

## **IRRIGATION WATER DELIVERY SERVICES OPERATING AGREEMENT**

THIS OPERATING AGREEMENT ("Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2026, by and between the CITY OF PEORIA, an Arizona municipal corporation ("City"), and PEORIA WATER USERS ASSOCIATION, INC., an Arizona non-profit corporation ("PWUA"). The City and PWUA collectively are referred to as the "**Parties**" and individually as a "**Party.**"

### **RECITALS**

1. In 2008, the City granted PWUA a franchise, which authorized it to provide irrigation water delivery services to the areas set forth in the map attached hereto as Exhibit A ("**Service Area**"). The Arizona Corporation Commission ("ACC") administratively dissolved PWUA in 2012, and the franchise expired in 2023.
2. PWUA obtained a Certificate of Reinstatement from the ACC on September 18, 2023, and desires now to continue to provide irrigation water utility services to the Service Area
3. Further, PWUA, in order to secure a more reliable financial source for repairs, replacement, and labor, may consider an Irrigation Water Delivery District ("IWDD"), pursuant to Arizona Revised Statutes Title 48, Chapter 20, but is not required to do so by anything in this agreement.
4. The City and PWUA acknowledge that organization of an IWDD requires a petition to the county board of supervisors, signed by a majority of the owners of the acreage within the proposed district, a public hearing, and an order from the board to organize the Irrigation Water Deliver District.
5. The Parties further acknowledge that PWUA, with or without the IWDD, must obtain a franchise, which pursuant to the City of Peoria Charter, Article XII, Section 1, may not be granted without approval of a majority of the qualified electors residing within its corporate limits voting thereon.
6. To facilitate the continued, efficient delivery of irrigation water to the Service Area during the pendency of PWUA's application and election for a City of Peoria franchise, the City and PWUA enter into this Agreement to allow PWUA to continue to operate and maintain an irrigation water delivery system within the Service Area according to the terms herein.

### **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

#### **Section 1. Operating Agreement.**

In consideration of the payments hereinafter provided and the benefits to City to be derived from the operation and maintenance of an irrigation water delivery system in the Service Area, PWUA, its successors and assigns, shall have the right and privilege to maintain and operate upon, over, along, across, and under the present and future public property interests of the City including, without limitation: public streets, public alleys, public rights-of-way, public highways, public utility easements, and public bridges (the "**Public Right of Way**") within the Service Area, an irrigation water delivery system, together with all necessary or desirable appurtenances (including without limitation transmission mains, distribution mains,

service lines, pipes, and related equipment for its own use (the “**Facilities**”), for the purpose of supplying irrigation water delivery services to the Service Area during the term of this Operating Agreement.

**Section 2. Compliance with Legal Requirements, Generally.**

- a. PWUA shall promptly and fully comply with all applicable statutes, ordinances, judgments, decrees, orders, rules, and regulations of any competent authority having jurisdiction over PWUA’s activities, including without limitation the ACC. Failure to maintain active status with the ACC is an Event of Default, as defined in Section 10 of this Agreement and subjects PWUA to all the provisions of Section 10.
- b. The City expressly reserves the right to adopt, from time to time in addition to the terms and conditions of this Agreement, ordinances, rules, permit requirements, and regulations it may deem necessary in the exercise of City’s governmental powers. Unless expressly stated herein, nothing in this Agreement shall be construed to exempt PWUA from any such applicable ordinances, rules, permit requirements, or regulations.

**Section 3. Compliance with City Requirements; Plans Submitted for Approval; City Construction near PWUA's Facilities.**

