

ADDITIONAL INFORMATION REQUIRED

___ YES (SEE ATTACHED)

X NO

BOARD OF SUPERVISORS AGENDA SUMMARY

Requested Board Meeting Date: January 7, 2014

ITEM SUMMARY, JUSTIFICATION & SPECIAL CONSIDERATIONS:

Staff recommends that the Board of Supervisors approve the following Pretreatment Settlement Agreement. The Settlement Agreement is a result of enforcement actions by Pima County Wastewater Management Department's Industrial Wastewater Control Group. Pursuant to *A.R.S. § 49-391*, a public comment period has been held and has passed with no public comment having been made regarding the Pretreatment Settlement Agreement listed below:

- Latitude South, Corp. (FN), Case No. C2013-07. The proposed settlement of payment of \$25,800.00, the acquisition of a permit, and installation of any pretreatment devices as required by the permit are in accordance with the Industrial Wastewater Enforcement Response Plan.

Please place the aforementioned on the Board of Supervisors agenda for January 7, 2014. The funds received in the settlement are placed in Wastewater's Enterprise fund.

STAFF RECOMMENDATION:

That the Board of Supervisors approves the Pretreatment Settlement Agreement.

TOTAL COST TO PIMA COUNTY: \$ None

FUNDING SOURCE: N/A

HAS FUNDING BEEN APPROVED IN THIS FISCAL YEAR'S BUDGET: YES NO
UNKNOWN

ADVERTISED PUBLIC HEARING: YES NO

REQUEST FOR: x Action Discussion Discussion/Action

EFFECTIVE DATE: Unknown TERMINATION DATE: Unknown

BOARD OF SUPERVISOR DISTRICT 1 2 3 4 5 X All

IMPACT:

IF APPROVED:

The Negotiated Settlement Agreement will be ratified in accordance with the requirements of A.R.S. § 49-391(C) and the pretreatment violations will be resolved as set forth therein.

IF DENIED:

The violations will be unresolved.

AGENDA ITEM INITIATED BY: Christopher Straub, Chief Civil Deputy C.S.

DEPARTMENT NAME: Pima County Attorney's Office

CONTACT PERSON: Harlan Agnew, Deputy County Attorney HA

DATE AND TELEPHONE NUMBER: December 11, 2013 / 740-5750

IN THE MATTER OF:

Latitude South, Corp. (FN)

PERMIT NO.: N/A

PERMIT NO.: N/A

NEGOTIATED SETTLEMENT AGREEMENT

NO. C2013-07

This Negotiated Settlement Agreement (hereinafter “Agreement”) is hereby made and entered into this 24th day of April, 2013, between Pima County, Arizona, a body politic, (hereinafter “Pima County”) and Latitude South, Corp. (FN) (hereinafter “Latitude South”) 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 pursuant to A.R.S. § 11-264 to establish and maintain a wastewater treatment system.

2. Pursuant to Pima County Ordinance 1991-140 and Pima County Code (“P.C.C.”), Title 13, Chapter 36, Pima County has authority to regulate persons who are Industrial Users of Pima County’s wastewater treatment system. Pima County’s regulatory program for Industrial Users is entitled the “Industrial Wastewater Ordinance” (hereinafter “IWO”).

3. Pima County's IWO is a federally approved pretreatment ordinance. The Environmental Protection Agency has approved the IWO as being in accordance with the requirements of A.A.C. R18-9-A905(A)(8)(b) and the permit conditions imposed on Pima County's Roger Road Wastewater Reclamation Facility and Ina Road Wastewater Reclamation Facility by Arizona Pollutant Discharge Elimination System ("AZPDES") Permit Nos. AZ 0020923 and 0020001, respectively.

4. Latitude South is a “Person” as defined in P.C.C. § 13.36.040(X).

5. Latitude South is an “Industrial User” of Pima County’s wastewater treatment system as defined in P.C.C. § 13.36.040(Q).

6. Under A.R.S. § 49-391(C), Pima County has the authority to enter into this Agreement with Latitude South with regard to the local enforcement of wastewater pretreatment requirements.

1 7. The parties acknowledge that final approval of this Agreement is subject to the
2 requirements of A.R.S. § 49-391(C), which provides for a mandatory thirty (30) day public
3 notice and comment period.

4 II. FINDINGS

5 8. At the time of the industrial pretreatment violations that give rise to this
6 Agreement, Latitude South operated (and continues to operate) a manufacturer of commercial
7 storage bins facility located at 949 W. Silverlake Road, Tucson, Pima County, Arizona.

8 9. Latitude South is a manufacturer of commercial storage bins facility
9 which discharges industrial wastewater to the Roger Road Wastewater Reclamation Facility;
10 AZPDES Permit No. AZ 0020923, which is a Publicly Owned Treatment Works ("POTW").
11

12 10. P.C.C. § 13.36.110.A.1. states:

13 No person shall discharge or cause to be discharged any industrial
14 wastewater directly or indirectly to the POTW without first
15 obtaining director approval. Director approval is demonstrated by
16 the issuance of an industrial wastewater discharge permit. The
17 director shall set requirements at least as stringent as applicable
18 state or federal rules, regulations or pretreatment standards.

19 11. Latitude South is a manufacturer of commercial refrigerator storage bins. It is
20 regulated under Pima County Code Title 13, Chapter 36.

