



REQUEST FOR BOARD ACTION

ITEM NO. 11.

DATE OF MEETING: October 20, 2014

REQUESTED BY: Michael G. Mack, Utilities Director

SHORT TITLE: Resolution Authorizing Approval of an Interlocal Agreement (ILA) between the Town of Wallace and Pender County for a Pump and Haul Arrangement as an Interim Solution for Pender County to Accept Up to 80,000 Gallons Per Day of Wastewater from R.C. Creations (Acme Smoked Fish) at the Pender Commerce Park, Approval of the Necessary Budget Ordinance Amendment, and Authorization to Issue a Purchase Order for this Service. This Interim Solution will Remain in Place Until Completion of the County's Phase II Wastewater Treatment Facility or 20-months, Whichever Occurs First.

BACKGROUND: Pender County committed to accept up to 80,000 gallons per day of industrial wastewater from R.C. Creations beginning October 1, 2014. This ILA will allow Pender County to haul the wastewater discharged from R.C. Creation's operations to the Town of Wallace for treatment and disposal. On September 15, 2014, the Board awarded a service contract to Southeastern Response & Remediation (SR&R) for the actual hauling of the wastewater collected at the Pender Commerce Park to the Town of Wallace Wastewater Treatment Plant.

As part of this ILA, Pender County agrees to enforce and comply with the Town's Sewer Use Ordinance and Fats, Oils, and Greases (FOG) Ordinance for all R.C. Creations wastewater to be hauled to Wallace. PCU has already provided the R.C. Creations effluent samples taken from their other facility to the Town of Wallace. The only pre-treatment required by PCU will be the dosing of the effluent with sulfuric acid to reduce the PH prior to delivery to the Town's WWTP.

The cost to treat and dispose of the wastewater will be \$3.65/1,000. The estimated total cost for the treatment of 80,000 gpd for a 20-month period is \$35,200.

SPECIFIC ACTION REQUESTED: To consider a resolution approving the Interlocal Agreement (ILA) between the Town of Wallace and Pender County for a Pump and Haul arrangement as an interim solution for Pender County to accept up to 80,000 gallons per day of industrial wastewater from R.C. Creations at the Pender Commerce Park, approval of the Budget Ordinance Amendment, and authorization to issue a Purchase Order to the Town of Wallace in the estimated amount of \$35,200 for this service.

COUNTY MANAGER'S RECOMMENDATION

Respectfully recommend approval.

DM
Initial

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that:

the Interlocal Agreement (ILA) between the Town of Wallace and Pender County for a Pump and Haul arrangement as an interim solution for Pender County to accept up to 80,000 gallons per day of industrial wastewater from R.C. Creations at the Pender Commerce Park is approved, the Budget Ordinance Amendment is approved, and a Purchase Order in the amount of \$35,200 to the Town of Wallace is authorized.

PCP-WWTP Contracted Services 78-404500 \$35,200

The Chairman/District Manager is authorized to execute any documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

YEA VOTES: Williams ___ McCoy ___ Brown ___ Tate ___ Ward ___

J. David Williams, Chairman 10/20/14
Date

ATTEST 10/20/14
Date

NORTH CAROLINA

DUPLIN/PENDER COUNTY

THIS INTERLOCAL AGREEMENT, made and entered into on 9-30- 2014, by and between the **TOWN OF WALLACE**, a North Carolina municipal corporation located in Duplin County, North Carolina, (hereafter "Wallace"); and **PENDER COUNTY**, a North Carolina county, with its County Seat located in Burgaw, North Carolina, (hereafter "Pender")

WHEREAS, Wallace entered into an agreement with Pender County on September 26, 2005, (hereafter the "2005 Agreement"), where by Pender County contracted to purchase an allocation of a portion of Wallace's new waste treatment plant capacity; and,

WHEREAS, Wallace has agreed to provide Pender with wastewater treatment services at its new regional sewer treatment plant to service the wastewater treatment needs of the residential, small business, institutional, and light industrial users located within Pender County outside of the corporate limits of Burgaw, under the terms and conditions hereafter set out; and,

WHEREAS, Wallace has completed construction of its sewage treatment facilities to enable it to treat the remaining portion of the allocation of 2.0 million gpd not utilized by Burgaw for Pender County, upon the terms and conditions set out in this Agreement; and,

