



**BOARD OF SUPERVISORS AGENDA ITEM REPORT**

Requested Board Meeting Date: September 19, 2017

Title: Regular Session Agenda Item: Regional Wastewater Reclamation

**Introduction/Background:**

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

**Discussion:**

Kingswood Collision, Inc. DBA Gerber Collision & Glass ("Gerber"), Case no. C2017-R-002. The proposed settlement in which Gerber agrees to pay a penalty of \$500.00 for failing to monitor and provide a quarterly self-monitoring report 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(C) and the pretreatment violation 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:**

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Department: Pima County Attorney's Office Telephone: 520-724-5700

Contact: Michael LeBlanc, Deputy County Attorney Telephone: 520-724-4032

Department Director Signature/Date:  ANDREW FLAGG 9/11/2017

Deputy County Administrator Signature/Date: \_\_\_\_\_

County Administrator Signature/Date: \_\_\_\_\_

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**BEFORE THE PIMA COUNTY BOARD OF SUPERVISORS**

IN THE MATTER OF: ) NEGOTIATED SETTLEMENT  
 ) AGREEMENT  
KINGSWOOD COLLISION, INC. )  
DOING BUSINESS AS )  
GERBER COLLISION & GLASS ) NO. C2017-R-002  
 )  
PERMIT NO: 12969 )

This Negotiated Settlement Agreement is made and entered between Pima County, Arizona, a body politic, ("Pima County") and Kingswood Collision, Inc. d.b.a Gerber Collision & Glass ("Gerber Collision") 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. 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.
3. 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.
4. Gerber Collision is an industrial user of Pima County's wastewater treatment system as defined in the Industrial Wastewater Ordinance § 13.36.040(Z).
5. Under A.R.S. § 49-391(C), Pima County has the authority to enter into this Agreement with Gerber Collision with regard to the local enforcement of wastewater pretreatment requirements.

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

- 6 7. Gerber Collision operates an autobody and glass repair facility located at 6108  
7 North Travel Center Drive that discharges industrial wastewater into Pima  
8 County's wastewater treatment system.
- 9 8. Gerber Collision's facility discharges industrial wastewater under the authority of  
10 Industrial Wastewater Discharge Permit 12969 (the "Permit").
- 11 9. The Permit requires that Gerber Collision monitor its industrial wastewater for  
12 parameters of the following: pH, copper, lead, zinc, chemical oxygen demand, oil  
13 and grease, and total suspended solids.
- 14 10. The Permit also requires Gerber Collision to submit self-monitoring reports to the  
15 Pima County Regional Wastewater Reclamation Department.
- 16 11. Industrial Wastewater Ordinance § 13.36.130(G)(1) requires industrial users to  
17 comply with all conditions of the discharge permit. Noncompliance is a violation  
18 of the ordinance and grounds for enforcement action.
- 19 12. Industrial Wastewater Ordinance § 13.36.040(VV)(f) provides that an Industrial  
20 User is in Significant Noncompliance for "[f]ailure to provide, within 45 days  
21 after due date, required reports such as baseline monitoring reports, 90-day  
22 compliance reports, periodic self-monitoring reports, and reports on compliance  
23 with Compliance Schedules."
- 24 13. Gerber Collision failed to submit a self-monitoring report for the sampling period  
25 from September 1, 2016 to February 28, 2017 within 45 days after the due date of  
26 March 28, 2017.

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2 14. On May 18, 2017, IWC issued Gerber Collision a Notification of Violation, No.  
3 2017-R-002 for being in significant non-compliance for failing to provide a self-  
4 monitoring report within 45 days of the due date as required by the Permit.

5 15. Gerber Collision's violation of the Permit before or since September 1, 2016 are  
6 violations of the Industrial Wastewater Ordinance and, consistent with the federal  
7 Clean Water Act, subjects Gerber Collision to civil penalties.

