

Board of Commissioners' Agenda

November 2, 2021

Commission Meetings are held at [200 College Street](#), Room 326 in downtown Asheville beginning at 5:00 p.m.

Public Comment is taken at the beginning of the meeting.

Call To Order

[▲top](#)

Discussion / Adjustment / Approval To Follow Agenda [▲top](#)

Consent Agenda [▲top](#)

- [Approval of October 19, 2021 Special Meeting Minutes](#)
- [Approval of October 19, 2021 Briefing Minutes](#)
- [Approval of October 19, 2021 Regular Meeting Minutes](#)
- [Tax Collection Report](#)
- [Resolution Approving Pyrotechnic Experts for Firework Display](#)
 - [Resolution](#)
- [Resolution Approving a Petition for Road Addition Processed by NC Department of Transportation](#)
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Public Comment

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Good News

[▲top](#)

Presentations [▲top](#)

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Public Hearings [▲top](#)

- [Personnel Ordinance Update](#)
 - [Resolution Placing Local Employees Who Service the Integrated HHS Agency Under the Personnel Ordinance](#)
 - [Ordinance Amendment](#)
 - [Resolution Approving the Buncombe County Conflict of Interest Policy for Employees](#)
 - [Conflict of Interest Draft](#)
 - [Personnel Ordinance](#)
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County Manager's Report [▲top](#)

- [Safety Update/Alertus](#)
 - [Job Fair](#)
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Old Business [▲top](#)

- [Library Facilities Study Status Update](#)
 - [More Information](#)
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New Business [▲top](#)

- [Resolution for Appointing Tax Assessor](#)
 - [Resolution](#)
- [Resolution for Appointing Tax Collector](#)
 - [Resolution](#)
- [Approval Power Purchase Agreement with Duke Energy](#)
 - [Agreement](#)
 - [More Information](#)
- [Budget Amendment for Positions and Funding for Emergency Services Response](#)
 - [Ordinance](#)
- [Budget Amendment for School Capital Fund Commission Recommended School Year 2023 Projects](#)
 - [Ordinance](#)
- [Approval of Trust for Public Lands Feasibility Study Letter](#)
 - [Letter](#)

Board Appointments [▲top](#)

- Strategic Partnership Grants Committee
 - Tara Scholtz
 - Myra Grant
 - Ray Hemachandra
 - Thomas Tachovsky
 - Marvin Nyman
- [Resolution Amending the Number of Members to the Ad Hoc Reappraisal Committee](#)
 - Ad Hoc Reappraisal Committee
 - Jonathan Hunter
 - Brooks Johnston
 - Bobbette Mays
 - Emil Revala
 - Dewayne McAfee
 - Ryan Maccubbin
 - Ori Baber
 - Howard Berkowitz
 - Bob Heckman
 - Melanie Pitrolo
- Homeless Initiative Advisory Committee
 - Lance Crawford
 - Jennifer Teague
 - Timea Jones
- African American Heritage Commission
 - Aaron Griffin, Sr.
 - Lynn Smith
 - Catherine Mitchell

- County Board of Adjustment
 - Josh Holmes

- Historic Resources Commission
 - Gail Lazaras

Announcements ▲top

- November 16 @ 3 p.m. - Commissioners' Briefing at 200 College Street, Room 326 in downtown Asheville.

- November 16 @ 5 p.m. - Commissioners' Regular Meeting at 200 College Street, Room 326 in downtown Asheville.

Closed Session / Open Session ▲top

Adjournment ▲top

**MINUTES OF BUNCOMBE COUNTY BOARD OF COMMISSIONERS'
REGULAR MEETING OF NOVEMBER 2, 2021 AT 5 P.M.**

BE IT REMEMBERED: That the Board of Commissioners met in regular session on November 2, 2021, in the Commission Chambers, 200 College Street, Room 326 in downtown Asheville, North Carolina at 5 p.m. where and when the following business was transacted:

The Chairman called the meeting to order with the following members present:

Brownie Newman, Chairman
Jasmine Beach-Ferrara, Commissioner
Amanda Edwards, Commissioner
Robert Pressley, Commissioner
Terri Wells, Commissioner
Al Whitesides, Vice Chair

Parker Sloan, Commissioner, was absent from the meeting.

