

J.F. Davis Construction, L.L.C.

14550 E. Easter Ave. Ste 900, Centennial, CO 80112

Tel: 720-457-3780

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AGREEMENT & WORK AUTHORIZATION

This Agreement is entered into between **J.F. Davis Construction, L.L.C.** (the "**Company**") and _____ (the "**Client**") who is the owner or authorized representative of the property located at:

_____ ("**the Property**").

Client authorizes **Company** to complete the testing, damage appraisal, mitigation, restoration, cleaning, repairs to, and the removal of, storage and return of inventoried property ("**Contents**") located at the Property (the "**Services**") and if applicable relating to the loss occurring at the Property (the "**Loss**") subject to the terms and conditions hereof. All emergency Services will be billed in accordance with **Company's** standard rates (**Company** follows industry pricing guidelines). All other Services will be described in an estimate provided by **Company** (the "**Estimate**") and billed in accordance with that Estimate. *All Estimates specifically exclude concealed & underlying conditions.*

For additional Provisions see "**Additional Agreement Terms & Conditions**" which are incorporated herein and are part of this contract. **Client** acknowledges receiving a copy of the "**Terms & Conditions**" prior to signing this agreement.

Client understands and agrees that pricing pertaining to mitigation work will be determined at a later date based on **Company's** Time, Equipment, Materials, and/or independent pricing set for insurance restoration purposes per the most recent Xactimate pricelist. **Client** agrees to make payment directly to **Company** for work and for any deductible, depreciation, or amounts not covered by insurance.

Client also understands and agrees that prior to **Company** commencing repair, reconstruction, supplemental, changer order, or remodel work a detailed line item estimate will be submitted to **Client** and/or **Insurance Carrier** for approval. Once estimate is approved, a Payment & Production schedule will be submitted based on said estimate package.

Client Acknowledges, Understands, and Agrees to all "**Additional Agreement Terms & Conditions**" on reverse side.

Client agrees to remove cash, jewelry, firearms, collectibles or any other valuable items prior to **Company** commencing work.

Direction of Payment:

Client understands and requests that all payments pertaining to **J.F. Davis Construction, L.L.C.'s** work be paid directly to **J.F. Davis Construction, L.L.C.** by **Client's** insurance provider and to add **J.F. Davis Construction, L.L.C.** as additional payee on all associated claim payments. To the extent this does not occur, owner assigns the insurance proceeds, to the extent they are on account of **J.F. Davis Construction, L.L.C.'s** work, to **J.F. Davis Construction, L.L.C.**

The Client hereby declares to have read and agree with all of the terms and conditions on the front and reverse side of this agreement and all terms and conditions are fully understood and voluntarily accepted. Client Acknowledges receipt of a copy of this agreement. Client agrees to pay Company for all emergency Services provided and for all other Services provided in accordance with the Estimate, including amendments, and for all supplemental and additional services whether or not reimbursed by an insurance Company; and, that all invoices are due upon receipt.

Dated this _____ day of _____ 20__

Client Contact Information: H)

C)

Insurance Carrier: _____

W) _____

Claim #: _____

E)

Date of Loss: _____

Billing Address (if different):

