

**PRETREATMENT SETTLEMENT AGREEMENT
BETWEEN THE CITY OF PHOENIX AND
UNITED GENERAL BAKERY, INC.
DBA UPPER CRUST BAKERY**

This PRETREATMENT SETTLEMENT AGREEMENT ("Agreement") is made and entered into as of _____, 2023 ("Effective Date"), by and between the CITY OF PHOENIX (the "City"), an Arizona municipal corporation, and UNITED GENERAL BAKERY, INC., DBA UPPER CRUST BAKERY, ("Industrial User"), an Arizona corporation doing business at 3655 West Washington Street, Phoenix, Arizona 85009 ("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. 2202-33224 ("Permit") on February 1, 2022, 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. February 9, 2022, Notice of Violation for effluent (Mercury) violation.
 - 2. February 18, 2022, Notice of Violation for failure to timely submit self-monitoring reports within 24-Hours in violation of Permit Conditions.
 - 3. May 10-11, 2022, Notice of Violation for effluent (pH) violation.
 - 4. August 1, 2022, Notice of Violation for late reporting in responding to a Notice of Violation issued May 20, 2022.
 - 5. November 28, 2022, Notice of Violation for effluent (pH) violation.

6. January 7, 202, Notice of Violation for effluent (pH) violation.
 7. January 8, 2023, Notice of Violation for failure to timely submit self-monitoring reports within 24-Hours in violation of Permit Conditions.
 8. January 16, 2023, Notice of Violation for effluent (pH) violation.
 9. January 27, 2023, Notice of Violation for effluent (pH) violation.
 10. January 28, 2023, Notice of Violation for effluent (pH) violation.
 11. January 28, 2023, Notice of Violation for failure to timely submit self-monitoring reports within 24-Hours in violation of Permit Conditions.
 12. March 2, 2023, Notice of Violation for effluent (pH) violation.
 13. March 3, 2023, Notice of Violation for failure to timely submit self-monitoring reports within 24-Hours in violation of Permit Conditions.
 14. May 23, 2023, Notice of Violation for effluent (pH) violation.
 15. May 24, 2023, Notice of Violation for failure to timely submit self-monitoring reports within 24-Hours in violation of Permit Conditions.
 16. June 17, 2023, Notice of Violation for prohibited and unlawful discharge.
 17. June 17, 2023, Notice of Violation for the failure to provide adequate pretreatment.
- D. The Parties met on August 23, 2023, for a Show Cause Proceeding, at which the Parties addressed the events and circumstances that led to the issuance of the NOV's by the City.
- E. The Parties desire to resolve all disputes between them arising out of the NOV's.

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.
- 4) Civil Penalty. Within thirty (30) days of the Effective Date of this Agreement, Industrial User must pay the City thirty-eight thousand six hundred twenty-seven dollars and ninety-two cents (\$38,627.92).
- 5) Industrial Pretreatment Compliance and System Enhancement. In addition to payment of the civil penalty set out in Paragraph 4, the Industrial User shall also install a pretreatment system upgrade as specified on the plans submitted by the Industrial User to the City of Phoenix Industrial Pretreatment Program (IPP) on March 31, 2023 and approved by the IPP on April 4, 2023, subject to the deadlines and penalties below.
 - 5.1 By September 15, 2023 Industrial User shall supply a copy of the fully executed contract to install the pretreatment system upgrade with Industrial User's Contractor of choice.
 - 5.2 By November 24, 2023 Industrial User shall have installed, and be fully operational, the additional pretreatment system upgrade. Should Industrial User fail to meet this deadline the Industrial User shall pay the City thirty-eight thousand six hundred twenty-seven dollars and ninety-two cents (\$38,627.92) within 30 days of written notice of default of this Agreement and demand from the City.
- 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. 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.
 - 6.2) 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.
- 7) Payments. The civil penalty set out in Paragraph 4, the notice fee set out in Subparagraph 6.1 and any default payments under Paragraph 5 must be delivered to:

City of Phoenix Law Department
Attn: Clean Water Act Industrial Pretreatment Program Attorney

200 West Washington Street, 13th Floor
Phoenix, Arizona 85003

- 7.1) Refund. If this Agreement is terminated pursuant to Subparagraph 6.2, the City shall reimburse Industrial User for any payments made pursuant to Paragraph 4.
- 8) Settlement. In exchange for Industrial Users' compliance with the terms of this Agreement, the City agrees to take no further enforcement actions regarding the NOVs.
- 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.
- 9.1) Limited Release. This Release does not preclude the City from considering the violations set forth in the 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 Users' 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: Clean Water Act Industrial Pretreatment Program Attorney
200 West Washington Street, 13th Floor
Phoenix, Arizona 85003
Dezarai.fisher@phoenix.gov

To Industrial User:

United General Bakery, Inc
Dba Upper Crust Bakery
Attn: Frank Alexander
3655 West Washington St
Phoenix, Arizona 85009-4759

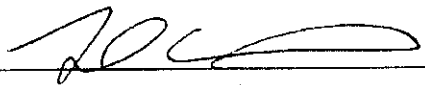
- 12) Severability. If any provision or application of any provision of this Agreement is held invalid, illegal, or unenforceable, the remainder of this Agreement remains unaffected and enforceable to the fullest extent permitted by law.
- 13) Authority. The Parties represent and warrant that the undersigned 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 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 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.

United General Bakery, INC.
Db a Upper Crust Bakery
An Arizona corporation

CITY OF PHOENIX, ARIZONA
A municipal corporation
Jeff Barton, City Manager

By: 

By: _____

Name: Frank Alexander

Name: _____

Title: CFO United General Bakery Inc.

Title: _____

Public Comment Start Date: _____

APPROVED AS TO FORM:

JULIE M. KRIEGH, City Attorney

Public Comment End Date: _____

ATTEST:

By: _____

Name: _____

City Clerk

Title: _____