

## RESIDENTIAL HOME IMPROVEMENT AGREEMENT AND WORK AUTHORIZATION – EMERGENCY SERVICES

This Work Authorization ("Agreement") is entered into on \_\_\_\_\_, between DL Restcon, a California corporation whose address is 35 Cottonwood Drive, Aliso Viejo, CA, Contractor's License No. 989964 and \_\_\_\_\_ ("Customer"). The job site for the services to be performed is: \_\_\_\_\_ The services to be performed by DL Restcon under this Agreement were initiated by a telephone solicitation by the Customer to DL Restcon. This Agreement is entered into in Aliso Viejo, California.

1. **Scope of Work to be Performed.** Customer hires DL Restcon to provide the services listed below:

DL Restcon may hire or engage subcontractors to perform and complete all or any portion of the work. DL Restcon is not required to perform to a state-of-the-art standard, but rather shall be required to conform to the state-of-practice standard. Customer will provide all water, electricity and other utilities necessary for DL Restcon to perform its work. Except for those items specifically set forth in the scope of work, DL Restcon is not responsible for any other materials, labor, or services without a written change order.

2. **Approximate Start Date.** \_\_\_\_/\_\_\_\_/\_\_\_\_.

3. **Approximate Completion Date.** \_\_\_\_/\_\_\_\_/\_\_\_\_.

4. **Contract Price.** Customer agrees to pay DL Restcon the total sum of : \$ \_\_\_\_\_. Customer is responsible for payment of services at the time such services are rendered or as specified in section 6 below, if checked.

5. **Down Payment.** \$ \_\_\_\_\_. **THE DOWN PAYMENT MAY NOT EXCEED \$1,000 OR 10 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS LESS.**

6. **Schedule of Progress Payments.**

\_\_\_\_ Payment Schedule: If this box is checked, the following progress payment schedule applies to this Agreement. DL Restcon shall be paid progress payments during the project as follows:

\$ \_\_\_\_\_ on execution of Agreement (10% or \$1,000 of the total Agreement, whichever is less)  
\$ \_\_\_\_\_ upon \_\_\_\_\_  
\$ \_\_\_\_\_ upon \_\_\_\_\_  
\$ \_\_\_\_\_ upon \_\_\_\_\_

Any remaining balance due under the Agreement or any change orders will be due ten (10) days after completion of the work or delivery of the invoice, whichever occurs first.

**The schedule of progress payments must specifically describe each phase of work, including the type and amount of work or services scheduled to be supplied in each phase, along with the amount of each proposed progress payment. IT IS AGAINST THE LAW FOR A CONTRACTOR TO COLLECT PAYMENT FOR WORK NOT YET COMPLETED, OR FOR MATERIALS NOT YET DELIVERED. HOWEVER, A CONTRACTOR MAY REQUIRE A DOWNPAYMENT.**

6. **Cancellation.** The Law requires that the contractor give you a notice explaining your right to cancel. Initial the checkbox if the contractor has given you a "Notice of the Three-Day Right to Cancel."

Customer Initials \_\_\_\_\_, \_\_\_\_\_

Customer Initials \_\_\_\_\_, \_\_\_\_\_

Provided that the right of cancellation has not been waived, the Customer may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction without any obligation or penalty. The three-day Notice of Cancellation form provided to Customer is incorporated into this Agreement by this reference.

If there is a cancellation of any part of the scope of work following the expiration of the time period for the right of cancellation, following a waiver of the right to cancel under Civil Code section 1989.13, or for a non-residential property, DL Restcon shall be immediately paid by Customer for all services already provided plus \$1,500 and all "Loss of Income". "Loss of Income" shall be computed as 20% of the total amount for unfinished work performed by Customer or any third party service DL Restcon. Customer agrees to provide, within ten (10) days, copies of all pricing, bills, receipts and/or invoicing from any and all third parties upon written request by DL Restcon. Further, Customer agrees to provide a full and complete release of any liability related to any work that was cancelled prior to completion.

