

**LENOIR CITY COUNCIL
TUESDAY, MARCH 3, 2020
6:00 P.M.**

PRESENT: Mayor Gibbons presiding. Councilmembers present were Beal, Perdue, Prestwood, Thomas and Willis. Also in attendance were City Manager Hildebran, City Clerk Cannon and City Attorney Rohr.

ABSENT: Councilmembers Ike Perkins and David Stevens.

I. CALL TO ORDER

- A. The meeting was opened by a moment of silence followed by the Pledge of Allegiance as led by Mayor Gibbons.
- B. On behalf of City Council, Mayor Gibbons asked everyone to keep Mrs. Pam Pilkenton in their thoughts and prayers during her recent illness.

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

III. CONSENT AGENDA ITEMS

- A. Upon a recommendation by City Manager Hildebran, the following Consent Agenda items were submitted for approval:
 - 1. Minutes: Approval of the minutes of the City Council meeting of Tuesday, February 18, 2020 as submitted.
 - 2. Minutes: Approval of the minutes of the City Council Strategic Planning Retreat of Friday, 21, 2020 as submitted.
 - 3. Agreement to Accept Sludge; Town of Blowing Rock: Staff recommends approval of the new agreement with the Town of Blowing Rock for the acceptance and treatment of the sludge from the Blowing Rock Wastewater Treatment Plant. The agreement will become effective upon approval by the City Council and acceptance by the Town of Blowing Rock. (A copy of the agreement is hereby incorporated into these minutes by reference. Refer to pages 28-33).

Upon a motion by Councilmember Willis, Council voted 5 to 0 to approve the above listed items on the Consent Agenda, as recommended by City Manager Hildebran.

IV. REQUESTS AND PETITIONS OF CITIZENS

V. REPORTS OF BOARDS AND COMMISSIONS

VI. REPORT AND RECOMMENDATIONS OF THE CITY MANAGER

- A. Items of Information

**NATIONAL LEAGUE OF
CITIES CONFERENCE:**

1. The National League of Cities Annual Conference will be held on March 8 through March 11 in Washington, DC.

**CITY/COUNTY SERVICES
COMMITTEE:**

2. The City/County Services Committee will meet on Monday, March 9 at 11:45 a.m. at Caldwell Community College & Technical Institute.

**CALDWELL COUNTY ECONOMIC DEVELOPMENT
COMMISSION:**

3. The Caldwell County Economic Development Commission will meet on Tuesday, March 10 at 8:00 a.m. at the J.E. Broyhill Civic Center.

CANCELLED; LENOIR BUSINESS ADVISORY

- BOARD:** 4. The Lenoir Business Advisory Board cancelled its meeting of Thursday, March 12 in order to attend the Main Street Conference. The next meeting will be held on Thursday, April 9 at 6:00 p.m. at City Hall, Third Floor, former Council Chambers.

LEPRECHAUN LEAP 5K & 10K:

5. The annual Leprechaun Leap 5K & 10K will be held on Saturday, March 14 beginning at 9:00 a.m. at the Lenoir Soccer Complex.

ABC BOARD:

6. The ABC Board will meet on Tuesday, March 17 at 2:00 p.m. at Lenoir Store No. 1 located at 115 ABC Court.

B. ITEMS FOR COUNCIL ACTION

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE MAYOR

IX. REPORT AND RECOMMENDATIONS OF COUNCIL MEMBERS

CLOSED SESSION:

- A. Pursuant to N.C.G.S. §143-318.11(a), (3), (4), and upon a motion by Councilmember Willis, City Council entered into closed session to discuss attorney/client privilege and personnel.

OPEN SESSION:

- B. Upon a motion by Councilmember Willis, Council voted unanimously to re-enter into open session.

X. ADJOURNMENT

- A. There being no further business, the meeting was adjourned at 6:30 p.m.

Shirley M. Cannon, City Clerk

Joseph L. Gibbons, Mayor

STATE OF NORTH CAROLINA

COUNTY OF CALDWELL

**AGREEMENT TO ACCEPT AND TREAT MUNICIPAL WASTEWATER
TREATMENT FACILITY SLUDGE**

THIS CONTRACT is made and entered into this _____ day of _____, 20__ by and between the City of Lenoir, a North Carolina Municipal Corporation hereinafter referred to as "Lenoir" and the TOWN of Blowing Rock, a North Carolina Municipal Corporation hereinafter referred to as "Blowing Rock".

