

**INDUSTRIAL PRETREATMENT SETTLEMENT AGREEMENT
BETWEEN THE CITY OF PHOENIX AND
ARIZONA FOODS GROUP, INC.**

This INDUSTRIAL PRETREATMENT SETTLEMENT AGREEMENT (“Agreement”) is made and entered into by and between the CITY OF PHOENIX (the “City”), an Arizona municipal corporation, and ARIZONA FOODS GROUP, INC., (“Industrial User”), an Arizona Corporation with operations at 2517 East Chambers Street, Phoenix, Arizona 85040 (“Facility”). The City and Industrial User are referred to individually as “Party” and collectively as “Parties.”

RECITALS

- A. Pursuant to the Clean Water Act (33 U.S.C. 1251, et seq), General Pretreatment Regulations (40 C.F.R. Part 403), Arizona Revised Statutes (A.R.S. § 9-276 and § 49-391), Phoenix City Charter (Ch. IV § 2), and Phoenix City Code (Ch. 28), the City administers an Industrial Pretreatment Program (“IPP”) to permit the discharge of industrial wastewater to the City’s Publicly Owned Treatment Works (“POTW”) and an Enforcement Response Plan (“ERP”) to investigate and respond to instances of noncompliance.
- B. Pursuant to the City’s IPP, Industrial User was issued Class A Wastewater Discharge Permit No. 2102-5325 (“Permit”) on February 1, 2021, incorporated herein by this reference, authorizing the discharge of industrial wastewater from its Facility to the City’s POTW in accordance with the effluent limitations, sampling requirements, and other conditions set forth in the Permit.
- C. Industrial User was issued the following Notice of Violations (NOVs), incorporated herein by this reference:
 - 1. March 7, 2023, Notice of Violation for the discharge of industrial wastewater in violation of discharge limits for concentrations of pH.
 - 2. March 10, 2023, Notice of Violation for the discharge of industrial wastewater in violation of discharge limits for concentrations of pH.
 - 3. August 2, 2023, Notice of Violation for the discharge of industrial wastewater in violation of discharge limits for concentrations of pH.
 - 4. September 26, 2023, Notice of Violation for the discharge of industrial wastewater in violation of discharge limits for concentrations of pH.
 - 5. May 28, 2023, Notice of Violation for self-monitoring reporting violation for being 4 days late.

6. October 28, 2023, Notice of Violation for late lab reporting in the 3rd Quarter violation for being 5 days late.
 7. September 2, 2023, Notice of Violation for failure to sample pH levels.
- D. The Parties met on January 26, 2024, for a Show Cause Proceeding, at which the Parties addressed the events and circumstances that led to the issuance of the NOVs by the City.
- E. The Parties desire to resolve all disputes between them arising out of the NOVs.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt of which is acknowledged, the Parties, intending to be legally bound, agree as follows:

AGREEMENT

1. Recitals. The Recitals set forth above are incorporated by this reference.
2. Effective Date. This Agreement becomes effective (“Effective Date”) upon execution by the Parties.
3. Negotiated Settlement. This Agreement is made upon the express understanding that it constitutes a settlement pursuant to A.R.S. § 49-391(C), and Phoenix City Code (“PCC”) Ch. 28, Art. IV, Sec. 28-46.5.
 - 3.1. Settlement Terms. Industrial User will complete the following:
 - a. The Quality Assurance Manager and Production Supervisor shall continue attending and complete the compliance academy by December 31, 2025. The Quality Assurance Manager and Production Supervisor have completed 2 classes each and shall have attended four additional classes within 2024. A certificate of completion must be received by the WSD by December 31, 2025 for both the Quality Assurance Manager and Production Supervisor.
 - b. By May 3, 2024 plans stamped by an Arizona licensed engineer detailing the installation proposed in (c) shall be submitted for preliminary review to the City of Phoenix Environmental Services Division (“ESD”)
 - c. By July 1, 2024 all improvements to the pretreatment system as described below shall be fully installed and operational:
 - i. Addition of a 2000-gallon holding/neutralizing tank and 500-gallon neutralizing acid tank with appropriate hydraulic sizing and capacity;

