

## PAYMENT IN LIEU OF TAX AGREEMENT

**THIS PAYMENT IN LIEU OF TAX AGREEMENT**, made and entered into as of this July 1, 2009 (the "Agreement"), by and between **BLACK & VEATCH CORPORATION**, a Delaware corporation (the "Company"), and **THE CITY OF OVERLAND PARK, KANSAS**, a municipal corporation (the "City").

### WITNESSETH THAT:

1. **Tax Exemption; Payment in Lieu of Taxes.** In consideration of the issuance by the City of its Federally Taxable Private Activity Revenue Bonds, Series 2009 (the "2009 Bonds") in the principal amount of \$60,000,000 to finance a portion of the cost of the acquisition, purchase, expansion, renovation, construction and improvement of the Company's corporate headquarters facility, including real estate (the "Project Site") and buildings and improvements (collectively, the "Project Improvements") (the Project Site and the Project Improvements, collectively, the "Project"), to be leased by the City to the Company, and in further consideration of the laws of the State of Kansas granting an exemption from ad valorem real property taxation for the portion of the Project financed with the proceeds of the 2009 Bonds for a period of up to ten (10) years (the "Tax Abatement"), commencing with the first calendar year after the calendar year in which the 2009 Bonds are issued (the "Abatement Period"), the Company agrees to make aggregate payments in lieu of ad valorem real property taxes (each a "PILOT") in the amounts specified herein and in the manner provided for herein. The portion of the Project acquired, purchased, expanded, renovated, constructed or improved with the proceeds of the 2009 Bonds is referred to herein as the "2009 Tax Abated Project."

2. **Amount of Payments; Place of Payment.** As permitted by K.S.A. 79-201a, as may be amended, in lieu of all general ad valorem real property taxes on the 2009 Tax Abated Project during the Abatement Period, the Company shall pay by separate check to the Treasurer of Johnson County, Kansas, or other appropriate officer (the "County Officer"), as required by the laws of the State of Kansas and subject to the provisions of the paragraphs below, a PILOT in an amount which is equal to twenty-five percent (25%) (the "PILOT Level") of the amount of general ad valorem real property taxes for the 2009 Tax Abated Project which would have been due and payable by the Company if the 2009 Tax Abated Project were not exempt from ad valorem real property taxation as determined in accordance with paragraph 3 below, to be distributed as and/or as a part of the general ad valorem tax collections for all taxing subdivisions in which the Project is located.

The PILOT amount shall be billed to the Company by statement of the Director of the Department of Records and Tax Administration of Johnson County, Kansas (the "Director"), or other appropriate officer, issued by approximately November 20th of each year and shall be paid each year of the Abatement Period as follows: (i) one hundred percent (100%) on or before December 20<sup>th</sup> for the then current calendar year; or (ii) one-half (1/2) on or before December 20th, and the remainder for such calendar year, without interest, on or before May 10th of the following

calendar year; or (iii) as otherwise required by law for the distribution of tax statements and the payment thereof. It is understood and agreed that the Company may elect either option (i) or (ii) above at its discretion but if a change in law occurs as provided in (iii) above, the Company shall pay the PILOT thereby required.

3. **Calculation of Taxes and Distribution of Payment.** The amount of general ad valorem taxes for the 2009 Tax Abated Project (the “Taxes”) will be determined by the Director in the same manner and according to the same statutory procedure as general ad valorem taxes, real and personal, are determined, using the valuations determined by the County Appraiser of Johnson County, Kansas (the “County Appraiser”), under the same laws, rules and procedures for which real and personal property taxes are determined for all taxpayers within the taxing jurisdiction(s), including the right to appeal and challenge the valuations as determined by the County Appraiser. The PILOT will be the product of multiplying the PILOT Level and the Taxes. The PILOT shall be distributed by the County Officer to all applicable taxing subdivisions in Johnson County, Kansas, as provided in K.S.A. 12-1742.

4. **Reduction of Payment for Actual Taxes Paid.** The PILOT shall be reduced by any actual ad valorem tax payments paid in respect of the property constituting the 2009 Tax Abated Project by or on behalf of the Company in respect of the 2009 Tax Abated Project for the current year and any applicable prior years, other than special assessments.

5. **Clawback Provisions.** For purposes of this Agreement, the term “Jobs” shall mean employees of the Company and its parent, subsidiaries, affiliates, partners, agents and contractors. As provided herein, the Company agrees that 2,300 Jobs will remain at the Project Site throughout the Abatement Period (the “Retained Jobs”) in order to maintain the PILOT Level and an abatement of seventy-five percent (75%) (the “Real Property Tax Abatement Level”). If at any time during the Abatement Period, the Company employs less than ninety percent (90% or 2070) of the Retained Jobs (the “Threshold Retained Jobs”) are employed at the Project Site, for the following one (1) calendar year period, the Real Property Tax Abatement Level shall be reduced by multiplying the Real Property Tax Abatement Level by a fraction, the numerator of which is the average number of jobs at the Project during the year in question and the denominator of which is the number of Retained Jobs. The PILOT Level shall be increased based on the revised Real Property Tax Abatement Level and the Company shall for the following one year pay the ad valorem property taxes for which an exemption had been granted based on the revised PILOT Level. Calculation of revisions to the Real Property Tax Abatement Level and the PILOT Level shall follow the method and formula outlined in **Exhibit A**.

