

CITY CONTRACT NO. \_\_\_\_\_

**PRETREATMENT SETTLEMENT AGREEMENT  
BETWEEN THE CITY OF PHOENIX AND  
SHEARER'S FOODS PHOENIX, LLC**

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This PRETREATMENT SETTLEMENT AGREEMENT (“Agreement”) is made and entered into as of February \_\_, 2026, by and between the CITY OF PHOENIX (the “City”), an Arizona municipal corporation, and Shearer’s Foods Phoenix LLC, (“Industrial User”), a Delaware limited liability company with operations at 7330 West Sherman Street, Phoenix, Arizona 85043-4751, previously doing business as Barrel O’ Fun Snack Foods Co. Southwest, LLC (“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. 2009-33399 on September 1, 2020 and 2504-33399 (“Permit”) on March 7, 2025, 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 Notices of Violations (collectively “NOVs”), incorporated herein by this reference:
  - 1. March 11, 2024, Notice of Violation for Effluent Limits (pH) Self-Monitoring.

2. August 7, 2024, Notice of Violation for Effluent Limits (pH) Self-Monitoring.
  3. January 10, 2025, Notice of Violation for Effluent Limits (pH) Self-Monitoring.
  4. January 28, 2025, Notice of Violation for Effluent Limits (pH) Self-Monitoring.
  5. February 10, 2025, Notice of Violation for Effluent Limits (pH) Self-Monitoring.
  6. February 28, 2025, Notice of Violation for Effluent Limits (pH) Self-Monitoring.
  7. March 13, 2025, Notice of Violation for Late Reporting (NOV Response report submitted 22 days late).
  8. October 31, 2025, Amended Notice of Violation for Effluent Limits (pH).
- D. The Parties met on December 9, 2025, 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. At the Show Cause Proceeding Industrial User clarified that Industrial User, previously known as Barrel O' Fun Snack Foods Co. Southwest, LLC dba Shearer's Snack Foods finalized a legal name change in October 2020. Industrial User is now legally Shearer's Foods Phoenix, LLC.
- F. The City was unaware of the legal name change and continued to issue NOVs and renewed the Permit to Barrel O' Fun Snack Foods Co. Southwest, LLC dba Shearer's Snack Foods. Industrial User continued to respond to the NOVs and City correspondence that was directed to Barrel O' Fun Snack Foods Co. Southwest, LLC dba Shearer's Snack Foods.
- G. The Parties agree NOVs, Permit and other City communications directed to Barrel O' Fun Snack Foods Co. Southwest, LLC dba Shearer's Snack Foods about the Facility were applicable to Industrial User.
- H. The Parties desire to resolve all disputes between them arising out of the above mentioned 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 the date of the last signature.
- 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.
- 4) Civil Penalty. Industrial User must pay the City, in conformity with Section 7, the amount as listed below:
  - a) Industrial User must pay ten thousand eighty-two dollars and ninety-eight cents (\$10,082.98) within thirty (30) days of the Effective Date of this Agreement, unless the criteria in 4.b below is satisfied:
  - b) Provided the Notice of Publication Start Date, as listed on page 7 below, is prior to or on March 5, 2026 the fine shall be reduced by two thousand, sixteen dollars and sixty cents (\$2,016.60) as a quick settlement benefit. Industrial User must pay eight thousand sixty-six dollars and thirty-eight cents (\$8,066.38). Industrial User shall pay four thousand thirty-three dollars and nineteen cents (\$4,033.19) of the \$8,066.38 within thirty days of the Effective Date.
    - i) Based on Industrial User proactively investing the significant improvements to the pretreatment process, Industrial User shall not be required to pay the remaining four thousand thirty-three dollars and nineteen cents (\$4,033.19) provided there are no subsequent notices of violations issued by the City within six (6) months of the Effective Date of this Agreement. Should any violation be issued by the City within six (6) months of the Effective Date of this Agreement, Industrial User shall be required to pay the remaining four thousand thirty-three dollars and nineteen cents (\$4,033.19) within thirty (30) days of the notice of violation from the City.
- 5) Industrial Pretreatment Compliance and System Enhancement. In addition to payment of the civil penalty set out in Paragraph 4, the Industrial User is to provide a compliance schedule, Preventative Maintenance Protocol and Standard Operating Procedure addressing changes and revisions to the newly upgraded pretreatment system. The City will re-issue the Permit to accurately reflect the true legal name of Industrial User.

- 6) 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.
  - a) Notice Fee. Prior to the Effective Date of this Agreement, Industrial User must pay a notice fee to the City of one thousand dollars (\$1,000) 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.
  - b) Termination: This Agreement may be terminated by the City if doing so is necessary based on public comments that are received by the City establishing this Agreement violates applicable law or where the City is otherwise required to terminate the Agreement by applicable law.
  
- 7) Payments. The civil penalty set out in Paragraph 4 and the notice fee set out in Subparagraph 6.a shall be delivered to:

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

*Please note electronic payment is not available.*

  - a) Refund. If this Agreement is terminated pursuant to Subparagraph 6.b, the City shall reimburse Industrial User for any payments made pursuant to Paragraph 4.
  
- 8) Settlement. In exchange for Industrial User's compliance with the terms of this Agreement, the City agrees to take no further enforcement actions regarding the NOVs except as provided in §9.a below.
  
- 9) 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 NOVs, 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 NOVs.
  - a) Limited Release. This Release does not preclude the City from considering the Industrial User's compliance history, which includes the above NOVs, in future enforcement actions regarding noncompliance with the Permit or any other pretreatment requirement.

- 10) Breach of Settlement Agreement. Nothing in this Agreement operates to release, remise, discharge, or acquit any claims by the City arising from Industrial User's breach of this Agreement.
- 11) 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: Dezarai Fisher  
Clean Water Act Industrial Pretreatment Program Attorney  
200 West Washington Street, 13<sup>th</sup> Floor  
Phoenix, Arizona 85003

[Dezarai.fisher@phoenix.gov](mailto:Dezarai.fisher@phoenix.gov)

To Industrial User:

Shearer's Foods Phoenix, LLC  
Attn: Greg Jackson, Plant Director  
7330 West Sherman Street  
Phoenix, Arizona 85043

[gregjackson@shearers.com](mailto:gregjackson@shearers.com)

- 12) 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.
- 13) 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.
- 14) 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.

- 15) 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.
- 16) 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.
- 17) 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.
- 18) Successors and Assigns. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and assigns.
- 19) 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.
- 20) Conflicts of Interest. Notice is hereby provided of A.R.S § 38-511.
- 21) 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.
- 22) 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 User's 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.

**Shearer's Foods Phoenix, LLC**  
**A Delaware limited liability company**

**CITY OF PHOENIX, ARIZONA**  
**A municipal corporation**  
Ed Zuercher, City Manager

Signed by:  
By: Gregory M. Jackson  
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Name: Gregory M. Jackson  
Title: Plant Director

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Notice of Publication Start Date: \_\_\_\_\_  
Notice of Publication End Date: \_\_\_\_\_

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

ATTEST:  
\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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