21 12. On January 31, 2013, IWC conducted an inspection at the industrial User's
22 facility. During the inspection a regulated process of the metal finishing operation contributing to
23 a source of discharge to the POTW was identified. The process is regulated under Title 40,
24 Chapter 1 subchapter N of the code of federal regulations. The specific category is found in Part
25 433.10, Metal finishing subcategory.

26 13. The Industrial user violated Pima County Code 13.36.110(A)(1). The Industrial
27 User failed to obtain a permit to discharge industrial wastewater.

28 14. On February 22, 2013, Latitude South was issued a Notice of Violation, number
29 2013-D-005, for the discharge violations and for being in Significant Non-compliance. A copy
30 of the Notice of Violation is attached and hereby incorporated as Exhibit "A".

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III. TERMS AND CONDITIONS

15. Pima County and Latitude South desire to resolve, settle, release and discharge, without further proceedings, the disputes between them arising out of the Findings above, as of **April 24, 2013**, the date of negotiation of this Agreement. To that end, Pima County and Latitude South have entered into this Agreement in order to resolve all identified disputes between them according to the terms, conditions, and provisions herein.

16. Settlement Payment.

17. Latitude South agrees to pay the sum of 25,800.00 (\$) Dollars (Twenty five thousand, eight hundred dollars).

18. Latitude South agrees to obtain an Industrial Waste permit. Latitude South Corporation further agrees to install any pretreatment devices required by the permit.

19. The payment of the total amount of \$25,800.00, obtaining the Industrial User permit, and the installation of any pretreatment devices as required by the permit shall represent full settlement of penalties and costs imposed by Pima County under P.C.C., Title 13, Chapter 13.36 for the violations alleged in the Notice of Violation.

20. Method of Payment. The payment shall be made by **company check payable to Pima County Regional Wastewater Reclamation Department** and delivered to the Pima County Attorney's Office, Civil Division, 32 Stone Avenue, Suite 2100, Tucson, Arizona 85701. The payment shall be accompanied by a letter of transmittal. In the event that payment in full is not made within thirty (30) days from the date of execution of this Agreement, Latitude South agrees to pay interest on any outstanding portion at a simple interest rate of ten (10) percent per annum. In the event that payment is not made within sixty (60) days from the date of execution of Agreement, this Agreement becomes voidable at the discretion of Pima County, and Pima County may then file a complaint in Superior Court and seek all available civil penalties against Latitude South.

21. Failure of Compliance. The parties agree that it is the responsibility of Latitude South 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

1 Latitude South's activities or omissions occurring after **April 24, 2013**, the date of negotiation of
2 this agreement.

3 22. Entire Agreement. This Agreement contains the entire agreement between Pima
4 County and Latitude South, and the terms, conditions, and provisions of this Agreement are
5 contractual and not a mere recital.

6 23. Attorneys' Fees. In the event that either Pima County or Latitude South finds it
7 necessary to employ legal counsel to bring an action at law or other proceeding against the other
8 party to enforce any of the terms, conditions, or provisions of this Agreement, the party
9 prevailing in such action shall be paid all reasonable attorneys' fees by the other party, and in the
10 event that any judgment is secured by the prevailing party in such action or proceeding, all
11 reasonable attorneys' fees shall be included in said judgment. The amount of reasonable
12 attorneys' fees shall be determined by the court and not by a jury.

13 24. Authority. The persons executing this Agreement expressly represent and warrant
14 that they are authorized to execute the same. Further, Pima County and Latitude South expressly
15 acknowledge that they, and each of them, have been given the opportunity to be represented by
16 their respective attorneys in the negotiation of this Agreement. The terms, conditions and
17 provisions of this Agreement shall be construed only according to their fair import.

18 25. Form of Notice. Unless otherwise provided for in this Agreement, any notice or
19 communication between the parties shall be deemed submitted on the date they are postmarked
20 and sent by certified mail, return receipt requested, and shall be addressed as follows:
21

22 To Pima County:

23
24 Wastewater Reclamation Department
25 Industrial Wastewater Control
26 C/O Pima County Attorney's Office
27 32 North Stone Avenue
Tucson, AZ 85701

To:

Mr. Todd Mallon
Latitude South, Corp. (FN)
6509 Beech Court
Waukegan, WI 53597
Waukegan, WI

28 26. Non-Waiver Provisions. This Agreement in no way relieves Latitude South of its
29 responsibility to comply with all applicable Federal, State, local laws, or permits conditions in
30 operating its Pima County facility.

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

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

8 29. Limitations. It is the intent of the parties that this Agreement shall not be used in
9 any judicial proceedings or in any other manner against Latitude South.

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

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

15 32. Date of Public Notice. Public notice of the thirty (30) day comment period shall
16 be given at the Pima County Board of Supervisors' Meeting scheduled on _____, 2013.

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19 **PIMA COUNTY**

LATITUDE SOUTH, CORP. (FN)

20
21 By _____
22 Chair, Board of Supervisors

By Todd Mallon
Todd Mallon

23 Date _____

Date 10-11-2013

24 **ATTESTED TO:**

APPROVED AS TO FORM:

25 CLERK OF THE BOARD
26 OF SUPERVISORS

BARBARA LAWALL
PIMA COUNTY ATTORNEY

27
28 By _____
29 Robin Brigode
30 Clerk of the Board of Supervisors

By Harlan Agnew
Harlan Agnew
Deputy Pima County Attorney

Date _____

Date 10-10-13