

**PRETREATMENT SETTLEMENT AGREEMENT
BETWEEN THE CITY OF PHOENIX AND
PRUDENTIAL OVERALL SUPPLY**

This Pretreatment Settlement Agreement (“Agreement”) is entered as of _____, 2020 (“Effective Date”), by and between the **City of Phoenix** (“**Phoenix**”), an Arizona municipal corporation, and **Prudential Overall Supply** (“**Industrial User**”), a California corporation doing business at 5102 West Roosevelt Street, Phoenix, Arizona 85043. Phoenix and Industrial User are sometimes referred to collectively as “**Parties**” and individually as a “**Party**.”

RECITALS

A. Phoenix has authority to build, repair, and regulate sewer use and enforce sewer-related ordinances pursuant to: (1) Ariz. Rev. Stat. §§ 9-276(A)(12) and 49-391(A); (2) Phoenix City Charter ch. II, § 2(a) and ch. IV, §§ 2(26) and (45); and (3) Phoenix City Code ch. 28.

B. Phoenix City Code ch. 28, art. VI requires industrial users that release industrial wastewater to the Phoenix sewer system to obtain a wastewater discharge permit from Phoenix’s Water Services Department requiring compliance with its terms.

C. Industrial User releases industrial wastewater to the sewer system. On May 11, 2018, Phoenix issued Class A Wastewater Discharge Permit No. 1806-1960 to Industrial User authorizing it to discharge wastewater to the Phoenix sewer system in accordance with the effluent limitations, sampling and reporting requirements, and other conditions set forth in the permit.

D. Phoenix issued to Industrial User the following compliance and enforcement notices, which are attached and incorporated by reference as Exhibit A and referred to collectively as the “**Notices**”:

- 1) February 13, 2020 Notice of Violation for Industrial User’s failure to include in its November 2019 Self-Monitoring Report the analytical results of industrial wastewater discharge sampling it conducted on October 24, 2019; and
- 2) June 9, 2020 Notice to Show Cause addressing Industrial Pretreatment Violations by Industrial User from October 1, 2019 to February 28, 2020.

E. Phoenix and Industrial User convened on July 14, 2020 for a Show Cause Proceeding, at which the Parties addressed the events and circumstances resulting in the issuance to Industrial User of the Notices by Phoenix.

G. Phoenix and Industrial User desire to resolve all disputes between them arising out of the allegations of the Notices set forth above without litigation. The Parties understand the terms of this Agreement and now enter into the Agreement voluntarily according to the following terms, conditions, and provisions.

H. Phoenix acknowledges that Industrial User enters into this Agreement as an accord to and resolution of a dispute with Phoenix, and that this Agreement does not constitute an admission of culpability or liability by Industrial User. Industrial User acknowledges that this Agreement is not—and shall not be interpreted to be—a permit issued under any provision of the Phoenix City Code.

AGREEMENT

For good and valuable consideration, Phoenix and Industrial User agree as follows:

1. RECITALS/CAPTIONS. The Parties acknowledge that the recitals set forth above are true and correct, and are incorporated into this Agreement by reference. The captions in this Agreement are merely for reference, and not to construe or limit the text.

2. NEGOTIATED SETTLEMENT. Pursuant to Ariz. Rev. Stat. § 49-391(C), Phoenix seeks compliance with pretreatment ordinances and recovery of civil penalties by negotiated settlement.

2.1 CIVIL PENALTY. After evaluating all circumstances and considerations in accordance with Ariz. Rev. Stat. § 49-391(C) and Phoenix City Code § 28-83, Phoenix assesses against Industrial User a civil penalty of **\$4,550**. After signing this Agreement, Industrial User must promptly submit to Phoenix the signed copy and a check in the amount of **\$4,550**, payable to “City of Phoenix,” which should be delivered to:

City of Phoenix Law Department
Attn: Assistant City Attorney Stephen L. Wetherell
200 West Washington Street, 13th Floor
Phoenix, Arizona 85003.

