

APPRAISAL ASSISTANCE CONTRACT

This Appraisal Assistance Contract (this "Contract") is entered into as of this 9th day of October, 2018 between the **City of Peoria** (the "City") and the **CEO Council**, an Illinois nonprofit corporation (the "CEO Council").

Recitals

- A. The City has a judicially confirmed right to exercise a purchase option (the "Option") every five years as provided in the City's 1889 Ordinance No. 878, as amended (the "Ordinance"), first adopted when the City sold its waterworks facilities to a private company. The Option gives the City the right to reacquire those facilities and their improvements that serve the City (the "Waterworks Facilities").
- B. If the Option is exercised and the price cannot be agreed between the City and the private company that owns the Waterworks Facilities, currently Illinois American Water Company ("IAWC"), the Ordinance contemplates an appraisal proceeding with the private owner (the "Appraisal"). After the Appraisal is completed, if it so determines to do so, the City can purchase the Waterworks Facilities in the amount determined by the Appraisal as fair and just value for the Waterworks Facilities.
- C. The CEO Council believes that to help the City control its water rights and financial future the City should exercise the Option to start the Appraisal process for the reacquisition of the Waterworks Facilities.
- D. Accordingly, the CEO Council believes that it is in the best interests of the City and the citizens and businesses of Peoria that the City timely exercise the Option upon the effectiveness of this Contract before November 1, 2018 and pursue the Appraisal for acquiring and operating the Waterworks Facilities and related water rights from IAWC.
- E. The City is willing to exercise the Option on the terms and with the financial and other help of the CEO Council set forth in this Contract.
- F. The CEO Council is willing to provide substantial funds to the City for the City to engage experts, attorneys, accountants and consultants to explore purchasing and operating the Waterworks Facilities (the "Appraisal Team") and provide other assistance to the City in pursuing the exercise of the Option and Appraisal, but only on the terms of this Contract.
- G. The CEO Council and the City recognize that the composition and the credentials and capabilities of the Appraisal Team and appraisers or arbitrators selected for the Appraisal is critical to the determination of a fair purchase price for the Waterworks Facilities.
- H. The CEO Council and the City are committed to this partnering to establish the lowest possible fair purchase price of the Waterworks Facilities and agree to work in good faith to achieve that goal for the taxpayers of the City.

Agreement

1. **Effectiveness of Contract.** The effectiveness of this Contract is conditioned on (a) the City Council approving the City's entering into this Contract and pursuing the actions contemplated by it by November 1, 2018 (the "Contract Approval"), and (b) the CEO Council receiving no later than thirty (30) days after Contract Approval at least \$400,000 (the "Trigger Funds") into a special segregated deposit account the CEO Council maintains for funding Appraisal Team and other authorized expenses incurred by the City as contemplated by this Contract (the "Special Deposit Account"). After the Contract Approval, the CEO Council shall notify the City (the "Trigger Notice") when it has received the Trigger Funds in the Special Deposit Account for use under this Contract. The date on which both conditions identified above have occurred is hereafter referred to as the "Effective Date."

2. **Exercise of the Option.** On or immediately after the Effective Date, the City will without delay notify IAWC of its exercise of the Option in accordance with its rights under the Ordinance.

3. **Appraisal Team Selection.**
 - a. Promptly after the Effective Date, the City will engage in the process of selecting experts, consultants, accountants and attorneys of appropriate qualifications and experience to comprise the Appraisal Team to present, support and determine the fair and just price of the Waterworks Facilities in the Appraisal proceedings.

 - b. The City shall select the Appraisal Team based on each proposed member's - expertise, qualifications, and experience in respect to obtaining a fair and proper valuation of the Waterworks Facilities.

 - c. In selecting the Appraisal Team and the appraiser or arbitrator in the Appraisal, the City shall consult with a committee designated by the CEO Council ("CEO Committee").

 - d. The City shall make available upon request and periodically to the CEO Committee the proposed rates of charge, costs, education, certifications, experiences, qualifications of the Appraisal Team and proposed appraisers or arbitrators in the Appraisal that the CEO Committee may determine relevant or important.

 - e. The City has the right to select the appraisers, consultants, experts, accountants and attorneys it chooses to make up the Appraisal Team, but only after consulting with the CEO Committee.

 - f. At any time the CEO Committee disagrees with the City on the City's choice or selection of experts, consultants, accountants and/or attorneys to make up the Appraisal Team or the appraiser or arbitrator in the Appraisal, it may notify the City. If such notice is given, the CEO Committee will work with the City to resolve their differences over the selections and choices for the Appraisal Team.

