

SERVICES AGREEMENT

This **SERVICES AGREEMENT** (“Agreement”) is made and entered into as of the _____ day of September, 2012, by and between **WATERFALL METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and **RITECORP, INC.** (“Contractor”).

RECITALS

WHEREAS, the District was organized pursuant to the laws of the State of Colorado in order to construct, operate and maintain certain public facilities and improvements in accordance with its approved service plan; and

WHEREAS, pursuant to § 32-1-1001(1)(d)(I), C.R.S., the District is permitted to enter into contracts affecting the affairs of the District; and

WHEREAS, the District desires to procure Pest Management services, as described in **Exhibit A** attached hereto, for purposes of operating and/or maintaining District facilities and/or improvements; and

WHEREAS, Contractor has experience in providing the types of services required by the District; and

WHEREAS, the District desires to engage Contractor to perform such services as are needed by the District and Contractor is willing to provide such services to the District for reasonable consideration; and

WHEREAS, the Parties desire to enter into this Agreement to establish the terms and conditions by which Contractor shall provide such services to the District.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

I. APPOINTMENT OF CONTRACTOR

1.1 APPOINTMENT OF CONTRACTOR. The District hereby retains Contractor and Contractor agrees to perform certain services for the District (“Services”) pursuant to the terms and conditions set forth herein.

1.2 INDEPENDENT CONTRACTOR STATUS. Contractor is and shall be considered an independent contractor under this Agreement. Nothing herein contained shall constitute or designate Contractor or any of its employees or agents as employees or agents of the District, nor

shall Contractor be deemed or considered as a partner or agent of the District. Contractor shall have full power and authority to select the means, manner and method of performing its duties under this Agreement without detailed control or direction of the District except as set forth in this Agreement. It shall be Contractor's responsibility as an independent contractor to pay any and all taxes on payments which it receives under this Agreement and to pay its own costs and expenses incurred in connection with performance of this Agreement.

II. DUTIES AND AUTHORITY

2.1 GENERAL LIMITATIONS AND REQUIREMENTS. Contractor shall perform the duties and have the authority specified in Section 2.4 below. Contractor shall have no right or authority, express or implied, to take any action, expend any sum, incur an obligation, or otherwise obligate the District in any manner whatsoever, except to the extent specifically provided in this Agreement or specifically authorized or ratified by the Board of Directors (the "Board") of the District as reflected in the meeting minutes of the Board. Contractor shall at all times conform to the stated policies established and approved by the District.

2.2 COMPLIANCE WITH APPLICABLE LAW. Contractor shall provide the Services set forth herein in full compliance with all applicable laws, ordinances, rules, and regulations of any federal, state, county, or municipal body or agency thereof having jurisdiction in which this Agreement is performed. Contractor declares that Contractor has complied with all federal, state and local laws regarding business permits, certificates and licenses that may be required to carry out the Services to be provided under this Agreement.

2.3 NO RIGHT OR INTEREST IN THE DISTRICT ASSETS. Contractor shall have no right or interest in any of the District's assets, nor any lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated herein.

2.4 SPECIFIC DUTIES AND AUTHORITY. Contractor shall perform the Services for the District as outlined on the Scope of Work in **Exhibit A** attached hereto and incorporated herein by reference. Contractor shall obtain approval from the District prior to providing any Services that vary from those Services set forth in Exhibit A attached hereto.

2.5 GENERAL DUTIES AND AUTHORITY. In connection with its specific duties, Contractor agrees to:

(A) Provide all Services specified in Section 2.4 herein in a good and workmanlike manner and in accordance with any and all approved plans, documents, and specifications described in Contractor's proposal to provide such Services to the District.

(B) Furnish, or cause to be furnished, all labor, materials, equipment, permits and accessories, as necessary, to provide such Services.

(C) Take all precautions necessary for safely and prudently conducting the Services required by this Agreement, including maintaining insurance as required by Part V hereof.

(D) Advise the District of the status of the Services required by this Agreement on a regular basis and work in coordination with the District's staff and consultants to assure that the District has the most complete information available for the exercise of the District's powers and discretionary authority.

