

AGREEMENT FOR MODIFICATION WORK TO THE  
TOWN OF PRESCOTT VALLEY WASTEWATER TREATMENT PLANT

TOWN OF PRESCOTT VALLEY  
AND  
BLACK & VEATCH CORPORATION

This Agreement for Modification Work to the Town of Prescott Valley Wastewater Treatment Plant ("Agreement") is made as of this 23rd day of June, 2011, by and between the Town of Prescott Valley, a municipal corporation of Arizona ("Town"), and Black & Veatch Corporation, a Delaware Corporation ("B&V"). Town and B&V are sometimes referred to herein collectively as "Parties" and individually as "Party."

RECITALS

A. On February 27, 2003, the Town and B&V entered into an Agreement for Engineering and Other Services whereby B&V agreed to design the Phase III expansion of the Town's wastewater treatment plant ("WWTP") and to also provide construction period services and operations and start-up assistance for the WWTP in exchange for certain Town payments as specified therein ("WWTP Agreement"). A true and correct copy of the WWTP Agreement is attached hereto as Exhibit "1."

B. During the course of construction, the WWTP Agreement was amended four times on March 11, 2004, September 23, 2004, May 26, 2005 and June 7, 2007 to further define the scope of engineering and other services to be provided by B&V in connection with the project. True and correct copies of the Amendments to the WWTP Agreement are attached hereto as Exhibit "2."

C. In August 2007, the Town expressed concerns to B&V about the WWTP's performance with respect to meeting design performance criteria and discharge limits for nitrogen and nitrates specified in *Black & Veatch - Wastewater Treatment Plant Upgrade and Expansion Phase III, Preliminary Design Report*, October 2003 ("Design Report"). A true and correct copy of the Design Report is attached hereto as Exhibit "3."

D. B&V responded by investigating various potential causes of the performance issues over a two-year period, culminating in a demonstration test lasting almost six (6) months. The Town assisted B&V during the investigation by providing labor (at no charge) and conducting additional sampling and laboratory tests at a cost of \$52,772.70. A true and correct copy of a letter dated August 12, 2009 from B&V (Brad Hemken) to the Town (Neil Wadsworth) describing the investigation is attached hereto as Exhibit "4."

E. Based on the results of the demonstration test, it was determined that with some modifications, the WWTP could meet the original design criteria for nitrogen removal. B&V obtained a quote from Fann Environmental, LLC in September 2009 for pipe removal to permanently implement hydraulic modifications at a cost of approximately \$40,000.00 ("Fann Quote"). A true and correct copy of the Fann Quote is attached hereto as Exhibit "5."

F. The Fann Quote is now over one (1) year old and is based on WWTP conditions existing at the time of the quote. The Town and B&V acknowledge that the WWTP conditions and/or the cost to perform the necessary modifications may have changed since the Fann Quote.

G. It is disputed as to whether the above-described WWTP performance issues are design related. However, in the interests of preserving a positive working relationship and without any admission of liability or wrongdoing by either Party, the Parties now wish to implement the aforementioned modifications to the WWTP, more fully described in Exhibits 6 and 7 hereto, pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, conditions, covenants and terms set forth herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **AGREEMENT**

**Section 1.** **Incorporation by Reference.** The above Recitals and exhibits hereto are incorporated herein by this reference.

**Section 2.** **Term.** The term of this Agreement shall be from the date first-above written through June 30, 2013, unless sooner terminated as set forth in Section 7 herein.

**Section 3.** **WWTP Modifications.** B&V and/or its affiliates shall arrange to perform the services and work described in Exhibits 6 and 7 hereto (the "Modification Work") at no expense to the Town, pursuant to the following terms and conditions:

- 3.1 **Permits.** The Parties will work together to identify the permits and/or approvals required for the Modification Work, if any (including any required Arizona Department of Environmental Quality permits (e.g., APP and AZPDES permits)) and to obtain same in the name of the appropriate Party, whether that be B&V or the Town. B&V will be responsible for all of the expenses of any required permits and approvals for the Modification Work.
- 3.2 **Compliance with Federal and State Laws.** B&V will comply with all applicable laws in the performance of the Modification Work including, but not limited to, the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986, the Drug Free Workplace Act of 1989, A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited", and A.R.S. § 34-302, as amended, "Residence Requirements for Employees."
- 3.3 **Mutual Cooperation and Good Faith Conduct.** The Parties agree to fully cooperate with one another to facilitate B&V's timely and cost efficient completion of the Modification Work, and to act at all times in good faith to ensure the successful performance of their respective obligations under this Agreement.
- 3.4 **Commencement of Modification Work.** After this Agreement is fully executed, the Town will direct its contractor for water and sewer operations and

maintenance, CH2MHill Operation Management International (“OMI”) to commence de-watering of the pertinent WWTPbasins. Once B&V receives written notice from the Town that this process is complete, B&V will begin the Modification Work.