Phoenix will not deposit the check until after it has executed this Agreement.

2.2 PUBLICATION AND FEE. Pursuant to Ariz. Rev. Stat. § 49-391(C), Phoenix must provide a period of at least **30 days** for public comment before finalizing the negotiated settlement. Phoenix will publicly post in a local newspaper the Industrial User's name and address, the civil penalties assessed, other conditions of settlement if applicable, and the website of the Phoenix Water Service Department's Environmental Services Division where this Agreement can be examined, available at:

<https://www.phoenix.gov/waterservices/envservices/indpretreatmentprog>.

Phoenix will pay the newspaper publication fee up front, and then submit a billing statement for that fee to Industrial User. Within **10 days** of receiving that billing statement, Industrial User must reimburse Phoenix by check for the publication fee charged by the newspaper in an amount not to exceed **\$500**, payable to "City of Phoenix," which should be delivered to:

City of Phoenix Law Department
Attn: Assistant City Attorney Stephen L. Wetherell
200 West Washington Street, 13th Floor
Phoenix, Arizona 85003.

After close of the 30-day public comment period, Phoenix will execute this Agreement or take whatever action it deems appropriate based upon the public comments received.

3. RELEASE. In exchange for Industrial User's timely payment of the civil penalty, reimbursement of the publication fee, and fulfillment of all other conditions for settlement, Phoenix acknowledges complete satisfaction of all demands, penalties, liabilities, and actions arising out of the Notices against Industrial User - and its affiliates, partners, stockholders, directors, officers, employees, agents, assigns, or successors in interest - and Phoenix releases them from any further claims for the pretreatment violations alleged in the Notices.

4. SEVERABILITY. If any provision or application of this Agreement is invalid or illegal, then the Agreement's remainder endures unaffected and enforceable to the fullest extent permitted by law - so long as the severability does not defeat this Agreement's fundamental purposes.

5. AUTHORITY. Each Party represents and warrants that: (a) the person signing this Agreement on the Party's behalf is duly authorized and empowered

to enter into and execute the Agreement; and (b) all persons or entities affiliated with the Party are bound by the terms of this Agreement.

6. ADDITIONAL DOCUMENTS/ACTIONS. The Parties agree to execute and deliver all documents and take all actions reasonably necessary to implement and enforce this Agreement.

7. ENTIRE AGREEMENT. This Agreement expresses the full agreement and understanding of the Parties, superseding all prior written or oral communications. No supplement, modification, or amendment of this Agreement's terms are effective unless in writing and signed by the Parties.

8. NO WAIVER. Both Phoenix and Industrial User reserve any and all legal and equitable remedies available to enforce the provisions of this Agreement. A Party may not construe the failure or delay of another Party to enforce—or require performance of—any of this Agreement's provisions to be a waiver of that provision. Such failure or delay will not affect the validity of any part of this Agreement or the rights of the Parties to enforce every provision.

9. GOVERNING LAW. Nothing in this Agreement is intended by the Parties to create any private cause of action. The laws of the State of Arizona will govern this Agreement. Any citations to a statute in this Agreement refers to the version of that statute in effect when the Parties execute this Agreement. Ariz. Rev. Stat. §§ 12-133 and 12-1518 may require arbitration of a dispute. Otherwise, the dispute is subject to the jurisdiction of the Maricopa County Superior Court.

10. NO BENEFICIARIES/AGENCY. Nothing in this Agreement gives any rights or benefits to anyone but the Parties. All duties and responsibilities undertaken under this Agreement are for the exclusive benefit of Phoenix and Industrial User—and not any other party. This Agreement does not create a contractual relationship with any third party or otherwise establish any third-party beneficiaries. No third party may enforce the terms and conditions of this Agreement.

11. CONFLICT OF INTERESTS. The Parties acknowledge that this Agreement is subject to cancellation within three years under Ariz. Rev. Stat. § 38-511 in the event of a Phoenix official or employee's conflict of interest. No official or employee of Phoenix may: (1) have any direct or indirect interest in this Agreement; or (2) participate in any decision relating to the Agreement that is prohibited by law.

