

SERVICES AGREEMENT

WORK ORDER TYPE

THIS AGREEMENT made and entered into the day and year set forth below, by and between THE CITY OF FORT COLLINS, COLORADO, a Municipal Corporation, hereinafter referred to as the "City" and Pierre DeMilitt, LLC, hereinafter referred to as "Service Provider".

WITNESSETH:

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties hereto as follows:

1. Services to be Performed.

a. This Agreement shall constitute the basic agreement between the parties for services for Backflow Assembly Testing and Repair. The conditions set forth herein shall apply to all services performed by the Service Provider on behalf of the City and particularly described in Work Orders agreed upon in writing by the parties from time to time. Such Work Orders, a sample of which is attached hereto as Exhibit "A", consisting of one (1) page, and incorporated herein by this reference, shall include a description of the services to be performed, the location and time for performance, the amount of payment, any materials to be supplied by the City and any other special circumstances relating to the performance of services. No workorder shall exceed \$50,000. The only services authorized under this agreement are those which are performed after receipt of such Work Order, except in emergency circumstances where oral work requests may be issued. Oral requests for emergency actions will be confirmed by issuance of a written Work Order within two (2) working days.

b. The City may, at any time during the term of a particular Work Order and without invalidating the Agreement, make changes within the general scope of the particular services assigned and the Service Provider agrees to perform such changed services.

2. Changes in the Work. The City reserves the right to independently bid any services rather than issuing work to the Service Provider pursuant to this Agreement. Nothing within this Agreement shall obligate the City to have any particular service performed by the Service Provider.

3. Time of Commencement and Completion of Services. The services to be performed pursuant to this Agreement shall be initiated as specified by each written Work Order or oral emergency service request. Oral emergency service requests will be acted upon without waiting for a written Work Order. Time is of the essence.

4. Contract Period. This Agreement shall commence upon signing, and shall continue in full force and effect until April 15, 2003, unless sooner terminated as herein provided. In addition, at the option of the City, the Agreement may be extended for additional one year periods not to exceed four (4) additional one year periods. Pricing changes shall be negotiated by and agreed to by both parties and may not exceed the Denver - Boulder CPI-U as published by the Colorado State Planning and Budget Office. Written notice of renewal shall be provided to the Service Provider and mailed no later than 90 days prior to contract end.

5. Delay. If either party is prevented in whole or in part from performing its obligations by unforeseeable causes beyond its reasonable control and without its fault or negligence, then the party so prevented shall be excused from whatever performance is prevented by such cause. To the extent that the performance is actually prevented, the Service Provider must provide written notice to the City of such condition within fifteen (15) days from the onset of such condition.

6. Early Termination by City/Notices. Notwithstanding the time periods contained herein, the City may terminate this Agreement at any time without cause by providing written notice of termination to the Service Provider. Such notice shall be mailed at least fifteen (15) days prior to the termination date contained in said notice unless otherwise agreed in writing by

the parties. All notices provided under this Agreement shall be effective when mailed, postage prepaid and sent to the following address:

City
City of Fort Collins, Purchasing
P.O. Box 580
Ft. Collins, CO 80522
Attn: John Stephen

Service Provider
Pierre DeMitt, LLC
P.O. Box 164
Severance, CO 80546

In the event of early termination by the City, the Service Provider shall be paid for services rendered to the termination date, subject only to the satisfactory performance of the Service Provider's obligations under this Agreement. Such payment shall be the Service Provider's sole right and remedy for such termination.

7. Contract Sum. This is an open-end indefinite quantity Agreement with no fixed price. The actual amount of work to be performed will be stated on the individual Work Orders. The City makes no guarantee as to the number of Work Orders that may be issued or the actual amount of services which will in fact be requested. No Work Order of \$50,000 or more shall be issued.

8. Payments. a. The City agrees to pay and the Service Provider agrees to accept as full payment for all work done and all materials furnished and for all costs and expenses incurred in performance of the work the sums set forth for the hourly labor rate and material costs, with markups, stated within the Bid Schedule Proposal Form, attached hereto as Exhibit "B", consisting of one (1) page, and incorporated herein by this reference.

b. Payment shall be made by the City only upon acceptance of the work by the City and upon the Service Provider furnishing satisfactory evidence of payment of all wages, taxes, supplies and materials, and other costs incurred in connection with the performance of such work.

9. City Representative. The City's representative will be shown on the specific Work Order and shall make, within the scope of his or her authority, all necessary and proper decisions with reference to the work requested. All requests concerning this Agreement shall be directed to the City Representative.

10. Independent Contractor. It is agreed that in the performance of any services hereunder, the Service Provider is an independent contractor responsible to the City only as to the results to be obtained in the particular work assignment and to the extent that the work shall be done in accordance with the terms, plans and specifications furnished by the City.