- 3.5 Performance of Modification Work. Except as otherwise provided herein, B&V will furnish any and all labor, materials, equipment, transportation, and services required to perform and complete the Modification Work.
- 3.6 Schedule for Completion of Modification Work; Uncontrollable Circumstances. Subject to Subsection 3.10, the Modification Work is expected to be complete by July 15, 2011, subject to execution of this Agreement and notice per Subsection 3.4 not later than May 15, 2011 (such date to be extended for each day after May 15, 2011, such conditions are not met) (“Completion Date”). If the Modification Work cannot reasonably be completed by the Completion Date due to circumstances beyond the control of B&V (“Uncontrollable Circumstances”), the Completion Date shall be extended for such additional period as B&V deems is reasonably required to complete the Modification Work not to exceed sixty days without a written amendment to this Agreement and all affected provisions (“Extended Completion Date”).

By way of example and not of limitation, such Uncontrollable Circumstances include without limitation (i) acts or omissions of Town or anyone under Town’s control (including separate contractors), (ii) unsuitable site conditions, (iii) hazardous site conditions, (iv) wars, (v) terrorism, (vi) civil unrest, (vii) actions and inactions of governmental or regulatory authorities, (viii) floods, (ix) labor disputes and unrest, (x) unusual delay in transportation, (xi) epidemics abroad, (xii) earthquakes, adverse weather conditions, and other acts of God, which adversely impact or impede performance of the Modification Work.

- 3.6.1 **Notice of Uncontrollable Circumstances.** Upon the occurrence of any Uncontrollable Circumstances, B&V shall promptly so notify the Town in writing as specified in Section 10 herein, stating the nature of the Uncontrollable Circumstances, the anticipated impact on the Completion Date of the Modification Work and B&V’s revised schedule for completion of the Modification Work;
- 3.6.2 **Cooperation to Minimize Impact of Uncontrollable Circumstances.** The Town and B&V shall work together to minimize the impacts of the Uncontrollable Circumstances to B&V’s timely completion of the Modification Work; and
- 3.6.3 **Modification Work Cannot Be Completed; Automatic Termination; Rights and Remedies.** B&V will proceed to complete the Modification Work as specified herein. In the event, however, that B&V cannot complete the Modification Work by the Completion Date or Extended Completion Date, as applicable, then this Agreement shall automatically terminate, subject to the provisions of Section 24 herein, and B&V’s

failure to complete the Modification Work shall not be construed as a Default hereunder or a breach of this Agreement, and B&V shall not be liable for any damages resulting from (or alleged to result from) such failure to complete the Modification Work within the timeframe specified. In the event of such termination, it is understood and agreed that the Town and B&V may proceed to exercise any rights and remedies that may be available to them under the WWTP Agreement.

3.6.4 **Modification Work Partially Completed.** Notwithstanding any other provision of this Agreement, it is understood and agreed that in the event the Modification Work is only partially completed at the time of termination under Subsection 3.6.3 herein, the Town has the exclusive right and option, in its discretion, to (i) require B&V to remove and haul off the partially-completed Modification Work at B&V's cost or (ii) retain and utilize same as it deems appropriate.

3.6.5 **Modification Work Completed.** Upon completion of the Modification Work, B&V will provide the Town with a written certification, signed by its authorized representative, stating that the Modification Work has been completed, and the date of completion. The Modification Work will be deemed complete upon written acceptance by the Town pursuant to Section 10 herein.