- g. The CEO Committee can suggest names and qualifications to the City of proposed members of the Appraisal Team or appraiser or arbitrator in the Appraisal.
 - h. Prior to selection of the Appraisal Team or the appraiser or arbitrator in the Appraisal, the CEO Committee and City may, either jointly or independently, interview the proposed members of the Appraisal Team or the appraiser or arbitrator in the Appraisal.
 - i. The Appraisal Team shall be selected by the City with diligence and in good faith to fulfill its purposes as contemplated by this Contract.
4. **Use of Contributed Funds.** The Trigger Funds and any funds added to them at any time by the CEO Council or its members or contributors (together with the Trigger Funds, the “Contributed Funds”) that are transferred to the City pursuant to this Contract, will be used by the City only to review, engage and pay the invoices of the Appraisal Team, to conduct the Appraisal to determine a fair and just value of the Waterworks Facilities, and for such other matters related to the Option or Appraisal as the CEO Committee authorizes in writing. The City agrees that any moneys contributed to it by the CEO Council for the Appraisal Team must be used by the City only to pay the fees and expenses of the Appraisal Team’s pursuit of the Appraisal and such other purposes under or related to the Option or Appraisal that the CEO Committee approves in writing. The bills and invoices of members of the Appraisal Team shall be made available for review upon request to the CEO Committee. The City shall require members of the Appraisal Team to have their bills and invoices contain sufficient detail to determine that specific charges, services and costs support the bills and invoices are for work relevant to the Appraisal.
5. **Proceeding with the Appraisal.** Upon constitution of the Appraisal Team, the City will, in good faith and reasonable diligence, cause the Appraisal Team and appraisers or arbitrators appointed for the Appraisal to proceed with an investigation, support and present a persuasive presentation of the determination of the fair and just price of the Waterworks Facilities at a value fair and reasonable to the City. The City shall cause the Appraisal Team to report the issues and its progress in the Appraisal proceedings to the CEO Committee once per week and upon the CEO Committee’s request.
6. **Cost Reimbursement to the City.** In order to pay for the costs of the Appraisal Team, the City is entitled to request advance monthly payments for the Appraisal Team from the CEO Council in amounts reasonably estimated to be the costs of the Appraisal Team for the monthly period. Notice of each payment shall be given to the CEO Council at least one week in advance of the month for which the payment is requested with supporting or requested detail. If the advances are approved by the CEO Committee, the CEO Council shall then send moneys not to exceed the amount of Contributed Funds that the CEO Council has in its Special Deposit Account. If the City does not receive advances of funds requested with ten (10) days after the advance invoices are received and approved by the CEO Committee, it is not obligated to have the Appraisal Team proceed and may suspend the work of the Appraisal Team. Before doing so, the City shall give the CEO Council one week’s prior written notice of its decision in that regard, will work with the CEO Committee to resolve any differences over funding and expenses, and will provide an opportunity for the CEO Council to cure any funding shortfalls during that one-week period or any extensions of that one week period agreed upon.

7. **Return of Unused Funds.** Any advances to the City and any funds remaining in the Special Deposit Account not used to pay the Appraisal Team for their work in the Appraisal or not used for other purposes relating to the Option or Appraisal which were authorized in writing by the CEO Committee shall be returned to the CEO Council for return to the funders and contributors that made them.
8. **Return of Contributed Funds upon Purchase of the Waterworks Facilities.** If the City purchases the Waterworks Facilities pursuant to exercise of the Option, the Trigger Funds, contributed funds, and any other funds contributed by the CEO Council or its members or other contributors to the City for the Appraisal will be refunded to the CEO Council without interest. If the City declines to purchase the Waterworks Facilities pursuant to the final valuation determined by the Appraisal, the City will not be obligated to refund or repay any Trigger Funds, Contributed Funds, and any other funds contributed by the CEO Council or its members or other contributors spent in pursuit of the Appraisal.
9. **Increase of Contributed Funds.** If costs for the Appraisal Team exceed the Trigger Funds, the CEO Council may endeavor to raise additional funds at its sole discretion. The Trigger Funds and any other Contributed Funds to be transferred to or escrowed with the CEO Council for contribution to the City for the Appraisal Team and exercise of the Option pursuant to this Contract can be increased at the option of the CEO Council upon offers and receipt of additional funding to support the exercise of the Option and the effort of the Appraisal Team and other related costs in connection with the Option approved by the CEO Committee.
10. **Restrictions on Suit.** The CEO Council covenants not to file suit against the City for breach of this Contract or for any matter related to this contract except for the following matters which the City hereby acknowledges and agrees to: (1) the City will not misrepresent its choice of and qualification of the members of the Appraisal Team for the Appraisal; (2) the City and the Appraisal Team shall communicate with the CEO Council or CEO Committee as specified in this Agreement; (3) the Contributed Funds (which includes the Trigger Funds) contributed by the CEO Council and/or its members or contributors are used only for Appraisal Proceedings and for no other purposes without the consent of the CEO Committee which can be given only in connection with the Option and the Appraisal; (4) any unused funds contributed by the CEO Council to the City under this Contract must be returned to the CEO Council for return to its members and contributors that contributed them; and (5) the City will repay the funds contributed by the CEO Council and its members and contributors if and when the City purchases the Waterworks Facilities pursuant to Option and Appraisal (or a negotiated price with IAWC) if the City does purchase the Waterworks Facilities.

