

Appendix G

**HOME IMPROVEMENT
CONTRACT FORM**

HOME IMPROVEMENT CONTRACT FORM

_____ ("Owner") hereby retains _____ Construction ("Contractor") located at _____, California, bearing California Contractor's License No. _____, to construct the following described work of improvement (the "project"):

1. Description of Work. Contractor shall furnish all labor and materials necessary to construct and complete in a good, workmanlike and prompt manner, pursuant to the project plans and applicable law, the improvements to the project located at _____, California (the "premises") as described hereafter.

The following specifically described work is included:

- a.
- b.
- c.
- d.
- e.
- f.
- g.
- h.
- i.
- j.
- k.
- l.

All improvements and included in this Contract shall constitute the "work" of improvement as to the premises.

The project shall be constructed with workmanship and materials which are timely approved by the owner, which approval shall not be unreasonably withheld.

Owner shall timely communicate with the contractor to provide contractor an opportunity to exercise such approval rights as appropriate as the project progresses.

The following items of work are not included in the work:

- a.
- b.
- c.

- d.
- e.
- f.
- g.
- h.

2. Construction Funds. The financing for this project shall be provided by an appropriate loan to the owner from its lender whereby some other specified source of funds as provided below:

The construction of this project shall be managed from the financial standpoint by the _____ Builders Control.

3. Property Lines. As the work will be completed within the confines of the existing property where the premises is located, or has no responsibility to locate and point out property lines to the contractor. There will be no need for a licensed land surveyor map on the property.

4. Price and Terms.

All of the above work is to be completed in a workmanlike manner according to the standards, practices and applicable codes for the sum of \$_____. Contractor understands that it is completing all necessary and appropriate seismic, energy conservation, heating and cooling improvements pursuant to applicable law, and pursuant to all applicable standards and industry practice.

Progress payments for the work are to be made in the course of terms and conditions hereinafter set forth, upon owner's approval of completion of the work as to each indicated stage indicated hereafter.

Amount of Work or Services
Amount of Payment
To Be Performed or Description
Of Any Material and Equipment
To Be Supplied

- 20% When Ready for Concrete
- 20% When Rough Framed
- 20% When Drywall is Installed
- 20% When Tile Completed
- 20% When Job Completed

5. Certificate of Completion Work.

Owner shall receive written certification from Contractor of completion of each day. Owner has the right to retain an appropriate construction inspection service or consult to certify actual satisfactory completion on each of the above-referenced stages of work, before any progress payment is due, as stated hereinabove, which satisfactory completion shall not be reasonably withheld by owner and/or its construction inspection service.

The entire amount of the agreed price under this contract has to be paid within 35 days after completion, as defined under California law.

6. Time for Commencement and Completion of Work.

The work shall commence within 10 calendar days after receipt of written notice from Owner to Contractor to proceed (Notice to Proceed), and the work shall be substantially completed within ___ calendar days thereafter. This schedule is subject to any unforeseen delays which are not in anyway, the fault of the Contractor, and which are caused by acts of god, stormy weather, Owner changes or Owner answers, and uncontrollable waiver of difficulties (all of which must be specifically recognized by Owner in writing). Time is of the essence to this Contract. The above-stated substantial completion schedule shall be substantially adhered to during the term of this Contract unless Owner and Contractor agree in writing that a schedule modification is appropriate.

The term "substantial completion" as used herein, shall be defined as completion of the work suitable to meet the requirements of the issuance of the Certificate of Occupancy or Temporary Certificate of Occupancy by the City of _____ and/or approval of the Owner if no Certificate of Occupancy is required for the improvement contemplated by this Agreement.

7. Liquidated Damages and Delay of Completion.

The Owner and Contractor agree in the event that the work, which is the subject of this Contract is not substantially completed as defined herein by the scheduled completion date following the Notice to Proceed, the amount by which Owner shall have been damaged although substantial will be difficult to fix. The Contractor and Owner therefore agree that no liquidated damages are appropriate and that the only remedy which Owner may have is for extension of time of completion and that no damages for delays shall be awarded.

