

Certified Operator Agreement

This Certified Operator Agreement ("Agreement") is entered into this 15th day of Sept., 2009 by and between the Pine Strawberry Water Improvement District ("PSWID") of 6306 W. Hardscrabble Rd, Pine, AZ 85544 and Shaffer Water Management, LLC ("Operator") of 605 W. Arabian Way, Payson, AZ 85541 (hereafter collectively referred to as the "Parties").

WHEREAS, PSWID is in the process of acquiring certain water systems within the boundaries of its district; and

WHEREAS, PSWID is in need of a Certified Operator to oversee the operations and maintenance of said water systems; and

WHEREAS, the Operator has the appropriate permits, credentials, and experience to operate said water systems.

NOW IN CONSIDERATION OF THE COVENANTS SET FORTH HEREIN the Parties agree as follows:

I. Engagement Agreement:

- a. PSWID pursuant to the terms and conditions hereof, hereby engages the services of Shaffer Water Management, LLC to act as the Certified Operator of the water systems owned by PSWID in accordance with all applicable laws, rules, and regulations of the United States, State of Arizona, County of Gila, and the Pine Strawberry Water Improvement District as if such applicable laws, rules and regulations were set forth herein. In consideration of these covenants the Operator agrees to provide said services, including but not limited to those set forth herein.

II. PSWID Covenants:

- a. Provide that all customer inquiries which require Operator response be referred to the Operator.
- b. Upon such referral PSWID shall provide the Operator all reasonably required information to allow for the Operator responsive action.
- c. PSWID shall provide the Operator access to all properties of PSWID necessary for the performance of its duties.
- d. PSWID shall provide timely response to any request from the Operator concerning the Operator's performance under its obligations. In the event that such response can be made by the PSWID Manager or the PSWID Board Chairman such response shall be made as quickly as reasonably possible. If the response requires action of the Board of Directors of PSWID, the Board shall make such decisions at its next scheduled meeting.
- e. PSWID shall supply the Operator with all parts, materials, supplies, chemicals, and other necessary items for the conduct of its work.
- f. PSWID shall provide any and all large equipment, tools, or machinery reasonably required by the Operator for the effectuation of the Operator's obligations hereunder.

III. Operator Covenants:

- a. Operator shall engage the services of Dean Shaffer as the Certified Operator of the water systems, Mr. Shaffer holding certification number 15970/15971.

- b. Operator shall provide responsive, prompt, and timely twenty-four (24) hour management and supervision of the PSWID water systems including timely response to customer inquiries made upon PSWID in accordance with both PSWID policy and all regulatory requirements and guidelines.
- c. Operator shall:
- i. Schedule monthly reading of all water meters.
 - ii. Submit monthly meter readings pursuant to PSWID schedule.
 - iii. Be responsible for the supervision of all repairs and improvements including wells, tanks, pumps, pipes, electrical components.
 - iv. Complete underground alert requests.
 - v. Complete and timely submit all meter re-reads.
 - vi. Perform meter installations.
 - vii. Perform meter replacements.
 - viii. Perform leak investigations.
 - ix. Perform water loss investigations.
 - x. Complete disconnection requests.
 - xi. Perform customer “turn-on” and “turn-off” requests and all other service order types.
 - xii. Complete weekly inspection of facilities to assure proper operation of wells, water storage levels and pressure systems.
 - xiii. Perform timely reporting of any and all suspicious conditions, activities, and responses to vandalism or threats to PSWID.
 - xiv. Complete collection of all water monitoring samples, and reporting forms delivered to Lab in compliance with ADEQ schedules.
 - xv. Provide field representation for regulatory agency inspections.
 - xvi. Follow all local, state, and federal laws pertaining to the testing of the water in the water systems of PSWID.
- d. Operator shall promptly report any material conditions to PSWID affecting the operation and maintenance of the water systems. Such reports shall be given immediately in the event of any danger to persons or property within PSWID. Further, the Operator shall provide regular monthly written reports to PSWID regarding the condition and operation of the water systems.
- e. Operator shall report directly to the PSWID Manager and not to individual members of the Board of Directors. In the event that the Operator believes that PSWID is not responsive to the Operator reports to the PSWID Manager, then the Operator may contact the PSWID Board Chairperson directly, or request that the Operator issue(s) be placed on the agenda for the next regular meeting of the Board of Directors of PSWID.
- f. The Operator shall not accept employment from any other water systems customer other than PSWID to perform work within the boundaries of PSWID.
- g. At the time of execution of this Agreement the Operator shall deliver a resolution of the governing body of the operator authorizing the entry into this Agreement and the performance of its terms and conditions.
- h. Operator shall obtain prior approval from PSWID for any and all expenditures which exceed two thousand five hundred dollars (\$2,500.00), however in the event of any emergency which arises which may have an immediate and direct impact upon persons, property, or the public health, safety, and welfare within PSWID the Operator may exceed this expenditure limitation provided that he simultaneously notifies PSWID of the same. Extraordinary or unusual occurrences associated with flood, fire or acts of God which increase Operator costs or other expense shall be the responsibility of PSWID. If