In the event the Company fails to retain at least 1,800 Retained Jobs (the “Minimum Retained Jobs”) during any calendar year (using the average employment figure for that calendar year), the PILOT Level for the following one year shall be 100% of the ad valorem property taxes that would have been due and payable by the Company if the 2009 Tax Abated Project was not exempt from ad valorem real property taxation.

Annual review of the employment levels and number of Retained Jobs of the Company will

be conducted by the City. The Real Property Tax Abatement Level and PILOT Level will be subject to annual calculations based on the prior calendar years employment levels and number of Retained Jobs in accordance with the terms of this Agreement.

6. **Company Certification.** On or before January 31, 2011, and on or before January 31 of each year thereafter through January 31, 2020, the Company shall certify to the City the number of Retained Jobs as of the end of each month as of December 31 each year beginning December 31, 2010, and thereafter through December 31, 2019.

<u>Abatement Year</u>	<u>Employment As Of</u>	<u>Reported by</u>
2010	12/31/2010	01/31/2011
2011	12/31/2011	01/31/2012
2012	12/31/2012	01/31/2013
2013	12/31/2013	01/31/2014
2014	12/31/2014	01/31/2015
2015	12/31/2015	01/31/2016
2016	12/31/2016	01/31/2017
2017	12/31/2017	01/31/2018
2018	12/31/2018	01/31/2019
2019	12/31/2019	01/31/2020

The Company shall submit the employment information outlined above in the form attached hereto as **Exhibit B** (the “Employment Certification Form”).

The Company hereby agrees the City shall have the right to audit and examine records of the Company in order to verify the employment information required by this Agreement furnished by the Company to the City.

7. **City’s Right to Terminate Agreement.** Should the Company (a) fail to pay all PILOTs on the date set forth for payment thereof (subject to the right to cure set forth below) or, (b) be in default under the Master Lease Agreement dated as of July 1, 2009, as may be amended and supplemented (the “Lease”), by and between the City and the Company, this Agreement may be terminated at the option of the City effective on the date in the year such payment was originally due or when such default occurs. The Company agrees that from and after such termination date, it shall pay in full the 100% amount of ad valorem property taxes on the property constituting the Project, and the City agrees that from and after such termination date, the Company’s obligation to make PILOTs shall terminate except as otherwise provided herein. Should the Company fail to make the PILOTs when due, penalties and/or interest will be assessed against the Company by the County Officer, in accordance with applicable state laws relating to late tax payments. The obligation of the Company to make any PILOTs which are due on the date of termination of this Agreement shall survive the termination of this Agreement. From and after such termination date, the full and regular amount of ad valorem real estate and personal property taxes on the property constituting the Project shall apply. In the event the Company fails to make a required payment of PILOTs when due, of

which the City has actual knowledge, the City shall provide the Company ten (10) days notice of the City's intention to terminate and provide the Company the opportunity to cure within the ten (10) day period and if such PILOT is not made within such ten (10) day period, no further notice by the City to the Company is required to terminate this Agreement.

8. **Company's Right to Protest Taxes.** The Company must make all PILOTs required by this Agreement; however, the Company reserves the right to make such payment under protest pending its timely appeal of the valuation determined by the County Appraiser. Any such payment made under protest shall be paid to the County Officer with an accompanying letter that states the payment was made by the Company under protest of the valuation. If after appeal, the valuation is adjusted downward, the Company shall reduce its subsequent PILOT by the amount of any overpayment previously made by the Company. If the subsequent payment is not sufficient to fully credit the overpayment, the credit may be carried forward to subsequent payment(s). Similarly, if after an appeal, the valuation is increased, the Company shall pay an additional amount, calculated based on the revised valuation, with its subsequent PILOT.

9. **Approval of Exemption.** This Agreement, including the Company's obligation to make PILOTs, is conditioned on the issuance by the Kansas Court of Tax Appeals of an order exempting the Project from ad valorem property taxation in accordance with Kansas law, including K.S.A. 79-201a *et seq.*, and upon receipt by the City from the Company of all information necessary to file the Application for Exemption with the Court of Tax Appeals of the State of Kansas by no later than February 1 of the calendar year following the issuance of the Bonds. The Company acknowledges that the exemption must be annually renewed and agrees to provide the City with information to complete the annual renewal by February 1 of each year in which the exemption is in place.

10. **Counterparts.** This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed to be an original and all of which shall constitute the same instrument.

