

1 **BEFORE THE PIMA COUNTY BOARD OF SUPERVISORS**

2
3 IN THE MATTER OF:) NEGOTIATED SETTLEMENT
4 AMPHITHEATER UNIFIED) AGREEMENT
5 SCHOOL DISTRICT)
6 PERMIT NO: 10903) NO. 2016-D-001

7 This Negotiated Settlement Agreement is hereby made and entered into by Pima
8 County, Arizona, a body politic, (“Pima County”) and Amphitheater Unified School
9 District (“Amphitheater School District”) pursuant to A.R.S. § 49-391(C).

10 I. LEGAL AUTHORITY

- 11 1. Pima County is a political subdivision of the State of Arizona with authority under
12 A.R.S. § 11-264 to establish and maintain a wastewater treatment system.
13 2. Pima County’s wastewater treatment system discharges treated wastewater into
14 designated waters of the United States and, therefore, is subject the National
15 Discharge Elimination System (NPDES) permitting requirements of the Clean
16 Water Act.
17 3. The Arizona Department of Environmental Quality administers the NPDES
18 program through the Arizona Pollutant Discharge Elimination System (AZPDES).
19 4. As required by its AZPDES permit and as authorized by A.R.S. § 49-391(A),
20 Pima County has enacted an Industrial Wastewater Ordinance, which is included
21 in the Pima County Code and regulates the industrial users of Pima County's
22 wastewater treatment system.
23 5. Amphitheater School District is an industrial user of Pima County’s wastewater
24 treatment system as defined in the Industrial Wastewater Ordinance §
25 13.36.040(Z).
26 6. Under A.R.S. § 49-391(C), Pima County has the authority to enter into this

1 Agreement with Amphitheater School District with regard to the local
2 enforcement of wastewater pretreatment requirements.

- 3 7. The parties acknowledge that final approval of this Agreement is subject to a
4 mandatory 30 day public notice and comment period under A.R.S. § 49-391(C).

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6 II. FINDINGS

- 7 8. Amphitheater School District operates Canyon del Oro High School, which
8 discharges industrial wastewater into Pima County's wastewater treatment system.
- 9 9. The Industrial Wastewater Ordinance § 13.36.070(A)(1) sets the allowable
10 discharge limit for zinc at 2.6 milligrams per liter of water.
- 11 10. Industrial Wastewater Ordinance §§ 13.36.150(A)(1)(b) requires industrial users
12 to "notify the industrial wastewater control section by telephone within twenty-
13 four hours from the time the user becomes aware of the circumstances in which
14 any discharge exceeds any effluent limitation in the permit, or exceeds a
15 maximum discharge limitation for any of the pollutants listed in this chapter."
- 16 11. On September 28, 2015, Amphitheater School District sampled its industrial
17 wastewater discharged from Canyon del Oro High School.
- 18 12. The collected sample exceeded the discharge limit for zinc in violation of
19 Industrial Wastewater Ordinance § 13.36.070(A)(1).
- 20 13. Amphitheater School District did not notify Pima County's Industrial Wastewater
21 Control (IWC) that the sample exceeded the zinc limits until December 9, 2015.
- 22 14. On January 14, 2016, IWC issued Amphitheater School District Notification of
23 Violation No. 2016-D-001 for being in significant non-compliance with the
24 discharge limitations for zinc and for violating the notification requirements of the
25 ordinance.
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1 15. Amphitheater School District has taken corrective measures to address the cause
2 of the exceedance of zinc limits.

3 16. Amphitheater School District's violations of Industrial Wastewater Ordinances §§
4 13.36.070(A)(1) and 13.36.150(A)(1)(b) subjects Amphitheater School District to
5 civil penalties consistent with the federal Clean Water Act.

