

ADDITIONAL INFORMATION REQUIRED

☐ YES (SEE ATTACHED)

☒ NO

## **BOARD OF SUPERVISORS AGENDA SUMMARY**

Requested Board Meeting Date: April 7, 2015

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### **ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS**

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 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 Negotiated Settlement Agreement listed below:

- Frontier Star CJ, L.L.C., dba Carl's Jr., Case No. C2014-D-005. The proposed settlement of payment in the amount of \$2,996.68 for penalty and remediation costs; the acquisition of an industrial waste discharge permit; and attendance of at least one representative at Pollution Prevention School are in accordance with the Industrial Wastewater Enforcement Response Plan.

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Please place the aforementioned on the Board of Supervisors agenda for April 7, 2015.  
The funds received in the settlement are placed in Wastewater's Enterprise fund.

### **STAFF RECOMMENDATION:**

That the Board of Supervisors approves the pretreatment Negotiated 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: X 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

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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 in the Agreement.

**IF DENIED:**

The violations will be unresolved.

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AGENDA ITEM INITIATED BY: Thomas Weaver, Chief Civil Deputy 

DEPARTMENT NAME: Pima County Attorney's Office

CONTACT PERSON: Michael LeBlanc, Deputy County Attorney 

DATE AND TELEPHONE NUMBER: March 10, 2015/ 740-5750

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This Negotiated Settlement Agreement is hereby made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, between Pima County, Arizona, a body politic, (“Pima County”) and Frontier Star CJ, L.L.C. doing business as Carl’s Jr. (“Carl’s Jr.”) pursuant to A.R.S. § 49-391(C).

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 National Discharge Elimination System (NPDES) permitting requirements of the Clean Water Act.
3. As required by its NPDES 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. Carl's Jr. 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 Carl's Jr. with regard to the local enforcement of wastewater pretreatment requirements.
6. The parties acknowledge that final approval of this Agreement is subject to a

1 mandatory 30 day public notice and comment period under A.R.S. § 49-391(C).

## 2 3 II. FINDINGS

4 7. Carl's Jr. operates a restaurant located at 4110 East 22<sup>nd</sup> Street in Tucson,  
5 Arizona that discharges industrial wastewater into Pima County's wastewater treatment  
6 system.

7 8. To ensure compliance with the Industrial Wastewater Ordinance, section  
8 13.36.130(J) requires an industrial user to "properly operate and maintain all facilities  
9 and systems of treatment and control (and related appurtenances) which are installed or  
10 used by the user to achieve compliance with the conditions of a permit or the Ordinance."

11 9. The Industrial Wastewater Ordinance § 13.36.070(A)(o) sets the allowable  
12 discharge limit for oil and grease at 200 milligrams per liter of water.

13 10. Industrial Wastewater Ordinance §§ 13.36.050 and 13.36.060(A)(4) prohibits  
14 the discharge of "any biodegradable fats, oils, or greases such as lard, tallow or vegetable  
15 oil, in concentrations that may cause adverse effects on the POTW [(publically owned  
16 treatment works)]."

17 11. Industrial Wastewater Ordinance § 13.36.210 provides that "[a]ny user who  
18 discharges or causes the discharge of wastewater which causes damage to the POTW,  
19 interference, pass-through, upset, bypass or [sanitary sewer overflow] or any other  
20 damages resulting in costs to the POTW shall be liable for all damages occasioned  
21 thereby."

22 12. On or before July 27, 2014, Carl's Jr. discharged oil and grease into the sewer  
23 system in excess of the discharge limits so as to directly or proximately cause sewage to  
24 overflow from a Pima County manhole onto a public street.

25 13. The Pima County Regional Wastewater Reclamation Department (RWRD)  
26 remediated the sanitary sewer overflow resulting in costs to the County.

1 14. During the remediation, RWRD inspectors found grease in the sewer system  
2 pipe downstream from Carl's Jr. and in the manhole where the overflow occurred.

3 15. On August 27, 2014, Pima County's Industrial Wastewater Control (IWC)  
4 conducted an inspection of Carl's Jr.'s restaurant. The inspection revealed that the  
5 hydromechanical grease interceptor at the restaurant was not receiving any restaurant  
6 discharge. During the inspection, IWC collected a sample of the industrial wastewater  
7 discharged from the wash basin to the floor sink drain inside the restaurant.

8 16. The collected sample exceeded the discharge limit for oil and grease in  
9 violation of Industrial Wastewater Ordinance § 13.36.070(A)(o).

10 17. On October 3, 2014 IWC issued Carl's Jr. a Notification of Violation, No.  
11 2014 D-005, for being in significant non-compliance with the discharge limitations for oil  
12 and grease, for failing to insure that the discharge from the facility was in compliance  
13 with the Industrial Wastewater Ordinance, and for failing to operate and maintain  
14 systems of treatment and control.