11. **Amendments and Transferability.** The Agreement may be amended in writing by the mutual consent of the City and the Company. The benefits of this Agreement may not be transferred to any assignee of the Company without the written consent of the City; provided, however, this Agreement may be assigned to any Subsidiary, as defined in the Lease, upon sixty (60) days prior written notice to the City of said proposed assignment.

12. **Payments on Defaulted Amounts.** Any amounts due hereunder which are not paid when due shall bear interest at the interest rate imposed by Kansas law on overdue ad valorem taxes from the date such payment was first due. In addition, amounts payable hereunder in lieu of ad valorem taxes that are not paid when due shall be subject to the same penalties imposed by Kansas law on overdue ad valorem taxes.

13. **Titles and Subheadings.** Titles and subheadings used in this Agreement are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any

provision of the Agreement.

14. **No Waiver.** No waiver by the City of any breach of this Agreement shall be construed to be a waiver of any other or subsequent breach.

15. **Notice.** Any notice required or permitted to be given hereunder must be in writing, and may be served by depositing the same in the mail, postage prepaid, and registered or certified, with a return receipt requested. Notice given by registered or certified mail shall be deemed given and effective on the date of delivery as shown on the return receipt, or, if the receipt is not returned to sender, five business days after the date deposited in the mail. Notice may be served in any other manner including by personal delivery, overnight courier, or facsimile but shall be deemed given and effective: in the case of personal delivery or delivery by overnight courier, as of the time of actual delivery thereof to the addressees, in the case of delivery by facsimile transmission, upon receipt by the sender of confirmation, and in all other cases, upon actual receipt thereof by the addressee; provided, however, that any notice delivered after the normal business hours of the recipient shall be effective as of the next business day of the recipient. Notices shall be addressed as follows:

If to the Company: Black & Veatch Corporation  
11401 Lamar Avenue  
Overland Park, KS 66211  
Attention: Treasurer

If to the City of Overland Park:  
City of Overland Park  
8500 Santa Fe  
Overland Park, KS 66212  
Facsimile No. (913) 885-5003  
Phone No. (913) 895-6152  
Attention: Deputy City Manager

or to such other address as a party may from time to time designate in accordance with this section.

16. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Kansas.

**IN WITNESS WHEREOF**, the City has caused this Agreement to be signed by a duly authorized official, such signature to be attested by a duly authorized officer and its official seal to be applied; and the Company has caused this Agreement to be executed by a duly authorized officer, as of the day and year first above written.

**CITY OF OVERLAND PARK, KANSAS**

(Seal)

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

Carl Gerlach  
Mayor

ATTEST:

\_\_\_\_\_  
Marian Cook  
City Clerk

APPROVED AS TO FORM

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

Michael R. Santos  
Deputy City Attorney

APPROVED AS TO FORM

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

Janet S. Garms  
Bond Counsel

**EXHIBIT A**

**CALCULATION OF REVISIONS TO THE  
REAL PROPERTY TAX ABATEMENT LEVEL AND THE PILOT LEVEL**

Retained Jobs	2,300
Threshold Retained Jobs	2,070
Minimum Retained Jobs	1,800
Full Property Tax	100%
Property Tax Abatement Level	75%
PILOT Level	25%

**CALCULATE REVISED REAL PROPERTY TAX ABATEMENT LEVEL**

75% <i>Real Property Tax Abatement Level</i>	<b>X</b>	$\frac{\text{Average Number of Jobs for the YearFrom Annual Certification}}{2,300Retained Jobs}}$	=	REVISED Real Property Tax Abatement Level
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**CALCULATE REVISED PILOT LEVEL**

100%	<b>-</b>	REVISED Real Property Tax Abatement Level	=	REVISED PILOT Level
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**EXAMPLE – Where Number of Jobs is 2,000, which is less than Threshold Retained Jobs Level necessary to maintain the 75% tax abatement**

**CALCULATE REVISED REAL PROPERTY TAX ABATEMENT LEVEL**

75%	<b>X</b>	$\frac{2,000}{2,300}$	=	REVISED Real Property Tax Abatement Level	
75%	<b>X</b>	_____	.86957	_____ =	65.2%

**CALCULATE REVISED PILOT LEVEL**

100%	<b>-</b>	62.5%	=	34.7%
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**EXHIBIT B**

**MONTHLY EMPLOYMENT REPORT  
FOR THE YEAR JANUARY 1, \_\_\_\_ TO DECEMBER 31, \_\_\_\_**

For the period and as of the dates described, the following total full time equivalent employees have been employed.

<b>Total Full Time Equivalent Employees as of:</b>	<b>Employees</b>
January 31, _____	_____
February 28/29, _____	_____
March 31, _____	_____
April 30, _____	_____
May 31, _____	_____
June 30, _____	_____
July 31, _____	_____
August 31, _____	_____
December 30, _____	_____
October 31, _____	_____
November 30, _____	_____
December 31, _____	_____

I hereby certify on behalf of \_\_\_\_\_ that the above information is true and correct as of the date hereof.

Authorized Signature

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Title (Please Print)

\_\_\_\_\_  
Date