party(ies) are entitled to all legal, arbitration, and attorney fees. The court shall not be bound to award fees based on any set, court fee schedule but shall if it so chooses, award the true amount of all costs, expenses and attorney fees paid or incurred.

14. 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)

CALL TO ORDER Contractors Forms 820-5656

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.