12. FORCE MAJEURE. Industrial User will not be liable for any delay in completing its obligations hereunder resulting from any cause beyond its reasonable control, including without limitation: fire; flood or other natural disaster; action or decree of civil or military authority; insurrection; act of war; or threatened or actual terrorism or bioterrorism.

Phoenix and Industrial User, having carefully read and reviewed the foregoing paragraphs, have executed this Agreement to be effective on the date first written above.

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Exhibit A



City of Phoenix
WATER SERVICES DEPARTMENT
ENVIRONMENTAL SERVICES DIVISION
Quality Reliability Value

February 13, 2020

Ms. Rebecca Koury
Plant Manager
Prudential Overall Supply
5102 West Roosevelt Street
Phoenix, Arizona 85043-2716

Certified Mail

Return Receipt Requested

NOTICE OF VIOLATION

RE: Late Reporting – Self-Monitoring Report (SMR) Lab Results

*Permit Reporting Requirements – Self-Monitoring Report
Phoenix City Code Chapter 28 – Sewers, Section 28-45 (d) (3)
Title 40 Code of Federal Regulations Part 403.12 (e) and / or (h)*

Prudential Overall Supply (Prudential) is required to submit complete and accurate monthly Self-Monitoring Reports (SMRs) as specified in Wastewater Discharge Permit No 1806-1960. The October 2019 SMR submitted by Prudential was due in our office by November 28, 2019 and was received incomplete on November 26, 2019. Quarterly sampling results from sampling conducted on October 24, 2019 was not included in the SMR received on November 26, 2019 and was not provided until requested on February 6, 2020, (70) days late. Therefore, Prudential is in violation of Permit reporting requirements.

Requirement

Prudential is required to submit to the City of Phoenix Industrial Pretreatment Program (IPP) a detailed written report **no later than February 28, 2020**, outlining the reason(s) the late reporting occurred and the corrective action(s) taken to prevent future violations. At a minimum, this report must address the following:

- A. Names and positions of all people involved with the investigation into why the violation(s) occurred.
- B. A summary of the events of the investigation, including dates and the amount of time expended on the investigation.
- C. The conclusions reached.
- D. The corrective action(s) taken or to be taken and dates, including completion dates.
- E. How this action, or actions, will prevent future violations from occurring.

Mr. Rebecca Koury
February 13, 2020
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Failure to comply with the requirements of this letter will subject Prudential to further enforcement action(s). This Notice does not preclude the City from taking additional enforcement action(s) under Chapter 28 of the Phoenix City Code.

Should you require additional time to complete the report, a written request for an extension must be submitted to IPP prior to the above due date.

Should you have any questions regarding this notice, please contact me at phone No (602) 534-2078, or e-mail at chase.torrence@phoenix.gov. My office hours are from 7:00 a.m. to 3:30 p.m., Monday through Friday.

Sincerely,



Chase Torrence
Water Quality Inspector

e-copy: Linda Palumbo
Chelsey Weaver
Jesse Flores
Chase Torrence



City of Phoenix
WATER SERVICES DEPARTMENT
Quality Reliability Value

June 9, 2020

Ms. Rebecca Koury
Plant Manager
Prudential Overall Supply
5102 West Roosevelt Street
Phoenix, Arizona 85043-2716

Certified Mail

Return Receipt Requested

NOTICE TO SHOW CAUSE

Prudential Overall Supply (Industrial User) has been previously notified of reporting violations. In light of the pretreatment violations identified below and detailed in the attached notices, the City of Phoenix – acting as the Control Authority under 40 CFR Part 403 and operating in accordance with Phoenix City Code ch. 28 – hereby notifies Industrial User that the City will use all appropriate remedies (including monetary penalties) to address the pretreatment violations.