- a. The quality of irrigation water delivery services provided by PWUA shall comply with all applicable requirements of the United States Environmental Protection Agency, Arizona Department of Environmental Quality, Arizona Corporation Commission, Arizona Department of Health Services, and the Maricopa County Department of Environmental Health Services.
- b. This Operating Agreement will not be effective unless and until PWUA has submitted the following to the City Engineer:
  - i. a detailed map accurately depicting the location of all Facilities within or outside of the Service Area. Throughout the term of this Agreement (defined below), PWUA shall keep and maintain accurate records of the location of all Facilities in the Public Right of Way and shall provide an updated map to the City Engineer within thirty (30) days of a written request from the City.
  - ii. A list of all properties to which PWUA provides irrigation water delivery services. PWUA shall maintain accurate records of all properties served and provide an updated list to the City Engineer at a minimum of every six (6) months, or within thirty (30) days of a written request from the City.
- c. Before beginning any construction work performed pursuant to the rights granted under this Operating Agreement, PWUA must: (i) apply for and obtain all approvals required by the City Engineer, including without limitation: a revocable right-of-way permit and plan review approval; and, (ii) submit construction assurances in the form of a permit bond in the amount of the cost of the improvements or any other form acceptable to the City Engineer and a certificate of insurance for each individual permit. SAID PERMIT BONDS ARE SEPARATE FROM AND IN ADDITION TO ANY OTHER PERFORMANCE BONDS, REVOCABLE LETTERS OF CREDIT, OR OTHER FINANCIAL ASSURANCE PROVIDED BY PWUA.
- d. Before a revocable right-of-way permit is granted, PWUA must apply for technical plan review by the City. Such application must include without limitation the number of complete construction plans (including without limitation drawings, details, maps, and notes) required by the City

Engineer. After reviewing said application and plans, the City may either issue the appropriate permit or deny the application and notify PWUA of all deficiencies. PWUA may resubmit the application after remedying the noted deficiencies.

- e. If, any time after a permit has been issued, PWUA desires to relocate, change, or upgrade said Facilities, then, before beginning construction, PWUA must obtain a new or amended revocable right-of-way permit from the City Engineer, which approval shall not be unreasonably withheld or delayed.
- f. PWUA must follow accepted practices for the industry and must perform all work pursuant to this Operating Agreement in strict compliance with the Peoria City Code, Uniform Standard Specifications for Public Works Construction sponsored and distributed by the Maricopa Association of Governments as amended (hereinafter referred to as “MAG”), the City of Peoria supplements to MAG, Peoria Engineering Standards Manual (including without limitation Chapter 12 Public Utilities – Non-City Utilities), and the City or Peoria Street Cut Policy (the “Local Standards”).
- g. The rights granted by this Agreement and in any revocable right-of-way permit issued hereunder shall be for the purposes of operating and maintaining PWUA’s existing Facilities. Expansion of the irrigation water delivery system is prohibited.
- h. If City undertakes either directly or through a contractor any construction project adjacent to or near Facilities operated pursuant to this Agreement, City shall include in all such construction specifications, bids, and contracts a requirement that, as part of the cost of the project, and at no cost to PWUA, the contractor or designee shall obtain from PWUA the temporary removal, relocation, barricading, or depressurization of Facilities or equipment, the location of which create an unsafe condition in the sole discretion of the City Engineer. City shall indemnify and hold PWUA harmless from any and all claims, costs, losses, or expenses incurred by PWUA as a result of the failure of City to comply with the requirements hereof.
- i. PWUA shall not construct, install, maintain, or perform any work in the Public Right of Way without first complying with the provisions of this Section 3. Failure by PWUA to comply with any provision of this Section 3 is an Event of Default, as defined in Section 10 of this Agreement, and subjects PWUA to all the provisions of Section 10.

**Section 4. Construction and Relocation of Utility Facilities; Payment.**

- a. The City’s right to use the Public Right of Way for any governmental purpose is paramount to PWUA’s right to occupy the Public Right of Way. All maintenance and construction pursuant to this Agreement must be conducted to reasonably minimize interference with vehicular and pedestrian traffic and all other authorized uses of the Public Right of Way. All phases of construction carried out by PWUA pursuant to this Agreement, including without limitation: maintenance that affects traffic control, bedding, backfilling, compaction, or paving, are subject to regulation by the City and may be subject to additional requirements in the reasonable discretion of the City Engineer.
- b. Upon completion of any construction involving underground Facilities in the Public Right of Way, PWUA shall promptly furnish to the City Engineer documentation accurately showing the location of said underground Facilities in a format compatible with the City’s computer-aided drafting and

geographic information system software. If the City Engineer determines that PWUA's electronic format is not compatible with the City's system, then PWUA must provide said documentation in hard copy format satisfactory to the City Engineer and reimburse the City for the cost to convert the documentation to a compatible format.