**7. Assignment of Insurance Proceeds and Payment Obligations.** By this agreement, Customer hereby assigns their benefits, under any applicable policy of insurance that Customer may have, to DL Restcon and directs that all payments for all insurance drafts be paid directly to DL Restcon. Customer hereby appoints DL Restcon as its attorney in fact to endorse any insurance payments under this contract. Customer agrees to pay their deductible directly to DL Restcon. Customer acknowledges and represents that DL Restcon is not responsible for reading or interpreting any insurance policy. To the extent that DL Restcon directly bills Customer's insurance company or some other third party, Customer acknowledges that such billing is being done as an accommodation. Customer is responsible for payment of services at the time such services are rendered. The duty of Customer to pay for services rendered to the company shall not be contingent upon the honoring of any applicable insurance claim. For any balance that remains unpaid for a period of more than ten (10) days from the date of the invoice, Customer agrees to pay a late payment of one and one-half percent (1.5%) per month on any unpaid balances. In the event of a dispute, Customer agrees to immediately pay all undisputed amounts due under this contract.

**8. Representation by Customer of Authority to Enter Into Contract.** Customer is the property owner, manager, tenant and/or responsible representative who hereby authorize DL Restcon to provide all necessary emergency services to protect the structure and contents from further damage. If the party executing this Agreement is not the owner of the property (e.g., a tenant, manager, agent or interested third party) Customer represents and warrants that he/she is authorized to sign on behalf of an absentee property owner during an emergency.

**9. Exclusions From Scope of Work.** DL Restcon is not required to perform services or provide any equipment other than the work or equipment specifically indicated in the scope of services. In addition, DL Restcon is not required to: (a) remedy or repair any existing code violations, illegal conditions, unusual or abnormal concrete footings, foundations, retaining walls, piers or unusual depth requirements, or any damage caused by termites or dry rot; (b) replace, reroute, or relocate plumbing, gas, water or sewer lines, vents, pipes, ducts, conduits or wiring; (c) change any existing electrical service panel other than to add circuit breakers or fuse blocks to distribute electric current to new outlets; (d) work on cesspools or septic tanks; (e) perform any work required by any public body, utility or inspector; or (f) excavate filled ground or ground of inadequate bearing or rock or any other material not removable by ordinary hand tools.

**10. Work Commencement and Completion.** DL Restcon will be deemed to have substantially commenced the work when equipment and/or materials are delivered to or workers actually commence the work at the Property. However, the start date and the completion date are estimates and may be delayed due to circumstances beyond DL Restcon's control. Drying the structure of a building is variable, therefore exact completion is variable. DL Restcon is not liable or responsible for any damages, costs, interruptions or losses of any kind resulting from or related to acts of God, weather conditions, fire, flood, casualty, labor strikes, lockouts, disturbances, riots, civil commotion, government regulation or restriction, acts of Customer, the issuance of any necessary permits, shortages or unavailability of materials and/or supplies or other causes beyond DL Restcon's control. The failure by DL Restcon, without lawful excuse, to substantially commence the work within twenty (20) days after the approximate commencement date stated above is a violation of the Contractors State License Law.

**11. Disclaimer.** If not promptly and properly addressed, the job site may become biologically contaminated causing substantial additional damage that may present health hazards. DL Restcon is not liable for damage that results from any of the following that occur due to circumstances beyond DL Restcon's control: (a) breach, dismantling or damage to containment and/or equipment; (b) interruption or interference with work; (c) unplugging or moving equipment, tools or machinery. Customer understands that damage to containment, interruption of DL Restcon's work, unplugging of equipment and other similar obstructions can cause mold, fungi and/or bacteria to grow in or around carpet, padding, walls, cabinets, and elsewhere within the structure, causing further property damage and/or resulting in a "sick" building - which may be a health hazard. Customer understands that problems may result including but not limited to: toxic, allergic, infectious and/or inflammatory illnesses, and structural damage including warping, decay and dry rot.