WHEREAS, the location of industries and other potential users of its portion of the sewer allocation in Pender County will provide economic benefits to Pender. The use of a regional sewer system will be of substantial benefit to the general environment of both Pender and Duplin County, as well as be economically beneficial to both Wallace and Burgaw under the above identified agreements; and,

WHEREAS, Wallace and Pender are authorized by N.C.G.S. §158-7.1, to engage in programs that aid and encourage the location of manufacturing enterprises within their respective

jurisdictions and adjacent areas, and to that end Wallace is entitled, but not required, to extend its utility services outside of its corporate jurisdiction pursuant to N.C.G.S. §160A-312, and has elected to exercise that right under the terms of this Agreement; and,

WHEREAS, this agreement is solely for a Pump & Haul arrangement whereby Pender has committed to receive up to 80,000 gallons per day of wastewater from an Industrial User (R.C. Creations-Acme Smoked Fish Co.) with a new facility in the Pender Commerce Park for up to an estimated 20-month period until such a time as Pender completes the construction of a new 0.5 million gallon per day wastewater treatment facility in the Commerce Park.

WHEREAS, Wallace must implement and enforce a pretreatment program to control discharges from all industrial users of its wastewater treatment system pursuant to requirements set out in 40 CFR Part 403. In this Agreement Pender agrees to comply with a sewer use ordinance that subjects all SIUs within its boundaries to the necessary pretreatment controls, and to implement and enforce that sewer use ordinance.

NOW, THEREFORE, for and in consideration of the mutual agreements and benefits contained herein, the receipt and sufficiency of which are hereby acknowledged the parties contract and agree as follows:

OBLIGATIONS OF THE PARTIES:

1.0 Wallace's obligation to provide treatment services for Pender County is subject to the following terms and conditions all of which shall be deemed material elements of this agreement.

1.1 Wallace will accept and treat up to 80,000 gallons per day of sewage from a Pump and Haul from R.C. Creations until Pender completes construction of their own Wastewater Treatment Facility within the Pender Commerce Park.

1.2 Pender County is responsible for procuring all pump and haul permits from NCDENR.

1.3 Pender County is to ensure that all sewage meets all parameters of the Wallace NPDES permit.

1.4 Pender is required to pay for all testing that may be needed to ensure that the sewage hauled meets the Wallace requirements for i.e., metals, BOD, TSS, FOG, PH, Nitrates, Chlorides, Phenolics, Nitrogen, COD, Ammonia, Phosphates, Halide, Alkalinity and Salinity to ensure Wallace sludge disposal parameters are met.

1.5 Wallace agrees to accept said pump and haul sewage 24 hours per day, 7 days per week until the Pender WWTP is on-line.

1.6 Pender agrees to pay Wallace an agreed fee of \$3.65 per 1,000 gallons accepted at the Wallace WWTP. Wallace will invoice Pender each month based on trip tickets signed by the haulers and the Wallace operational facility staff.

1.7 Wallace has the right to refuse any load that does not meet the requirements set out above.

1.8 Pender agrees to pay any fines imposed on Wallace by NCDENR as a result of any violation by Pender of the Wallace NPDES requirements.

2.0 Pender will diligently enforce a sewer use ordinance which is no less stringent and is as broad in scope as the sewer use ordinance adopted by the Town of Wallace.

2.1 Whenever Wallace revises its sewer use ordinance, it will forward a copy of the revisions to Pender. Pender will enforce revisions to its sewer use ordinance that are at least as stringent as those adopted by Wallace.

2.2 Pender will enforce pollutant specific local limits which address at least the same pollutant parameters and are at least as stringent as the local limits enacted by Wallace.

2.3 Pender will take all actions necessary to ensure that industrial users within its boundaries are subject to an approved pre-treatment program to the extent required by 40 C.F.R. 403.8, including the performance of all technical and administrative duties necessary to implement and enforce its sewer use ordinance with respect to industrial users located within its jurisdiction. Pender will: (1) Update the industrial waste survey; (2) issue permits to all industrial users required to obtain a permit; (3) conduct inspections, sampling and analysis; (4) perform enforcement activities; and (5) perform any other technical or administrative duties the Parties deem appropriate. In addition, Pender will take emergency action to stop or prevent any discharge which presents or may present an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, to which threatens to cause interference, pass through or sludge contamination at the Wallace Waste Water Treatment facility.