### 3.7 Warranties

3.7.1 **Compliance with A.R.S. § 41-4401.** B&V warrants to the Town that it and/or each of its subcontractors/affiliates performing services hereunder ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) ("B&V Immigration Warranty"). A breach of the B&V Immigration Warranty shall constitute a material breach of this Agreement and shall subject B&V to penalties up to and including termination of this Agreement at the sole discretion of the Town. The Town has the legal right to randomly inspect the papers of any employee of B&V or its Subcontractors who perform the Modification Work to ensure compliance with the B&V Immigration Warranty. B&V agrees to assist the Town in performing any such inspections. There will be no material breach of the B&V Immigration Warranty if B&V or its Subcontractor, as applicable, establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214, Subsection A. B&V acknowledges and agrees that the requirements of this Subsection 3.7.1 apply to every contract B&V enters into with any and all of its Subcontractors who provide services under this Agreement. "Services" are defined as furnishing labor, time, or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

3.7.2 **Modification Work.** B&V guarantees that the Modification Work will be performed in a skillful and workmanlike manner, free from defects in workmanship, and in conformance with this Agreement. B&V's liability for this guarantee will be limited to remedying, at its own expense, any defect in the workmanship caused by B&V's failure to perform the Modification Work in a skillful and workmanlike manner, provided, however: (i) that such defect shall manifest itself within 2 years of completion as defined in Subsection 3.6.5 herein, and (ii) that the Town shall give notice in writing to B&V within thirty days of discovery. The guarantees stated in this Subsection 3.7.2 are conditioned on operation and maintenance of the WWTP, including the Modification Work, in accordance with applicable operating and maintenance requirements and standard industry practice.

3.7.3 **No Other Warranties. EXCEPT AS PROVIDED HEREIN, B&V MAKES NO OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO THE WORK OR B&V'S OTHER SERVICES HEREUNDER, AND B&V DISCLAIMS ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

3.8 Bonds. No bonding or other performance security shall be required for the Modification Work.

3.9 Insurance. B&V, at its own expense and prior to commencing the Modification Work, shall secure and maintain the herein stipulated minimum insurance with companies duly licensed or otherwise authorized by the State of Arizona, possessing a current A.M. Best Company, Inc. rating of not less than A-, with policies and forms satisfactory to the Town.

*Additional Insured:* The insurance coverage, except Workers' Compensation, required by this Agreement, shall name the Town, its agents, representatives, directors, officials, employees, and officers, as additional insureds, and shall specify that insurance coverage carried by the Town or its employees shall be excess coverage, and not contributory coverage to that provided by B&V.

*Coverage Term:* All insurance required herein shall be maintained in full force and effect until the Modification Work required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted; failure to do so may constitute a material breach of this Agreement, at the sole discretion of the Town. In the event any insurance policy(ies) required by this Agreement is(are) written on a "claims made" basis, coverage shall extend for 2 years past completion and acceptance of B&V's work or services, as evidenced by annual Certificates of Insurance.

*Primary Coverage:* B&V's insurance shall be primary insurance as respects the Town and any insurance maintained by the Town shall be excess of B&V's insurance and shall not contribute to it.

*Claim Reporting:* Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the Town.

*Waiver:* The policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the Town, its agents, representatives, directors, officers, and employees for any claims arising out of B&V's work or service under this Agreement.

*Deductible/Retention:* The policies may provide coverage which contains deductibles or self insured retentions. Such deductibles and/or self insured retentions shall not be applicable with respect to the coverage provided to the Town under such policies. B&V shall be solely responsible for such deductibles and/or self insured retentions.

*Certificates of Insurance:* Prior to commencing the Modification Work, B&V shall furnish the Town with Certificates of Insurance issued by B&V's insurer(s), as evidence that policies providing the required coverages, conditions, and limits are in full force and effect. Such certificates shall identify this Agreement by name and date and shall provide for not less than thirty (30) days per certificate, advance Notice of Cancellation or Termination. Such certificates shall be sent directly to:

Town of Prescott Valley  
Utilities Director  
7501 E. Civic Circle  
Prescott Valley, AZ 86314

The Town shall not be obligated, to review or to advise B&V of any deficiencies in the insurance policies and endorsements it provides to the Town under this Agreement, and such receipt shall not relieve B&V from, or be deemed a waiver of, the Town's right to insist on strict fulfillment of B&V's obligations under this Agreement.

If a policy expires during the life of the contract, a renewal certificate must be sent to the Town 15 days prior to the expiration date. Insurance required herein shall not expire or be canceled without renewal during the term of this Agreement without 30 days prior written notice to the Town.