Industrial User's representatives must attend a Show Cause Meeting through:

Location: **WebEx – Virtual Platform**

Log-In: **Link and information to be provided via e-mail**

Date/Time: **8:30 am on Tuesday, July 14, 2020**

During the Show Cause Meeting, Industrial User will have the opportunity to respond to the City's allegations and to show cause why the City should not initiate legal action or seek the maximum penalty allowed under Phoenix City Code Sections 28-82, 83.

Industrial User, during the time period of **October 1, 2019 to February 28, 2020**:

- **Submitted lab results a total of 70 days late**
- **Was determined to be in Significant Noncompliance (SNC) for late reporting**

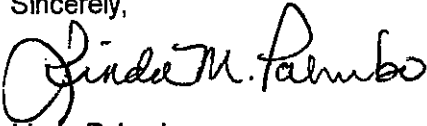
REQUIREMENT

For the City to consider any written response to this Notice to Show Cause, the City's Environmental Services Division must receive that response from Industrial User by **Monday, July 13, 2020**. A Copy of the City's Civil Penalty Policy detailing such considerations is enclosed.

Industrial User must have persons knowledgeable about the alleged matters – and persons having financial decision-making authority – in attendance at this meeting. Industrial User's representatives may be accompanied by their legal counsel if desired. (A representative from City's Law Department will be present at the meeting.) Industrial User's failure to appear at the meeting will result in the City taking all appropriate enforcement action it deems necessary, based on the facts outlined in this Notice and its attachments.

If you have any questions regarding this Notice, please contact the Environmental Services Division at 602-262-1859. Its office hours are 8:00 a.m. to 4:00 p.m., Monday through Friday.

Sincerely,



Linda Palumbo
Environmental Programs Coordinator

Enclosures: List of Violations
Penalty Calculations
NOV dated February 13, 2020 - Reporting
Determination of Compliance Status dated February 13, 2020
Civil Penalty Policy

e-copy: Stephen Wetherell
Linda Palumbo
Chelsey Weaver
Jesse Flores
Kyle Smith
Chase Torrence

LIST OF VIOLATIONS

Regulated Under 40 CFR 403
Phoenix City Code Chapter 28 & Permit Number 1806-1960

CITY MONITORING VIOLATIONS

<u>Date</u>	<u>Parameter</u>	<u>Minutes of Excursion</u>	<u>Discharge Concentration</u>	<u>Discharge Limitation</u>
None	None			

SELF MONITORING VIOLATIONS

<u>Date</u>	<u>Parameter</u>	<u>Minutes of Excursion</u>	<u>Discharge Concentration</u>	<u>Discharge Limitation</u>
None	None			

REPORTING VIOLATIONS

<u>Report</u>	<u>Due Date</u>	<u>Received Date</u>	<u>Days Late</u>
Lab Results (SMR)	11/28/2019	02/06/2020	70

PERMIT CONDITIONS VIOLATIONS

<u>Date</u>	<u>Violation</u>
None	None

CITY CODE VIOLATIONS

<u>Date</u>	<u>Violation</u>
None	None

PENALTY CALCULATIONS WORKSHEET

Penalty Period: October 1, 2019 through February 28, 2020 = 5 months

Effluent Violations

Parameter	№ from City Monitoring	№ from Self-Monitoring	Total Violations	Total Penalty
None				
Subtotal of Effluent Violations				\$ 0.00

Reporting Violations

Type of Report	Total Penalty	
Lab Results (Self-Monitoring Report)	\$ 7,000.00	
Subtotal of Reporting Violations		\$ 7,000.00

Permit Conditions Violations

Type of Violation	Total Violations	Total Penalty
None		
Subtotal of Permit Condition Violations		\$ 0.00

City Code Violations

Type of Violation	Total Violations	Total Penalty
None		
Subtotal of City Code Violations		\$ 0.00

Penalty Totals

Total Penalties	\$ 7,000.00
Public Notification Publication Fee	\$ 1,000
Total of Penalties and Publication Fee	\$ 8,000.00