WITNESSETH

WHEREAS, Lenoir and Blowing Rock are political subdivisions of the State of North Carolina, both having the power and authority to enter into this agreement, and the signatories hereto have been authorized to execute this document on behalf of the Lenoir City Council and the Blowing Rock Town Council; and

WHEREAS, Lenoir currently owns and operates the Lower Creek Wastewater Treatment Facility (LCWWTF) and is engaged in the enterprise of managing, operating, and maintaining said facility and the biosolid residuals generated by such operation; and

WHEREAS, Blowing Rock owns and operates a wastewater treatment facility, and is also engaged in the enterprise of managing, operating, and maintaining the facility; and

WHEREAS, Lenoir and Blowing Rock mutually desire to enter into an agreement to provide for the acceptance and treatment of sludge generated by the Blowing Rock wastewater treatment facility in accordance with the terms and provisions contained herein; and

WHEREAS, Lenoir has determined that it has the capability to accept the wastewater treatment sludge throughout the term of this agreement without impairing the treatment capabilities of the Lower Creek Wastewater Treatment Facility; and

WHEREAS, Lenoir and Blowing Rock have or hold and will continue to have or hold throughout the term of this agreement, all appropriate permits necessary to effectuate their respective responsibilities under this agreement or will use their best efforts to obtain such permits;

NOW THEREFORE, in consideration of the mutual covenants, conditions and terms contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. This agreement shall commence on the _____ day of _____, 20__, and unless earlier terminated in accordance with the terms herein, shall expire

on the ___ day of ___, 20__ (Hereinafter referred to as the “Wastewater Service Period”).

2. Lenoir agrees to accept up to three (3) tanker loads (not to exceed 3,750 gallons per load) of sludge from the Blowing Rock Wastewater Treatment Facility per week (not to exceed 9,000 gallons per week) during the term of this agreement. The sludge will be received from Blowing Rock and discharged at the headworks of the LCWWTF.
3. Blowing Rock will not exceed the above gallons per tanker load (or 9,000 gallons per week) and a maximum of three (3) tanker loads per week provided for in Section 2 of this agreement, unless Lenoir expressly agrees in advance in writing that said maximum weekly loads and gallons per load may exceed the terms set forth for a specified period of time.
4. The wastewater sludge received from Blowing Rock shall be in liquid form and shall not have a concentration of more than 1.5% solids. The pH shall not be less than 5.5 or greater than 8.0.
5. Blowing Rock will perform annual testing, to be paid for by Blowing Rock, of the sludge being accepted by Lenoir at the LCWWTF for metals and perform an annual TCLP (Toxicity Characteristics Leachate Procedure) test. The testing will be performed according to acceptable industry standards and according to applicable guidelines of the North Carolina Department of Environmental Quality (NCDEQ). Blowing Rock will perform additional testing as may be necessary to evaluate the quality and constituents of the sludge being accepted at the LCWWTF.
6. Blowing Rock will timely pay Lenoir for the gallons of treated sludge on a monthly basis, in accordance with invoices, or by purchase of coupons from Lenoir for septic waste haulers, which shall be based upon the capacity of the tanker or the actual gallons disposed of at the LCWWTF. Blowing Rock will pay Lenoir the amounts of each such monthly invoice within 30 calendar days of the date of each invoice.
7. The initial per gallon rate to be charged to Blowing Rock for the acceptance of wastewater treatment sludge shall be 4.5 cents per gallon.

Over the term of this agreement or any extension thereof, Lenoir may, at its sole discretion after the first three years of this agreement, increase the initial per gallon rate as it deems necessary. Lenoir shall not increase said rates to Blowing Rock more than one time during any fiscal year of twelve (12) months ending on June 30 of each year. Lenoir agrees to notify Blowing Rock in writing of planned increases in rates at least ninety (90) days prior to June 30 of any fiscal year, with rate increases that are to become effective on July 1 of that same year.