**3.9.1 Workers' Compensation.** B&V shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of B&V's employees engaged in the performance of the Modification Work, and Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit. If any of the Modification Work is

subcontracted, B&V will require the Subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of B&V under this Agreement.

3.9.2 **Automobile Liability.** B&V shall carry Commercial/ Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence and a \$2,000,000 aggregate including bodily injury and property damage with respect to any of B&V's owned, hired, and non-owned vehicles assigned to, or used in, performance of the Modification Work. Coverage will be at least as broad as coverage Code 1, "any auto," (Insurance Service Office, Inc. policy form CA 0001 1/87, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damage shall apply.

3.9.3 **General Liability.** B&V shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products and Completed Operations Aggregate and \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products/completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Agreement, which coverage will be at least as broad as Insurance Service Office, Inc.'s Policy Form CG 000211093 or any update thereof. The coverage shall not exclude X, C, U.

Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision which would serve to limit third party action over claims.

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s, Additional Insured, Form B, CG20100704, or any update thereof, and shall include coverage for B&V's operations and products and completed operations.

If B&V intends to sublet any part of the Modification Work, B&V shall have all Subcontractors provide insurance subject to the same insurance requirements listed herein.

### 3.10 Hazardous Conditions.

3.10.1 **Definition.** For the purposes of this Agreement, "Hazardous Conditions" are defined as any materials, wastes, substances and chemicals deemed to be hazardous under applicable state, local or federal law, including without limitation CERCLA or RCRA, or the handling, storage, remediation, or

disposal of which are regulated by applicable state, local or federal law, including without limitation CERCLA or RCRA.

3.10.2 **Liability.** B&V is not responsible for any Hazardous Conditions encountered or suspected to be or have been encountered at the WWTP.

3.10.3 **Response.** Upon encountering any Hazardous Conditions, B&V will stop the Modification Work immediately in the affected area and notify the Town and, if required under applicable law, all government or quasi-government entities with jurisdiction over the site. Upon receiving notice of the presence of suspected Hazardous Conditions, the Town shall take the necessary steps to ensure that the Hazardous Conditions are remediated or rendered harmless. This will include the retention of a qualified, independent expert to ascertain whether Hazardous Conditions exist and the remedial measures required to remove the Hazardous Conditions or render them harmless. B&V shall be obligated to resume Modification Work at the affected area of the WWTP only after the Town's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Modification Work.

3.10.4 **Reimbursement.** Except as otherwise stated in Subsections 3.11.2, 3.11.3 and 3.11.4 herein, B&V will be entitled to be reimbursed for any costs it incurs due to the presence or suspected presence of Hazardous Conditions.

### 3.11 Indemnity and Limitations of Liability.

3.11.1 **B&V.** B&V hereby agrees to indemnify and save harmless the Town, its officers, officials, employees, agents and representatives for, from, and against, all suits, actions, losses, damages, expenses, costs or claims of any character or any nature brought on account of any injuries or damages sustained by any person(s) or property arising out of, or in connection with, the negligent performance of the Modification Work pursuant to this Agreement, willful misconduct hereunder, or material breach of this Agreement, by B&V its officers, employees, agents, assigns and Subcontractors (except such loss or damage caused by the negligence, willful misconduct or material breach of this Agreement by the Town, its officers, officials, employees, agents and representatives).

3.11.2 **Town.** Town agrees to hold harmless, indemnify and defend B&V and its Subcontractors, and their officers, employees, agents and representatives for, from and against, any and all suits, actions, claims, losses, damages, liability, expenses, and costs (including, but not limited to, costs of defense) resulting from the presence, or suspected presence, of Hazardous Conditions, excepting only such liability as may arise out of the sole negligence or willful misconduct by B&V, its officers, employees, agents, assigns and Subcontractors under applicable environmental laws and regulations.

3.11.3 **Limitation on Liability.** No Party or its Subcontractors, officers or employees shall be liable to the other Party or its Subcontractors, officers or employees for special, indirect or consequential losses or damages, whether such liability arises in breach of contract or warranty, tort (including negligence), strict or statutory liability, or any other cause of action.

3.11.4 **No Increase in Liability under WWTP Agreement.** Nothing herein shall be construed to increase the liability of either Party to the other under the terms of the WWTP Agreement (including, but not limited to, with respect to the nitrogen removal issues addressed herein).