- c. If City elects to abandon a Public Right of Way containing Facilities, PWUA may elect to abandon such Facilities or may request in writing that City convey such interest to PWUA. The City Engineer may agree to convey such interest so long as the City Attorney determines in its sole discretion that such conveyance is legal and advisable. Such conveyance shall be by quit claim with no warranties of title.
- d. If Facilities are required to be relocated, PWUA shall relocate its Facilities subject to the following provisions:
  - i. For Facilities located outside of the Public Right of Way, if the City requires such Facilities be relocated as part of a City project, then the City shall bear the entire cost of relocating such Facilities (including the cost of securing additional private property rights, if necessary).
  - ii. For Facilities located within the Public Right of Way: (a) If the City requires such Facilities be relocated as part of a City project, then City shall bear the costs of the relocation; (b) If PWUA requires such Facilities be relocated as part of a PWUA project, then PWUA shall bear the costs of the relocation.
  - iii. All relocated Facilities must be relocated within the Public Right of Way whenever reasonably possible.
  - iv. When a conflict exists between PWUA's proposed location of Facilities and existing facilities owned, licensed, or permitted by City, PWUA may request in writing that such existing facilities be relocated. The City Engineer shall have complete discretion to determine a resolution. If the City Engineer determines that the existing facilities should be relocated, PWUA shall bear the entire cost of relocating the existing facilities, irrespective of the function they served.
  - v. Should City contribute to or bear the cost of relocating any Facilities for any reason, the City shall not bear any cost related to upgrading, extending, or improving any Facilities unless such upgrade, extension, or improvement is deemed beneficial to the City in proportion to the cost as determined by the City Engineer.
  - vi. City will not unreasonably or arbitrarily exercise its right to require Facilities to be relocated or seek to avoid City's obligations under this Section 4.

**Section 5. Indemnification and Hold Harmless; Insurance.**

- a. To the fullest extent allowed by law, PWUA shall indemnify, defend, and protect City and hold City harmless from any loss or costs due to any claim or liability and all costs and expenses, including but not limited to reasonable attorneys' fees, resulting from the use, construction, maintenance, or operation of Facilities. The provisions of this Section 5.a. will survive the expiration or termination of this Agreement.

- b. The City shall not be liable to any third party for damages, losses, or liability arising from the issuance of this Agreement. The provisions of this Section 5.b. will survive the expiration or termination of this Agreement.
- c. PWUA shall obtain, maintain at all times, and provide proof of such to City upon request, commercial general liability insurance and commercial automobile liability insurance protecting PWUA in an amount not less than FIVE MILLION Dollars (\$5,000,000) per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than FIVE MILLION Dollars (\$5,000,000) annual aggregate for each personal injury liability and products-completed operations, and statutory workers' compensation and employer's liability insurance in an amount not less than ONE MILLION Dollars (\$1,000,000). Coverage must be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. When an umbrella or excess coverage is in effect, coverage must be provided in following form. PWUA must notify City of any change or cancellation of insurance coverage. Such insurance must not be canceled or materially altered to reduce the policy limits unless PWUA notifies City in writing no fewer than thirty (30) days in advance of such cancellation or change.
- d. Within thirty (30) days following execution of this Agreement and before the commencement of any construction work pursuant to this Agreement, PWUA shall file with City the required original certificates of insurance, with endorsements, which shall clearly state all of the following:
  - i. The policy number; name of insurance company; name and address of the agent or authorized representative; name, address, and telephone number of insured; project name and address; policy expiration date; and specific coverage amounts;
  - ii. The policy will not be canceled except after providing thirty (30) days prior notice of cancellation to City; and,
  - iii. PWUA's insurance is primary for services it provides with respect to any other valid or collectible insurance that City may possess, including any self-insured retention City may have; and any other insurance City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance.
  - iv. PWUA may not commence construction work pursuant to this Agreement prior to the submission of the insurance documents required in this Section 5.d.
- e. The provider of insurance described in this Section 5 must be admitted and authorized to do business in the State of Arizona and must be rated at least A- in A.M. Best & Company's Insurance Guide. Insurance policies and certificates issued by any other insurance companies are not acceptable.
- f. To the fullest extent permitted by law, all such insurance policies, except Workers' Compensation, for claims arising out of the performance of this Agreement shall name City, its agents, representatives, officers, directors, officials, and employees as additional insureds.
- g. All insurance policies shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, representatives, officers, directors, officials, and employees for any claims arising out of the Association's acts, errors, mistakes, omissions, work, or service.