(E) Refrain from entering into any contract, oral or written, in the name of the District, and from incurring any debt, liability or obligation for or on behalf of the District. All obligations incurred by Contractor shall be the obligations of Contractor whom shall hold the District harmless therefrom.

III. COMPENSATION

3.1 FEE CALCULATION. Contractor shall be paid as set forth in **Exhibit B** attached hereto and incorporated herein by reference and in accordance with the procedures described herein. Contractor shall obtain approval from the District prior to charging for any Services that vary from those costs set forth in Exhibit B attached hereto. In the event of early termination described in Section 4.2 hereof, the District shall pay Contractor for all Services satisfactorily performed up to and including the designated termination date. The District is exempt from Colorado sales and use taxes. Contractor shall use reasonable efforts to assure that costs for Services set forth in Exhibit B and charged to the District as set forth in Section 3.2 herein do not include sales and use taxes.

3.2 MONTHLY REPORTS AND PAYMENTS. Contractor shall submit to the District monthly reports in a form acceptable to the District which describes the work completed to date and the work yet to be performed, and summarizes costs paid to date by the District and the amount currently due to Contractor. Contractor shall submit its report together with its invoice to the District by the 5th day of each month for Services completed in the preceding month. The District's Board shall review and approve all invoices received for payment at the next meeting of the Board. The District reserves the right to inspect all services completed and invoiced for payment. In the event inspected services are not accepted for payment by the District, the terms of Section 3.3 herein shall apply.

3.3 INSPECTION OF SERVICES. The District may inspect the Services provided at any time throughout the term of this Agreement and shall notify Contractor if, in the District's discretion, any or all Services are not provided in accordance with this Agreement. Failure by Contractor to properly provide the Services required by this Agreement shall constitute a default hereunder. In such case, the District shall provide written notice of said default to Contractor. Contractor shall have two (2) days to cure the default unless otherwise agreed to by the Parties. If Contractor fails to cure the default within the time period provided, the District shall be entitled to pursue all remedies provided by law and in equity, including specific performance, and to recover all costs and reasonable attorney fees incurred in any suit or claim brought by the District to enforce the terms of this Agreement. In addition, in the event of default by Contractor, the District may hire a third party to complete the Services and Contractor agrees to pay all additional costs incurred for the completion of the Services by a third party.

3.4 EXPENSES. Contractor shall be responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as set forth in Section 3.1 herein unless such expenses are approved for reimbursement in advance by the District in writing. Contractor shall not charge the District any other fee for use by the District of Contractor's offices, personnel, or overhead except as agreed in advance by the District in writing.

3.5 FEE ADJUSTMENT. In the event, this Agreement extends beyond one year, the District and Contractor shall annually analyze the reasonableness of the fees set forth in Exhibit B attached hereto, and may, upon the mutual consent of the District and Contractor, adjust the schedule of fees as deemed appropriate by the Parties. The failure of the District and Contractor to agree upon any such adjustment shall not require a termination of this Agreement nor shall either party be entitled to seek an adjustment from any court or other tribunal.

3.6 ANNUAL BIDDING. The District shall be entitled to bid each calendar year's services under this Agreement as it deems necessary to comply with current law regarding contracts for such services. Contractor shall have no claim against the District if this Agreement is not extended for any budget year.

IV. DURATION AND TERMINATION

4.1 TERM. The term of this Agreement shall begin on the date set forth above, shall be effective as of such date regardless of the date of execution hereof, and shall expire upon completion of the Services, subject to annual appropriations as set forth in Section 7.6 hereof, unless otherwise agreed to in writing by the parties or terminated pursuant to Section 4.2 herein.

4.2 NOTICE OF TERMINATION. The District reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Contractor. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Contractor shall immediately stop rendering services under this Agreement unless otherwise directed by the District. Contractor may terminate this Agreement, with cause, by delivery to the District of written notice of termination at least 30 days prior to the effective date of termination. Contractor shall stop rendering services under this Agreement upon the effective date of termination.