costs exceed \$2,500.00, PSWID approval will be necessary prior to repair by Operator, except for the remedy of events that may cause damage to human safety or the environment as described herein.

- i. Operator shall not proceed with the performance of any work of a value in excess of \$2,500.00 without the prior approval of PSWID.
- j. Operator recognizes that it is not the responsible party to make arrangements with customers of PSWID, nor to collect or receive sums of money from the customers of PSWID.
- k. Operator shall, within all permit requirements, operate and maintain the water systems and perform all required testing. Operator shall do so in such a manner so that the water systems will not deteriorate in appearance and mechanical condition beyond normal wear and tear.
- l. Operator employees will maintain necessary certifications as may be required by governmental agencies for the operation of the PSWID water systems.
- m. The Operator shall involve the Board of PSWID in any and all meetings or discussions with the Arizona Department of Environmental Quality (ADEQ), the United States Environmental Protection Agency or any other regulatory agency regarding the PSWID water systems.
- n. Operator will perform in a technical and professional manner at or above industry standards and in accordance with all applicable County, State, Federal and local laws, rules and regulations. Operator will cause the water systems to meet all permit requirements and will be liable for fines or civil penalties imposed by regulatory agencies during the term of this Agreement for any violations beyond these criteria if the same are caused by its operation up to a maximum aggregate amount of \$15,000. If this Agreement is terminated, upon such termination, Operator's responsibility for fines or civil penalties resulting from events occurring after termination shall cease. The Operator shall not be liable for any post-termination penalties if PSWID does not take diligent and reasonable action to correct the cause of such problems after Operator's termination. PSWID shall cooperate fully with the Operator in the defense of any penalty or fine proceeding. All legal fees and costs in the defense of any penalty or fine proceeding shall be paid by PSWID and by the Operator in accordance with their comparative responsibility for the penalty or fine proceeding.
- o. Operator will provide routine, preventive maintenance and repair services for the water systems equipment, structure, and grounds consistent with good preventive practice and/or manufacturer's specification (as referenced by the water systems O & M Manual).
- p. Operator will prepare all monthly operating reports for signature by a designated PSWID official as required by the County, State, Federal and local laws, rules and regulations. The Operator shall supply the Board a written report within forty-eight (48) hours of the violation of any Permits or Permit Standards, laws, rules or regulations pertaining to the operation of the water systems and of all remedied action taken to correct the same.
- q. Operator will provide to PSWID daily logs and monthly reports of operating and maintenance data in accordance with County, State, Federal, and local laws, rules and regulations and with complete copies of all letters and other correspondence sent or received by the Operator and a log of all labor hired and materials acquired showing complete names and addresses of laborers, construction and supplies, telephone, local and long distance, and facsimile logs of all calls and faxes. In addition, the Operator will provide to PSWID, copies of all correspondence, internal memoranda, faxes and other correspondence received from or sent to ADEQ by the Operator.
- r. The following hold harmless provisions shall apply:

- i. Operator hereby agrees to and shall indemnify and hold harmless PSWID, its elective and appointive boards, officers, agents and employees from any claims, loss, liability, damages, injury, or expenses, including attorney's fees, which directly arise from its intentional, willful, or negligent operations under this Agreement, whether such operations be by the Operator or any subcontractor of the Operator.
- s. Operator agrees to provide PSWID with proof of the following described insurance naming PSWID, the Board of Directors, accountant and attorney as additional named insured and will require insurer to give PSWID thirty (30) days notice of cancellation or material change in said policies. Cancellation or any or all of these policies shall give either party the right to terminate this Agreement. Operator shall maintain during the life of the Agreement the following insurance:
 - i. Public Liability and Property Damage: \$1,000,000
 - ii. General Liability: \$2,000,000
 - iii. Automotive Liability: \$1,000,000
 - iv. Workers' Compensation: Per State and Federal Law
- t. The Operator shall separately maintain a log of all costs and expenses associated with any repairs to the water systems necessitated or caused by the acts, errors or omissions of the users, said log identifying liable users, if possible, so that PSWID may account for and bill for such costs separately.
- u. Operator shall provide services to PSWID, Monday through Friday, from at least 8:00 a.m. to 5:00 p.m., State and Federal holidays excluded.
- v. The Operator shall take all steps necessary to ensure that no liens are threatened or imposed on PSWID property as a result of the actions or inactions of the Operator.
- w. Operator shall provide to PSWID as a part of its monthly report, recommendation(s) requiring maintenance and preventative maintenance to the water systems.

IV. Compensation to Operator:

- a. Operator shall on the last day of each and every month submit a monthly invoice for services rendered by the Operator in accordance with this Agreement. Said invoice shall set forth the monthly flat fee of \$20,000.00 which shall cover the labor costs of Dean Shaffer, one supervisor/foreman, three operators, all vehicles and all hand tools. Said invoice shall also include an itemized list of any reimbursements requested by the Operator for any materials or supplies purchased by the Operator and shall include reimbursement for after hours emergency response services; said services to be billed at the rate of \$75/hour for Dean Shaffer and at the rate of one and one half times of the hourly wage of any other person engaged to provide the emergency services.
- b. Operator recognizes that the Operator is an independent contractor and all payments hereunder are made to the Operator as an independent contractor.
- c. It is understood that the relationship of the Operator to PSWID is that of an independent contractor and that none of the employees or agents of the Operator shall be considered employees of PSWID, nor shall employees or agents of PSWID be considered employees of the Operator

V. Term of Agreement:

- a. This Agreement shall commence upon the execution hereof and shall terminate on the anniversary date hereof one year following the execution of this Agreement.
- b. Sixty days (60) prior to the anniversary date hereof the Board of Directors of PSWID shall evaluate the performance hereunder and shall make a determination as to whether or

not it shall extend to the Operator the right to renew this Agreement for an additional one year term. If this Agreement is renewed, then annually the Board of Directors of PSWID shall conduct such evaluation and make a determination as to whether or not to extend this Agreement for an additional one year term.

VI. Termination of Agreement:

- a. Either party may terminate this Agreement without cause by first providing thirty (30) days notice prior to the date of such termination. The terminating party shall provide written notice to the other party of its intent to terminate. Said written notice to be mailed or hand delivered to the non terminating party. Ten days after the termination date of this Agreement, final invoice of the Operator shall be paid by PSWID unless PSWID shall have any exception to any amounts to be paid. In the event of such exception, PSWID shall notify the Operator no later than ten (10) days following the presentation of the invoice of such exception. All amounts owing and due shall be paid within ten (10) days of the presentation of the invoice unless exception has been made as described above. In the event of such exception, payment shall be made, if any, on the amount called into question at the time of the resolution of the exception by the parties, said resolution to be accomplished through mediation by a single mediator selected by the parties or if the parties cannot agree, by the Gila County Superior Court.