Staff present: Avril Pinder, County Manager; Sybil Tate, Assistant County Manager; Dakisha Wesley, Assistant County Manager; Donald Warn, Finance Director; Jennifer Barnette, Budget Director; Sharon Burke, Human Resources Director; Jennifer Pike, Tax Collector; Keith Miller, Tax Assessor; Stoney Blevins, Health & Human Services Director; Rachael Nygaard, Strategic Partnerships Director; Tim Love, Intergovernmental Relations; Dane Pederson, Solid Waste Director; Lamar Joyner, Clerk to the Board; Curt Euler, Staff Attorney; Brandon Freeman, Staff Attorney

PLEDGE OF ALLEGIANCE

CONSENT AGENDA

Vice Chair Whitesides motioned to approve the Consent Agenda, add the **Resolution Amending the Number of Members to the Ad Hoc Reappraisal Committee to Board Appointments**, and the remainder of the agenda. Commissioner Wells seconded and the motion passed 6-0.

- Approval of October 19, 2021 Special Meeting Minutes
- Approval of October 19, 2021 Briefing Minutes
- Approval of October 19, 2021 Regular Meeting Minutes
- Tax Collection Report
- Resolution Approving Pyrotechnic Experts for Firework Display
 - Resolution
- Resolution Approving a Petition for Road Addition Processed by NC Department of Transportation
 - Resolution
 - More Information

PUBLIC COMMENT

Kari Smith and Shannon Watkins expressed support for keeping the Oakley Library open and provided its many benefits.

Lance Jones represented some County EMS staff and shared support the budget amendment for positions and funding for the department.

PRESENTATIONS

- **Audit Committee**

Kendra Ferguson, Chair, explained that the purpose of the committee was to provide oversight for the financial reporting process, management's systems of internal controls, and the performance of internal and external audit functions. Accomplishments and challenges were outlined, with the major concern being staff turnover.

PUBLIC HEARINGS

- **Personnel Ordinance Update**

Rafael Baptista, Strategy & Innovation Director, explained that the reason for the public hearing was for the proposed updates to the Personnel Ordinance. These updates include: moving Health and Human Services employees from the State Personnel System to the County Personnel System, updates to the Cost of Living Adjustment, removal of four policies from the Ordinances and updating our on-call compensation language within the ordinance.

The Chairman opened the hearing at 6:02 p.m.

The hearing was closed at 6:03 p.m.

Commissioner Edwards moved to approve the Resolution Placing Local Employees Who Service the Integrated HHS Agency Under the Personnel Ordinance as presented. Commissioner Beach-Ferrara seconded the motion and it passed 6-0.

Commissioner Beach-Ferrara moved to approve the Ordinance Amendment as presented. Vice Chair Whitesides seconded the motion and it passed 6-0.

Commissioner Pressley moved to approve the Resolution Approving the Buncombe County Conflict of Interest Policy for Employees as presented. Commissioner Edwards seconded the motion and it passed 6-0.

COUNTY MANAGER'S REPORT

Avril Pinder, County Manager, introduced the new Chief Equity & Human Rights Officer, Rachael Edens.

Chris Austin, Safety Officer, provided a Safety Update with the new Alertus system.

Caroline Long, HR Recruiter, provide information of the County Job Fair to be held on November 6th, 10 a.m. – 3 p.m. at 40 Coxe Avenue (HHS Building).

OLD BUSINESS

- **Library Facilities Study Status Update**

Jim Blanton, Library Director, provided a timeline of events up to the present and requested guidance on how to move forward with community input sessions and study recommendations. The Commissioners gave feedback and asked that certain priorities be fulfilled.