2.4 Pender will maintain current information on industrial users located in its jurisdiction. Pender will update the industrial waste survey not later than September 1 of each year for industrial users located within its jurisdiction, and forward a copy of this survey to Wallace within fifteen (15.0) days of the completion of the survey, and will provide Wallace with the analysis of the wastewater for each SIU, showing FOG, BOD, NH3, ARSENIC, CANMIUM, CHROMIUM, COPPER, CYANIDE, LEAD, MERCURY, NICKLE, SILVER, AND ZINC.

2.5 Whenever a new industrial user begins operations in Pender, or any time an existing industrial user increases its discharge by twenty-five percent (25.0%), or changes the content of its discharge, or any time it is requested by Wallace, Pender will require that such industrial user respond to an industrial user questionnaire supplied by Wallace. Pender will forward a copy of the completed questionnaire to Wallace for its review within fifteen (15.0) days of its receipt by Pender.

2.6 Pender will provide Wallace with access to all records of documents relevant to the pre-treatment program for any industrial user located in Pender or discharging through Burgaw to Wallace.

2.7 Pender will inspect and sample all industrial users located within its jurisdiction each year. Pender will submit written notice of scheduled inspections to Wallace, for the purpose and opportunity of Wallace's representative to attend all such inspections. If an inspection is in response to an emergency situation and such notice is not possible, Pender will make every effort to informally notify Wallace of the impending inspection so Wallace may attend. Pender will forward copies of any such inspection to Wallace within ten (10.0) days of such inspection. Pender will provide Wallace with written listing of its procedures for sampling and analyses, including all procedures in place for quality assurance and quality control. All procedures will conform to those set out in 40 C.F.R. Part 136, except as otherwise required by the U.S. Environment Protection Agency, ("EPA).

2.8 Wallace may, with prior written notice to Pender, conduct inspections and sampling at any industrial user's facility located in Pender, as it deems necessary.

2.9 Pender will issue permits to all industrial users required to be permitted under its sewer use ordinance located within its jurisdiction. Permits must be issued prior to any

discharge. Permits must contain, at a minimum, appropriate effluent limitations, monitoring and reporting requirements, a statement of duration, a statement of non-transferability of the permit, a statement of applicable civil and criminal penalties, and any other conditions requested to be included in the permit by either Wallace or DENR. After drafting a proposed Permit, Pender shall forward a copy thereof to Wallace for review and comment at least ten (10.) days prior to its expected date of issuance. Within ten (10.0) days of receipt of the proposed permit, Wallace will either approve the issuance of the permit, or request Pender make additions, deletions, or changes. No permit may be issued if Wallace objects to the issuance, based upon stated factual issues with the extent and nature of the proposed discharge. Pender will maintain current information on SIU's within its jurisdiction, and will update the SIU survey and designate the names and type of SIU not later than September 1 of each year.

2.10 Pender will submit a monthly report to Wallace containing the compliance status of each SIU, and any enforcement response taken or anticipated. Such report will include the time frames for initial enforcement actions, as well as any subsequent enforcement actions.

2.11 Pender will enforce the provisions of its sewer use ordinance and permits. In the event Pender should fail to take adequate enforcement action against noncompliant users in Pender on a timely basis, Wallace shall be entitled to take such action on behalf of, in the name of, and as the agent for Pender, having given prior written notice to Pender of such intended action.

2.12 Wallace may take emergency action whenever it deems such action necessary to stop or prevent any discharge which presents, or may present, an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to cause interference, pass through, or sludge contamination at the Wallace treatment plant.

Wallace will provide informal notice to the industrial user and Pender of its intent to take emergency action, and the nature of such intended action, prior to taking such emergency action. The opportunity to respond, however, may be limited to a hearing after the emergency powers of Wallace have been exercised.

2.13 At all times during this Agreement, Pender shall be responsible for and comply with all applicable Federal, State and Local Rules and regulations, laws, statutes, and ordinances. In the event of any non-compliance by Pender or any of its users, that either occurs or is initiated in Pender County, Pender shall be responsible for the following actions, which include, but are not limited to: the correction, compliance, penalties, and cleanup of any violation. In order to avoid any such violation, Pender shall take all reasonably necessary, proper or required safety preventative or remedial measures in accordance with all applicable regulations and/or requirements or recommendations by any applicable Federal, State or local agency that has jurisdiction, to ensure the prevention or cessation, whether now or in the future, of any actual or potential violation. Further, Pender does hereby contract and agree to hold and save Wallace fully and completely harmless from any and all costs, penalties, finds, attorney fees, or other charges that proximately result from any violations of any user within Pender County