**Section 6. Restoration of Rights-of-Way.**

- a. Except as hereinafter provided with regard to repairs of Facilities, before PWUA shall cause any opening or alteration whatsoever to be made for any purpose in any Public Right of Way, PWUA must apply for and obtain a right-of-way permit (separate and distinct from any other permit described in this Agreement) from City and must provide for City inspection of the Public Right of Way before the work may be considered complete.
- b. PWUA shall complete all construction in accordance with all laws and the Local Standards.
- c. PWUA shall diligently pursue completion of all construction within a reasonable amount of time. Such work will not be deemed complete until PWUA has restored the Public Right of Way to as good a condition as it existed before such work.
- d. During any opening or alteration of the Public Right of Way, when required by the City Engineer, PWUA must apply for and obtain an approved Traffic Control Plan from the City, comply with the Manual of Uniform Traffic Control Devices and the City of Phoenix Barricade Manual, and bear the full cost of any barricades, signage, traffic control devices, rerouting of traffic, or other action or expense that the City Engineer shall reasonably require in the interest of public safety. Upon completion of such work, PWUA shall bear the full cost of removal of barricades, signage, and traffic control devices, including without limitation any cost incurred by City to remove or store barricades not otherwise removed by PWUA or its contractors. The City Engineer is authorized to restrict or limit construction activities to certain designated hours and days to minimize impact on traffic.
- e. PWUA must obtain and maintain for the duration of this Agreement an annual emergency encroachment permit and an annual maintenance encroachment permit (separate and distinct from any other permit described in this Agreement). Whenever reasonably necessary, PWUA may initiate emergency repairs before obtaining any additional permits, however, PWUA must notify the City Engineer or designee, before initiating the repairs if such notice is practicable in the circumstance. If after initiating emergency repairs, additional permits are required by the City Engineer, PWUA must apply for those permits as soon thereafter as is reasonable and practicable. In all cases, such application must be submitted to the City within three (3) business days after the initiation of the emergency repair. PWUA must maintain any annual permits required by the City Engineer.
- f. If PWUA fails to repair the Public Right of Way to a safe and satisfactory condition (normal wear and tear excepted) reasonably satisfactory to the City Engineer, the City shall have the option, upon fifteen (15) days written notice to PWUA, to perform or cause to be performed such work deemed reasonable and necessary by the City Engineer. In such event, the City may demand, and PWUA shall be responsible for the proposed costs to be incurred or the actual costs incurred by the City. Such costs shall be calculated at City's standard rates, plus an administrative fee of fifteen percent. PWUA must reimburse the City for such costs within thirty (30) days after receipt of such a demand for payment by the City. After thirty (30) days, unpaid amounts shall bear interest at the rate of 1.5% per month.

**Section 7. Operating Agreement Fees.**

- a. In consideration of the granting of the rights under this Agreement, PWUA agrees to pay to the City each of the following when due (collectively the “Fees”):
  - i. A sum equal to five percent (5%) of the gross receipts of PWUA (excluding from gross receipts all sales taxes, gross revenue taxes, or similar charges based upon gross receipts), from the sale of irrigation water delivery services by PWUA within the Service Area. This fee shall be due and payable monthly. This fee is in lieu of any initial permit or inspection fees typically required by the City;
  - ii. If PWUA successfully obtains a City franchise, the fee required by Section 7.a.i. shall be reduced to two percent (2%), effective upon the date the City franchise is issued;
  - iii. Notwithstanding the foregoing Sections 7.a.i and 7.a.ii., PWUA shall be responsible for fees charged by the City for pavement damage resulting from cuts into new or rehabilitated pavement, in accordance with Chapter 23 of the Peoria City Code (1992); and,
  - iv. All applicable local taxes including transaction privilege tax at the then current rate for the utilities classification.
- b. This Operating Agreement will not be effective unless and until PWUA pays in full the outstanding and delinquent franchise fees and taxes owed to the City, the invoice for which is attached hereto as Exhibit B.
- c. To verify any amount payable according to this Agreement, upon reasonable notice PWUA shall make available all pertinent books and records of its operations and the properties served, for inspection by duly authorized officers or representatives of City.
- d. Within thirty (30) days of a City request, PWUA must provide data, in a spreadsheet format acceptable to the City Engineer, reflecting all project numbers, associated city permit numbers, and the respective amounts paid by PWUA for any associated fees.
- e. Failure to pay the fees and taxes required by this Section 7 and Section 8 of this Operating Agreement is an Event of Default, as defined in Section 10 of this Agreement, and will subject PWUA to all the provisions of Section 10.