- ii. Inclusion of pH control system for chemical dosing and mixing with audible alarm for out-of-specification wastewater;
 - iii. Inclusion of a secondary redundant pH monitoring system with audible alarm and alert system for out-of-specification wastewater;
 - iv. Installation of air actuated valve to release compliant wastewater from the above system to the associated drain.
 - d. By July 1, 2024, a request shall be made to the ESD and Planning and Development Department (“PDD”) to schedule final inspections of the improvements detailed in (c).
- 3.2. Civil Penalty. The City has assessed a fine of nine thousand six hundred and sixty-five dollars and fifteen cents (\$9,665.15). In consideration for the completion of items 3.1.a, 3.1.b and 3.1.c above, the City has granted a 5% reduction, of four hundred eighty-three dollars and twenty-six cents (\$483.26) to the original penalty.
 - a. Within thirty (30) days of the Effective Date of this Agreement, Industrial User shall pay the City nine thousand one hundred eighty-one dollars and eighty-nine cents (\$9,181.89).
 - b. In the event that Industrial User fails to perform any item above, 3.1.a, 3.1.b, 3.1.c, or 3.1.d, the Industrial User shall pay the four hundred eighty-three dollars and twenty-six cents (\$483.26) as provided for in PCC 28-41.C within 30 days of notice of failure to perform from the City.
- 4. Public Comment Period. Upon execution of this Agreement, the City must provide a public comment period of thirty (30) days pursuant to A.R.S § 49-391(C) and Phoenix City Code Ch. 28 Art. IV Sec. 28-46.7.
 - 4.1. Notice Fee. Upon the Effective Date of this Agreement, Industrial User must pay a notice fee to the City of five hundred dollars (\$500) pursuant to Phoenix City Code Ch. 28, Art. X, Sec. 28-84 to publish a notice in a newspaper of general circulation informing the public of the public comment period, the name and address of the Industrial User, the terms of this Agreement, and the locations where the public may examine this Agreement.
 - 4.2. Termination: This Agreement may be terminated by the City if doing so is necessary based on public comments that are received by the City or where the City is otherwise required to terminate the Agreement by applicable law.

5. Payments. The fees set out in the Agreement must be delivered to:

City of Phoenix Law Department
Attn: Clean Water Act Industrial Pretreatment Program Attorney; Dezarai Fisher
200 West Washington Street, 13th Floor
Phoenix, Arizona 85003

6. Settlement. In exchange for Industrial Users' compliance with the terms of this Agreement, the City agrees to take no further enforcement actions regarding the NOV's listed herein.

7. Release. As of the Effective Date of this Agreement, the City acknowledges complete satisfaction of all demands, penalties, liabilities, and actions arising out of the NOV, and releases Industrial User (and its affiliates, partners, stockholders, directors, officers, employees, agents, assigns, or successors-in-interest) from any further claims alleged in the NOV.

- 7.1. Limited Release. This Release does not preclude the City from considering the violations set forth in the NOV in future enforcement actions regarding noncompliance with the Permit or any other pretreatment requirement.

8. Breach of Settlement Agreement. Nothing in this Agreement operates to release, remise, discharge, or acquit any claims by the City arising from Industrial Users' breach of this Agreement.