Deductible: _____

Checks/Drafts/Paid Amount: _____

Cash: _____ Check #: _____ Credit Card: Type: _____ #: _____
Exp: _____

J.F. Davis Construction, L.L.C. Representative Signature

Client Signature

ADDITIONAL AGREEMENT TERMS AND CONDITIONS

- 1. Services:** **Company** agrees to provide **Client** emergency mitigation and repair services (the "Services"). Services provided in addition to emergency Services will be set forth in an Estimate and amendments thereto, including supplemental work covered by insurance and additional work requested by **Client** but not covered by insurance. The Estimate defines the scope of the Services and will be modified by **Company** from time to time, as needed to reflect the complete scope of the Services. The most current Estimate will reflect the amount due for the Services. **Client** may not cancel or elect not to have **Company** perform any material item of the Services in the Estimate. Materiality shall be determined by **Company** in **Company's** sole discretion. In the event that **Client** cancels any immaterial item of the Services, **Client** agrees to pay **Company** 20% (10% overhead + 10% profit) of the amount that would have been due for the Services had **Client** not cancelled such Services. Should **Company** develop an alternate method to accomplish the overall scope of the Services, **Client** authorizes **Company** to proceed with the alternative method without reduction of the amount due in the Estimate.
- 2. Quality of Services:** **Company** warrants that **Company** will use industry recommended restoration procedures, and that the Services will be completed in a workmanlike manner in conformity with customary industry practices using current techniques and materials reasonably calculated to approximate the finish and quality prior to the damage, including deletion of certain items deemed not necessary by **Company**. **This does not mean zero defects.** Restoration is not an exact science and results cannot be guaranteed by the **Company**. Seams or joints in carpet or light colored finishes, or irregularities in shiny surfaces, will be visible. **Client** acknowledges that permanently discolored, spotted, faded and or bleached areas might remain, even after diligent efforts are made to restore the same. Restoration of Contents and certain decorator structure items, such as fabric-covered furniture and drapes, cannot be guaranteed. **Company** will use commercially reasonable efforts to repair or restore such items, but if items cannot be repaired or restored to their pre-damaged condition, **Client** shall remain obligated to pay **Company** for its efforts to restore the items. Quality of the restored items will be judged against similar items of the **Client** displaying the approximate condition prior to the Loss.
- 3. Additional Services:** Change Orders are required for additional Services (not covered by insurance company and not set forth in the Estimate) including changes in specifications of any portion of the Services (the term "Services" shall include the initial scope of Services, supplemental Services or additional Services). Additional Services specifically includes **Client** requested design consultation, engineering, betterment and Services required by applicable local building codes to correct pre-existing violations or deficiencies. Painting is estimated to return existing surfaces to their same color. A change in color, finish or surface will be considered additional Services. Any color, style, or quality selections and/or Services decisions that are made verbally by the **Client** are the **Client's** responsibility, and **Company** will not be liable for **Client's** decisions or judgment.
- 4. Certain Client Obligations:** **Client** agrees not to touch, move, disturb, or turn off the equipment of **Company** and understands that by do so it may affect the result of the work. **Client** understands that there is also a risk of injury to the equipment and the person contacting the equipment. This agreement is based upon, and **client** shall provide, clear and continuous access for all work on a concurrent, unscheduled basis, during normal working hours (7:00 am to 5:30 pm weekdays). **Client's** telephone, electric, toilet, heat, and water are to be made available for **Company's** use during the process of work at no cost to **Company**. **Client** agrees to be present during all onsite work. **Client** may comply with the foregoing condition by supplying **Company** with a premise key to be placed in a **Company** supplied lock box. **Company** assumes no liability for unauthorized entry. **Client** shall be responsible for all equipment and tools left on the job site outside of normal working hours and shall keep the tools and equipment in a safe and locked place, if necessary, without charge or fee to **Company**.
- 5. Hazardous or Other Conditions:** During the Course of work, should **J.F. Davis Construction, L.L.C.** Encounter and hazardous substance (asbestos, chemical, gas, or the like) or unsafe condition, **J.F. Davis Construction, L.L.C.** may halt the work. Should the work be halted for more than one week for this reason, or for any other reason whatsoever, **J.F. Davis Construction, L.L.C.** may terminate this contract and **client** agrees to pay **J.F. Davis Construction, L.L.C.** for all work performed to date, without retention, as determined by **J.F. Davis Construction, L.L.C.'s** reasonable estimate and invoice, including costs of demobilization, substance investigation and/or testing, and any additional costs occasioned by the discovery and disposal of, and decontamination due to, said hazardous substance or unsafe condition. **Client** shall inform **J.F. Davis Construction, L.L.C.** of the presence of any hazardous substances or unsafe conditions contained within the contents or structure, and does hereby indemnify and agree to hold harmless **J.F. Davis Construction, L.L.C.** from any and all claims by any person arising from the existence of and/or exposure to the hazardous substances or unsafe conditions. **Client** further understands that notwithstanding the performance of **J.F. Davis Construction, L.L.C.** to industry standards, it is still possible for undetected damage to exist and it is also possible for mold to not be eliminated or to appear after the completion of the work. **J.F. Davis Construction** makes no representations as to the complete removal or prevention of mold and **client** hereby waives any claims it may have to damages or injuries, to the **client** or **client's** employees, family, guests, agents or any other person who may enter upon the premises as a result of the existence of mold.