**Section 8. Occupation Tax.**

Notwithstanding any provision contained herein to the contrary, PWUA shall, in addition to any other payments, pay any business or occupation tax established by City, provided the tax is a flat fee per year and the annual amount of such tax does not exceed the amount of similar fees paid by the other businesses with comparable gross revenue from sales within City.

**Section 9. Title to Facilities; Right to Use Easement; Reserved Right to Purchase or Condemn.**

- a. Title to all Facilities presently owned by PWUA wherever situated on the Public Right of Way shall be and remain in PWUA, its successors, or assigns.

- b. The City reserves the right and power to purchase or condemn the Facilities of PWUA within the corporate limits of the City or any additions thereto, as provided by law. PWUA likewise reserves all rights and remedies provided by law in any such circumstance.
- c. In the event of a purchase of PWUA or under the exercises of eminent domain, this Agreement shall be construed to have no value for purposes of establishing the value of PWUA.

**Section 10. Default, Remedies, Waiver.**

In the event (an “**Event of Default**”) a Party (the “**Defaulting Party**”) fails to perform or fails to otherwise act in accordance with any term or provision hereof (a “**Default**”) then the other Party (the “**Non-Defaulting Party**”) may provide Notice of the Default to the Defaulting Party (the “**Notice of Default**”). The Defaulting Party shall have thirty (30) days from receipt of the Notice of Default to cure the Default (the “**Cure Period**”). If the failure is such that more than thirty (30) days would reasonably be required to cure the Default or otherwise comply with any term or provision herein, then the Defaulting Party shall Notify the Non-Defaulting Party of such and the timeframe reasonably needed to cure such Default. So long as the Defaulting Party commences performance or compliance or gives Notice of additional time needed to cure within said thirty (30) day period and the Defaulting Party diligently proceeds to complete such performance or fulfill such obligation, the Cure Period will be extended as reasonably necessary; provided further, however, that no Cure Period shall exceed ninety (90) days except by mutual written agreement of the Parties. Any Notice shall specify the nature of the Default and the manner in which the Default may be satisfactorily cured, if reasonably practicable.

- a. Remedies for Default. Whenever any Event of Default occurs and is not cured (or cure undertaken) by the Defaulting Party in accordance with this Agreement, the other Party may take any of one or more of the following actions:
  - i. Remedies of City. City’s remedies for an uncured event of Default by PWUA shall be all remedies available at law or in equity, including, without limitation, any of the following:
    - 1) The City may terminate this Agreement, and PWUA shall be subject to the conditions in Section 15 of this Operating Agreement.
    - 2) At any time, City may seek special action or other similar relief (whether characterized as mandamus, injunction, or otherwise), requiring PWUA to undertake and fully and timely to address or to enjoin any construction or activity undertaken by PWUA that is not in accordance with the terms of this Agreement.
    - 3) Notwithstanding the foregoing, PWUA shall be liable, and City may recover from PWUA, its actual damages for any unrepaired damage to the City’s facilities or real property caused by PWUA’s actions taken pursuant to this Agreement.
    - 4) Notwithstanding the foregoing, City at any time may enforce its rights given under any bond or similar financial assurance given or provided by or for the benefit of PWUA pursuant to this Agreement.
  - ii. Remedies of PWUA. PWUA’s exclusive remedies for an uncured Event of Default by City will consist of and will be limited to a special action or other similar relief (whether characterized as mandamus, injunction or otherwise) requiring City to undertake and fully and timely to perform its obligations under this Agreement. In such event, PWUA may seek to recover any actual damages incurred by PWUA as a result of City’s Default.