**Section 4. Mutual Release Contingent on Results of Modification Work.** After the Modification Work is complete and accepted by the Town pursuant to Subsection 3.6.5, the Town (and B&V in its discretion) shall evaluate and/or test the performance of the WWTP. Within 90 days of the date of the Town's written acceptance of the Modification Work, the Town shall advise B&V in writing as to whether the Modification Work has fully and consistently resolved the nitrogen removal issues described in the Recitals herein and Exhibits 3 & 4 hereto based on any original design parameters specified in the WWTP Agreement without adversely impacting the WWTP's current design capacity or any other design parameters or processes specified in the WWTP Agreement and/or required by applicable law/permits ("Successful Resolution"). The Town's written notice shall include all supporting data and/or test results. If the Town's written notice (which must be based on the supporting data and/or test results) states that the Modification Work has resulted in a Successful Resolution, then, and only then, shall the mutual releases in Subsections 4.1 and 4.2 herein automatically take effect. Otherwise, the Parties' respective rights, remedies and obligations with regard to the nitrogen removal issues addressed herein shall continue to be governed by the terms of the WWTP Agreement (and this Agreement to the extent not inconsistent therewith).

4.1 Release of B&V. The Town, its officers, officials, employees, agents and representatives hereby release and forever discharge B&V and any and all of its affiliated companies, parent companies, related companies, successors, agents, employees, beneficiaries, attorneys, insurers, reinsurers, sureties, owners, members, shareholders, officers and assigns and subcontractors from any and all claims, actions, causes of action, suits, debts, sums of money, accounts, bills, covenants, contracts, controversies, agreements, promises, demands, rights, damages, costs, expenses, compensation, relief, judgments, executions, attorneys' fees, and any and all other liability of any kind or nature or description whatsoever, in law or equity, under federal law, state law, common law or any other law, with respect to the nitrogen removal issues described in the Recitals herein and Exhibits 3 and 4 hereto; provided, however, that all other rights, remedies and defenses that either Party may have under the WWTP Agreement, as amended, or this Agreement are expressly preserved and shall survive the termination of this Agreement.

4.2 Release of Town. B&V and any and all of its affiliated companies, parent companies, related companies, successors, agents, employees, beneficiaries,

attorneys, insurers, reinsurers, sureties, owners, members, shareholders, officers and assigns and subcontractors hereby release and forever discharge the Town, its officers, officials, employees, agents and representatives from any and all claims, actions, causes of action, suits, debts, sums of money, accounts, bills, covenants, contracts, controversies, agreements, promises, demands, rights, damages, costs, expenses, compensation, relief, judgments, executions, attorneys' fees, and any and all other liability of any kind or nature or description whatsoever, in law or equity, under federal law, state law, common law or any other law, with respect to the nitrogen removal issues described in the Recitals herein and Exhibits 3 and 4 hereto; provided, however, that all other rights, remedies and defenses that either Party may have under the WWTP Agreement, as amended, or this Agreement are expressly preserved and shall survive the termination of this Agreement.

**Section 5.** **In-Kind Services.** To compensate the Town for the additional sampling and analysis costs it has already incurred (as described in Recital D above), B&V agrees to waive its final payment of \$11,286.60 under the WWTP Agreement and to provide the \$41,486.10 (at then-current rates) in future engineering design work to the Town (i) at no cost to the Town, (ii) on unrelated Town projects (separate from the Modification Work), (iii) in the time and manner reasonably specified by the Town, (iv) during the period through and including June 30, 2013, and (v) in accordance with the Town's engineering procurement requirements. Any design work requested by the Town pursuant to this Section 5 that is still in progress on June 30, 2013 shall be timely completed by B&V; otherwise, B&V's obligations to provide in-kind services under this Section 5 shall end effective July 1, 2013.

**Section 6.** **Project Drawings.** Within thirty (30) calendar days of the date of B&V's certification that the Modification Work is complete, B&V shall provide the Town with two (2) paper and two (2) electronic copies (in pdf format) of all certified as-built drawings for the WWTP expansion project, including the Modification Work.

