

**INDUSTRIAL PRETREATMENT SETTLEMENT AGREEMENT  
BETWEEN THE CITY OF PHOENIX AND CBM MANUFACTURING COMPANY, INC.**

CONTRACT NO. 159231--0

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 CBM Manufacturing Company, Inc. ("Industrial User"), a Delaware corporation with operations at 4242 East Raymond Street, Phoenix, Arizona 85040 ("Facility"). The City and Industrial User may be referred to individually as "Party" and collectively as "Parties" herein.

**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 Statute (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. 1904-1880 ("Permit No. 1904") on April 1, 2019, attached as **Exhibit A** and incorporated herein by 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 Permit No. 1904, the Permit Standard Conditions dated July 30, 2015, and Chapter 28 of Phoenix City Code.
- C. Pursuant to the City's ERP, Industrial User was issued the following notices (collectively "Notices"), attached as **Exhibit B** and incorporated herein by reference, regarding instances of noncompliance with the effluent limitations, sampling requirements, and other conditions of Permit No. 1904:
  - 1. September 7, 2022, Notice of Violation for the discharge of industrial wastewater in violation of discharge limits for concentrations of pH.
  - 2. April 7, 2023, Notice to Show Cause notifying Industrial User that the City will use all appropriate remedies to address its discharge of industrial wastewater in violation of discharge limits and scheduling a Show Cause Proceeding for May 5, 2023.
- D. The Parties met on May 5, 2023, for a Show Cause Proceeding to address Industrial User's discharge of industrial wastewater in violation of discharge limits.



- E. The Parties desire to resolve all disputes between them arising out of Industrial User's discharge of industrial wastewater in violation of discharge limits.

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

#### AGREEMENT

1. Recitals. The Recitals set forth above are incorporated herein by this reference.
2. Effective Date. This Agreement shall become effective on the date attested by the City Clerk ("Effective Date").
3. Negotiated Settlement. This Agreement is made upon the express understating that it constitutes a settlement pursuant to A.R.S. § 49-391(C), and Phoenix City Code Ch. 28 Art. IV Sec. 28-46.5 to: (i) enforce Industrial User's compliance with the conditions set forth in Permit No. 1904, and (ii) establish the specific actions that Industrial User must take to correct its noncompliance.
4. Compliance with Permit. Industrial User must comply with the effluent limitations, sampling requirements, and other conditions set forth in Permit No. 1904, the Permit Standard Conditions dated July 30, 2015, and Chapter 28 of Phoenix City Code.
5. Specific Actions. Industrial User must take the following specific actions to correct its noncompliance:
  - 5.1. Update alarm components and systems.
  - 5.2. Upgrade the Programmable Logic Controller (PLC).
  - 5.3. Upgrade the Pressure Level Sensor (PLS) Transmitter.
  - 5.4. Upgrade bulk caustic refill cabinet.
  - 5.5. Upgrade blower addition.
  - 5.6. Upgrade chlorine injection.
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.
  - 6.1. Notice Fee. Industrial User shall pay a notice fee of five hundred (\$500) dollars 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.



6.2. Termination: The City may terminate this Agreement, at its sole discretion, upon written notice to Industrial User at any time up to fourteen (14) days after the end of the public comment period.

7. Payments. Within thirty (30) days of the Effective Date of this Agreement, Industrial User shall pay the City five hundred dollars (\$500) pursuant to the notice fee required by Subparagraph 6.1. Payments should be delivered to:

City of Phoenix, Water Services Department  
Environmental Service & Safety  
Attn: Chelsey McClusky, Pretreatment Compliance Coordinator  
2474 South 22nd Avenue, Building 31  
Phoenix, Arizona 85009

8. Settlement. In exchange for Industrial Users continued compliance with the conditions set forth in Permit No. 1904 or subsequent permits, completion of the specific actions described in Paragraph 5, and the payment of the notice fee required by Subparagraph 6.1, the City agrees not to take any further enforcement actions for the violations described in the Notices. If Industrial User fails to comply with, pay, or complete any of the conditions, penalties, fees, or specific actions described herein, the City may take any and all actions allowable by law to address the violations.

