



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: 6/20/2023

*= Mandatory, information must be provided

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

***Title:**

Regular Session Addendum Agenda Item, Regional Wastewater Reclamation Department

***Introduction/Background:**

Staff recommends that the Board of Supervisors approve the following 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 beginning on April 18, 2023, and Pima County did not receive any public comments during the public comment period regarding the Negotiated Settlement Agreement listed below:

***Discussion:**

The Department and Kingwood Collision Inc. (doing business as Gerber Collision & Glass) proposed a Negotiated Settlement Agreement to settle the violations of the County's wastewater discharge limitations at Kingwood Collision's facility located at 6108 North Travel Center Drive. As part of the Negotiated Settlement Agreement, Kingwood Collision will pay a total of \$500.00.

***Conclusion:**

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

***Recommendation:**

That the Board of Supervisors approve the 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: _____

Deputy County Administrator Signature: _____

Date: _____

County Administrator Signature: _____

Date: _____

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

3
4 IN THE MATTER OF:) NEGOTIATED SETTLEMENT
5) AGREEMENT
6 KINGSWOOD COLLISION INC.)
7 DOING BUSINESS AS)
8 GERBER COLLISION & GLASS)
9)
10) NO. 2022-R-002
11)
12 PERMIT NO: 12969)

13 This Negotiated Settlement Agreement is made and entered between Pima County,
14 Arizona, a body politic, ("Pima County") and Kingswood Collision Inc. ("Kingswood"),
15 doing business in Arizona under the registered trade name of Gerber Collision & Glass
16 ("Gerber"), pursuant to A.R.S. § 49-391(C).

17 **I. LEGAL AUTHORITY**

- 18 1. Pima County is a political subdivision of the State of Arizona with authority under
19 A.R.S. § 11-264 to establish and maintain a wastewater treatment system.
20 2. Pima County's wastewater treatment system discharges treated wastewater into
21 designated waters of the United States and, therefore, is subject the Arizona
22 Discharge Elimination System ("AZPDES") permitting requirements of the Clean
23 Water Act.
24 3. As required by its AZPDES permit and as authorized by A.R.S. § 49-391(A);
25 Pima County has enacted an Industrial Wastewater Ordinance, which is included
26 in the Pima County Code ("P.C.C.") and regulates the industrial users of Pima
County's wastewater treatment system.
4. Gerber is an "Industrial User" of Pima County's wastewater treatment system as
defined in the Industrial Wastewater Ordinance, P.C.C. § 13.36.040(Z).

5. Gerber is a commercial vehicle collision and glass repair facility that generates industrial wastewater through car washing.
6. Under A.R.S. § 49-391(C), Pima County has the authority to enter into this Agreement with Gerber with regard to the local enforcement of wastewater pretreatment requirements.
7. The parties acknowledge that final approval of this Agreement is subject to a mandatory 30-day public notice and comment period under A.R.S. § 49-391(C).

II. FINDINGS

8. Gerber operates an autobody and glass repair facility located at 6108 North Travel Center Drive that discharges industrial wastewater into Pima County's wastewater treatment system under the authority of Industrial Wastewater Discharge Permit 12969 (the "Permit").
9. The Permit requires that Gerber monitor and submits self-monitoring reports of its industrial wastewater discharge semi-annually to the Pima County Regional Wastewater Reclamation Department.
10. The Permit sets the due dates for the self-monitoring reports on March 28 and September 28 each year for the duration of the permit.
11. Industrial Wastewater Ordinance, P.C.C. § 13.36.130(G)(1) requires industrial users to comply with all conditions of the discharge permit. A failure to submit a self-monitoring permit as required by the discharge permit is a violation of the ordinance and grounds for enforcement action by the County.
12. Industrial Wastewater Ordinance, P.C.C. § 13.36.130(A) requires industrial users to "comply with all applicable federal rules, regulations, or pretreatment standards, or any applicable more stringent State or local rules, regulations or standards, whether or not contained in a permit."

13. Industrial Wastewater Ordinance, P.C.C. § 13.36.040(VV)(f) considers a significant industrial user to be in significant noncompliance when there is a “failure to provide, within forty-five days after due date, required reports such as baseline monitoring reports, ninety-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules.”
14. For the sampling period ending on August 31, 2022, Gerber failed to submit the periodic self-monitoring report within 45 days of the due date in violation of the Industrial Wastewater Ordinance.
15. On December 20, 2022, the Pima County Industrial Wastewater Control section (“IWC”) issued Gerber Notification of Violation, No. 2022-R-002 for failure to provide the periodic self-monitoring report.
16. Gerber is a corporation operating under its trade name and has made good faith efforts with IWC to resolve this enforcement action.
17. Gerber 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
18. Gerber’s violations of the Permit subjects Gerber to civil penalties consistent with the federal Clean Water Act.

III. TERMS AND CONDITIONS

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

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

- a. Gerber agrees to pay a penalty of \$500.00 for Failure to provide the periodic self-monitoring report within 45 days of the due date. In the event that payment in full is not made within 30 days of the date of this Agreement, Gerber Collision agrees to pay interest on any outstanding portion at a simple interest rate of 10 percent per annum. In the event that payment is not made within 60 days from the date of this Agreement, this Agreement becomes voidable at the discretion of Pima County, and the County may file a complaint in Superior Court and seek all available civil penalties against Gerber Collision.

The payment of the \$500.00 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.

20. Failure of Compliance. The parties agree that it is the responsibility of Gerber 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 Gerber's activities or omissions occurring after the date of this agreement.

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

22. Attorney Fees. In the event that either Pima County or Gerber 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

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

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

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

To Pima County:	To Gerber:
Steve King	Alfie Perez
Regional Wastewater Reclamation Department	Gerber Collision & Glass
Industrial Wastewater Control	6108 N Travel Center Drive
2955 West Calle Agua Nueva	Tucson, AZ 85741
Tucson, AZ 85745	

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

26. 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.

27. 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.

28. 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.

29. 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.

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

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

SIGNATURE PAGE FOLLOWS

1 **PIMA COUNTY**

In the matter of Gerber Collision & Glass, No. 2022-R-002

2 **ATTEST:**

3 By _____
4 Chair, Board of Supervisors

By _____
Melissa Manriquez
Clerk of the Board of Supervisors

5 Date _____

Date _____

7 **APPROVED AS TO FORM:**

8 By Bobby Yu
9 Bobby Yu
10 Deputy Pima County Attorney

11 **KINGSWOOD COLLISION INC. d.b.a.**
12 **GERBER COLLISION & GLASS**

13 By Alfie Perez
14 Alfie Perez, Plant Manager

15 Date 3-29-2023

17 STATE OF ARIZONA)
18 COUNTY OF PIMA) ss

19 The foregoing signature was acknowledged before me this 28 day of
20 March, 2023, by Armando Alfie Perez, a General Manager
(name) (title)
21 with authority to enter into this contract on behalf of Kingswood Collision, Inc. d.b.a. Gerber
Collision & Glass, an Arizona corporation.

22 M. Haller
23 Notary Public

24 My Commission Expires:
25 July 13, 2023