- 6. Limited Warranty:** **Company** warrants its work for one year from the date **Company** completes the work. In the event a warranty issue arises, **Company** will have the right to re-perform the work or return amounts paid, at its sole discretion. This warranty is expressly in lieu of all other warranties, express or implied, including all warranties of merchantability and fitness for purpose or use. All other obligations or liabilities of **Company** and its suppliers and contractors are hereby expressly disclaimed. **Company**, its suppliers and contractors neither assume nor authorize any other person to give or assume for them any other warranty or liability in connection with these services. Customer expressly understands and agrees that neither **Company**, nor its officers, directors, employees, agents, representatives, suppliers, or contractors shall be liable for any loss, damage, or expense directly or indirectly arising from the services, including, but not limited to, penalties, direct damages, special damages, consequential damages, incidental damages or liquid damages. In no event shall **Company** or its contractors incur any liability whatsoever until they receive full payment for services. **Company's** limited warranty is limited to Services provided solely by **Company and its agents or subcontractors**.
- 7. Client Contents:** If **Company** is storing and/or repairing **Client's** Contents, upon return of the Contents, if **Company** does not unpack boxed Contents and/or place Contents in their final location, because **Company** will not have control over the security and/or handling of the Contents, **Client** agrees that **Company** shall not be liable for breakage, damage or loss discovered subsequent to the return of the Contents.
- 8. Completion Date:** **Company** agrees to diligently pursue Substantial Completion of the Services, but shall not be held liable for delays due to late deliveries, weather, inspections, strikes or conditions beyond **Company's** reasonable control. **Client** shall not delay the Services and agrees to avoid interrupting, interfering with or casually visiting with **Company's** workers while they are performing the Services. Substantial Completion is the date when Services are sufficiently complete so the **Client** can occupy or utilize the Services area for the use for which it was intended and is subject to adjustments in time as provided pursuant to written Change Orders. **Company** will repair or replace, at **Company's** option, defective Services found following the final walkthrough at the time of Substantial Completion through **Company's** limited warranty.
- 9. LIMITATION ON LIABILITY:**
 - a) Dumpster/Storage Containers/Port-O-Let:** If **Company** requires the use of units such as roll-off dumpsters, port-o-lets and/or mobile storage units ("Units"), neither **Company** nor **Company's** subcontractors will be liable for damage to driveways or other surfaces resulting from the Units.
 - b) Temporary Plumbing:** If **Company** uses temporary sinks in providing the Services; the temporary sinks are for liquid drainage only. Except for damages caused by **Company** or **Company's** subcontractors' improper use, neither **Company** nor **Company's** subcontractors will be liable for damages resulting from drain back-up or any other misuse or improper use of a temporary sink.
 - c) Plumbing Fixtures and Appliances:** Seals, Drains and Supply Lines. **Company** recommends that all seals, supply and drain lines affected by the emergency be replaced. **Company** can replace affected seals, supply and drain lines for an additional charge to **Client** if not covered by the insurance company. In addition, appliances that require removal and re-installation may leak due to their removal and reinstallation. **Company** will take all necessary precautions to secure and contain drain and supply lines to prevent any leaks by capping or plugging these lines and to prevent, to the extent possible, appliances from leaking. Except for injury, loss or damage resulting from **Company's** negligence, neither **Company**, nor **Company's** subcontractors, will be liable for injury, loss or damage caused by deteriorated seals or drain and supply lines or reinstalled appliances that may leak during or following **Company's** provision of the Services.
 - d) Prior Mitigation Services:** In the event that **Client** or any other third party provided mitigation services prior to the arrival of **Company**, **Company** will not be liable for injury, loss or damage arising in whole or in part from prior mitigation services.
 - e) Pre-existing Conditions:** In the event that pre-existing conditions are discovered during the provision of Services, **Company** will not be liable for injury, loss or damage arising in whole or in part from such pre-existing conditions. **Company** will promptly notify **Client** of the pre-existing condition and will make recommendations to **Client** regarding repairing the pre-existing condition and the cost thereof. If **Client** elects to repair the pre-existing condition this written authorization will be revised pursuant to a change order executed by both parties prior to continuation of the Services.
 - f) Mold:** **Company** shall not be liable for any damages, existing or future, resulting either directly or indirectly from mold, mildew, dampness or any other moisture related issue.
- 10. Default:** In the event **Client** breaches this Agreement, **Company** may cease all Services and terminate this Agreement without prejudice to any other rights or remedies available to it, or **Company** may, but shall not be obligated to, pursue any one or more of the following remedies without terminating this Agreement: a) **Company** may retain possession of the Contents and charge storage fees per **Company's** standard pricing until the default has been corrected; b) **Company** may file a lien pursuant to Colorado law; c) **Company** may sell the Contents in accordance with any procedure provided by law; d) **Company** may pursue any other rights or remedies available to it under applicable laws or in equity. In the event that **Company** files a civil action to collect damages, **Client** agrees that it will be difficult to determine the damages, in addition to the monies owed for Services performed, that **Company** would incur as a result of **Client's** default and that, all circumstances

