

**AGREEMENT
FOR
ENGINEERING SERVICES**

THIS AGREEMENT (Agreement) is by and between the City of Grand Junction (Owner)
and
Black & Veatch Corporation (Engineer);

WITNESSETH:

WHEREAS, Owner intends to request Water System Modeling Services (the Project);

WHEREAS, Owner requires certain engineering services in connection with the Project (the Services); and,

WHEREAS, Engineer is prepared to provide the Services.

NOW, THEREFORE, in consideration of the promises contained in this Agreement, Owner and Engineer agree as follows:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this Agreement shall be September 14, 2011.

ARTICLE 2 - GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without giving effect to the principles thereof relating to conflicts of law.

ARTICLE 3 - SERVICES TO BE PERFORMED BY ENGINEER

Engineer shall perform professional engineering services ("Services") in connection with various of Owner's facilities ("Facilities") in accordance with written Requests for Services issued by Owner and agreed to by Engineer from time to time during the term of this Agreement. Such Requests for Services shall be attached

as separate Exhibits A and B hereto. Such Requests for Services shall make specific reference to this Agreement and shall be subject to Engineer's written acceptance. Engineer shall accept or decline a Request for Services as promptly as practicable under the circumstances. A Request for Services shall not amend or add to this Agreement in any respect except to describe the new scope of Services, the schedule therefore, and the applicable compensation terms. Additional or conflicting contractual terms or conditions may be added only by formal written amendment to this Agreement and not through Requests for Services. Any such additional or conflicting terms and conditions contained in Requests for Services shall be of no force or effect. Engineer shall have no liability for defects in the Services attributable to Engineer's reliance upon or use of data, design criteria, drawings, specifications, or other information furnished by Owner or third parties retained by Owner.

ARTICLE 4 – COMPENSATION

4.1 Owner shall pay and Engineer shall accept in full consideration for the Services the compensation described in each Request for Services. Any such payment shall be due and payable upon receipt by Owner to Engineer.

4.2 Method of Payment. Payments due Engineer under this Agreement shall be electronically transferred either by ACH, specifically in CCD+ or CTX format, or wire transfer to the bank account and in accordance with the bank instructions identified in Engineer's most recent invoice in immediately available funds no later than the payment due date. Invoice number and project name shall be referenced in the bank wire reference fields or the ACH addenda information. In the event that such electronic funds transfer methods are not available to Owner, then payments due Engineer under this Agreement shall be made by check and mailed to the PO Box identified in the remittance instructions on the Engineer's most recent invoice, and received by Engineer no later than the payment due date. The Remittance Advice document shall be mailed with the check to the PO Box.

4.3 In the event Owner disputes any invoice item, Owner shall give Engineer written notice of such disputed item within ten (10) days after receipt of such invoice and shall pay to Engineer the undisputed portion of the invoice according to the provisions hereof. If Owner fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of one and one-half percent (1 ½%) per month, or the

maximum amount allowed by law, if less, from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item finally resolved in Owner's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

ARTICLE 5 - OWNER'S RESPONSIBILITIES

Owner shall at such times as may be required by Engineer for the successful and expeditious completion of the Services:

- 5.1 Obtain all permits and licenses required to be taken out in the name of Owner which are necessary for the performance of the Services;
- 5.2 Provide Engineer with all specifications necessary for the completion of the Services;
- 5.3 Provide Engineer with soil data evidencing that the site is clean and free of above ground and underground obstructions, fissures, faults and other similarly hidden features which will interfere with the completion of the Services;
- 5.4 Advise Engineer of the existence and undertake the abatement and disposal of all hazardous materials, including, but not limited to, asbestos, polychlorinated biphenyls (PCBs) and radioactive material and other toxic substances, encountered by Engineer in the performance of the Services; and
- 5.5 Appoint an individual who shall be authorized to act on behalf of Owner, with whom Engineer may consult at all reasonable times, and whose instructions, requests, and decisions will be binding upon Owner as to all matters pertaining to this Agreement and the performance of the parties hereunder.

ARTICLE 6 - STANDARD OF CARE

Engineer shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily possessed and exercised by a professional engineer under similar circumstances. If, during the one year period following completion of the services under, it is shown there is an error in the services provided caused by Engineer's failure to meet its standard of care and Owner has notified Engineer in writing of any such error within that period, then Engineer shall properly re-perform, at the written request of Owner, all corrective engineering services within the original Scope of Services necessary to conform to the foregoing guarantee at no additional cost of Owner. ***NO OTHER WARRANTY, EXPRESSED OR IMPLIED, IS INCLUDED IN THIS AGREEMENT OR IN ANY DRAWING, SPECIFICATION, REPORT, OR***

OPINION PRODUCED PURSUANT TO THIS AGREEMENT. The obligations and representations contained in this paragraph are Engineer's sole warranty and guarantee obligations and Owner's exclusive remedy in respect of quality of the services regardless of how the theory of recovery regarding the quality of the services is characterized, whether the theory of liability is tort (including negligence), strict liability, contract or other basis of legal liability.