Chairman Newman moved to direct the County Manager to maintain current library facilities and presence in the existing libraries, including the Black Mountain Library, Swannanoa, Oakley, and Weaverville; maintain the Downtown Library at its current location rather than constructing a new library at Coxe Avenue, encourage the exploration of opportunities to enhance the facilities and services at these locations, and although that the direction is to focus in the near term on maintaining and improving the libraries in their current locations, the Commission is open to considering, in the future, new library projects on a case-by-case basis if they have the support within the neighborhood that are served by the existing libraries. Wells seconded the motion and it passed 6-0.

NEW BUSINESS

- **Resolution for Appointing Tax Assessor**

Keith Miller, Tax Assessor, explained that the appointment was a statutory requirement and requested that the term be approved for four years.

Commissioner Pressley moved to approve the resolution as presented. Commissioner Wells seconded the motion and it passed 6-0.

- **Resolution for Appointing Tax Collector**

Jennifer Pike, Tax Collector, explained that the appointment was a statutory requirement and requested that the term be approved for four years.

Commissioner Edwards moved to approve the resolution as presented. Commissioner Wells seconded the motion and it passed 6-0.

- **Approval Power Purchase Agreement with Duke Energy**

Kristy Smith, Solid Waste Manager, explained that the County Landfill has been producing renewable electricity from landfill gas since 2011, under a Power Purchase Agreement (PPA) with Duke Energy. The PPA expires 11/21/2021 and a new 3-year power purchase agreement with Duke Energy is recommended in order to continue producing renewable electricity for our community.

Commissioner Wells moved to approve the 3-year power purchase agreement with Duke Energy. Chairman Newman seconded the motion and it passed 6-0.

- **Budget Amendment for Positions and Funding for Emergency Services Response**

Jennifer Barnette, Budget Director, explained the budget amendment.

Commissioner Edwards moved to approve the budget amendment as presented. Commissioner Beach-Ferrara seconded and the motion passed 6-0.

Vice Chair Whitesides moved to approve the positions. Commissioner Edwards seconded and the motion passed 6-0.

- **Budget Amendment for School Capital Fund Commission Recommended School Year 2023 Projects**

Jennifer Barnette, Budget Director, explained the budget amendment.

Commissioner Edwards moved to approve the budget amendment as presented. Commissioner Wells seconded and the motion passed 6-0.

- **Approval of Trust for Public Lands Feasibility Study Letter**

Chairman Newman explained that the letter was discussed and received information from the Affordable Housing Committee. The Affordable Housing Committee and Environmental & Energy Stewardship Subcommittee support the letter. The feasibility study may show a need for investing in bonds for land and water conservation. The letter would not obligate the County to any projects in the future but support the study with consideration of the information discovered by the study.

Commissioner Wells moved to approve the letter, with the addition of affordable housing wording. Commissioner Edwards seconded the motion and it passed 6-0.

BOARD APPOINTMENTS

- **Resolution Amending the Number of Members to the Ad Hoc Reappraisal Committee**

Chairman Newman moved to approve the resolution as presented. Commissioner Wells seconded the motion and it passed 6-0.

Chairman Newman moved to appoint **Jonathan Hunter** (Real Estate professional), **Bobbette Mays** (at-large), **Dewayne McAfee** (at-large), **Ori Baber** (at-large) and **Melanie Pitrolo** (at-large) to the **Ad Hoc Reappraisal Committee**. Commissioner Wells seconded and the motion passed 6-0.

Commissioner Beach-Ferrara moved to appoint **Lance Crawford**, and reappoint **Jennifer Teague** and **Timea Jones** to the **Homeless Initiative Advisory Committee**. Vice Chair Whitesides seconded and the motion passed 6-0.

Vice Chair Whitesides moved to reappoint **Aaron Griffin, Sr.**, **Lynn Smith** and **Catherine Mitchell** to the **African American Heritage Commission**. Commissioner Edwards seconded and the motion passed 6-0.

Commissioner Pressley moved to reappoint **Josh Holmes** (alternate) to the **County Board of Adjustment**. Commissioner Edwards seconded and the motion passed 6-0.

Commissioner Edwards moved to reappoint **Gail Lazaras** to the **Historic Resources Commission**. Commissioner Wells seconded and the motion passed 6-0.