8. Contractor's Duty.

Subject to and in accordance with the terms and provisions of this Contract, Contractor shall construct, equip and furnish for the Owner the within described work which is described and reasonably inferable from the drawings herein described (and made a part hereof) as fully and to the same extent as attached hereto. In connection therewith, Contractor shall provide and furnish all materials, supplies, appliances, equipment, fixtures, tools, implements and all other facilities and all labor, supervision, transportation, utilities, storage and all other services as and when required for and in connection with the construction, furnishing, or equipment of the within described work, pursuant to the Contract documents. The Contract documents shall mean this Contract, those certain drawings and plans provided to the Contractor, including the purported general notes affixed thereto, and as modified by any written change orders executed to this Contract by the Owner and by the Contractor.

9. Contractor's Performance.

Contractor covets that the work which is does pursuant to this Contract shall be in good and workmanlike and to the reasonable satisfaction of the Owner, and that all materials furnished and used in connection therewith shall be new. Contractor shall cause all the materials and other parts of the work to be readily available as and when required or daily _____ equipment of the work provided for herein.

Contractor shall provide competent supervision as to all phases of the work, including all of its subcontractors and suppliers, and Contractor shall cause the work to be performed in accordance with the drawings, plans and specifications incorporated in this Contract, and all things indicated are reasonably inferable therefrom. Contractor shall provide a schedule of the work to Owner prior to or upon commencement of the work. If requested by Owner, Contractor shall also prepare and furnish project manning charts for all key trades and schedules for the persons and delivery of all material, together with periodic updating thereof.

The subcontractors who are retained by the Contractor to work on this project are:

_____, _____, _____.

10. Contractor's Lien Releases.

Upon satisfactory payment being made for any portion of the work performed, under applicable law, the Contractor shall refrain from any further payment being made, furnish to the Owner in full and unconditional relief from any claim or mechanic's lien pursuant to Section 3114 of the California Civil Code, for that portion of the work for which payment has been fully made.

11. Notice to Owner.

You, the homeowner (the "Buyer") have the right to require that your Contractor furnish you with a performance and payment bond or use a joint control approved by the Registrar of Contractors. 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 day of this transaction. See the attached Notice of Cancellation form for an explanation of this right.

Owner hereby designates the following Builders Control Service _____, _____ and _____, to administer payments to the subcontractors and suppliers on this project.

12. Allowance.

From time to time after commencement of the performance of the work, Owner may prepare and deliver to Contractor written communications of instructions for utilization of any allowance items provided for hereinabove. Such allowance items include, as described above: plumbing fixtures (_____); tile material (_____); floor covering (_____); in the amounts specified. Said amounts are all applied to the guaranteed maximum cost of this project of _____. In the event that the costs of performing the work, included in the allowance items is less than the amounts set forth above, the guaranteed maximum price for this Contract of _____ shall be reduced the amount of the allowance of amounts not expended. Should the cost of performing said allowance work exceed the amounts set forth above, then the Owner shall pay the Contractor such actual costs, pursuant to the Owner's specific written instructions, and the guaranteed maximum amount of the Contract shall be increased to such extent.

13. Delay.

Contractor shall be responsible for timely completion of the project consistent with the time limits set forth for the work herein. However, Owner shall also be responsible to cooperate in good faith with the Contractor, and not to interfere with the Contractor's progress of the work. Owner understands that Owner must provide timely input and counsel to the Contractor regarding inquiries and directions to proceed where reasonably requested by the Contractor. Any delay which is solely caused by acts of god, owner interference, stormy weather, labor trouble, acts of public bodies and/or failure of Owner to make progress payments shall not be the responsibility of Contractor.

14. Extra Work.

Should the Owner direct any modifications or additions to the work covered by this Contract, and should the Owner and Contractor agree that there is extra work involved, the cost shall be added to the Contract price.

For the purpose of this "cost" is defined as a cost of extra subcontract work, labor and materials, plus 10% of such "costs" for overhead, and plus 7 1/2% of such "costs" for profit. Changes in the contract shall be evidenced by a writing signed by both parties. Contractor shall give adequate notice in advance when any "extra" work is in his/her view being required so that he/she and Owner can discuss the need for such work and the proper classification of such work, including appropriate cost adjustments. There will not be any unusual ground conditions encountered as to the work. If there are unforeseen conditions and circumstances which the Contractor discovers during the course of demolition and/or construction of the work, then Owner shall receive timely notice of such and

Contractor and Owner shall negotiate in good faith any appropriate changes or additions to the work necessitated by such unforeseen conditions.