4.3 COMPENSATION. In the event of termination by either party, the District shall pay Contractor for reasonable costs incurred and services satisfactorily performed up to and including the date of the notice of termination if terminated by the District or the effective date of termination if terminated by Contractor. Compensation for work in progress shall be prorated as to the percentage of work completed as of the date of notice of termination or the effective date of termination, as applicable. In ascertaining the services actually rendered hereunder up to the date of notice of termination or the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, pertaining to the Services contemplated herein.

V. INSURANCE

5.1 INSURANCE COVERAGE REQUIREMENTS.

(A) Minimum Scope and Limits of Insurance. At all times during the Term of this Agreement, Contractor shall carry and maintain, at its sole cost and expense, no less than the following liability insurance coverage limits (unless otherwise crossed out or adjusted by the Parties, any such changes shall be initialed and dated by both Parties):

<u>General Liability</u>	
General Aggregate	\$ 2,000,000.00
Products and Completed Operations	\$ 2,000,000.00
Personal and Advertising Injury	\$ 1,000,000.00
Each Occurrence	\$ 1,000,000.00
Damage to Rented Premises	\$ 100,000.00
Medical Expenses (Any one person)	\$ 5,000.00
 <u>Automobile Liability</u>	
Combined Single Limit	\$ 1,000,000.00
 <u>Workmen's Compensation and Employer Liability</u>	
Each Accident	\$ 100,000.00
Disease Limit	\$ 500,000.00
Disease Each Employee	\$ 100,000.00
 <u>Umbrella</u>	 \$ 1,000,000.00

All policies listed herein shall be on an occurrence basis.

(B) Additional Coverage. In addition, unless otherwise crossed out, initialed and dated by both Parties, the following coverage shall be obtained by Contractor, on an occurrence basis:

- (1) ~~Performance Bond~~
- (2) Inland Marine including Builder's Risk, Installation Floater, Contractor's Equipment
- (3) Pollution Liability, claims made is acceptable

(C) Endorsements. The District, and if applicable, its managing consultant, shall be listed as additional insured on the comprehensive general liability insurance policy and auto liability insurance policy. General liability insurance coverage and auto liability insurance coverage shall be primary. Waiver of subrogation applies to general liability insurance and Workers Compensation insurance. All insurance policies required by this Agreement shall include a provision requiring a 10-day notice to the District for the cancellation of an insurance

policy due to the non-payment of a premium and a minimum of a 30-day notice to the District for any change to or cancellation of an insurance policy other than for non-payment of a premium.

(D) Certificates of Insurance. Contractor shall provide to the District certificates of insurance showing the insurance coverages and required endorsements described above, prior to performing any services under this Agreement.

(E) Non-limiting. No provision, term or condition contained under this Part V of the Agreement shall be construed as limiting in any way, the indemnification provision contained in Section 7.3 hereof, or the extent to which Contractor may be held responsible for payments of damages to persons or property

VI. ILLEGAL ALIENS

6.1 CERTIFICATION. Prior to the execution of this Agreement, Contractor shall certify to the District, as attached hereto as **Exhibit C**, that at the time of certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment's Employment Verification Program (the "Department Program"), as further described in Section 6.6 herein, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

6.2 PROHIBITED ACTS. Contractor shall not:

(A) Knowingly employ or contract with an illegal alien to perform work under this Agreement; or

(B) Enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Contractor shall provide the District with all certifications received from subcontractors in which subcontractors certify that said subcontractors do not knowingly employ or contract with an illegal alien to perform work under this Agreement.

6.3 VERIFICATION.

(A) Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

(B) Contractor shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

(C) If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall:

(i) Notify the subcontractor and the District within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(ii) Terminate the subcontract with the subcontractor if, within three (3) days of receiving the notice required pursuant to subparagraph (i) hereof, the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

6.4 DUTY TO COMPLY WITH INVESTIGATIONS. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (the “Department”) made in the course of an investigation conducted pursuant to § 8-17.5-102 (5), C.R.S. to ensure that Contractor is complying with this Part VI of the Agreement.