ANNOUNCEMENTS

The Chairman made the following announcements:

- *November 16 @ 3 p.m. - Commissioners' Briefing at 200 College Street, Room 326 in downtown Asheville.*
- *November 16 @ 5 p.m. - Commissioners' Regular Meeting at 200 College Street, Room 326 in downtown Asheville.*

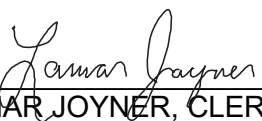
CLOSED SESSION

Commissioner Beach-Ferrara moved to go into closed session pursuant to NCGS 143-318.11(a) (3) to hear legal matters with no possible action anticipated following the closed session. Vice Chair Whitesides seconded and the motion passed 6-0.

The Board heard the legal update and had discussion regarding the matters. No action was taken.

Vice Chair Whitesides moved to go back into open session. Commissioner Wells seconded and the motion passed 6-0.

Commissioner Beach-Ferrara moved to adjourn the meeting. Commissioner Edwards seconded and the motion passed 6-0. The meeting was adjourned at 7:18 p.m.



LAMAR JOYNER, CLERK
BOARD OF COMMISSIONERS



BROWNIE NEWMAN, CHAIRMAN
BOARD OF COMMISSIONERS



Buncombe County Tax Collections

Jennifer Pike
Tax Collector

CONSENT

DEPARTMENT: Tax Collections

PRESENTER: Jennifer Pike

CONTACT: Jennifer Pike

SUBJECT: Approval of September 2021 Tax Collection Report

BRIEF SUMMARY:

NCGS 105-350 requires the Tax Collector to submit a report showing the amount of taxes collected.

In the month of September, the majority of fiscal year 2022 property tax notices have been created and mailed. Public service company property taxes will be billed in October.

As of September 30, 2021, the total levy billed for fiscal year 2022 is 14.04% collected, as compared to 13.28% for fiscal year 2021.

Below is Buncombe County year to date reporting for fiscal year 2022, as of September 30, 2021.

Current Year Collections

Fiscal Year 2022	Personal Property	Public Service	Real Estate	Motor Vehicles	Total
Total Levy	\$ 12,926,784.72	\$ -	\$ 202,235,420.74	\$ 3,943,922.18	\$ 219,106,127.64
Amount Collected	\$ 2,204,274.92	\$ -	\$ 24,632,679.59	\$ 3,932,134.69	\$ 30,769,089.20
Unpaid Balance	\$ 10,722,509.80	\$ -	\$ 177,602,741.15	\$ 11,787.49	\$ 188,337,038.44
Interest Collected	\$ -	\$ -	\$ 81,178.58	\$ 28,826.07	\$ 110,004.65
FY22 Collection %	17.05%		12.18%	99.70%	14.04%
FY21 Collection %	15.13%		11.32%	98.69%	13.28%

Total fiscal year 2022 year to date collections, property tax and interest \$ 30,879,093.85

Prior Year Collections

Prior Years 2012-2021	Personal Property	Real Estate	Total
Amount Collected	\$ 41,315.26	\$ 284,498.36	\$ 325,813.62
Interest Collected	\$ 4,622.79	\$ 22,329.79	\$ 26,952.58

Total prior year collections, fiscal year to date \$ 352,766.20

*Total property tax released September 2021 due to taxable value adjustments \$ 119,772.14

*Total refunds processed September 2021 \$ 15,482.15

*Detailed information for releases and refunds is available in Tax Collections.



Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 11/2/2021

Consent Agenda

Department: Emergency Services

Presenter(s): Jerry Leatherwood, Deputy Fire Marshal

Contact(s): Jerry Leatherwood, Deputy Fire Marshal

Subject: Resolution Approving Pyrotechnic Experts for Firework Displays

Brief Summary:

- Request from Pyro Shows, Inc. and Jennifer Robbins to conduct a fireworks display on 11/5/21 for The Omni Grove Park Inn, 290 Macon Avenue, Asheville, NC 28804.
- Request from Gosnell's Pyrotechnics and Dustin Gosnell to conduct a fireworks display on 12/31/21 for Biltmore Forest Country Club, 31 Stuyvesant Road, Asheville, NC 28803.