VII. General Conditions of Agreement:

- a. Wrongful, willful or negligent acts of PSWID through its officers, agents or employees and wrongful, willful or negligent acts of third parties, or acts of God, which cause damage to the water systems or to the parties or properties, shall not be the responsibility of the Operator.
- b. PSWID and Operator agree that this Agreement is not assignable, nor assumable by any successor to the Operator
- c. Force Majeure Events. Neither party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligations hereunder, other than for the payment of money obligations specified herein, in case such failure, default or delay is caused by strikes or other labor problems, by forces of nature, unavoidable accident, fire, acts of the public enemy, interference by civil authorities, passage of laws, orders of the court, adoption of rules, ordinances, acts, failures to act, decisions or orders or regulations of any governmental or military body or agency, office or commission, delays in receipt of materials, or any other cause, whether of similar nature, not within the control of the party affected and which, by the exercise of due diligence, such party is unable to prevent or mitigate the outcome ("Force Majeure Events"); provided, however, that the party's failure, default or delay in performance of such Force Majeure Event occur, the parties hereto agree to proceed with diligence to do what is reasonable and necessary with respect to the Force Majeure Event so that each party may perform its obligations under this Agreement. By this provision, the parties do not waive or otherwise relinquish any claims either of them may have for consequential or any other damages which may result from interruptions not due to a Force Majeure Event.
- d. This Agreement shall be construed in accordance with, and shall be governed by the laws of the State of Arizona. 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 Gila (or as may be appropriate, in the Justice Court or the United States District Court for the district of Arizona, if but only if, the Superior Court lacks or declines jurisdiction over such action). The parties

irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action.

- e. There are no third party beneficiaries under this Agreement.
 - i. The covenants, undertakings and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the parties.
- f. If any of this Agreement is declared void or unenforceable by a court of competent jurisdiction, such provision shall be severed from this Agreement, which the remaining provisions shall otherwise remain in full force and effect if the remaining provisions permit the parties to achieve the practical benefits of the arrangements contemplated by this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement, a provision as similar in terms to such illegal, invalid, or unenforceable provisions as may be possible and still be legal, valid, and enforceable and this Agreement shall be deemed reformed accordingly.
- g. All parties have been represented by counsel in negotiation and drafting of this Agreement, or in the alternative, it has been recommended that they do so, and this Agreement shall be construed to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the party who drafted a provision shall not be employed in interpreting this Agreement.
- h. Each party hereby agrees it shall from time to time and at such time as may be required, take such further actions and execute such further documents as may be reasonably required and necessary to effectuate the provisions of this Agreement.
- i. The terms and conditions of this Agreement shall bind and inure to the benefit of the parties, and their legal representatives. Neither party hereto shall assign its interests hereunder.
- j. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. Either party may waive any provision of this intended for its benefit; provided, however that such waiver shall in no way excuse the other party from the performance of any of its other obligations under this Agreement. No failure or delay on the part of a party in exercising any right, remedy, power, or privilege hereunder and no course of dealing between the parties shall operate as a waiver or abandonment thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- k. The section headings used herein are for reference only and shall not be used to construe, define, extend or describe the scope of this Agreement or the intent of the parties hereto.
- l. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all so executed shall constitute one agreement, binding the parties.
- m. This Agreement is subject to, and may be terminated by PSWID in accordance with the provisions of *A.R.S. §38-511*.
- n. The Operator shall be responsible for all federal, state, and local taxes of any kind or sort, including but not limited to income taxes and personal property taxes which arise out of the payments received by the Operator under this Agreement, or which arise as result of the activities of the Operator. The Operator is responsible for all taxes associated with the operation of its business including employment related taxes, property taxes, income taxes or any other tax imposed by any governmental entity. The Operator shall indemnify and hold harmless PSWID from any and all tax claims, levies, assessments, or other tax impositions arising out of this Agreement.