ARTICLE 7 - LIABILITY AND INDEMNIFICATION

7.1 General. Having considered the potential liabilities that may exist during the performance of the Services, the benefits of the Project, and the Engineer's fee for the Services, and in consideration of the promises contained in this Agreement, Owner and Engineer agree to allocate and limit such liabilities in accordance with this Article. Indemnities against, releases from, and limitations on liability expressed in this Agreement shall apply even in the event of the breach of contract or warranty, tort (including negligence), strict liability or other basis of legal liability of the party indemnified or released, or of the party whose liability is limited. Such indemnities, releases, and limitations shall extend to the partners, licensors, subcontractors, vendors and related entities of such party, and all such parties' directors, officers, shareholders, employees, and agents.

7.2 Indemnification. Engineer agrees to defend, indemnify, and hold harmless the Owner, from and against legal liability for all claims, losses, damages, and expenses resulting from death or bodily injury to any person, damage or destruction to third-party property to the extent such claims, losses, damages, or expenses are caused by its negligent acts, errors, or omissions. In the event such claims, losses, damages, or expenses are caused by the joint or concurrent negligence of Engineer and Owner, they shall be borne by each party in proportion to its own negligence.

7.3 Employee Claims. Engineer shall indemnify Owner against legal liability for damages arising out of claims by Engineer's employees. Owner shall indemnify Engineer against legal liability for damages arising out of claims by Owner's employees.

7.4 Consequential Damages. Notwithstanding any provision in this Agreement to the contrary, and to the fullest extent permitted by law, Engineer (including any of its related or affiliated companies) shall not be

liable to Owner and Owner expressly waives all claims for loss of profits, revenue, use, opportunity, and goodwill; cost of substitute facilities, goods, and services; cost of capital; increased operating costs; and for any special, indirect, incidental, consequential, punitive, or exemplary damages resulting in any way from the performance or non-performance of the Services whether arising under breach of contract or warranty, tort (including negligence), indemnity, strict liability or other basis of legal liability.

7.5 Limitations of Liability. To the fullest extent permitted by law, Engineer's (including any of its related or affiliated companies) total liability to Owner for all claims, losses, damages, and expenses, whether arising under breach of contract or warranty, tort (including negligence), indemnity, strict liability or any other basis of legal liability, resulting in any way from the performance or non-performance of the Services shall not exceed the total compensation actually received by Engineer under this Agreement.

7.6 Survival. Upon completion of all Services, obligations, and duties provided for in this Agreement, or if this Agreement is terminated for any reason whatsoever, the terms and conditions of this Article shall survive.

ARTICLE 8 – INSURANCE

During the performance of the Services under this Agreement, Engineer shall maintain the following insurance:

- (1) General Liability Insurance, with a combined single limit of \$1,000,000 for each occurrence and in the aggregate.
- (2) Automobile Liability Insurance, with a combined single limit of \$1,000,000.
- (3) Workers' Compensation Insurance in accordance with statutory requirements and Employers' Liability Insurance, with limits of \$500,000 for each occurrence and in the aggregate.
- (4) Professional Liability Insurance, with a limit of \$1,000,000 per occurrence and in the aggregate.

Engineer shall, upon written request, furnish Owner certificates of insurance which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to Owner. If Owner purchases, or causes a contractor to purchase, a builders' risk or other property insurance policy for the Project, Owner shall require that Engineer be included as a named insured on such policy without liability for the payment of premiums.

Owner assumes sole responsibility and waives all rights and claims against Engineer for all loss of or damage to property owned by or in the custody of Owner and any items at the job site or in transit thereto (including, but not limited to, construction work in progress), however such loss or damage shall occur, including the fault or negligence of Engineer. Owner shall require its insurers to waive all rights of subrogation against Engineer for claims covered under any property insurance that Owner may carry.

Owner shall require all Project contractors under contract with Owner to include Owner and Engineer as additional insureds on their general, automobile, excess, and umbrella liability insurance policies. Further, Owner shall obtain and maintain for the benefit of Engineer the same indemnities, waivers of subrogation rights and insurance benefits obtained for the protection of the Owner from any construction contractor and subcontractor working on the Project and shall obtain from that contractor and subcontractor insurance certificates evidencing the required coverages.