Recommended Motion & Requested Action: Approve resolution.

County Manager's comments and Recommendation: County Manager recommends approval.

RESOLUTION #: 21-11-01

**RESOLUTION APPROVING PYROTECHNICS EXPERTS FOR CONDUCTING
FIREWORKS DISPLAYS**

WHEREAS, pursuant to North Carolina General Statutes Section 14-410 and 14-413 the Board of Commissioners is authorized to review and approve the qualifications of persons applying for approval as pyrotechnics experts for the purpose of conducting fireworks displays; and

WHEREAS, application has been made by Pyro Shows, Inc. and Gosnell's Pyrotechnics for pyrotechnic displays; and

WHEREAS, this Board is of the opinion that the application received to conduct firework or pyrotechnic displays should be approved.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners for the County of Buncombe as follows:

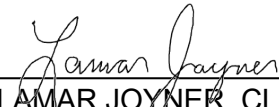
1. That the following be granted permission to conduct fireworks displays at the location and on the dates shown, to-wit:

<u>NAME</u>	<u>LOCATION</u>	<u>DATE</u>
Pyro Shows, Inc.	290 Macon Avenue, Asheville	November 5, 2021
Gosnell's Pyrotechnics	31 Stuyvesant Road, Asheville	December 31, 2021

2. The County Fire Marshal has reviewed these requests and found that those listed above are qualified pyrotechnic experts.
3. That pursuant to N.C.G.S. 14-410 and 14-413 the Board has found that the above named individual/company is a qualified pyrotechnic expert for the purpose of conducting fireworks displays.
4. In accordance with the current NC Executive Order.

ADOPTED this the 2nd day of November, 2021.

ATTEST


LAMAR JOYNER, CLERK

**BOARD OF COMMISSIONERS
FOR THE COUNTY OF BUNCOMBE**


BROWNIE NEWMAN, CHAIRMAN

APPROVED AS TO FORM:


COUNTY ATTORNEY



Buncombe County Board of Commissioners
Request for Board Action
Meeting Date: 11/2/2021

Consent Agenda

Department: Planning/Legal **Presenter(s): Nathan L. Pennington, CFM**
Planning Director

Contact(s): Nathan L. Pennington

Subject: NCDOT Road Acceptance (0.14 mile segment) SR 2739

Brief Summary: Richmond Avenue (SR 2739) is located in Swannanoa in unincorporated Buncombe County. The road is maintained by the NCDOT for approximately .51 miles as noted in the supporting documentation provided by the NCDOT. A road addition petition has been submitted to the NCDOT to accept the remaining portion of the road (approximately .14 miles) into the NCDOT maintenance inventory.

Recommended Motion & Requested Action: Approve

County Manager's Comments and Recommendation: County Manager recommends as presented.

RESOLUTION #21-11-02

RESOLUTION APPROVING A PETITION FOR ROAD ADDITION PROCESSED BY
NC DEPARTMENT OF TRANSPORTATION

WHEREAS, this Board has received a letter from the NC Department of Transportation ("DOT") regarding a Petition for Road Addition from the property owners along Richmond Avenue;

WHEREAS, the petition requests that DOT add an additional portion of SR 2739, Richmond Avenue, for a length of 0.14 miles in Buncombe County to the State Highway system; and

WHEREAS, this Board supports this request.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County of Buncombe as follows:

1. That this Board hereby approves the Petition for Road Addition for an addition of 0.14 miles of road for SR 2739, Richmond Avenue, as set forth in the attached materials in the DOT letter dated October 21, 2021.
2. That this resolution shall be effective upon its adoption.

This the 2nd of November, 2021.