- o. The parties agree that in the event of any delay by PSWID in responding to a request from the Operator in giving direction to the Operator shall be deemed to be a non-compensable delay. In the event of any dispute, the Operator shall not be compensated for any damages arising out of a delay or a failure to act by PSWID.
- p. The parties agree that in the event of any dispute with any customer of PSWID that the Operator shall not be a party to such dispute but rather the Operator shall be an agent and witness for PSWID.

VIII. Notice:

- a. Except as otherwise required by law, all notices given pursuant to the terms of this Agreement shall be in writing and shall further be deemed received upon personal delivery or transmission via telecopy thereof or if mailed, five (5) business days after deposit in the United States mail, postage prepaid, certified or registered mail, return receipt requested, to the parties at the addresses set out below, or at such other address as a party may designate in writing:
 - i. If to PSWID: Board of Directors, PO Box 134, Pine, AZ 85544-0134
 1. with copies to: PSWID, 6306 W. Hardscrabble Rd, Pine, AZ 85544
 2. with copies to: Gliege Law Offices, PLLC, PO Box 1388, Flagstaff, AZ 86002-1388
 - ii. If to Shaffer Water Management, LLC: 605 W. Arabian Way, Payson, AZ 85541
 1. with copies to: _____

IX. Remedies:

- a. In the event of any dispute under this Agreement resolution of said dispute is to be accomplished through mediation by a single mediator selected by the parties or if the parties cannot agree by the Gila County Superior Court.
- b. The parties agree that in the event of any dispute arising hereunder, if the parties cannot successfully mediate such claim, that jurisdiction and venue for the resolution of said dispute shall lie in the Superior Court of the State of Arizona in and for the County of Gila. The parties further agree that the prevailing party in the resolution of such dispute, whether said resolution is had by litigation or other means, shall be entitled to recover its reasonable attorneys' fees, expert witness fees, and all other costs incurred in the resolution of such dispute.
- c. The parties further agree that in the event of any regulatory action taken against PSWID arising out of the operation of the PSWID water systems that the parties hereto shall bear all attorneys' fees and costs incurred in defense of such action in proportion to the parties' respective degrees of fault or culpability which gave rise to the regulatory action.

X. Indemnification:

- a. Each party (as Indemnitor) agrees to indemnify, defend and hold harmless the other party (as Indemnitee) from and against any and all claims, losses, liability, costs or other expenses including reasonable attorney's fees (hereinafter collectively referred to as Claim) arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claim which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers; provided, however, that the Parties will each bear their proportionate share of any penalty that may be assessed against PSWID as a result of any violations.
- b. The Indemnification contained herein shall survive the termination of this Agreement.

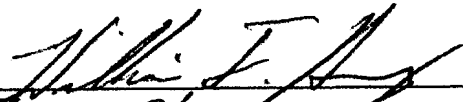
- c. Indemnity as to potability. The Operator shall indemnify and hold harmless PSWID from any and all claims or causes of action related to the potability which arise out of the Operator water systems operations and maintenance.

XI. Contingent Effectiveness of Agreement:

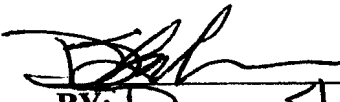
- a. The effectiveness of this Agreement is contingent upon PSWID obtaining the Used and Useful Assets in order to provide full and complete water service to the now existing customers of the Pine Water Company and Strawberry Water Company. Should PSWID not obtain such assets by or before December 31, 2009 this Agreement in its entirety shall be deemed null and void.

XII. Acceptance:

**Pine Strawberry Water Improvement
District (PSWID):**


BY: Chairman

**Shaffer Water Management, LLC
(Operator):**


BY: DEAN Shaffer