15. Completion and Occupancy.

Owner agrees to sign and record an appropriate Notice of Completion within five business days after completion of the project, which completion shall be established by agreement in writing of the Owner and Contractor. If the work passes final inspection by the City of Los Angeles, but the Owner fails to report the Notice of Completion within the time period above stated, then Owner hereby appoints Contractor as Owner's agent to sign and record a Notice of Completion on behalf of Owner. Under no circumstances may Contractor bar occupancy of the work by the Owner.

16. Contractor's Duties and Status.

Contractor bears the relationship of an independent contractor with Owner, and has no fiduciary duty or other relationship of trust with the Owner. Contractor agrees with the Owner to furnish his/her best efforts to cooperate with the Owner in furthering and expediting completion of the work. Owner agrees to cooperate with Contractor, upon timely request, as to any and all inquiries and explanations regarding the requirements on the project. Also, Owner shall cure the cooperation of the Owner's architect and/or engineer with the progress of the work by the Contractor and such design professionals shall not be allowed by the Owner to interfere with the work by the Contractor. If the Owner requests that the work covered by the allowance be accomplished in such way that the costs will exceed the allowance, Contractor shall promptly comply with the Owner's request, provided that the Contractor first provides written notice to Owner that the Cost will exceed the allowance and that thereafter the Owner will pay for the additional costs. The parties agree that appropriate communications shall take place between Contractor and Owner to advance the Contractor's responsibility assumed under the contract. It is understood that timely communication and cooperation between Owner and Contractor are essential for timely completion of the work.

17. Damage to Work and Insurance.

Owner will procure at his/her own expense and before commencement of any work hereunder, fire insurance and other casualty insurance with course of construction, vandalism and malicious mischief clauses attached. Such insurance shall be in a sum at least equal to the contract price with loss, if any, payable to the owner and any beneficiary or deed of trust covering the property, which are met solely within the knowledge and concern of the Owner. Owner is to be named as an additional insured on the Contractor's general liability insurance. If the work is destroyed or damaged by an accident, disaster or calamity such as fire, storm, flood, landslide, subsidence or earthquake, or theft or vandalism, the work done by the Contractor in rebuilding or restoring such work shall be paid for by the Owner only if such involved extra work and the Contractor has no responsibility.

If the work is destroyed or damaged by an accident, disaster or calamity such as a fire, storm, flood, landslide, subsidence or earthquake or by theft, or vandalism any work done by Contractor in rebuilding or restoring the work shall be paid for by the Owner as extra work, only if such involves extra work and the Contractor has no responsibility for such events of destruction.

The Contractor will maintain in full force the workers compensation insurance policy and the a comprehensive general liability insurance policy in amounts not less than required by this Contract and less than \$300,000. Contractor shall furnish Certificates of Insurance to Owner before commencing work showing that the Owner is added as an additional insured under such insurance, including the comprehensive general liability insurance. This failure of the Owner to demand delivery of such certificates shall not relieve Contractor of any obligation under this Contract.

18. Right to Stop Work.

Contractor shall have the right to stop work if and only if (i) any payment under this Contract shall not be timely made to Contractor under this Contract; (ii) contractor and owner have a disagreement regarding the project, which the contract in good faith believes to be irreconcilable, or (iii) owner substantially interferes with contractor's good faith and proper performance of work on the project.

19. Limitations.

No action arising from or related to the Contract, or performance thereof, shall be commenced by either party against the other more than five years after completion or cessation of the work under this contract. This provision does not limit, change or eliminate the otherwise applicable statutes of limitations available under California law, particularly those applicable to latent and patent defects.

20. Attorneys Fees.

If either party becomes involved in litigation arising out of this Contract, or the performance thereof, the Court in such litigation, or in a separate suit, shall award reasonable costs and expenses, including attorneys fees, to a party justly entitled thereto. In awarding attorneys fees, the Court will not be bound by any Court fee schedule; but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses and attorneys fees paid or incurred in good faith.

21. Cleanup.

Upon completion of the work, Contractor shall remove debris and surplus material from Owner's property, and leave Owner's property in a neat and broom clean condition.

22. Taxes and Assessments.

Taxes and special assessments of all descriptions will be paid by the Owner.

23. Notice.

Any notice required or permitted under this Contract, shall be given by ordinary mail at the addresses contained in this Contract; but such addresses may be changed by written notice given by one party to the other, from time to time. After a notice is deposited in the mail, postage prepaid, it shall be deemed received in the ordinary course of time.

