

Gem State Draft 08.05.20

### Operator Agreement

This Operator Agreement (this “**Agreement**”) dated as of SEPTEMBER 25, 2020 (the “**Effective Date**”), is entered into between Gem State Infrastructure LLC, an Idaho limited liability company (“**Operator**”) and Pelican Point Water Co (“**Company**”), a Washington corporation. Operator and Company may be referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

### Background

Company would like to engage Operator to provide water services to the water supply and distribution system owned by Company (the “**Water System**”). The Parties therefore agree, as follows:

### Agreement

1. **Services.** Operator will provide the services set forth on the attached Exhibit A (the “**Services**”) to Company in a professional, timely and workmanlike manner consistent with the standards of the water utility industry. Operator will comply with all laws in connection with its performance of the Services. Operator will follow Company policies and procedures, if any, related to the Services. Company will (a) notify Operator of any deficiencies or potential problems with the Water System that it is aware of; and (b) provide all documents reasonably needed by Operator to perform the Services (e.g., maps, water facility reports, and routine maintenance schedules required for the Water System).
2. **Compensation.** As consideration for provision of the Services, Company will pay Operator the amount specified on **Exhibit A**. Operator will invoice Company monthly in arrears. The invoice will include reasonable detail of the amounts payable. Company will pay each properly submitted undisputed invoice within thirty (30) days after the date of receipt. If Company disputes any invoice amount, the Parties will seek to resolve the dispute expeditiously and in good faith. Operator will continue performing the Services in accordance with this Agreement notwithstanding the existence of any invoice dispute. In the event any amounts payable hereunder remain unpaid as of the date of any purchase of Company’s assets by Operator, the unpaid amount hereunder shall be deducted from the purchase price payable by Operator to Company in respect of such asset purchase.
3. **Term and Termination.**
  - 3.1 **Term.** This Agreement is binding upon the Parties as of the Effective Date and, unless earlier terminated as provided for in this Agreement, will continue in full force and effect through and including the six month (6) anniversary (the “**Initial Term**”). This Agreement will automatically renew for successive six (6) month terms thereafter (each a “**Renewal Term**” and together with the Initial Term, the “**Term**”) until and unless either Party provides the other Party with sixty (60) days prior written notice to the end of the Term, or unless earlier terminated as provided for in this Agreement.
  - 3.2 **Termination.** A Party may terminate this Agreement before the end of the Term in the following circumstances:
    - (a) **Breach.** A Party may terminate this Agreement with respect to any Service or all Services at any time upon prior written notice to the other Party if the other Party has failed to perform any of its material obligations under this Agreement, and the failure has continued without cure for a period of thirty (30) days after the breaching Party’s receipt of written notice from the non-breaching Party of the failure.
    - (b) **Insolvency.** A Party may terminate this Agreement by providing written notice thereof if the other Party (a) files a petition in bankruptcy, (b) becomes or is declared insolvent, or becomes the subject of any proceedings (not dismissed within sixty (60) days) related to its liquidation, insolvency or the appointment of a receiver, (c) makes an assignment on

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behalf of all or substantially all of its creditors, or (d) takes any corporate action for its winding up or dissolution.

- (c) **Convenience.** A Party may terminate this Agreement with respect to any Service or all Services at any time upon prior written notice to the other Party with thirty (30) days prior written notice.

Upon expiration or termination of this Agreement in its entirety, Company shall remain liable to Operator for compensation pursuant to Section 2 in respect of all Services performed prior to termination. All other obligations of the Parties will terminate, except for the provisions of this Section 3.2 and Sections 4-6, which will survive any termination of this Agreement.

#### 4. Confidentiality.

- 4.1 **Non-Use; Non-Disclosure.** Receiving Party (as defined below) (a) will keep the Confidential Information confidential and will not (except as required by applicable law only after compliance with this Section 4), without the prior written consent of Disclosing Party (as defined below), disclose any Confidential Information in any manner whatsoever; (b) will not use any Confidential Information other than in connection with fulfilling the purposes of this Agreement; and (c) will take reasonable measures to protect Confidential Information from misuse and unauthorized disclosure, but in no event less than the measures Receiving Party takes to protect its own confidential information. A failure of Receiving Party's Representatives to observe the terms of this Section 4 will be deemed a failure by Receiving Party to observe the terms of this Section 4. At Disclosing Party's written request, Receiving Party will, unless otherwise required by law, promptly destroy or return all copies of the Confidential Information in its and its Representatives' possession and, upon Receiving Party's written request, certify the destruction or return in writing.