8. Blowing Rock will provide a minimum of three months advance written notice to Lenoir prior to the expiration of this agreement or subsequent extensions of this agreement if Blowing Rock desires to extend the terms of this agreement. Upon timely receipt of such notice of Blowing Rock's desire to extend this agreement, Lenoir shall, within sixty (60) days after having received such notification, notify Blowing Rock in writing of its acceptance of the extension of this agreement.
9. In the event that Lenoir elects not to extend this agreement, Lenoir shall continue to accept and provide sludge treatment to Blowing Rock, under the same terms of the agreement, until Blowing Rock has had sufficient opportunity to secure an alternate source(s) of sludge disposal and treatment; however, Lenoir shall not be bound to continue to provide sludge acceptance and treatment to Blowing Rock beyond a period of twelve (12) months past the date of its written notification to Blowing Rock of its intention not to extend this agreement.
10. In the event of damage or destruction of Lenoir's LCWWTF or any emergency which, in the reasonable judgment of Lenoir, is likely to result in material loss or damage to the system or constitute a material threat to human health or safety, Lenoir may suspend operation of its wastewater treatment facility. Lenoir's response to emergencies and other such unusual circumstances will be in accordance with applicable policies, regulations, laws and requirements and with such personnel and equipment as necessary to maintain or restore the operations of its wastewater treatment facility in a timely manner with the least possible disruption or inconvenience.
11. Lenoir and Blowing Rock both represent that no litigation is pending or threatened against them which would impair their ability to perform their respective duties and obligations under the terms, covenants and provisions of this agreement.
12. Resolution of Disputes
Should any disputes arise under this agreement, including but not limited to disputes pertaining to services, rates, or invoices, said disputes shall be resolved, if at all possible, through good faith negotiations between the parties. It is the intent of Lenoir and Blowing Rock that pursuit of legal action will be a remedy of last resort and that a negotiated resolution, including the use of outside experts or mediators, will be the preferred means of resolving disputes hereunder.
13. Default and Termination
This agreement may be terminated prior to its stated expiration date by Lenoir or Blowing Rock in accordance with the terms and conditions set forth below.

A. Termination for cause by Lenoir. Upon the happening of any of the following events of default by Blowing Rock, Lenoir will have the right to terminate this agreement:

The failure of Blowing Rock to perform or observe any of its material covenants, agreements, obligations and/or duties created by this agreement including but not limited to paragraph 6 hereof.

B. Termination for cause by Blowing Rock. Upon the happening of any of the following events of default by Lenoir, Blowing Rock shall have the right to terminate this agreement:

The failure of Lenoir to perform or observe any of its material covenants, agreements, obligations and/or duties created by this agreement.

14. **NOTICES:** For the purposes of this agreement, all notices required shall be deemed to have been properly served and shall be only served when posted by Certified United States Mail, Postage Prepaid, Return Receipt Requested, Addressed to the Party to whom directed at the address herein set forth or at such other address as may from time to time be designated in writing by either party:

To Lenoir:

City of Lenoir

To Blowing Rock:

Town of Blowing Rock

15. This agreement embodies the entire agreement between the parties in connection with this transaction, and there are no oral or parol agreements, representations or inducements existing between the parties relating to this transaction, which are not expressly set forth herein. This agreement may not be modified except by a written agreement signed by all parties to this agreement. Neither party shall be entitled to sell, convey or otherwise alienate the rights and obligations created herein without the prior written permission of the other party to this agreement. This agreement is non-assignable.

16. Nothing contained herein shall be construed to place the parties in the relationship of partners or joint venturers, and neither party shall have the power to obligate or bind the other party in any manner whatsoever. No joint agency is established by this Agreement pursuant to Article 20, Part 1 of Chapter 160A of the North Carolina General Statutes, by other similar statutory authority authorizing interlocal cooperation between units of local government, or otherwise.

- 17. No written waiver by any party to this agreement at any time of any breach of any other provision of this agreement shall be deemed a waiver of a breach of any provision herein or consent to any subsequent breach of the same or any other provision.
- 18. The captions and article numbers appearing in this agreement are inserted only as a matter of convenience and do not define, limit, construe or describe the scope of such paragraphs or articles of this agreement or in any way affect this agreement.
- 19. This agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina.
- 20. Words of any gender used in this agreement shall be held to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires.
- 21. This agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this agreement to produce or account for more than one such fully executed counterpart.
- 22. Except as provided herein, the rights and remedies provided for in this agreement are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

CITY OF LENOIR, NORTH CAROLINA

By: _____

_____, Mayor

(SEAL)
Attest:

By: _____

_____, City Clerk

TOWN OF _____, NORTH CAROLINA

By: _____
_____, Mayor

(SEAL)
Attest:

By: _____
_____, Town Clerk

This agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

By: _____
_____, Finance Officer
City of Lenoir, North Carolina

by: _____
_____, Finance Director
Town of _____, North Carolina