24. Prohibition of Assignments.

Contractor may not assign this contract or payment due under this Contract to any other party without the written consent of the Owner.

25. Incorporation of Section 7159 of the California Business and Professions Code.

Section 7159 of the California Business and Professions Code, as amended by AB 2190, effective January 1, 1992, and as reproduced in the last page of this form, is incorporated in this Contract.

26. Changes in the Work.

Any alteration or deviation from the Contract documents hereby identified for performing the work, involving extra costs of material or labor will be performed only upon written orders for same, signed by each of the Owners (George and Cecilia Calkins), and will become an extra charge over the guaranteed maximum sum of this Contract, only by Contractor following the procedures set forth in this Contract. All such change orders shall be in writing. Any such changes in the work, shall only be performed upon written communication by Contractor to Owner describing the changes, and upon the Owner's execution of change orders giving Contractor specific authority to proceed, setting forth, in detail, the nature of the requested change. Upon receipt by Owner of any executed change order, Contractor shall within five days furnish to Owner a statement in writing setting forth in detail, with suitable breakdown by trades and work classifications, the changes and the guaranteed maximum costs attributable to the changes set forth in said change order request, including any proposed adjustment in the scheduled completion date resulting from such change order requests. If Owner approves in writing such changes, the guaranteed maximum cost and schedule will be adjusted, as set forth in such written change order requests signed by the parties. Owner shall have the right to issue change orders deleting portions, or entire categories, of materials and services from the work, and to reduce the guaranteed maximum price of \$50,000 by the amount of the materials and services attributable to such deletion (together with the prorata portion of the Contractor's profit and overhead).

27. Applications for Payment.

At least five calendar days before the date of any scheduled payment under this Contract, as hereinabove provided, Contractor shall provide to Owner an application for payment ("Application for Payment") in form and substance satisfactory to Owner. Each application for payment shall be for a sum specified hereinabove in this Contract (which provides for six payments upon completion of specified portions of the work, including after job completion). Each application for payment shall provide a specification of the exact work and materials provided by the Contractor, including an accounting of the cost and value of the work and materials provided. Title to all work, materials and equipment shall pass to Owner upon payment, and Contractor shall prepare and execute all documents necessary to effect and perfect such transfer of title.

In each application for payment, Contractor shall certify that such application for payment represents a reasonable statement of the actual costs payable to Contractor under the terms of this Contract, and shall also certify as follows:

"There are no new mechanics or material liens outstanding at the date of this Application for Payment. All due and payable bills with respect to the work have been paid or are included in the amount requested in the current application. Except for such bills not paid, but so included, there is no known basis for the filing of any mechanic's or material liens on the work. Waivers from all subContractors and materialmen have been obtained in such form as to constitute an effective waiver of the lien under the laws of the State of California, to the extent payment made by Owner to Contractor."

Contractor shall furnish with each application for payment waivers of liens for itself and each of its subContractors and suppliers, and any such forms as required by Owner, Owner's title insurer, Owner's construction lender, or Owner's permanent lender for the project (or any portion thereof), in order to assure an effective waiver of mechanic's and material liens relating to the payment in compliance with the laws of the State of California. Contractor shall furnish any supplemental waivers of liens for itself and each of the subContractors and materialmen as may be reasonably required by the Owner, the Owner's title insurer, or lenders to the full extent of the payments made by the Owner.

On or about three calendar days after submission of each such application for payment, Owner shall make payment to Contractor in the appropriate amount, except the amounts as to which the Contractor has failed to make provision of appropriate supporting data and other documents, as

hereinabove provided, including appropriate lien releases. The payment of any application for payment by Contractor to Owner, including the final certificate for payment by Contractor to Owner, does not constitute a waiver of any claim that Owner may have for defective or inadequate workmanship or materials against the Contractor. Contractor agrees to timely pay all of his/her subcontractors and materialmen as to the work in order to prevent the occurrence of any liens upon the subject premises or property.

Owner has no obligation to pay any portion of the contract amount, pursuant to application for payment or otherwise, if Contractor is in default as to any of its obligations hereunder or otherwise is in default under any of the Contract provisions.

Owner reserves the right to make payment to Contractor and any subContractor by appropriate joint check.

