

**PRETREATMENT SETTLEMENT AGREEMENT
BETWEEN THE CITY OF PHOENIX AND
APEL EXTRUSIONS, INC.**

This PRETREATMENT SETTLEMENT AGREEMENT (“Agreement”) is made and entered into as of _____, 2025, by and between the CITY OF PHOENIX (the “City”), an Arizona municipal corporation, and APEL Extrusions, Inc, (“Industrial User”), a Delaware corporation with operations at 3033 South 59th Avenue, Phoenix, Arizona 85043-7909 (“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. 2309-48591 (“Permit”) on September 1, 2023, 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. March 22, 2024, Notice of Violation for Effluent Violations (Chromium and Zinc).
 - 2. March 25, 2024, Notice of Violation for Reporting Violations (Late 24-hour notification of effluent violations for chromium and zinc).
 - 3. April 15, 2024, Notice of Violation for Permit Violations (Failure to sample).
 - 4. April 16, 2024, Notice of Violation for Reporting Violations (Late 24-hour notification of an effluent violation for chromium).
 - 5. April 16, 2024, Notice of Violation for Effluent Violations (Chromium).

6. May 2, 2024, Notice of Violation for Permit Violations (Failure to sample).
7. May 20, 2024, Notice of Violation for Reporting Violations (Late 24-hour notification of an effluent violation for chromium).
8. May 22, 2024, Notice of Violation for Effluent Violations (Chromium).
9. July 1, 2024, Amended Notice of Violation for Effluent Violations (Chromium and Zinc).
10. August 5, 2024, Notice of Violation for Reporting Violations (Late submittal of a self-monitoring report).
11. August 7, 2024, Notice of Violation for Permit Violations (Failure to sample).
12. September 4, 2024, Notice of Violation for Effluent Violations (Chromium).
13. September 5, 2024, Notice of Violation and Cease & Desist (Discharge violations).
14. November 21, 2024, Notice of Violation for Reporting Violations (Late 24-hour notification of an effluent violation for chromium).
15. November 22, 2024, Notice of Violation for Reporting Violations (Failure to timely submit notice of violation response).
16. November 22, 2024, Notice of Violation for Reporting Violations (Failure to timely submit notice of concern response and 30-day resample results).
17. November 26, 2024, Notice of Violation for Permit Violations (Failure to sample).
18. December 16, 2024, Notice of Violation for Effluent Violations (Chromium).
19. December 31, 2024, Notice of Violation for Effluent Violations (Chromium).
20. April 8, 2025, Notice of Violation for Reporting Violations (Late 24-hour notification of an effluent violation for oil & grease).
21. April 8, 2025, Notice of Violation for Effluent Violations (Oil & Grease).
22. June 10, 2025, Notice of Violation for Effluent Violations (Oil & Grease).
23. July 28, 2025, Amended Notice of Violation for Effluent Violations (Chromium).

24. August 8, 2025, Amended Notice of Violation for Reporting Violations (Late 24-hour notification of effluent violations for chromium and zinc).
 25. August 8, 2025, Amended Notice of Violation for Reporting Violations (Late 24-hour notification of an effluent violation for chromium).
 26. August 8, 2025, Amended Notice of Violation for Reporting Violations (Failure to timely submit response to notice of concern and 30-day resample results).
 27. August 8, 2025, Amended Notice of Violation for Reporting Violations (Late 24-hour notification of an effluent violation for oil & grease).
- D. The Parties met on October 1, 2025, 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 above mentioned 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 the date of the last signature.
- 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 the amount as listed below:
 - a) Industrial User must pay ninety thousand eight hundred and twenty-five dollars and sixteen cents (\$90,825.16) as directed in Section 7 below, unless the criteria in 4.b below is satisfied:
 - b) Provided the Notice of Publication date, as listed on page 7 below, is prior to or on January 5, 2026 the fine shall be reduced by thirteen thousand, nine hundred seventy-three dollars and ten cents (\$13,973.10) as a quick settlement benefit. Industrial User

must pay seventy-six thousand eight hundred and fifty-two dollars and six cents (\$76,852.06)

- 5) Industrial Pretreatment Compliance and System Enhancement. In addition to payment of the civil penalty set out in Paragraph 4, the Industrial User is to perform preliminary compliance sampling by collecting representative grab samples once per week for four consecutive weeks and analyzing for chromium. The samples shall be collected at a new sampling point to be installed by APEL in the waste treatment piping system after the final effluent tank and before the final shutoff valve. This sampling point will be the furthest point in the process before Permit Compliance Sampling Point No. 48591.01. The Industrial User shall provide analytical data to the City within five days of receiving the results from an ADHS certified laboratory. Upon successful completion of the four weeks of samples demonstrating compliance with Permit limits, Industrial User may resume discharge at Compliance Sampling Point № 48591.01.
- 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.
 - a) Notice Fee. Prior to the Effective Date of this Agreement, Industrial User must pay a notice fee to the City of one thousand dollars (\$1,000) 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.
 - b) 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 and the notice fee set out in Subparagraph 6.a shall be delivered to:

City of Phoenix Law Department
Attn: Dezarai Fisher
Clean Water Act Industrial Pretreatment Program Attorney
200 West Washington Street, 13th Floor
Phoenix, Arizona 85003

Please note electronic payment is not available.

- a) Refund. If this Agreement is terminated pursuant to Subparagraph 6.b, 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 NOV's except as provided in §9.1 below.
- 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 NOV's, 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 NOV's.
- 9.1) Limited Release. This Release does not preclude the City from considering the violations set forth in the NOV's 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: Dezarai Fisher
Clean Water Act Industrial Pretreatment Program Attorney
200 West Washington Street, 13th Floor
Phoenix, Arizona 85003
Dezarai.fisher@phoenix.gov

To Industrial User:

APEL Extrusions, INC.
Attn: Tom VanSumeren
VP of Operations
3033 S. 59th Ave
Phoenix, Arizona 85043
tvansumeren@apelextrusions.com

- 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 hereby 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.

APEL Extrusions, INC
A Delaware Corporation

CITY OF PHOENIX, ARIZONA
A municipal corporation
Ed Zuercher, City Manager

By:  _____

By: _____

Name: Tom VanSumeren

Name: _____

Title: VP of Operations

Title: _____

Public Comment Start Date: _____

APPROVED AS TO FORM:
JULIE M. KRIEGH, City Attorney

Public Comment End Date: _____

ATTEST:

City Clerk

By: _____
Name: _____
Title: _____