6.5 BREACH. If Contractor violates a provision of this Part VI, the District may terminate the Agreement for breach of the Agreement. If the Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the District. The District shall notify the Colorado office of the Secretary of State if Contractor violates a provision of this Part VI of the Agreement and the District terminates the Agreement.

6.6 DEPARTMENT PROGRAM. If Contractor participates in the Department Program, in lieu of the E-Verify Program, Contractor shall notify the Department and the District of such participation. Contractor shall, within twenty (20) days after hiring an employee who is newly hired for employment to perform work under the Agreement, affirm that the Contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. Sec. 1324a, and not altered or falsified the identification documents for such employees. Contractor shall provide a written, notarized copy of the affirmation, similar in form as attached hereto as **Exhibit D**, to the District.

VII. MISCELLANEOUS

7.1 MODIFICATION. This Agreement may not be amended, modified, or changed, in whole or in part, without a written agreement executed by both the District and Contractor.

7.2 ASSIGNMENT. Contractor shall not assign or transfer all or any part of Contractor’s interest in this Agreement without the District’s prior written consent. Any attempted assignment or transfer shall be void and shall constitute a breach of the Agreement and cause for termination of this Agreement. Regardless of the District’s consent, no assignment or transfer shall release Contractor from Contractor’s obligation to perform all other obligations to be performed by Contractor hereunder for the Term of the Agreement. Consent to one

assignment shall not be deemed to be consent to any subsequent assignment nor the waiver of any right to consent to such subsequent assignment.

7.3 INDEMNIFICATION. Contractor shall defend, indemnify, assume all responsibility for and hold harmless the District and its directors, officers, consultants, employees, servants, agents, or authorized volunteers, from all claims or suits for any damages to property or injury to persons, and for the costs of litigation and reasonable attorney fees of all such parties and persons that may arise out of any actions undertaken by Contractor pursuant to this Agreement; provided, however, that the provisions of this Section 7.3 shall not apply to loss, damage or claims attributable solely to the intentional acts or omissions of the District.

7.4 GOVERNMENTAL IMMUNITY. Nothing in this Agreement shall be construed to be a waiver, in whole or in part, of any right, privilege, or protection afforded the District or its Board of Directors, officers, employees, servants, agents, or authorized volunteers, pursuant to the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S.

7.5 LIABILITY OF THE DISTRICT. No provision, covenant or agreement contained in this Agreement, nor any obligations herein imposed upon the District shall constitute or create an indebtedness or debt of the District within the meaning of any Colorado constitutional provision or statutory limitation.

7.6 SUBJECT TO ANNUAL BUDGET AND APPROPRIATION. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The performance of those obligations of the District hereunder requiring budgeting and appropriation of funds are subject to annual budgeting and appropriations.

7.7 NOTICES. Any notices, demands, or other communications required or permitted to be given by any provision of this Agreement shall be in writing and may be personally delivered; sent by certified mail, return receipt requested; sent by electronic mail; or sent by a nationally recognized receipted overnight delivery service, including United States Postal Service, United Parcel Service, Federal Express, or Airborne Express, for earliest delivery the next day. Any such notice shall be deemed to have been given as follows: when personally delivered to the party to whom it is addressed; when mailed, three delivery (3) days after deposit in the United States mail, postage prepaid; when by electronic mail, on the day sent if sent on a day during regular business hours (9 a.m. to 5 p.m.) of the recipient, otherwise on the next day at 9 a.m.; and when by overnight delivery service, one (1) day after deposit in the custody of the delivery service. The addresses for mailing, transmitting, or delivering notices shall be as follows:

If to the District: Waterfall Metropolitan District No. 1
C/o Pinnacle Consulting Group, Inc.
Attention: Carla Hawkins
5110 Granite Street, Suite C
Loveland, CO 80538
970-669-3611/f 970-669-3612
Email: carlah@pinnacleconsultinggroupinc.com

Copy to: Icenogle, Seaver, & Pogue, PC.
Attention: Alan D. Pogue
4725 South Monaco Street, Suite 225
Denver, Colorado 80237
Email: apogue@isp-law.com

If to the Contractor: RITECorp, Inc.
Attention: David Thomason
621 Innovation Circle, Suite A
Windsor, CO 80550
970-800-2847/ f 970-674-1173
Email: dave.thomason@ritecorp.com

7.8 NON-WAIVER. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence of event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

7.9 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

7.10 SEVERABILITY. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance.

7.11 ATTORNEYS' FEES. In the event that litigation is brought by either party hereto in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any terms, conditions, or provisions hereof.