The City covenants not to file suit against the CEO Council or funders of the Trigger Funds or Contributed Funds for breach of this Contract or for any matter related to this contract except for the following matters which the CEO Council hereby acknowledges and agrees that: (1) the City may sue the CEO Council for breach if the CEO Council fails to deliver Trigger Funds to the City, and (2) if the City declines to purchase the Waterworks Facilities pursuant to the final valuation determined by the Appraisal, the City will not be obligated to refund or repay any Trigger Funds, Contributed Funds, and any other funds contributed by the CEO Council or its members or other contributors spent in pursuit of the Appraisal.

11. **General Terms.**

- a. **Authority.** Each party, respectively, represents to the other for itself that its entry into and performance of this Contract and any amendments to it in accordance with its terms are within its full corporate, and for the City, also its municipal, power and authority, has been duly authorized and approved by all necessary corporate or municipal action, and is legally binding and enforceable in accordance with its terms. Each party agrees to proceed in good faith to fulfill its respective conditions stated in Paragraph 1 above for this Contract to become effective.
- b. **Amendments.** This Contract may only be amended in writing or by facsimile or pdf signature by a duly authorized representative of the City and the CEO Council.
- c. **Waiver.** The failure of either party at any time or times to require performance or enforce any provision, right, breach or term of or arising out of this Contract shall not affect and shall not waive such party's right at a later time to enforce the same or any other provision, right, breach, or term of this Contract.
- d. **Notices.** Notices required pursuant to this agreement shall be given by regular mail or electronic transmission to the following parties:

If to the City:

Patrick Urich
Fax No.: 309-494-8556
Email Address: purich@peoriagov.org

Donald Leist
Fax No.: 309-494-8559
Email Address: dleist@peoriagov.org

If to the CEO Council:

Jeff Griffin
Fax No.: N/A
Email Address: jgriffin@peoriachamber.org

With a Copy to:

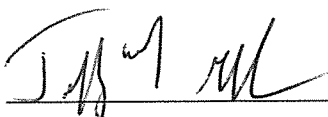
Tom Fliege
Fax No.: 309-690-7828
Email Address: Tom_Fliege@ajg.com

- e. **Governing Law.** This contract shall be governed by and construed and enforced in accordance with the laws of the State of Illinois.
- f. **Confidentiality.** Each party acknowledges that in carrying out their obligations under this Contract, they will obtain from the other information proprietary to the other which is not readily or at all publicly available and/or which was given to a party in confidence (“Confidential Information”). Each party agrees to treat all Confidential Information pertaining to or received from the other as confidential and shall not use such information for any purpose other than the purposes set forth in and contemplated by this Contract, except as otherwise required by law, including but not limited to the Illinois Freedom of Information Act.
- g. **Attorney Client and Work Product Privileges.** The City and the CEO Council share a common interest to obtain a fair and reasonable price determination for the Waterworks Facilities in the Appraisal and to that end the CEO Committee and its advisors will be sharing legal and related advice and argument with and from the City to better assist the City in its efforts in the Appraisal. To the maximum extent permitted by law the Parties agree that such communications and legal and related advice between them or between the Appraisal Team and the CEO Committee or their attorneys may be subject to a joint attorney-client privilege and an attorney work product privilege and not be shared with outside parties without the consent of both the City through its attorney on the Appraisal Team and the CEO Council through its attorney representative advising the CEO Committee and the Appraisal Team.
- h. **No Third-Party Beneficiary or Assignment.** This Contract is for the benefit of the parties to it only and not third parties and the rights of either party to it cannot be assigned without the consent of the other party.
- i. **Entire Agreement.** This Contract sets forth the entire agreement and understanding of the parties with respect to the transactions contemplated by it and supersede all prior agreements, arrangements and understandings related to the subject matter of this Contract.
- j. **Execution.** This Contract may be executed in counterparts in original form or by signature sent electronically after scanning or by facsimile transmission and, subject to Paragraph 1, becomes effective when counterpart signatures are exchanged. Each party agrees to furnish the other an original signed counterpart of this Contract upon request, but failure to exchange original signatures after electronic or other copies have been exchanges, will not affect this Contract if signatures have otherwise been exchanged.

CITY OF PEORIA

CEO COUNCIL

BY: _____
ITS:

BY:  10/9/18
ITS: 