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9 III. TERMS AND CONDITIONS

10 16. Settlement. Pima County and Gerber Collision have entered into this Agreement in  
11 order to resolve all identified disputes between them according to the following  
12 terms and conditions:

- 13 a. Gerber Collision agrees to pay a penalty of \$500 for failing to monitor and  
14 provide a quarterly self-monitoring report within 30 days from execution of  
15 this agreement. In the event that payment in full is not made within 30 days  
16 of the date of this Agreement, Gerber Collision agrees to pay interest on  
17 any outstanding portion at a simple interest rate of 10 percent per annum. In  
18 the event that payment is not made within 60 days from the date of this  
19 Agreement, this Agreement becomes voidable at the discretion of Pima  
20 County, and the County may file a complaint in Superior Court and seek all  
21 available civil penalties against Gerber Collision.

22 The payment of the penalty represent the full settlement of penalties imposed by  
23 Pima County under P.C.C., Title 13, Chapter 13.36 for the violations alleged in the  
24 Notification of Violation.

25 17. Failure of Compliance. The parties agree that it is the responsibility of Gerber  
26 Collision to achieve and maintain compliance with all applicable Federal, State

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2 and local laws, regulations and permits. Compliance with this Agreement shall not  
3 be a defense to any enforcement actions commenced pursuant to said laws,  
4 regulations, or permits and based on Gerber Collision activities or omissions  
5 occurring after the date of this agreement.

6 18. Entire Agreement. This Agreement contains the entire agreement between Pima  
7 County and Gerber Collision, and the terms, conditions, and provisions of this  
8 Agreement are contractual and not a mere recital.

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

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

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

To Pima County:  
Jason Grodman  
Wastewater Reclamation Department  
Industrial Wastewater Control  
2955 West Calle Agua Nueva  
Tucson, AZ 85745

To Gerber Collision:  
Alfie Perez  
Gerber Collision and Glass  
6108 North Travel Center Drive  
Tucson, AZ 85741

22. Non-Waiver Provisions. This Agreement in no way relieves Gerber Collision of its responsibility to comply with all applicable Federal, State, local laws, or permits conditions in operating its facility in Pima County.
23. Severability. The provisions of this Agreement shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with Federal or State law, and therefore unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.
24. Good Faith. The parties agree that each of them shall take such further action and execute such further documents, if any, which may be necessary or appropriate to implement this Agreement according to all of its terms and conditions.
25. Limitations. It is the intent of the parties that this Agreement shall not be used in any judicial proceedings or in any other manner against Gerber Collision.
26. Binding Effect. The provisions of this Agreement shall be binding upon the parties, their officers, directors, agents, servants, employees, successors, assigns and all persons, firms, and corporations in active concert with them.
27. Governing Law. The terms and conditions of this Agreement shall be governed by the law of the State of Arizona.
28. Date of Public Notice. Public notice of the thirty (30) day comment period shall be given at a Pima County Board of Supervisors' Meeting.

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In the matter of Gerber Collision, No. C2017-R-002

**PIMA COUNTY**

ATTEST:

By \_\_\_\_\_  
Chair, Board of Supervisors

By \_\_\_\_\_  
Julie Castañeda  
Clerk of the Board of Supervisors

Date \_\_\_\_\_

Date \_\_\_\_\_

APPROVED AS TO FORM:

By *[Signature]*  
Michael LeBlanc  
Deputy Pima County Attorney


**KINGSWOOD COLLISION, INC. d.b.a. GERBER COLLISION AND GLASS**

By *[Signature]*

Date 7/11/17

STATE OF ARIZONA        }  
  } ss  
COUNTY OF PIMA

The foregoing signature was acknowledged before me this 11<sup>TH</sup> day of  
JULY, 2017, by ALFIE PEREZ, a GENERAL MANAGER  
(name) (title)  
with authority to enter into this contract on behalf of Kingswood Collision, Incorporated an  
Arizona corporation.

 **DOMINIQUE WAITE**  
Notary Public - Arizona  
Pima County  
Expires 12/15/2020

Notary Public  
*[Signature]*

My Commission Expires:  
12/15/2020