7.12 NO THIRD PARTY BENEFICIARY RIGHTS. This Agreement is entered into for the sole benefit of the District and Contractor and no other parties are intended to be direct or

incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

7.13 HEADINGS. The headings, captions and titles contained herein are intended for convenience and reference only and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

7.14 BINDING AGREEMENT. This Agreement shall inure to and be binding upon the respective parties hereto and their successors and permitted assigns.

7.15 ENTIRE AGREEMENT. This Agreement, including all Exhibits and the Addendum attached hereto, constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations.

7.16 COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

(Remainder of Page Left Intentionally Blank.)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

**WATERFALL METROPOLITAN
DISTRICT NO. 1**

By: _____
Its: _____

ATTEST:

By: _____
Its: _____

RITECorp, Inc.

By: David S. Thomason
Its: Commercial Accounts Manager

EXHIBIT A AND B
SCOPE OF WORK
AND
PAYMENT FOR SERVICES

EXHIBIT C

CERTIFICATION REGARDING ILLEGAL ALIENS

**CERTIFICATION
REGARDING ILLEGAL ALIENS**

To: **WATERFALL METROPOLITAN DISTRICT NO. 1**

I, _____, as _____ of RITECorp, Inc., the prospective “Contractor” for that certain contract for pest management services to be entered into with Centerra Metropolitan District No. 1, do hereby certify on behalf of said Contractor that, as of the date of this Certification, Contractor does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment’s Employment Verification Program pursuant to Section 8-17.5-102(5)(c), C.R.S. in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

Executed on the _____ day of September, 2012.

RITECorp, Inc.

By: David S. Thomason
Its: Commercial Accounts Manager

EXHIBIT D

AFFIRMATION OF LEGAL WORK STATUS



Contractor Affirmation for the Department Program

Required for use by contractors participating in the Department Program for public contracts for services 8-17.5-101 & 102, C.R.S.

The contractor shall provide a written, notarized copy of this affirmation to the contracting state agency or political subdivision.

DO NOT submit this affirmation to the Colorado Division of Labor unless specifically requested to do so.

Employee Name: _____ Last _____ First _____ M.I. _____ Date of Birth: _____ Date of Hire: _____

In accordance with 8-17.5-102, C.R.S., I have:

(Initial after each)

- Examined the legal work status of the above named employee: _____
- Retained file copies of documents required by 8 U.S.C. sec. 1324a.: _____
- Not altered or falsified the employee's identification documents: _____

Contract Number: _____

Contractor / Business Name: _____

Phone: _____

Contractor or Contractor Representative Name: _____

Contractor OR Contractor Representative Signature and Title: _____ Date Signed: _____

Subscribed and affirmed before me in the county of _____, State of Colorado, this _____ day of _____, 20_____.



(Notary's official signature)

(Commission expiration date)

8-17.5-102(5)(c)(II), C.R.S. A participating contractor shall, within twenty days after hiring an employee who is newly hired for employment to perform work under the public contract for services, affirm that the contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. sec. 1324a, and not altered or falsified the identification documents for such employees. The contractor shall provide a written, notarized copy of the affirmation to the contracting state agency or political subdivision.

This affirmation and the documents required by 8 U.S.C. sec. 1324a will be retained by the contractor for the duration of the above named individual's employment.

This affirmation is provided as a courtesy by the Colorado Division of Labor.

Another substantially similar affirmation may be used, provided that it contains the necessary elements and information as required by law.