12. **Agreed Procedure for Billing Disputes.** Customer agrees that the invoices will be reviewed within ten (10) days of mailing and that any objection will be stated in writing within thirty (30) days of the date of the invoice. If no objection is made by Customer within this period of time, it is agreed that the invoice shall be deemed accurate and reasonable and Customer shall be obligated to pay the entire invoice amount. Should Customer dispute any charge set forth on any invoice, such dispute must be made in writing, specifying each specific entry in dispute and the basis for the dispute. **ANY DISPUTE OF A CHARGE MUST BE DELIVERED TO DL RESTCON WITHIN 30 DAYS OF THE DATE OF THE INVOICE. ANY DISPUTE AS TO AN ITEM ON THE INVOICE THAT IS NOT DISPUTED WITHIN 30 DAYS OF DATE OF THE INVOICE SHALL BE EXPRESSLY WAIVED.** The existence of the dispute will not alter the obligation to pay interest on the disputed amount as set forth in this Agreement, unless, the Customer receives a judgment in Customer's favor with respect to such disputed amounts.

13. **Access to Property/Responsibility for Equipment.** Customer will provide free and unrestricted access to the job site to DL Restcon's employees, agents and subcontractors, and their vehicles and equipment. Customer will keep driveways clear and available for movement and parking during working hours, and will provide areas for storage of equipment, materials, and debris. DL Restcon will store equipment and materials in the areas provided by Customer at the end of each workday. Customer will secure all entrances to the job site in a manner adequate to prevent persons other than Customer, DL Restcon and any authorized workers, subcontractors, or material suppliers from gaining access to the job site. Customer is responsible for the care and custody of any equipment and materials while DL Restcon is not on the job site, and will pay the repair and/or replacement cost of any lost or damaged equipment or materials. Customer will provide all water, electricity and other utilities necessary for DL Restcon to perform the work. The Customer is responsible for all on-site and sub-contracted equipment, including but not limited to dryers, dehumidifiers and monitoring equipment. It is the Customer's responsibility to all persons away from contractor's equipment left at the job side. The loss or damage to equipment is billable to the Customer.

14. **Representations/Waiver and Release of Customer Entering or Remaining on the Premises.** Customer represents, warrants and acknowledges that Customer has independently investigated the potential risks involved in entering into or remaining on the job site during the clean-up/remediation process. The Customer represents and warrants that Customer has consulted with and obtained information from qualified experts regarding any potential risks, including but not limited to potential health consequences, which may result from my entry into or upon the premises and/or the effect of remaining on the premises during the clean-up/remediation process. The Customer further represents, warrants and acknowledges that neither DL Restcon nor any of its employees, agents, or representatives of any nature, has made any representations about the safety or lack of risk in connection with my entry onto or remaining on the job site during the clean-up/remediation process.

Customer hereby agrees, to the fullest extent permitted by law, to limit the liability of DL Restcon to Customer or any third party related to any and all claims, losses, costs damages of any nature whatsoever caused by or occurring during Customer's entry upon or remaining on the job site during the clean-up/remediation process. Customer agrees that DL Restcon shall NOT be responsible for any consequential damages or contingent liability as a result of my entry onto or remaining on the job site during the clean-up/remediation process, irrespective of the cause of any such damage. To the extent permitted by law: Customer agrees to indemnify, defend, and hold DL Restcon harmless against and in respect of any and all third party claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and reasonable attorneys' fees, that DL Restcon shall incur or suffer, that arise, result from, or relate to Customer's entry onto or remaining on the job site during the clean-up/remediation process, except those caused by DL Restcon's sole and active negligence.

15. **Obligation for Disclosure.** Customer shall provide DL Restcon complete available information regarding known conditions in and around the Structure. Customer shall be responsible for advising DL Restcon of the existence of hazardous substances or areas of concern. Customer will disclose to all occupants that mold, fungus, sewage, water damage and/or biological contamination can lead to serious health effects, and will indemnify and hold DL Restcon harmless from any claims that arise as a result of Customer's failure to make such a disclosure. All occupants should consult with a physician regarding the potential health effects of exposure to microbial contamination. DL Restcon will not give medical advice and Customer agrees not to interpret DL Restcon's statements as medical advice.