15 18. Carl's Jr.'s violations of the Industrial Wastewater Ordinance before and since  
16 July 27, 2014, are a violation of Industrial Wastewater Ordinance §§ 13.36.070(A)(o) and  
17 13.36.130(J) and subjects Carl's Jr. to civil penalties.

### 18 19 III. TERMS AND CONDITIONS

20 19. Settlement. Pima County and Carl's Jr. have entered into this Agreement in  
21 order to resolve all identified disputes between them according to the following terms and  
22 conditions:

- 23 a. Carl's Jr. agrees to secure an Industrial Wastewater Discharge Permit and  
24 monitor its discharge on a quarterly basis. Carl's Jr. is entitled to have the  
25 permit deactivated upon petition after one year, unless Carl's Jr. has failed  
26 to comply materially with the terms of the permit;

1           b.     Carl's Jr. agrees to pay a \$2,000 penalty for exceeding the oil and grease  
2               limitations and pay \$996.68 for Pima County's remediation costs within 30  
3               days from execution of this agreement. In the event that payment in full is  
4               not made within 30 days of the date of this Agreement, Carl's Jr. agrees to  
5               pay interest on any outstanding portion at a simple interest rate of 10  
6               percent per annum. In the event that payment is not made within 60 days  
7               from the date of this Agreement, this Agreement becomes voidable at the  
8               discretion of Pima County, and the County may file a complaint in Superior  
9               Court and seek all available civil penalties against Carl's Jr.

10          c.     Carl's Jr. agrees to send at least one representative to IWC's Pollution  
11               Prevention School within a year from execution of this agreement.

12           The acquisition of the Discharge Permit, the payment of the penalty and  
13           remediation cost, and attendance at Pollution Prevention School, represent the full  
14           settlement of penalties and costs imposed by Pima County under P.C.C., Title 13,  
15           Chapter 13.36 for the violations alleged in the Notification of Violation.

16           20. Failure of Compliance. The parties agree that it is the responsibility of Carl's  
17           Jr. to achieve and maintain compliance with all applicable Federal, State and local laws,  
18           regulations and permits. Compliance with this Agreement shall not be a defense to any  
19           enforcement actions commenced pursuant to said laws, regulations, or permits and based  
20           on Carl's Jr.'s activities or omissions occurring after October 28, 2014, the date of  
21           negotiation of this agreement

22           21. Entire Agreement. This Agreement contains the entire agreement between  
23           Pima County and Carl's Jr., and the terms, conditions, and provisions of this Agreement  
24           are contractual and not a mere recital.

25           22. Attorneys' Fees. In the event that either Pima County or Carl's Jr. finds it  
26           necessary to employ legal counsel to bring an action at law or other proceeding against

1 the other party to enforce any of the terms, conditions, or provisions of this Agreement,  
2 the party prevailing in such action shall be paid all reasonable attorneys' fees by the other  
3 party, and in the event that any judgment is secured by the prevailing party in such action  
4 or proceeding, all reasonable attorneys' fees shall be included in said judgment. The  
5 amount of reasonable attorneys' fees shall be determined by the court and not by a jury.

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

11       24. Form of Notice. Unless otherwise provided for in this Agreement, any notice  
12 or communication between the parties shall be deemed submitted on the date they are  
13 emailed or postmarked and addressed as follows:

14               To Pima County:

15               Wastewater Reclamation Department  
16               Industrial Wastewater Control  
17               2955 West Calle Agua Nueva  
18               Tucson, AZ 85745

                  To Carl's Jr.:

                  Attn: Jason LeVecke  
                  5210 S. Priest  
                  Guadalupe, AZ 85283  
                  copy to Marc G. Simon  
                  Snell & Wilmer L.L.P.  
                  One South Church Avenue, Ste. 1500  
                  Tucson, Arizona, 85701

21       25. Non-Waiver Provisions. This Agreement in no way relieves Carl's Jr. of its  
22 responsibility to comply with all applicable Federal, State, local laws, or permits  
23 conditions in operating its facility in Pima County.

24       26. Severability. The provisions of this Agreement shall be severable, and should  
25 any provision be declared by a court of competent jurisdiction to be inconsistent with  
26 Federal or State law, and therefore unenforceable, the remaining provisions of this

1 Agreement shall remain in full force and effect.

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

5 28. Limitations. It is the intent of the parties that this Agreement shall not be used  
6 in any judicial proceedings or in any other manner against Carl's Jr.

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

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

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

14 FEBRUARY 3, 2014.5

15 **PIMA COUNTY**

16  
17 By \_\_\_\_\_  
18 Chair, Board of Supervisors

19 Date \_\_\_\_\_

**FRONTIER STAR CJ, L.L.C.  
DBA CARL'S JR.**

By 

Date 1-7-15

20 ATTEST

21 By \_\_\_\_\_  
22 Robin Brigode  
23 Clerk of the Board of Supervisors

24 Date \_\_\_\_\_

25 APPROVED AS TO FORM:

26 By   
Michael LeBlanc  
Deputy Pima County Attorney