- 4.2 **"Confidential Information"** means all confidential or proprietary information (whether or not identified with a confidentiality marking) concerning the operations, assets, resources, projects, liabilities, contracts, know-how, improvements, strategy or trade secrets of a Party (the **"Disclosing Party"**) that is furnished in writing (whether directly or indirectly, intentionally or inadvertently), before or after the Effective Date, by Disclosing Party or any of its Representatives to the other Party (the **"Receiving Party"**) or its Representatives, and all work product that contains or reflects any of the Confidential Information. Confidential Information will not include any information in Receiving Party's possession that: (a) is or becomes available to the public other than through a violation of this Agreement; or (b) is given to Receiving Party by a third party who has no obligation to keep the information confidential.

- 4.3 **"Representatives"** means, with respect to any Person, that Person's officers, directors, employees, counsel, accountants, bankers, agents, advisors, approved subcontractors and others who act on the Person's behalf or at the Person's direction or request.

5. **Indemnification.** Each Party will indemnify, defend and hold harmless the other Party and the other Party's affiliates and each of their respective Representatives from and against any and all Losses relating to, arising out of or resulting from (a) gross negligence or willful misconduct of, or violation of law by, the indemnifying Party or its Representatives in connection with the provision of, or failure to provide, any Services under this Agreement or (b) the indemnifying Party's material breach of this Agreement of material failure to comply with applicable law. **"Losses"** means losses, damages, liabilities, deficiencies, judgments, interest, awards, penalties, fees, or fines, or costs or expenses relating to the foregoing, including reasonable attorneys' fees, but does not include punitive, incidental, consequential or special damages, except in the case of fraud or to the extent actually awarded to a third party.

**6. Miscellaneous.**

- 6.1 Independent Contractor.** Operator will perform the Services as an independent contractor. This Agreement does not create a fiduciary relationship, partnership, joint venture or relationships of trust or agency between the Parties.
- 6.2 Notices.** Notices must be in writing. Notice is deemed given when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); on the date sent by email of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient (otherwise on the next business day); or on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Notice is only effective if sent to the address or email addresses set forth on the signature page of this Agreement, except that each party may change its address and email address for notices by giving notice in accordance with this paragraph.
- 6.3 Entire Agreement; Headings.** This Agreement, including Exhibit A, constitutes the entire agreement of the Parties with respect to its subject matter and supersedes any and all prior understandings, written or oral, between the Parties, or any of them, with regard to its subject matter. The headings contained in this Agreement are for convenience and do not affect the meaning of this Agreement. Other than with respect to the indemnified parties in Section 5, nothing in this Agreement confers any rights or liabilities upon any third party.
- 6.4 Amendment; Waiver.** This Agreement may not be amended or modified orally, but only by an instrument in writing signed by an authorized representative of each of the Parties. Provisions of this Agreement may only be amended waived in a writing signed by the parties specifically identifying the provision to be amended or waived. The waiver of any condition will not affect the right to indemnification or other remedy. A failure or delay in exercising a right will not act as a waiver. A partial exercise will not preclude further exercise of a right. A waiver of a term will not act as a waiver of any later breach of the same term.
- 6.5 Severability.** The terms contained in this Agreement are severable and distinct. The invalidity or unenforceability of any term as written will not invalidate or render unenforceable the remaining terms, and any invalidity or unenforceability in any jurisdiction will not invalidate or render unenforceable the covenant in any other jurisdiction. If any term is held to be invalid, illegal or unenforceable, the Parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible.
- 6.6 Binding Effect; Assignment.** This Agreement is binding upon, and enforceable by and inures to the benefit of, the Parties and their respective successors and permitted assigns. This Agreement may not be assigned or otherwise transferred (including a change of voting control and a transfer by operation of law) without the prior written consent of the other Party, except that Operator may transfer its rights and obligations to an affiliate without Company's consent. Operator will not subcontract any of the Services to a third party without Company's prior written approval, not to be unreasonably withheld.
- 6.7 Specific Performance.** Remedies under this Agreement are cumulative. No right or remedy of the Parties under this Agreement is intended to be exclusive of any other right or remedy. A Party would be irreparably damaged by reason of a failure of the other Party to perform its obligations under this Agreement in accordance with its terms. Each Party is entitled, therefore, to equitable relief in the event of a breach or threatened breach (without any requirement to post bond), in addition to any other remedy to which it is entitled at law or in equity.
- 6.8 Governing Law.** This Agreement is to be construed and enforced in accordance with Washington law, without giving effect to any conflict of law rule. Any action arising out of

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this Agreement must be brought in the federal or state courts located in King County, Washington. The parties waive any objection to the jurisdiction or those courts. Each party waives any right it may have to trial by jury in respect of any action arising out for this Agreement.