3.0 At all times during this agreement, Pender shall be responsible for and comply with all applicable federal, state and local rules and regulations, laws, statutes and ordinances. In the event of any non-compliance by Pender or any of its users, that either occurs or is initiated within Pender County, Pender shall be solely responsible for the following actions, which shall include, but not be limited to: the correction, compliance, penalties, or cleanup of any violation. In order to avoid any such violations, Pender shall take all reasonably necessary, proper, or required safety, preventative or remedial measures in accordance with all applicable regulations and/or

requirements or recommendations by any applicable state, federal or local agency that has jurisdiction, to ensure the prevention or cessation, whether now or in the future, of any actual or potential violation.

4.0 Wallace shall be obligated and responsible for the following matters and things:

4.1 Wallace agrees to process and treat up to a maximum of SEVEN HUNDRED FIFTY THOUSAND GALLONS PER DAY wastewater generated in Pender County.

4.2 This contract shall be in full force and effect for a period up to 20-months from the effective day of the Agreement which option right shall be deemed to have been automatically extended upon Pender's failure to notify Wallace in writing of its intent not to exercise its right to any additional option period, which notification shall be given at least three calendar months prior to the expiration of the then existing contract period.

4.3 The terms of this agreement may not be modified, amended or waived unless and until such modification, amendment or waiver is: (a) specifically approved by a majority vote of each municipal board; and, (b) executed in duplicate originals by the parties authorized to execute such changes.

5.0 The terms of this agreement may be terminated upon the following terms and conditions:

5.1 WITHOUT CAUSE. This agreement may be terminated without cause upon the mutual agreement of the parties hereto. Provided, however, in the event Pender and Wallace should seek termination without cause, it shall first obtain the consent of Burgaw to do so.

5.2 FOR CAUSE: If either party shall breach or fail to keep and perform any or all material provisions of this Agreement, then and in that event, the other party shall have the right

and option to, within its sole discretion, to: (1) terminate this agreement after written notice as herein provided; (2) enforce its right to specific performance by the breaching party; (3) injunctive relief; and, (4) recover its damages as a result of the breach by the other party. It is specifically agreed that the performing party shall have the right to enforce all or any one or more of the remedies herein contained, and the selection of any remedy shall not constitute the election of that remedy as its sole remedy. It is further understood and agreed that in the event of a breach by any party in which the other party does not seek redress under any of the above provisions, that such event shall not constitute a waiver of any future breach.

5.3 The rights and/or obligations herein contained may only be transferred or assigned with the prior written consent of the other party, which consent shall not be unreasonably withheld. The assignee/transferee shall be obligated to do and perform any and all obligations under the terms of this Agreement, and both the assigning/transferring party and assignee/transferee, shall, at all times after such assignment or transfer, remain fully liable for the performance of all terms and conditions of this agreement.

5.4 This agreement contains the entire agreement of the parties. Any prior negotiations, representations, or discussions that are not contained herein are deemed to have been waived if not included within the terms of this agreement.

5.5 In the event any provision of this Agreement shall be declared null and void, any such provision shall be deemed to have been severed from the remainder of this Agreement, and the remaining portion shall remain in full force and effect.

5.6 The terms of this Agreement shall be enforced under the laws of the State of North Carolina. Any legal action to enforce the terms of this agreement shall be brought in the Superior

Court Division of the General Court of Justice in the County in which the party seeking performance by the other party is located.

5.7 In the event of any force majeure or any natural disaster, such as a tornado, hurricane, flood, etc., or other breakdown, which renders the Wallace sewer plant incapable of receiving and/or treating effluent for any period of time, it shall not be liable in contract, tort, or otherwise, to Pender or Burgaw, for any general or special damages, profits, or other financial loss for such period of non-use. No third parties shall be deemed third party beneficiaries of this Agreement for any purpose.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in **DUPLICATE ORIGINALS**, for the purposes herein set out the day and year first above written.

(ALL SIGNATURES ON NEXT PAGE)

TOWN OF WALLACE

BY: Paul Christie Mayor

ATTEST:

Mark D. [Signature]
Town Manager

APPROVED TO FORM:

[Signature]
Attorney for Wallace

PENDER COUNTY

BY: _____
Chairman

ATTEST:

County Manager

APPROVED TO FORM:

Attorney for Pender County

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

Pender County Finance Director