16. **Limited Warranty.** For a period of one (1) year from the date services were first provided, DL Restcon will provide replacement services for any defectively performed service. This limited warranty is the only warranty provided under this Agreement and no other warranties, either express or implied, shall exist. Customer must make a claim under this warranty, in writing, by delivering notice to DL Restcon's principle place of business within three hundred sixty five (365) days of the date services were first performed. Such notice shall specify the defective work and the basis for the defect. DL Restcon shall have a reasonable time thereafter to investigate the claim and perform corrective work on this warranty. Unless DL Restcon has refused to honor this warranty, Customer shall have no right to have the repair work performed by any third party and in the event such work is undertaken, DL Restcon shall be relieved of all financial responsibility to pay for such corrective work.

**17. Hold Harmless and Indemnification.** To the extent permitted by law: Customer shall indemnify, defend, and hold harmless DL Restcon against and in respect of any and all third party claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and reasonable attorneys' fees, that DL Restcon shall incur or suffer, that arise, result from, or relate to any breach of, or failure by DL Restcon to perform, any of its obligations in this Agreement or in any way related to the scope of work to be performed under this Agreement except those caused by DL Restcon's sole and active negligence.

**18. Limitation of Liability.** The Customer agrees, to the fullest extent permitted by law, to limit the liability of DL Restcon to the Customer for any and all claims, losses, costs, damages of any nature whatsoever, or claims expenses from any cause or causes so that the total aggregate liability of DL Restcon and its subcontractors to the Customer's total fee for services rendered on this project. In no event shall DL Restcon be responsible for any consequential damages or contingent liability as a result of its performance or non-performance of its duties under this Agreement. This limitation includes, but is not limited to, all claims for personal injuries, damage to property, and lost profits.

DL Restcon shall not be responsible or liable for pre-existing, existing, or post existing, sick building syndrome, building related illness, or complaints. In the case of wet floors, slippery surfaces from water, fire damaged, etc., the Customer will oversee and provide security and safety for the work area.

**19. Contractor's License.** Contractors are required by law to be licensed and regulated by the Contractor's State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (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. DL Restcon's Contractors license number is 989964. DL Restcon is a corporation.

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."

**20. No Third Party Beneficiary/No Duty to Third Parties.** This Agreement is for the sole benefit of the Customer and there are no intended or unintended third party beneficiaries to this Agreement. DL Restcon assumes no duty toward any third party by virtue of this Agreement and its sole duty shall be for the obligations specifically enumerated in this Agreement and this limited duty shall be owed only to the Client and to no other person(s) or entities.

**21. Right to Releases.** 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 the services, 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.

**22. Change Orders/ Note About Extra Work and Change Orders.** No extra or change-order work may be required to be performed without prior written authorization of the person contracting for the services. No change-order is enforceable against the person contracting for the services unless it clearly sets forth the scope of work encompassed by the change-order and the price to be charged for the changes. Any change-order forms for changes or extra work shall be incorporated in, and become a part of, the Agreement. Extra Work and Change Orders become part of the contract once the order is prepared and signed by the parties. The order must describe the scope of the extra or change, the cost to be added or subtracted from the Agreement, and the effect the order will have on the schedule of progress payments. Change orders required by the building department at the jobsite shall be considered incorporated into the Agreement without being signed by both parties.

23. **Notice to Customer/Mechanic's Lien Law Handout.** State law requires us to give you certain notices regarding California Mechanic's Lien Law, and Customer hereby acknowledges receipt of those notices which have been provided separately and are incorporated into this agreement as though set forth herein.

24. **List of Documents to be Incorporated Into the Agreement.** The terms set forth in this Agreement, the notice of right to cancellation, the standard pricing of DL Restcon, the Notice and Mechanic's Lien Warning Handout, Scope of Services Information Sheet, together with any change orders constitutes the entire agreement between the parties pertaining to the subject matter contained in this Agreement and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties related to the emergency services being provided.

25. **Modification; Waiver; Severability.** No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by all the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver. The provisions of this Agreement are separate and divisible, and if any of those provisions, or portions thereof are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remain provisions, or portions thereof, shall not be affected and shall remain in full force.

26. **Attorney's Fees and Costs.** The parties agree that in an action for a breach of this Agreement, that the Prevailing Party will be entitled to Reasonable Attorneys' Fees, costs and expert witness fees in addition to any other relief to which that party may be entitled. Costs shall include all costs and not be limited to the recoverable costs set forth in the Code of Civil Procedure. This attorney's fee provision is only intended to cover actions based upon the Agreement and shall not apply to any tort causes of action that may be brought by any party.