- b. Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any default by the other Party shall not be considered as a waiver of rights with respect to any other default by the performing Party or with respect to the particular default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches, or otherwise at a time when it may still hope to resolve the problems created by the default involved.

**Section 11. Term.**

This Agreement is effective upon PWUA's compliance with Sections 3.b. and 7.b. and execution by both Parties and shall continue and exist (unless terminated pursuant to Section 10) until the earliest of the following occur:

- a. PWUA's obtains a franchise pursuant to the Charter of the City of Peoria, Article XII.
- b. November 4, 2026. Upon expiration of this Operating Agreement under this Section 11, PWUA shall be subject to the conditions in Section 15.

**Section 12. Nature of Agreement.**

This Agreement is exclusive to the Service Area, and City shall not enter into similar Agreements with any other person, firm, or corporation providing irrigation within the specific Service Area.

**Section 13. Survival of Provisions.**

All provisions of this Agreement which are obligatory upon, or which inure to the benefit of PWUA shall be obligatory upon and shall inure to the benefit of all successors and assigns of PWUA and the word "PWUA" wherever used in this Agreement shall include and be taken to mean all successors and assigns of PWUA.

**Section 14. Repealer.**

All ordinances and parts of ordinances previously granting PWUA a Franchise have expired or are hereby repealed.

**Section 15. Miscellaneous Provisions.**

- a. Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). The Parties wish to confer jurisdiction, to the extent possible, upon the Superior Court of Maricopa County for the purpose of coordinating and centralizing any required judicial administration of this Agreement. Accordingly, any action brought to interpret, enforce, or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa. The Parties irrevocably consent to the exclusive jurisdiction and venue in such court for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 15.a. The Parties expressly waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other, on any matter whatsoever arising out of

or any way connected with this Agreement or their relationship arising hereunder.

- b. Limited Severability. The City and PWUA each intend that the execution, delivery, and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring the City to do any act in violation of any applicable laws, constitutional provision, law, regulation, City code, or City charter), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.
- c. Construction. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic, or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.
- d. Notices.
- i. Except as otherwise required by law, any notice required or permitted under this Agreement (each, a “**Notice**” or when used as a verb “**Notify**”) shall be in writing and shall be given by (1) personal delivery, (2) deposit in the United States certified, registered or express mail, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section 15.d., or (3) any nationally recognized express or overnight delivery service (e.g. Federal Express or UPS), delivery charges prepaid, for next business day delivery:

If to the City: Henry Darwin, City Manager  
City of Peoria  
8401 West Monroe Street  
Peoria, Arizona 85345

With a required copy to: Emily Jurmu, City Attorney  
City of Peoria  
8401 West Monroe Street  
Peoria, Arizona 85345

If to PWUA:

*To the statutory agent.*

With a required copy to:

- ii. Effective Date of Notices. Any Notice sent by United States Postal Service certified, registered, or express mail shall be deemed to be effective on the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any Notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Any Notice personally delivered or delivered through a same-day delivery/courier service shall be deemed effective upon its receipt or refusal to accept receipt by the addressee. Notices transmitted digitally or electronically or by facsimile may be offered as a courtesy, but do not constitute "Notice" for the purposes of this Section 15.d. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee. Any Party may designate a different person or entity or change the place to which any Notice shall be given as herein provided.
- e. Time of Essence. Time is of the essence of this Agreement and each provision hereof.
- f. Section Headings. The section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.
- g. Attorneys' Fees and Costs Between the Parties. In the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, the prevailing Party in any such dispute will be entitled to reimbursement of its reasonable attorneys' fees and court costs, including, but not limited to, its reasonable costs of expert witnesses, transportation, lodging and meal costs of out-of-town parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.
- h. Exhibits. Without limiting the provisions of this Agreement, the Parties agree that all references to this Agreement include all exhibits designated in and attached to this Agreement, such exhibits being incorporated into and made an integral part of this Agreement for all purposes.
- i. Integration. Except as expressly provided herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement.
- j. Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of: (a) this Agreement as in full force and effect; and (b) the performance of the obligations hereunder at any time during its Term.
- k. Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Friday, Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Friday, Saturday, Sunday or legal holiday.
- l. Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval shall be given or denied

by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise. Wherever the City's consent is required to be given in this Agreement, such consent will be the consent of the City Manager (or his/her designee), without the requirement of the prior approval of the City Council unless required by Applicable Law, City policy, or the City Manager.