ARTICLE 9 - LIMITATIONS OF RESPONSIBILITY

Engineer shall not be responsible for: (1) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Project; (2) the failure of any contractor, subcontractor, vendor, or other Project participant, not under contract to Engineer, to fulfill contractual responsibilities to the Owner or to comply with federal, state, or local laws, regulations, and codes; or (3) procuring permits, certificates, and licenses required for any construction unless such responsibilities are specifically assigned to Engineer in Attachment A, Scope of Services.

ARTICLE 10 - OPINIONS OF COST AND SCHEDULE

Since Engineer has no control over the cost of labor, materials, or equipment furnished by others not under contract to Engineer, or over the resources provided by others not under contract to Engineer to meet Project schedules, Engineer's opinion of probable costs and of project schedules for construction shall be made on the basis of experience and qualifications as a professional engineer. Engineer does not guarantee that proposals, bids, or actual Project costs will not vary from Engineer's opinions of probable cost or that actual schedules will not vary from Engineer's projected schedules.

ARTICLE 11 - REUSE OF DOCUMENTS

All documents, including, but not limited to, drawings, specifications, and computer software prepared by Engineer pursuant to this Agreement are instruments of service in respect to the Project.

They are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any reuse without prior written verification or adaptation by Engineer for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Engineer. Owner shall defend, indemnify, and hold harmless Engineer against all claims, losses, damages, injuries, and expenses, including attorneys' fees, arising out of or resulting from such reuse. Any verification or adaptation of documents will entitle Engineer to additional compensation at rates to be agreed upon by Owner and Engineer.

Any files delivered in electronic media may not work on systems and software different than those with which they were originally produced. Engineer makes no warranty as to the compatibility of these files with any other system or software. Because of the potential degradation of electronic medium over time, in the event of a conflict between the sealed original drawings/hard copies and the electronic files, the sealed drawings/hard copies will govern.

ARTICLE 12 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Project specific engineering documents, drawings, and specifications prepared by Engineer as part of the Services shall become the property of Owner when Engineer has been compensated for all Services rendered, provided, however, that Engineer shall have the unrestricted right to their use. Engineer shall, however, retain its rights in its standard drawing details, specifications, data bases,

computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of Engineer.

ARTICLE 13 - TERMINATION

This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement. The nonperforming party shall have fifteen calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party.

Owner may terminate or suspend performance of this Agreement for Owner's convenience upon written notice to Engineer. Engineer shall terminate or suspend performance of the Services on a schedule acceptable to Owner. If termination or suspension is for Owner's convenience, Owner shall pay Engineer for all the Services performed and termination or suspension expenses, including, but not limited to, demobilization, remobilization and cancellation charges. Upon restart, an equitable adjustment shall be made to Engineer's compensation.

ARTICLE 14 - DELAY IN PERFORMANCE

Except for Owner's payment obligation, neither Owner nor Engineer shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include, but are not limited to: unusually severe weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either Owner or Engineer under this Agreement.

Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this

Agreement. Engineer shall be entitled to an equitable adjustment in schedule and compensation in the event such circumstances occur.

ARTICLE 15 - PRE-EXISTING CONTAMINATION

Anything herein to the contrary notwithstanding, title to, ownership of, and legal responsibility and liability for any and all pre-existing contamination shall at all times remain with Owner. "Pre-existing contamination" is any hazardous or toxic substance, material, or condition present at the Project site or sites concerned which was not brought onto such site or sites by Engineer for the exclusive benefit of Engineer. Owner shall release, defend, indemnify, and hold Engineer harmless from and against any and all liability which may in any manner arise from or be in any way directly or indirectly caused by such pre-existing contamination except if, and then only to the extent, such liability is caused by Engineer's sole negligence or willful misconduct.

ARTICLE 16 - COMMUNICATIONS

Any communication required by this Agreement shall be made in writing to the address specified below:

Engineer: Black & Veatch Corporation
6300 S. Syracuse Way
Centennial, CO 80111

Owner: City of Grand Junction
250 N 5th Street
Grand Junction, CO 81501

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Engineer and Owner.

ARTICLE 17 - WAIVER

A waiver by either Owner or Engineer of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

ARTICLE 18 - SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

ARTICLE 19 - INTEGRATION

This Agreement represents the entire and integrated agreement between Owner and Engineer. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may only be modified by a written amendment executed by both parties.

ARTICLE 20 - SUCCESSORS AND ASSIGNS

Owner and Engineer each binds itself and its directors, officers, partners, successors, executors, administrators, assigns, and legal representatives to the other party to this Agreement and to the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all provisions of this Agreement.