27. **Opportunity to Review Agreement.** Each party to this Agreement has been given an opportunity to fully review and analyze this Agreement and further have had the opportunity to seek legal counsel and to have legal counsel review and analyze this Agreement. Each party has fully read and understands each provision of this Agreement and all parties understand their respective duties under this Agreement. DL Restcon and Customer agree to the use of the particular language of the provisions of this Agreement, and any questions of doubtful interpretation will not be resolved by any rule providing for interpretation against the party who causes the uncertainty to exist as both parties agree to be considered the drafter of this Agreement.

28. **Governing Law/Forum Selection.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of California as applied to contracts that are executed and performed entirely in California. The sole forum for any action or proceeding brought by DL Restcon or Customer arising of or in any way related to this Agreement, whether such action is in law or equity, will be a court of competent jurisdiction or arbitration forum in the County of Orange, State of California.

29. **Insurance Information.** DL Restcon carries commercial general liability workers compensation insurance written by [Insert Name of Insurance Company]. You may call [Insert Name of Insurance Agent] at (\_\_\_\_) \_\_\_\_-\_\_\_\_ to check DL Restcon's insurance coverage.

30. **Bond.** Customer may require DL Restcon to have a performance and payment bond with respect to its work. The cost of such bond will be added to the fee for services and shall be paid by the Customer.

**Notice to the Buyer: You are entitled to a completely filled in copy of this Agreement, signed by both you and the contractor, before any work may be started.**

IN WITNESS WHEREOF, the parties to this Agreement have duly executed it on the day and year first above written. The Customer has the right to require DL Restcon to have a performance and payment bond as specifically set forth in paragraph 30 of this Agreement.

Signature: \_\_\_\_\_

By: \_\_\_\_\_  
Darryl Huie for DL Restcon

Customer Name: \_\_\_\_\_

**FOR RESIDENTIAL PROJECTS: YOU THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.**

## **SCOPE OF SERVICES INFORMATION**

### **EMERGENCY WATER DAMAGE INFORMATION**

The following are the typical steps utilized by DL Restcon in performing a “clean water” damage clean up. A “clean water” clean-up is defined as a water damage originating from a source that does not pose a harm to humans. The services can include, but are not limited to: Extraction of water from flooring and other areas, furniture moved and blocked, inspection for salvageable flooring and building materials using advanced metering equipment, removal and disposal of unsalvageable flooring and building materials, application of mildewcide to salvageable flooring and building materials, advanced drying systems will be used to reduce excessive moisture and humidity to acceptable levels. The drying process will be determined by periodic moisture and humidity monitoring, pick up of drying equipment will be done upon final inspection of the water damage project. Because of the unique circumstances of every water damage project, it is impractical to issue blanket rules intended to apply to every water damage situation. In certain circumstances, deviation from portions of the above may occur.

### **EMERGENCY INTERIOR NON “CLEAN WATER” DAMAGE INFORMATION**

The following are the typical steps utilized by DL Restcon in performing a NON “clean water” damage clean up. A “clean water” clean-up is defined as a water damage originating from a source that does not pose a harm to humans. All other clean up services will be performed as a NON “clean water” project. The services can include, but are not limited to: Personal protective equipment and containment barriers will be utilized by DL Restcon employees to prevent exposure to potential hazards as needed and when practical, initial disinfection of affected materials, extraction of NON “clean water” from flooring and other areas, furniture moved, blocked and disinfected as needed, inspection for salvageable flooring and building materials using advanced metering equipment, removal and disposal of unsalvageable flooring and building materials, application of disinfectants to salvageable flooring and building materials, advanced drying systems will be used to reduce excessive moisture and humidity to acceptable levels. The drying process will be determined by periodic moisture and humidity monitoring, pick up of drying equipment will be done upon final inspection of the NON “clean water” damage project and including, but not limited to a thorough cleaning is required before implementation of additional procedures. Because of the unique circumstances of every NON “clean water” damage project, it is impractical to issue blanket rules intended to apply to every NON “clean water” damage situation. In certain circumstances, deviation from portions of the above may occur.