considered, \$2,500.00 for liquidated damages is a reasonable amount. Therefore, in addition to all sums owing **Company** for Services and other damages expressly provided for in this Agreement, **Client** shall pay **Company** \$2,500.00 as liquidated damages.

11. **Termination:** In the event of termination by **Client** or by **Company**, **Client** shall pay **Company** for Services performed through the termination and demobilization date including all materials delivered for the Services, whether or not incorporated into the improvements, plus all demobilization costs, plus a sum equal to twenty percent (20%) of the Contract Price that **Company** would have been paid but for termination of the Agreement. **Company** need not accept an adjusted settlement amount offered by the insurance company, in which event, **Client** shall pay **Company** pursuant to this Section 12. In the event **Client** terminates this Agreement prior to the start of repairs and/or ordering of repair materials, **Client** agrees to pay **Company** the greater of \$500 or 10% of the repair/re-construction estimate price which has been provided by the Company and approved by Insurance Carrier.

12. **COMPANY'S LIABILITY FOR ANY REASON AND UPON ANY CAUSE OF ACTION, WHETHER SOUNDING IN TORT, CONTRACT, OR ANY OTHER LEGAL THEORY, SHALL AT ALL TIMES AND IN THE AGGREGATE BE LIMITED TO THE LESSER OF CLIENT'S DIRECT DAMAGES OR THE AMOUNT PAID BY CLIENT TO COMPANY UNDER THIS AGREEMENT. EXCEPT WHERE SUCH LIMITATIONS ARE PROHIBITED BY LAW, UNDER NO CIRCUMSTANCES SHALL COMPANY BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR EXEMPLARY DAMAGES OF ANY NATURE INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING OUT OF THE SERVICES PROVIDED HEREUNDER, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY.**

13. **Jurisdiction and Venue:** Client agrees that venue for any legal proceedings related to this agreement shall be in Denver, Colorado or in the County in which the Property is located. The parties specifically waive their right to a trial by Jury.