ARTICLE 21 - ASSIGNMENT

Neither Owner nor Engineer shall assign any rights or duties under this Agreement without the prior written consent of the other party, except that Engineer may do so to any of its related, affiliated, or successor entities upon written notice to Owner of same. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent Engineer from employing independent consultants, associates, and subcontractors to assist in the performance of the Services.


ARTICLE 22 - THIRD PARTY RIGHTS

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than Owner and Engineer.

IN WITNESS WHEREOF, Owner and Engineer have executed this Agreement effective as of the date first written above.

CITY OF GRAND JT.
OWNER

BLACK & VEATCH CORP.
ENGINEER

By 
Printed Name S. BRET GUILFORD

By Shawn D LaBonde

Title UTILITY ENGINEER

Title ASSOCIATE VICE PRESIDENT

Date 9/23/11

Date 10/4/11

**EXHIBIT A
REQUEST FOR SERVICES
ENGINEERING SERVICES
CONTINUING SERVICES AGREEMENT**

Between

City of Grand Junction (“Owner”)

And

Black & Veatch Corporation (“Engineer”)

Pursuant to the terms and conditions of the Continuing Services Agreement executed and made effective as of the 14th day of SEPTEMBER, 2011, by and between CITY OF GRAND JUNCTION (“Owner”) and Black & Veatch Corporation (“Engineer”), Owner hereby requests Engineer to perform the following Services:

A. Requested Services:

Hydraulic modeling evaluation of the City water distribution system

B. Commencement Date:

September 14th, 2011

C. Estimated Completion Date:

Ongoing

D. Estimated Cost of the Services:

Time and Materials (see Attachment B)

E. Monthly Billing: Commencing on or about the first day of the calendar month following execution of this Agreement, and monthly thereafter, Engineer shall furnish Owner with an invoice covering the Engineer’s compensation as set forth in Exhibit B to the Agreement incurred during the previous month and any interest due under this Agreement. Invoices are due and payable upon receipt.

F. Method of Payment: Payments due Engineer under this Agreement shall be electronically transferred either by ACH, specifically in CCD+ or CTX format, or wire transfer to the bank account and in accordance with the bank instructions identified in Engineer's most recent invoice in immediately available funds no later than the payment due date. Invoice number and project name shall be referenced in the bank wire reference fields or the ACH addenda information. In the event that such electronic funds transfer methods are not available to Owner, then payments due Engineer under this Agreement shall be made by check and mailed to the PO Box identified in the remittance instructions on the Engineer's most recent invoice, and received by Engineer no later than the payment due date. The Remittance Advice document shall be mailed with the check to the PO Box.

G. Disputes: In the event Owner disputes any invoice item, Owner shall give Engineer written notice of such disputed item within ten days after receipt of such invoice and shall pay to Engineer the undisputed portion of the invoice according to the provisions hereof. If Owner fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of one and one-half percent per month, or the maximum amount allowed by law if less, from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item which is finally resolved in Owner's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

This Request for Services (including the appropriate Exhibit B for the services contemplated) and the above-referenced Agreement constitute the complete understanding of the parties with respect to the Services specified herein. Terms and conditions contained in purchase orders, work orders, or other documents issued by Owner with respect to the Services shall be of no force and effect.

IN WITNESS WHEREOF, the parties have executed this Request for Services on the date(s) indicated below.

Owner

By: 

By: S. BRET GULLORY
(Name Printed)

Title: UTILITY ENGINEER

Date: 9/23/11

Black & Veatch Corporation

By: 

By: S.D. LABONDE
(Name Printed)

Title: ASSOCIATE VICE PRESIDENT

Date: 10/4/11

**EXHIBIT B
COMPENSATION**

**ENGINEERING SERVICES
CONTINUING SERVICES AGREEMENT**

Between

City of Grand Junction (“Owner”)

And

Black & Veatch Corporation (“Engineer”)

(See Attached Exhibit B)

Exhibit B - Continuing Services Rates

City of Grand Junction Continuing Engineering Services Agreement Billing Rates (January 1, 2011 to December 31, 2012)	
	Proposed 2010 Rates (January 1, 2011 to December 31, 2012)
Accounting/Clerical	\$85
Technician	\$100
Senior Technician	\$120
Principal In Charge	\$225
Project Manager	\$210
Engineering Manager	\$190
Technical Specialist	\$190
Project Engineer, Level 7	\$200
Project Engineer, Level 6	\$185
Project Engineer, Level 5	\$165
Project Engineer, Level 4	\$150
Project Engineer, Level 3	\$130
Project Engineer, Level 2	\$115
Project Engineer, Level 1	\$95
GIS Manager	\$135

1. Billing rates for subsequent years would typically be automatically adjusted by the change in the Bureau of Labor Statistics unadjusted Consumer Price Index (CPI-U) over the proceeding year.