**Section 7.** **Default; Termination.** Failure or unreasonable delay of either Party to act in accordance with any provision of this Agreement for a period of thirty (30) calendar days (the "cure period") following mailing of a written notice from the other Party by regular mail, postage prepaid, shall constitute an "incident of default." The written notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. [Note, however, that if an action under this Agreement would normally require more than thirty (30) calendar days to complete, the responsible Party shall have reasonable additional time beyond thirty (30) days in which to comply]. Subject to Subsection 3.6 herein, only in the event of an incident of default where a Party fails to act in accord with any substantial provision of this Agreement, shall the non-defaulting Party have the right to terminate this Agreement by written notice to the defaulting Party, which termination shall be effective thirty (30) calendar days following the mailing of the notice by regular mail, postage prepaid (provided the defaulting Party has not cured such default). In addition, if any default is not cured within the cure period, the non-defaulting Party may exercise all rights and remedies available to it (i) hereunder, including without limitation the right to specifically enforce any term or provision hereof, and/or (ii) under the WWTP Agreement, as amended.

**Section 8.**     **Separate Agreement.** This Agreement is a separate contract by and between the Parties and does not amend or supersede the terms of the WWTP Agreement except as specified in Sections 4 and 5 herein. Subject to Sections 4 and 5 herein, if any term herein conflicts with the terms of the WWTP Agreement or any amendment thereto, the terms of the WWTP Agreement, as amended, shall govern.

**Section 9.**     **No Agency, Partnership or Joint Venture.** Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the Parties.

**Section 10.**   **Notices.** Notices shall be in writing and shall be given by personal or air courier service delivery to a responsible person, by telephone facsimile, or by deposit in the United States mail, certified mail, and return-receipt requested, postage prepaid. Notices shall be delivered or addressed to Town and B&V at the addresses set forth below, or at such other address as a Party may designate in writing. The date notice is deemed to have been given, received and become effective shall be the date on which the notice is delivered (if notice is given by personal or air courier service delivery or by telephone facsimile), or 2 days following the date of deposit in the mail (if the notice is sent through the United States mail).

If to Town:     Town of Prescott Valley  
                  c/o Utilities Director  
                  7501 E. Civic Circle  
                  Prescott Valley, Arizona 86314

If to B&V:     Adrienne Mickells  
                  Black & Veatch Corporation  
                  P.O. Box 803823  
                  Kansas City, MO 64180-3823

                  Brad Hemken  
                  Black & Veatch Corporation  
                  2850 E. Camelback, Suite 250  
                  Phoenix, AZ 85016

All notices served by a Party, that may trigger a right, obligation or duty to be fulfilled by the other Party under this Agreement, shall be served by Certified Mail, return receipt requested.

**Section 11.**   **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect and the Parties shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effectuating the purpose of this Agreement. The validity and enforceability of the remaining provisions or portions, or applications thereof, shall not be affected thereby.

**Section 12.**   **Governing Law.** This Agreement shall be deemed an Arizona contract and construed according to Arizona law, regardless of whether this Agreement is being

executed by either of the Parties in another state or otherwise. This Agreement shall only be enforceable in a court of competent jurisdiction in the State of Arizona, and not in any other state.

**Section 13.** **Counterparts.** This Agreement may be executed in counterparts, each of which shall be considered part of the whole. Further, the Parties agree that valid execution of this Agreement may be accomplished by signatures exchanged between the Parties by facsimile transmission and that such signatures shall be valid and binding as though they were original signatures.

**Section 14.** **Attorneys' Fees.** Should a Party be required to consult or engage attorneys to represent it with regard to enforcement of any material part of this Agreement, the prevailing Party shall be entitled to (and the non-prevailing Party shall be responsible for), the payment of all costs and expenses incurred by the prevailing Party, including reasonable attorneys' fees.

**Section 15.** **Successors-in-Interest; No Third-Party Rights.** This Agreement shall apply to, be binding in all respects upon, and inure to the benefit of, the successors-in-interest of the Parties. Nothing expressed or referred to in this Agreement will be construed to give any Person, other than the Parties to this Agreement, any legal or equitable right, remedy or claim under this Agreement, except such rights as shall inure to a successor-in-interest pursuant to this Section 15.

**Section 16.** **Waivers.** No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver. Any Party may waive any provision of this Agreement intended for its benefit. Provided, however, such waiver shall in no way excuse the other Party from the performance of any of its other obligations under this Agreement.