11. Personal Services. It is understood that the City enters into the Agreement based on the special abilities of the Service Provider and that this Agreement shall be considered as an agreement for personal services. Accordingly, the Service Provider shall neither assign any responsibilities nor delegate any duties arising under the Agreement without the prior written consent of the city.

12. Acceptance Not Waiver. The City's approval or acceptance of, or payment for any of the services shall not be construed to operate as a waiver of any rights under the Agreement or of any cause of action arising out of the performance of this Agreement.

13. Warranty.

- (a) Service Provider warrants that all work performed hereunder shall be performed with the highest degree of competence and care in accordance with accepted standards for work of a similar nature.
- (b) Unless otherwise provided in the Agreement, all materials and equipment incorporated into any work shall be new and, where not specified, of the most suitable grade of their respective kinds for their intended use, and all workmanship shall be acceptable to City.
- (c) Service Provider warrants all equipment, materials, labor and other work, provided under this Agreement, except City-furnished materials, equipment and labor, against defects and nonconformances in design, materials and workmanship/workwomanship for a period beginning with the start of the work and ending twelve (12) months from and after final acceptance under the Agreement, regardless whether the same were

furnished or performed by Service Provider or by any of its subcontractors of any tier. Upon receipt of written notice from City of any such defect or nonconformances, the affected item or part thereof shall be redesigned, repaired or replaced by Service Provider in a manner and at a time acceptable to City.

14. Default. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this agreement, such party may be declared in default thereof.

15. Remedies. In the event a party has been declared in default, such defaulting party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail himself of any other remedy at law or equity. If the non-defaulting party commences legal or equitable actions against the defaulting party, the defaulting party shall be liable to the non-defaulting party for the non-defaulting party's reasonable attorney fees and costs incurred because of the default.

16. Binding Effect. This writing, together with the exhibits hereto, constitutes the entire agreement between the parties and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representative, successors and assigns of said parties.

17. Indemnity/Insurance. a. The Service Provider agrees to indemnify and save harmless the City, its officers, agents and employees against and from any and all actions, suits, claims, demands or liability of any character whatsoever, brought or asserted for injuries to or death of any person or persons, or damages to property arising out of, result from or occurring in connection with the performance of any service hereunder.

b. The Service Provider shall take all necessary precautions in performing the work hereunder to prevent injury to persons and property.

c. Without limiting any of the Service Provider's obligations hereunder, the Service Provider shall provide and maintain insurance coverage naming the City as an additional insured under this Agreement of the type and with the limits specified within Exhibit "D", consisting of one (1) page, attached hereto and incorporated herein by this reference. The Service Provider before commencing services hereunder, shall deliver to the City's Director of Purchasing and Risk Management, 215 North Mason , 2nd Floor, Fort Collins, Colorado 80524 one copy of a certificate evidencing the insurance coverage required from an insurance company acceptable to the city.

18. Entire Agreement. This Agreement, along with all Exhibits and other documents incorporated herein, shall constitute the entire Agreement of the parties. Covenants or representations not contained in this Agreement shall not be binding on the parties.

19. Law/Severability. This Agreement shall be governed in all respect by the laws of the State of Colorado. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction such holding shall not invalidate or render unenforceable any other provision of this Agreement.

CITY OF FORT COLLINS, COLORADO
a municipal corporation

By: _____
James B. O'Neill II, CPPO, FNIGP
Director of Purchasing and Risk Management

Date: _____

Pierre DeMiltt, LLC

By: _____

PRINT NAME

CORPORATE PRESIDENT OR VICE PRESIDENT

Date: _____

ATTEST:

(Corporate Seal)

CORPORATE SECRETARY

EXHIBIT "A"
WORK ORDER FORM
PURSUANT TO AN AGREEMENT BETWEEN
THE CITY OF FORT COLLINS
AND

DATED: _____

Work Order Number: _____

Purchase Order Number: _____

Project Title: _____

Commencement Date: _____

Completion Date: _____

Maximum Fee: (time and reimbursable direct costs): _____

Project Description: _____

Scope of Services: _____

Acceptance _____
User

Service Provider agrees to perform the services identified above and on the attached forms in accordance with the terms and conditions contained herein and in the Services Agreement between the parties. In the event of a conflict between or ambiguity in the terms of the Services Agreement and this work order (including the attached forms) the Services Agreement shall control.

The attached forms consisting of ____ () pages are hereby accepted and incorporated herein by this reference, and Notice to Proceed is hereby given.

Service Provider
By: _____

City of Fort Collins
By: _____

Date: _____

Date: _____

WOSA 10/97