



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: 3/21/2023

**= Mandatory, information must be provided*

Click or tap the boxes to enter text. If not applicable, indicate "N/A".

***Title:**

Regular Session Agenda Item, Regional Wastewater Reclamation Department

***Introduction/Background:**

Staff recommends that the Board of Supervisors approve the following pretreatment Negotiated Settlement Agreement. The Negotiated Settlement Agreement is a result of enforcement actions by Pima County's Regional Wastewater Reclamation Department's Industrial Wastewater Control Group. Pursuant to A.R.S. § 49-391, the Board of Supervisors held a public comment period starting on January 3, 2023, and Pima County did not receive any public comments during the public comment period regarding the pretreatment Negotiated Settlement Agreement listed below:

***Discussion:**

Enterprise Leasing Company of Phoenix, LLC, Case No. 2022-D-003. The proposed completion of the Negotiated Settlement Agreement is in accordance with the Industrial Wastewater Enforcement Response Plan.

***Conclusion:**

If approved, the Negotiated Settlement Agreement will be ratified in accordance with the requirements of A.R.S. § 49-391 and the pretreatment violations will be resolved as set forth in the Agreement.

***Recommendation:**

That the Board of Supervisors approve the Pretreatment Negotiated Settlement Agreement.

***Fiscal Impact:**

None.

***Board of Supervisor District:**

☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☒ All

Department: Pima County Attorney's Office

Telephone: 520-724-5700

Contact: Chief Civil Deputy Sam Brown

Telephone: 520-724-5700

Department Director Signature: _____

Date: 3.6.23

Deputy County Administrator Signature: _____

Date: _____

County Administrator Signature: _____

Date: 3/8/23

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IN THE MATTER OF:)	NEGOTIATED SETTLEMENT
)	AGREEMENT
ENTERPRISE LEASING COMPANY)	
OF PHOENIX, LLC)	
)	
)	NO. 2022-D-003
)	
PERMIT NO: 12965)	

This Negotiated Settlement Agreement is made and entered between Pima County, Arizona, a body politic, ("Pima County") and Enterprise Leasing Company of Phoenix, LLC. ("Enterprise") pursuant to A.R.S. § 49-391(C).

I. LEGAL AUTHORITY

1. Pima County is a political subdivision of the State of Arizona with authority under A.R.S. § 11-264 to establish and maintain a wastewater treatment system.
2. Pursuant to Pima County Ordinance No. 2013-32 and Pima County Code Title 13, Chapter 36, Pima County has authority to regulate persons who are industrial users of Pima County's wastewater treatment system.
3. Pima County's wastewater treatment system discharges treated wastewater into designated waters of the United States and, therefore, is subject the Arizona Discharge Elimination System (AZPDES) permitting requirements of the Clean Water Act.
4. As required by its AZPDES permit and as authorized by A.R.S. § 49-391(A), Pima County has enacted an Industrial Wastewater Ordinance, which is included in the Pima County Code and regulates the industrial users of Pima County's wastewater treatment system.
5. Enterprise is a person as defined in the Industrial Wastewater Ordinance §

1 13.36.040(JJ).

- 2 6. Enterprise is an industrial user of Pima County's wastewater treatment system as
3 defined in the Industrial Wastewater Ordinance § 13.36.040(Z).
- 4 7. Enterprise is a commercial car rental facility that generates industrial wastewater
5 through car rental washing.
- 6 8. Under A.R.S. § 49-391(C), Pima County has the authority to enter into this
7 Agreement with Enterprise with regard to the local enforcement of wastewater
8 pretreatment requirements.
- 9 9. The parties acknowledge that final approval of this Agreement is subject to a
10 mandatory 30 day public notice and comment period under A.R.S. § 49-391(C).

11 **II. FINDINGS**

- 12 10. Enterprise operates a facility located at 1198 South Kolb Road that discharges
13 industrial wastewater into Pima County's wastewater treatment system under the
14 authority of Industrial Wastewater Discharge Permit 12965 (the "Permit").
- 15 11. The Permit requires that Enterprise monitor its industrial wastewater for
16 parameters of copper and zinc.
- 17 12. The Permit sets the maximum daily limit for copper at 1.2 milligrams per liter
18 ("mg/l").
- 19 13. The Permit sets the maximum daily limit for zinc at 2.6 mg/l.
- 20 14. Industrial Wastewater Ordinance § 13.36.130(G)(1) requires industrial users to
21 comply with all conditions of the discharge permit. Noncompliance is a violation
22 of the ordinance and grounds for enforcement action.
- 23 15. Industrial Wastewater Ordinance § 13.36.130(A) requires industrial users to
24 "comply with all applicable Federal rules, regulations, or Pretreatment standards,
25 or any applicable more stringent State or local rules, regulations or standards,
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whether or not contained in a permit.”

16. Industrial Wastewater Ordinance § 13.36.150(A)(1)(b) requires industrial users to “notify the Industrial Wastewater Control Section by telephone within 24 hours from the time the User becomes aware of the circumstances in which any Discharge exceeds any effluent limitation in the permit, or exceeds a maximum Discharge limitation for any of the pollutants listed in this Ordinance”

17. On June 10, 2022, analytical results for waste water discharged from the Enterprise facility exceeded the maximum daily limit for copper and zinc in violation of the Permit.

18. On October 7, 2022, IWC issued Enterprise Notification of Violation, No. 2022-D-003 for exceeding the maximum daily limits for copper and zinc.

19. Enterprise is a national limited liability corporation company and has made good faith efforts with IWC to resolve this enforcement action.