**6.9 Counterparts.** This Agreement may be executed in several counterparts, each of which will be an original, all of which will constitute one and the same instrument. A facsimile, PDF or other electronic signature will be considered an original.

The Parties entered into and signed this Operator Services Agreement as of the Effective Date.

**Operator:**

**Gem State Water Company, LLC**

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

*Leslie Abrams-Rayner*

Leslie Abrams-Rayner  
250 NW BLVD Suite 203  
Coeur D Alene ID 83814  
Phone: 1.877.755.9287  
Email: leslie@gemstate-water.com

**Company:**

**Pelican Point Water Co**

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

*Jill B. Goodrich Jill B. Goodrich*

[Name]

[Title]

[address]

*P.O. Box 458  
Moses Lake WA, 98837*

Phone: [phone]

*509-765-3608*

Cell: [phone]

*509-760-3091*

Email: [email]

*jillg.pelicanpointwaterco@gmail.com*

**EXHIBIT A**  
**SERVICES**

Operator to receive a flat fee of \$6680.00 per calendar month (prorated for any partial month) for performance of the "Services", which include operation and maintenance of the Water System on a day to day basis, and the performance all tasks necessary for the safe and reliable functioning of the Water System set forth below. Installation of meters and water system repairs will be paid on an hourly basis<sup>1</sup>, plus reimbursement for the cost of materials, drive time, and mileage.

1. Manage and maintain safe and reliable drinking water.
2. Perform customer billing and A/R as well as general customer service.
3. Ensure all of the Water System daily operational and maintenance activities are completed in accordance with acceptable public health practices and water industry standards.
4. Perform water quality monitoring, maintain adequate records, and take follow-up action, if necessary, to comply with state and federal drinking water regulations
5. Implement preventive maintenance programs, and inspect system components for malfunctions, keep adequate records, and make needed repairs.
6. Analyze, review, record, instrument readings and laboratory tests, determine causes of any malfunctions; adjust components accordingly, and maintain a record of these actions.
7. Implement a cross-connection control program.
8. Determine and implement remedial actions in emergencies. This includes following directions of DOH to address the situation
9. Operator will pass along any and all documents about the Water System to Company.
10. Be available 24 hours a day, seven days a week for emergency service at hourly rates.
11. Have a back-up operator.
12. Read Meters every month when possible and pass the readings on to Company
13. Turn all the valves in the system every 6 months
14. Flush fire hydrants or blow off valves every 6 months
15. Maintain relationships with all agencies to ensure the water system remain in good standing.
16. Work with subcontractors to perform specialized maintenance on pumps, motor, and electrical components.
17. Maintain certified operator licensure (WTPO1, CCS)
18. Provide customer service including responding to complaints, inquiries, emergencies, etc.
19. Respond and be available on an "on call" basis for "utility locates" at hourly rates.

<sup>1</sup>Hourly rates:

- \$55.00 hour for Monday-Friday 8:00 a.m. - 5:00 p.m. repairs labor, excluding holidays
- \$110.00 hour for emergency response 7:00 p.m. - 7:00 a.m. and weekends
- \$137.50 hour for holidays\*
- \$35.00 hour for Monday-Friday 8:00 a.m. -5:00 p.m. drive time, excluding holidays
- \$70.00 hour for emergency response 7:00 p.m. - 7:00 a.m. and weekends drive time
- \$87.50 hour for holidays\* drive time
- \$.57 mileage

\* New Year's Day (Jan. 1), Martin Luther King, Jr. Day (3<sup>rd</sup> Monday in January), President's Day (3<sup>rd</sup> Monday in February), Memorial Day (last Monday in May), Independence Day (July 4), Veteran's Day

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(November 11), Thanksgiving (fourth Thursday in November), Native American Heritage Day (fourth Friday in November) and Christmas Day (December 25). If a legal holiday falls on a Sunday, it is observed on the following Monday. If any of these holidays falls on a Saturday, it is observed on the prior Friday.

For the avoidance of doubt, (a) each Party will pay its own expenses incurred in connection with this Agreement and (b) Operator is not responsible for identifying, designing, or making capital improvements to the Water System or for paying any operating permits, regulatory fees, dues, licenses, chemical testing or any other ongoing expenses.