**Section 17.** **Construction.** The Parties acknowledge that they were each represented by counsel in connection with this Agreement, that each of them (and their respective counsel) reviewed this Agreement, that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement, and that the language in all parts of this Agreement shall in all cases be construed as a whole and in accordance with its fair meaning. Any provision of this Agreement which requires a Party to perform an action shall be construed so as to require the Party to perform the action or to cause the action to be performed. Any provision of this Agreement which prohibits a Party from performing an action shall be construed so as to prohibit the Party from performing the action or from permitting others to perform the action. Except to the extent, if any, to which this Agreement specifies otherwise, each Party shall be deemed to be required to perform its obligations under this Agreement at its own expense, and each Party shall be permitted to exercise its rights and privileges only at its own expense.

**Section 18.** **Cooperation and Further Documentation.** Each Party agrees in good faith to (i) cooperate with the other, and (ii) execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

**Section 19.** **Cooperation in the Event of Third-Party Litigation.** Subject to the indemnification provisions of Subsection 3.11 herein, in the event that any legal action is instituted by a third party or other governmental entity or official against the Parties challenging the validity or enforceability of any provision of this Agreement, or any other action by a Party performing hereunder, the Parties hereby agree to affirmatively cooperate in defending such action and to pay their own expenses associated with such defense. In the event of any litigation challenging the effectiveness of this Agreement (or any portion hereof), this Agreement shall remain in full force and effect while such litigation (including any appellate review) is pending.

**Section 20.** **Entire Agreement.** This Agreement and the exhibits hereto constitute the entire agreement between the Parties pertaining to the subject matter contained herein. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded by, and merged into, this Agreement and the exhibits hereto. This Agreement shall not be modified, changed or amended by any subsequent written or oral agreement unless agreed to in writing by the Town and B&V.

**Section 21.** **Authorizations.** The signatories to this Agreement represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for which they sign, and that no further action or approvals are necessary before execution of this Agreement.

**Section 22.** **Conflict of Interest.** Notice is hereby given of the provisions of A.R.S. §38-511, as amended. By this reference, the provisions of this statute are incorporated in this Agreement to the extent of their applicability to contracts of the nature of this Agreement under the laws of the State of Arizona.

**Section 23.** **Confidentiality.** Neither Party shall disclose the existence or terms of this Agreement to any third party without the other Party's express written consent, except (a) to its employees who are reasonably required to know of the Agreement and its terms, (b) to its agents, representatives, attorneys and other professional advisors (provided that such parties undertake in writing, or are otherwise bound by rules of professional conduct to keep such information strictly confidential), (c) as required by applicable law, or (d) where such disclosure is reasonably required to enact or implement the terms of this Agreement.

**Section 24.** **Survival.** Each of the following shall survive the termination of this Agreement: (a) Section 4 herein (Mutual Release Contingent on Results of Modification Work), Section 5 herein (In-Kind Services), Section 6 herein (Project Drawings), Section 8 herein (Separate Agreement), Section 9 herein (No Agency, Partnership or Joint Venture), Section 10 herein (Notices), Section 11 herein (Severability), Section 12 herein (Governing Law), Section 13 herein (Counterparts), Section 14 herein (Attorneys' Fees), Section 15 herein (Successors-in-Interest; No Third-Party Rights), Section 16 herein

(Waivers), Section 17 herein (Construction), Section 19 herein (Cooperation in the Event of Third-Party Litigation), Section 22 herein (Conflict of Interest), Section 23 herein (Confidentiality), (b) Subsection 3.6 (Schedule for Completion of Modification Work; Uncontrollable Circumstances), Subsection 3.7 herein (Warranties), Subsection 3.9 herein (Insurance), Subsection 3.10 herein (Hazardous Conditions), Subsection 3.11 herein (Indemnity), and (c) those provisions, and the rights and obligations therein, set forth in this Agreement which either by their terms state or evidence the intent of the Parties that the provisions survive the expiration or termination of this Agreement (or must survive to give effect to the provisions of this Agreement).

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by and through their authorized representatives effective on the day and year first-above written.

**TOWN**

TOWN OF PRESCOTT VALLEY,  
a municipal corporation of Arizona (“Town”)

\_\_\_\_\_  
Harvey C. Skoog, Mayor  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Diane Russell, Town Clerk                      Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Ivan Legler, Town Attorney                      Date

**B&V**

BLACK & VEATCH CORPORATION,  
a Delaware corporation (“B&V”)

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_