20. Enterprise and IWC have negotiated the terms of a Negotiated Settlement Agreement (NSA) with a reduction of a monetary penalty as authorized by section 2.4(C) of Pima County’s Enforcement Response Plan.¹

21. Enterprise wastewater sampling data for copper and zinc before and after this exceedance on June 10, 2022 were below the maximum daily limits. The exceedance on June 10, 2022 has not been directly linked to Enterprise’s car rental washing process or any changes to that process.

22. Enterprise’s violations of the Permit subjects Enterprise to civil penalties consistent with the federal Clean Water Act.

¹ The Enforcement Response Plan was approved by the Board of Supervisors on June 18, 2013 and is available online at:
http://webcms.pima.gov/UserFiles/Servers/Server_6/File/Government/Wastewater%20Reclamation/IWC/EnforcementResponsePlan.pdf

III. TERMS AND CONDITIONS

23. Settlement. Pima County and Enterprise desire to resolve, settle, release and discharge, without further proceedings, the disputes between them arising out of the Findings above. To that end, Pima County and Enterprise have entered into this Agreement in order to resolve all identified disputes between them according to the following terms and conditions:

- a. Enterprise agrees to pay a reduced penalty of \$800.00 for Failure to Make Notification and agrees to attend Pollution Prevention School as provided in Attachment A to this agreement.

The payment of the \$800.00 penalty and the NSA represents the full settlement of penalties imposed by Pima County under P.C.C., Title 13, Chapter 13.36 for the violations alleged in the Notification of Violation.

24. Failure of Compliance. The parties agree that it is the responsibility of Enterprise to achieve and maintain compliance with all applicable Federal, State and local laws, regulations and permits. Compliance with this Agreement shall not be a defense to any enforcement actions commenced pursuant to said laws, regulations, or permits and based on Enterprise's activities or omissions occurring after the date of this agreement.

25. Entire Agreement. This Agreement contains the entire agreement between Pima County and Enterprise, and the terms, conditions, and provisions of this Agreement are contractual and not a mere recital.

26. Attorney Fees. In the event that either Pima County or Enterprise finds it necessary to employ legal counsel to bring an action at law or other proceeding against the other party to enforce any of the terms, conditions, or provisions of this Agreement, the party prevailing in such action shall be paid all reasonable attorney

1 fees by the other party, and in the event that any judgment is secured by the
2 prevailing party in such action or proceeding, all reasonable attorney fees shall be
3 included in said judgment. The amount of reasonable attorney fees shall be
4 determined by the court and not by a jury.

5 27. Authority. The persons executing this Agreement expressly represent and warrant
6 that they are authorized to execute the same. Further, Pima County and Enterprise
7 expressly acknowledge that they have been given the opportunity to be
8 represented by their respective attorneys in the negotiation of this Agreement. The
9 terms, conditions and provisions of this Agreement shall be construed only
10 according to their fair import.

11 28. Form of Notice. Unless otherwise provided for in this Agreement, any notice or
12 communication between the parties shall be deemed submitted on the date they are
13 postmarked and sent by certified mail, return receipt requested, and shall be
14 addressed as follows:

15 To Pima County:	To Enterprise:
16 Steve King	Tim Fascetta
17 Regional Wastewater Reclamation Department	Enterprise Leasing Company of
Industrial Wastewater Control	Phoenix, LLC
18 2955 West Calle Agua Nueva	4100 W Galveston Street Suite 1
Tucson, AZ 85745	Chandler, AZ 85226

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20 29. Non-Waiver Provisions. This Agreement in no way relieves Enterprise of its
21 responsibility to comply with all applicable Federal, State, local laws, or permit
22 conditions in operating its facility in Pima County.

23 30. Severability. The provisions of this Agreement shall be severable, and should any
24 provision be declared by a court of competent jurisdiction to be inconsistent with
25 Federal or State law, and therefore unenforceable, the remaining provisions of this
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1 Agreement shall remain in full force and effect.

2 31. Good Faith. The parties agree that each of them shall take such further action and
3 execute such further documents, if any, which may be necessary or appropriate to
4 implement this Agreement according to all of its terms and conditions.

5 32. Limitations. Enterprise does not admit any liability or wrongdoing arising out of,
6 or in connection with, the allegations contained in this Agreement. Enterprise also
7 makes no admission of fact or law regarding the allegations. It is the intent of the
8 parties that this Agreement shall not be used in any judicial proceedings or in any
9 other manner against Enterprise.

10 33. Binding Effect. The provisions of this Agreement shall be binding upon the
11 parties, their officers, directors, agents, servants, employees, successors, assigns
12 and all persons, firms, and corporations in active concert with them.

13 34. Governing Law. The terms and conditions of this Agreement shall be governed by
14 the law of the State of Arizona.

15 35. Date of Public Notice. Public notice of the thirty (30) day comment period shall
16 be given at a Pima County Board of Supervisors' Meeting.

17
18
19 **PIMA COUNTY**

ATTEST:

20
21 By _____
22 Chairman, Board of Supervisors


By _____
Melissa Manriquez
Clerk of the Board of Supervisors

23 Date _____

Date _____


24
25 APPROVED AS TO FORM:
26

1 By


Chris Gerber
Pima County Attorney

2
3 **ENTERPRISE LEASING COMPANY OF PHOENIX, LLC.**

4
5 By


Kevin M. Cooper, Vice-President

6
7 Date

12/5/2022

8 STATE OF ARIZONA)

9 COUNTY OF MARICOPA)

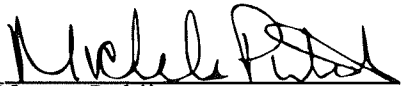
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10 The foregoing signature was acknowledged before me this 5 day of

11 December, 2022, by Michele Puntillo, a Exec. Assist.
12 (name) (title)

13 with authority to enter into this contract on behalf of Enterprise Leasing Company of Phoenix,
14 LLC a national limited liability corporation.


Notary Public

15 My Commission Expires: Feb. 14, 2024