ATTEST

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE


Lamar Joyner, Clerk

By: 
Brownie Newman, Chairman

APPROVED AS TO FORM


County Attorney



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

ROY COOPER
GOVERNOR

J. ERIC BOYETTE
SECRETARY

October 21, 2021

Avril Pinder
Buncombe County Manager
200 College Street, Suite 300
Asheville, NC 28801

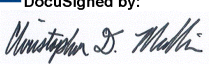
Dear Avril:

Richmond Avenue, Secondary Road # 2739, is located in Swannanoa, NC. It is currently a state maintained road for 0.51 miles. Our office has received a request from the property owners along Richmond Avenue to add an additional portion of SR 2739 for a length of 0.14 miles.

Please find attached the Addition Petition form and a vicinity map showing the location of Richmond Avenue. Please obtain a resolution for the addition of 0.14 miles of SR 2739 Richmond Avenue in Buncombe County, if the County Commissioners concur. Please email the resolution to me at cdmedlin@ncdot.gov.

If I can provide additional information, please contact me at 828-298-2741

Sincerely,

DocuSigned by:

6D92D71E27C94A3...

Christopher D. Medlin, P.E.
District Engineer

CDM/jmd
attachments

North Carolina Department of Transportation
Division of Highways
Petition for Road Addition

RECEIVED

SEP 21 2021

DIVISION 13
DISTRICT 2

C.D. MILL

ROADWAY INFORMATION: (Please Print/Type)

County: Buncombe Road Name: Richmond Avenue

(Please list additional street names and lengths on the back of this form.)

Subdivision Name: Beacon Village Length (miles): 0.14

Number of occupied homes having street frontage: 12 Located (miles): 0.04

miles N ☐ S ☐ E ☒ W ☐ of the intersection of Route 2739 and Route 2854
(Check one) (SR, NC, US) (SR, NC, US)

We, the undersigned, being property owners and/or developers of Richmond Avenue in
Buncombe County, do hereby request the Division of Highways to add the above described road.

CONTACT PERSON: Name and Address of First Petitioner. (Please Print/Type)

Name: Gary W. Aiken Phone Number: (828) 777-3930

Street Address: 312 Richmond Avenue, Swannanoa, NC 28778

Mailing Address: Same as above

PROPERTY OWNERS

Name	Mailing Address	Telephone
Gary Aiken	312 Richmond Ave. Swannanoa, NC 28778	<u>Gary W. Aiken 828-777-3930</u>
Joseph Baker & Susan Pyatt	309 Richmond Ave. Swannanoa, NC 28778	<u>Joe Baker 828-777-3930</u>
Clinton Autrey	310 Richmond Ave. Swannanoa, NC 28778	<u>Clinton Autrey 828-777-3930</u>
William Daugherty	311 Richmond Ave. Swannanoa, NC 28778	<u>William Daugherty 828-777-3930</u>
Carolyn Clarke	313 Richmond Ave. Swannanoa, NC 28778	<u>Carolyn Clarke 828-777-3930</u>
James Huntley	314 Richmond Ave. Swannanoa, NC 28778	<u>James Huntley 828-777-3930</u>
Brandon Hudson & Anthony Nidek	315 Richmond Ave. Swannanoa, NC 28778	<u>Brandon Hudson & Anthony Nidek 828-777-3930</u>
Carol Foster	316 Richmond Ave. Swannanoa, NC 28778	<u>Carol H. Foster 828-777-3930</u>
Randall Collins	317 Richmond Ave. Swannanoa, NC 28778	<u>Randall Collins 828-777-3930</u>

William Foster
Sarver Mills Holdings
Valley Ventures Properties

318 Richmond Ave. Swannanoa, NC 28778
7 Westchester Drive, Asheville, NC 28803
4737 Crest Knoll Drive SE. Mableton, GA 30126

William Foster
ELLIS W SARVER (828) 772-7315
Matha Eve Egan
770-222-7627

INSTRUCTIONS FOR COMPLETING PETITION:

1. Complete Information Section
2. Identify Contact Person (This person serves as spokesperson for petitioner(s)).
3. Attach two (2) copies of recorded subdivision plat or property deeds, which refer to candidate road.
4. Adjoining property owners and/or the developer may submit a petition. Subdivision roads with prior NCDOT review and approval only require the developer's signature.
5. If submitted by the developer, encroachment agreements from all utilities located within the right of way shall be submitted with the petition for Road addition. However, construction plans may not be required at this time.
6. Submit to District Engineer's Office.