28. Termination of Contract. If Contractor shall fail to commence and perform the work in accordance with the provisions of this contract, or shall fail to diligently prosecute the work to completion, in a diligent, efficient, timely and workmanlike, skillful and careful manner, or Contractor shall fail to timely make any payments to Subcontractors, materialmen or laborers, then Owner shall have the right, if Contractor shall not cure any such default after fourteen days written notice thereof, to:

- (i) terminate the employment of Contractor hereunder;
- (ii) take possession of and use all or any part of Contractor's materials, equipment, supplies or other property of any kind used by Contractor in performance of the work and to use such property in the completion of the work; or
- (iii) complete the work in any manner the Owner deems desirable, including the engaging of the services of other parties therefor.

Owner hereby reserves the right to terminate this Agreement without regard to default or breach, and for convenience of the Owner, upon written notice to Contractor, effective immediately unless otherwise provided in said notice. In the event of any such termination, Owner shall promptly pay as the sole amount due the Contractor in connection with this project, all sums then due to Contractor for work actually performed and completed to the date of the termination (except retained sums which shall not be paid prior to 35 days following the date of termination).

29. Liens.

Contractor shall not voluntarily permit any laborers, materialmen, mechanics or other similar liens to be filed or otherwise imposed on any part of the work or the property on which the work is performed, provided that the specified payments are made by Owner to Contractor, or Owner is excused for not making such payment, in accordance with the terms of this contract. If any such lien is not discharged by Contractor forthwith, or the Contractor fails to file a bond in lieu thereof, Owner shall have the right to pay all sums necessary to obtain such releases and discharge, and then deduct all amounts so paid from the balance due the Contractor under this contract.

30. Title to Work.

Immediately upon performance of any part of the work, as between Contractor and Owner, title thereto shall vest in Owner; provided, however, that vesting of such title does not impose any obligations on Owner or relieve Contractor of any of its obligations hereunder.

Any provision hereof to the contrary, notwithstanding, Contractor shall observe, abide by and perform all of its obligations hereunder in accordance with all applicable laws, rules and regulations of all governmental authorities, having jurisdiction.

31. Contractor's Warranty.

Contractor represents and warrants that Contractor holds an active unencumbered Contractor's license, to perform the services included in this contract, as required by law, and that Contractor shall keep and maintain such license in good standing, and in full force and effect at all times while Contractor is performing the work under this contract.

Contractor represents that he/she is fully capable (as will be all of his/her workman, suppliers and subcontractors) to perform all aspects of the work described herein.

32. Defects.

Contractor shall reexecute any parts of the work that fail to conform with the requirements of this Contract, and the Contractor shall remedy any defects in the work, materials or workmanship, due to faulty materials or workmanship which appear within a period of one year from the final date of the work hereunder, and Contractor shall replace, repair or restore any parts of the work that are injured, or damaged by any such parts of the work that do not conform to the requirements of this Contract, or that are injured or damaged by any defects in the work. Contractor's warranty herein shall be in addition to and not in lieu of, any other remedies owner may have under this Contract, at law or in equity for defective workmanship by the Contractor.

33. Dispute Resolution.

All claims, disputes and other matters in question between Contractor and Owner arising out of or relating to the work of improvement herein under this Contract shall be first submitted to non-binding mediation in order for the parties to attempt to settle the matter, and failing to achieve settlement, all such disputes shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then existing, before an appropriate retired judge of the Los Angeles County Superior Court, as designated and chosen by the JAMS/Endispute organization, or by mutual agreement of the parties.

34. Performance and Payment Bonds.

It is understood by the parties that the Owner, at the Owner's sole expense, may obtain a performance bond assuring completion of the work without default by Contractor, and a payment bond assuring payment of all subContractors, materialmen and suppliers of the Contractor. Contractor understands that Owner may record said payment bond and file its contract with the Los Angeles County Recorder's Office pursuant to applicable provisions of California law.

35. Acknowledgment by Owner that They Have Received the Notice to Owner Specified by Section 7018.5 of the State Contractor's License Board.

The Owner acknowledges that it has received the Notice as specified by Section 7018.5 of the California Business and Professions Code. Included in that Notice is Owner's acknowledgement of complete text of Sections 70151, 70151.2, and 70159 of the California Business and Professions Code. In no event shall the payment schedule herein provide for Contractor to receive nor shall Contractor actually receive, payment in excess of 100% of the value of the work performed on the project at any time.

DATED: _____, 1996

By _____

DATED: _____, 1996

By _____

Owner