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7 **III. TERMS AND CONDITIONS**

8 17. Settlement. Pima County and Amphitheater School District have entered into this
9 Agreement in order to resolve all identified disputes between them according to
10 the following terms and conditions:

- 11 a. Amphitheater School District agrees to retain its Industrial Wastewater
12 Discharge Permit and monitor its discharge on a semi-annual basis.
- 13 b. Amphitheater School District agrees to pay a penalty of \$800 for failing to
14 notify IWC of the zinc exceedance. In the event that payment in full is not
15 made within 30 days of the date of this Agreement, Amphitheater School
16 District agrees to pay interest on any outstanding portion at a simple
17 interest rate of 10 percent per annum. In the event that payment is not made
18 within 60 days from the date of this Agreement, this Agreement becomes
19 voidable at the discretion of Pima County, and the County may file a
20 complaint in Superior Court and seek all available civil penalties against
21 Amphitheater School District.
- 22 c. Amphitheater School District agrees to arrange for at least one
23 representative to attend IWC's Pollution Prevention School.

24 The Discharge Permit, the payment of \$800, and attendance at Pollution
25 Prevention School, represent the full settlement of penalties and costs imposed by
26 Pima County under P.C.C., Title 13, Chapter 13.36 for the violations alleged in the

1 Notification of Violation.

2 18. Failure of Compliance. The parties agree that it is the responsibility of
3 Amphitheater School District to achieve and maintain compliance with all
4 applicable Federal, State and local laws, regulations and permits. Compliance with
5 this Agreement shall not be a defense to any enforcement actions commenced
6 pursuant to said laws, regulations, or permits and based on Amphitheater School
7 District's activities or omissions occurring after February 17, 2016, the date of
8 negotiation of this agreement.

9 19. Entire Agreement. This Agreement contains the entire agreement between Pima
10 County and Amphitheater School District, and the terms, conditions, and
11 provisions of this Agreement are contractual and not a mere recital.

12 20. Attorneys' Fees. In the event that either Pima County or Amphitheater School
13 District finds it necessary to employ legal counsel to bring an action at law or
14 other proceeding against the other party to enforce any of the terms, conditions, or
15 provisions of this Agreement, the party prevailing in such action shall be paid all
16 reasonable attorneys' fees by the other party, and in the event that any judgment is
17 secured by the prevailing party in such action or proceeding, all reasonable
18 attorneys' fees shall be included in said judgment. The amount of reasonable
19 attorneys' fees shall be determined by the court and not by a jury.

20 21. Authority. The persons executing this Agreement expressly represent and warrant
21 that they are authorized to execute the same. Further, Pima County and
22 Amphitheater School District expressly acknowledge that they have been given
23 the opportunity to be represented by their respective attorneys in the negotiation of
24 this Agreement. The terms, conditions and provisions of this Agreement shall be
25 construed only according to their fair import.

26 22. Form of Notice. Unless otherwise provided for in this Agreement, any notice or

1 communication between the parties shall be deemed submitted on the date they are
2 emailed or postmarked and shall be addressed as follows:

3 To Pima County: To Amphitheater School District:
4 Doug Kirkland
5 Wastewater Reclamation Department
6 Industrial Wastewater Control
7 2955 West Calle Agua Nueva
8 Tucson, AZ 85745

8 23. Non-Waiver Provisions. This Agreement in no way relieves Amphitheater School
9 District of its responsibility to comply with all applicable Federal, State, local
10 laws, or permits conditions in operating its facility in Pima County.

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

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

18 26. Limitations. It is the intent of the parties that this Agreement shall not be used in
19 any judicial proceedings or in any other manner against Amphitheater School
20 District.

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

24 28. Governing Law. The terms and conditions of this Agreement shall be governed by
25 the law of the State of Arizona.
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PIMA COUNTY

ATTEST:

By _____
Chair, Board of Supervisors

By _____
Robin Brigode
Clerk of the Board of Supervisors

Date _____

Date _____

APPROVED AS TO FORM:

By _____
Michael LeBlanc
Deputy Pima County Attorney

Amphitheater School District

By _____

Date _____