FOR NCDOT USE ONLY: Please check the appropriate block

☐ Rural Road ☒ Subdivision platted prior to October 1, 1975 ☐ Subdivision platted after September 30, 1975

REQUIREMENTS FOR ADDITION

If this road meets the requirements necessary for addition, we agree to grant the Department of Transportation a right-of-way of the necessary width to construct the road to the minimum construction standards of the NCDOT. The right-of-way will extend the entire length of the road that is requested to be added to the state maintained system and will include the necessary areas outside of the right-of-way for cut and fill slopes and drainage. Also, we agree to dedicate additional right-of-way at intersections for sight distance and design purposes and execute said right-of-way agreement forms that will be submitted to us by representatives of the NCDOT. The right-of-way shall be cleared at no expense to the NCDOT, which includes the removal of utilities, fences, other obstructions, etc.

General Statute 136-102.6 states that any subdivision recorded on or after October 1, 1975, must be built in accordance with NCDOT standards in order to be eligible for addition to the State Road System.





Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 11/2/2021

Presentations

Department: Audit Committee

Presenter(s): Kendra Ferguson, Chair

Contact(s): Kelly Houston, Internal Audit

Subject: Audit Committee Update

Brief Summary: Update Board of Commissioners on the Audit Committee.

Buncombe County Audit Committee

Update for Buncombe County Board of Commissioners



About Us

Purpose

Assist the Board of Commissioners in fulfilling their oversight responsibilities for:

- The financial reporting process
- Management's systems of internal controls
- The performance of internal and external audit functions



About Us

Members

Kendra Ferguson, CPA (Chair)

Commissioner Al Whitesides (Vice Chair)

Commissioner Robert Pressley

Larry Harris, CPA

Danny Yelton, CPA

Mike Knepshield

Dr. Glenda Weinert



Dates and Accomplishments

12-01-2020

Meeting

- Approval of Business Plan for the Internal Audit Department
 - *Aligns with the Buncombe County Strategic Plan*
- Approval of 2021 Meeting Dates and Elected Officers
- Continued discussion of Governance documents
- Internal Audit Department updates

01-29-2021

Meeting

- Review and approval of Fiscal Year 2022 Budget Proposal for Internal Audit Department
- External audit update
- Continued discussion of Governance documents
- Internal Audit Department updates

03-02-2021

Meeting

- Approval to recommend Fiscal Year 2020 external audit report to the BOC
- Approval of the Fiscal Year 2021 external audit contract
- Approval of Audit Committee Charter, Audit Committee Bylaws, and Internal Audit Charter
- Internal Audit Department updates



Dates and Accomplishments

06-23-2021

Meeting

- Approval of Internal Audit Subcommittee to serve as Personnel Committee to work with the County Manager on the Internal Audit Director recruitment
- Internal Audit Department updates

08-03-2021

Meeting

- Updates on Fiscal Year 2021 external audit plan
- Internal Audit Department updates
- Internal Audit Director recruitment updates



Internal Audit Recent Successes

- Increased number of Employee Ethics Report Line cases
 - Demonstrates confidence in the process
- Implementation of audit management software is ongoing, which will include a data analytics component
- Internal Audit serves on various County workgroups in an advisory capacity
 - IA is a valued partner
- Internal Audit conducts training for other departments (such as on COSO's Internal Control Integrated Framework)



Current Challenges

- Internal Audit Director position has been open since July 1, 2021
- Have been unable to approve a comprehensive risk assessment and audit plan for FY2021 due to Director turnover
- Lack of resources within the Internal Audit Department
 - Currently only one staff person
 - Do not have the capacity to complete audits
 - Do not have expertise to assess risk and audit Information Technology functions