9. Notice. Any notice that is required to be given by the Parties to each other under the terms of this Agreement must be in writing, delivered, or mailed postpaid to the other Party, or transmitted by email with acknowledgment of receipt, to the Parties at the following addresses, which may from time-to-time be changed by the Parties by notice to the other Party:

To the City:

City of Phoenix Law Department
Attn: Clean Water Act Industrial Pretreatment Program Attorney
200 West Washington Street, 13th Floor
Phoenix, Arizona 85003
dezarai.fisher@phoenix.gov

To Industrial User:

Arizona Food Group, Inc.
Attn: Plant Manager
2517 East Chambers Street
Phoenix, Arizona 85040-3640


10. Severability. If any provision or application of any provision of this Agreement is held invalid, illegal, or unenforceable, the remainder of this Agreement remains unaffected and enforceable to the fullest extent permitted by law.
11. Authority. The Parties represent and warrant that the undersigned have the authority to enter into and execute this Agreement and that this Agreement is a legal, valid, and binding obligation, enforceable in accordance with its terms.
12. Integration; Modification. This Agreement constitutes the full and complete understanding and agreement of the Parties hereto and supersedes all prior representations, understandings, or agreements, whether oral or written in relation to the NOVs. No supplement, modification, or amendment of this Agreement is effective unless in writing and signed by the Parties. This Agreement is not intended to, and does not, alter, amend, supplement, terminate, retract, or modify the Permit or any prior agreement between Industrial User and the City.
13. No Waiver; Cumulative Remedies. The failure to exercise or delay in exercising, on the part of the City or Industrial User, any provision, right, remedy, power or privilege hereunder does not operate as a waiver thereof; nor does any single or partial exercise of any provision, right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other provision, right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.
14. Governing Law; Forum; Venue. This Agreement is governed by and is to be construed under the laws of the State of Arizona, without regard to conflict-of-law principles. Any action brought to interpret or enforce any provision of this Agreement, or otherwise related to or arising from this Agreement, will be commenced and maintained in the state or federal courts of the State of Arizona, Maricopa County, and the Parties, to the extent permitted by law, consent to jurisdiction and venue in such courts for such purposes.
15. No Third-Party Beneficiaries. The Parties expressly agree that this Agreement is for the sole benefit of the Parties and their respective successors and assigns and nothing, express or implied, is intended to or confers upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
16. Successors and Assigns. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and assigns.
17. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute the same instrument.

18. Conflicts of Interest. Notice is provided of A.R.S § 38-511.
19. Licenses and Permits. Industrial User shall procure at its own expense all necessary licenses and permits and shall adhere to all the laws, regulations, and ordinances applicable to the performance of this Agreement.
20. Force Majeure. Industrial User will not be considered to be in breach of this Agreement, if and to the extent Industrial User is delayed in or prevented from performing or carrying out any of the provisions of this Agreement, arising out of or from any act, omission, or circumstance by or in consequence of any act of God, labor disturbance, sabotage, act of the public enemy, war, invasion, insurrection, riot, fire, storm, flood, ice, earthquake, explosion, epidemic, breakage or accident to machinery or equipment or any other cause or causes beyond Industrial Users reasonable control, including any curtailment, order, regulation, or restriction imposed by governmental, military or lawfully established civilian authorities, or by making of repairs necessitated by an emergency circumstance not limited to those listed above upon the Facility or equipment of Industrial User. A Force Majeure event does not include an act of negligence or intentional wrongdoing by Industrial User. Industrial User shall use reasonable diligence to remove the condition that prevents performance and is not entitled to suspend performance of its obligations in any greater scope or for any longer duration than is required by the Force Majeure event. Industrial User shall use its best efforts to mitigate the effects of a Force Majeure event, remedy its inability to perform, and resume full performance of its obligations under this Agreement.

IN WITNESS THEREFORE, the Parties hereof have caused this Agreement to be executed by their duly authorized representatives as of the dates written below.

ARIZONA FOODS GROUP, INC.
An Arizona Corporation

CITY OF PHOENIX, ARIZONA
A municipal corporation

By:  _____

By: _____

Name: DAVID A KAUFMAN _____

Name: _____

Title: VICE PRESIDENT _____

Title: _____

Date: 4/9/24 _____

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:
JULIE M. KRIEGH, City Attorney

By: _____

Name: _____

Title: _____