- m. Amendment. From time to time, PWUA and City (acting through its City Manager or the City Manager's designee) may, by mutual written agreement, refine, amend, revise, change, or correct any part of this Agreement as the City and PWUA deem necessary or preferable. The City Council authorizes its City Manager (or the City Manager's designee), in the City Manager's administrative capacity, to take any action that the City Manager deems necessary to carry out the intent and purpose of this Agreement, including without limitation to: complete all transactions contemplated within this Agreement, execute amendments to this agreement, and execute any other documents related to this agreement. Except as otherwise expressly provided for in this Agreement, no change or addition shall be made to this Agreement except by written amendment executed by the City and PWUA.
- n. Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, or capriciously and will not unreasonably withhold, delay, or condition any requested approval, acknowledgment or consent.
- o. Nonliability of City Officials, Etc., and of Employees, Members and Partners, Etc. of PWUA. No City Council member, official, representative, agent, attorney or employee of the City shall be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any default or breach by the City or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of the City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of PWUA under this Agreement shall be limited solely to the assets of PWUA and shall not extend to or be enforceable against the personal assets of any of the individuals or entities who are members, managers, or officers of PWUA.
- p. No Partnership. This Agreement shall not be construed as creating a joint venture, partnership, or any other joint arrangement between PWUA and City.
- q. No Third-Party Beneficiaries. No person or entity shall be a third-party beneficiary to the Agreement nor have any right or cause of action hereunder. City shall have no liability to third parties for any approval of plans, PWUA's negligence, PWUA's failure to comply with the provisions of this Agreement, or otherwise as a result of the existence of this Agreement.
- r. Counterparts; Termination. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument. In the event of any termination of this Agreement, the Parties shall have no obligations to each other except for any obligations that are stated to survive expiration or termination of this Agreement.
- s. Arizona Law Provisions. To the extent required by Arizona State law:
  - i. No member, official, or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to this Agreement, that is prohibited by

law. This Agreement shall be subject to cancellation pursuant to the provisions of A.R.S. § 38-511 relating to conflicts of interest.

- ii. PWUA certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in, a “boycott,” as that term is defined in § 35-393, Arizona Revised Statutes, of Israel.
- iii. To the extent applicable under A.R.S. § 41-4401, PWUA warrants compliance with all federal immigration laws and regulations that relate to their employees and contractors and their compliance with the e-verify requirements under A.R.S. § 23-214(A). The failure by PWUA to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.
- iv. To the extent applicable under A.R.S. § 35-394, PWUA hereby certifies it does not currently, and for the duration of this Agreement shall not use: (a) the forced labor of ethnic Uyghurs in the People’s Republic of China, (b) any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China, and (c) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China.

**[SIGNATURE PAGES FOLLOW]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date and year first above written.

**CITY OF PEORIA**, an Arizona  
Municipal Corporation

\_\_\_\_\_  
By: Henry Darwin, City Manager

**ATTEST:**

\_\_\_\_\_  
Agnes Goodwine, City Clerk

**APPROVED AS TO FORM**

\_\_\_\_\_  
Emily Jurmu, City Attorney

STATE OF ARIZONA

ss:

County of Maricopa

On this \_\_\_\_\_ day of 2026, before me, the undersigned officer, personally appeared who acknowledged himself to be the duly appointed and qualified City Manager of the City of Peoria, an Arizona municipal corporation, and that he in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

PEORIA WATER USERS ASSOCIATION, INC.,  
an Arizona non-profit corporation



By: Bart Turner, President of the Board of Directors

STATE OF ARIZONA

ss:

County of Maricopa

On this 22<sup>nd</sup> day of January 2026, before me, the undersigned officer, personally appeared Elen Barton who acknowledged himself to be the President of the PEORIA WATER USERS ASSOCIATION, INC., an Arizona non-profit corporation, and that he in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public

My Commission Expires:

September 25, 2026