9. Notice:

9.1 Any notice, consent or other communication ("Notice") required or permitted under this Agreement will be in writing and either: (i) delivered in person; (ii) sent via e-mail, return receipt requested; (iii) sent via facsimile transmission; (iv) deposited with any commercial air courier or express delivery service; or (v) deposited in the United States mail, postage prepaid to the Parties at the following addresses, which may from time to time be changed by the Parties by Notice to the other Party:

For the City:

City of Phoenix, Law Department  
Attn: RoseMarie Horvath, Assistant Chief Counsel  
200 West Washington Street, 13<sup>th</sup> Floor  
Phoenix, Arizona 85003  
[Rosemarie.Horvath@phoenix.gov](mailto:Rosemarie.Horvath@phoenix.gov)



With copy to:

City of Phoenix, Water Services Department  
Environmental Service & Safety  
Attn: Chelsey McClusky, Pretreatment Compliance Coordinator  
2474 South 22nd Avenue, Building 31  
Phoenix, Arizona 85009  
[Chelsey.McClusky@phoenix.gov](mailto:Chelsey.McClusky@phoenix.gov)

For Industrial User:

CBM Manufacturing Company, Inc.  
Attn: Nicole Peter, Plant Director  
4242 East Raymond Street  
Phoenix, Arizona 85040  
[nicole.peter@pepsico.com](mailto:nicole.peter@pepsico.com)

With a copy to:

Taft Stettinius & Hollister LLP  
Attn: David H. Patrick, Esquire  
2200 IDS Center  
80 South Eighth Street  
Minneapolis, Minnesota 554022  
[dpatrick@taftlaw.com](mailto:dpatrick@taftlaw.com)

9.2. Notice will be deemed received: (i) at the time it is personally served; (ii) on the day it is sent via e-mail; (iii) on the day it is sent by facsimile transmission; (iv) on the second day after its deposit with any commercial air courier or express delivery service; or (v) five business days after the Notice is deposited in the United States mail as above provided. Any time period stated in a Notice will be computed from the time the Notice is deemed received.

9.3. Notices sent by e-mail and facsimile transmission will also be sent by regular mail to the recipient at the above address. This requirement for duplicate Notice is not intended to change the effective date of the Notice sent by e-mail or facsimile transmission.

10. Severability. If any provision or application of any provision of this Agreement is held invalid, illegal, or unenforceable, the remainder of this Agreement shall remain 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. No supplement, modification, or amendment of this Agreement's shall be effective unless in writing and signed by the Parties.
14. No Waiver; Cumulative Remedies. The failure to exercise or delay in exercising, on the part of the City, any provision, right, remedy, power or privilege hereunder shall not operate as a waiver thereof; nor shall 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.
15. Governing Law; Forum; Venue. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Arizona without giving effect to any choice or conflict of law provision or rule (whether of the State of Arizona or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Arizona. Any legal suit, action, or proceeding arising out of or related to this Agreement or the matters contemplated hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Arizona in each case located in the city of Phoenix and County of Maricopa County, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding and waives any objection based on improper venue or forum non convenience. Service of process, summons, notice, or other document by mail to such Party's address set out herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.
16. No Third-Party Beneficiaries. The Parties expressly agree that this Agreement is for the sole benefit of the Parties hereto and their respective successors and assigns and nothing herein, express or implied, is intended to or shall confer 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.
17. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.
18. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.



19. Conflicts of Interest. This Agreement is subject to the requirements of A.R.S. § 38-503.
20. Licenses and Permits; Compliance with Laws. Industrial User shall procure at his own expense all necessary licenses and permits and shall comply with all applicable federal, state and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any court, or administrative bodies or tribunals in any manner affecting the performance of this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]



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

**CBM MANUFACTURING COMPANY, INC.  
CORPORATION**

**CITY OF PHOENIX, A DELAWARE  
AN ARIZONA MUNICIPAL  
CORPORATION**

By: <u>Nicole Peter</u>	By: <u>Troy Hayes</u> <small>Troy Hayes Sep 14, 2023 07:42 PDT</small>
Name: <u>Nicole Peter</u>	Name: <u>Troy Hayes</u>
Title: <u>Plant Director</u>	Title: <u>Water Services Director</u>
Date: <u>9.1.23</u>	Date: <u>Sep 14, 2023</u>

ATTEST:

Deise Aschold  
City Clerk

Date: Sep 21, 2023



APPROVED AS TO FORM:

JULIE M. KRIEGH, CITY ATTORNEY

RoseMarie R. Horvath  
RoseMarie R. Horvath, Assistant Chief Counsel