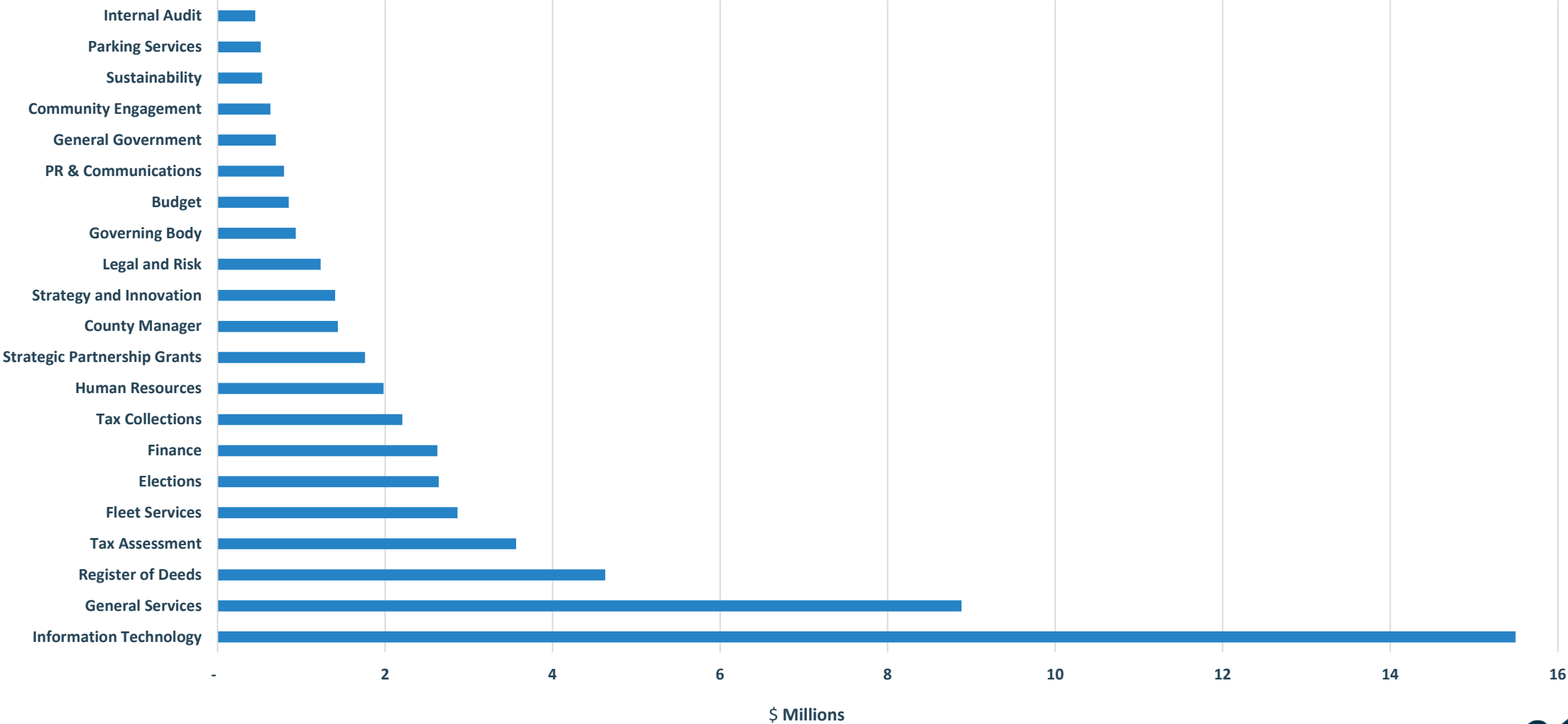
Benchmarking

Internal Audit Department Size of Other North Carolina Governments (as of January 2021)

- Mecklenburg County 15 staff
- City of Charlotte 11 staff
- Wake County 5 staff
- City of Raleigh 5 staff
- Guilford County 5 staff
- City of Greensboro 5 staff
- Durham County 3 staff
- City of Durham 5 staff
- Buncombe County 3 staff (1 open position; 3rd position authorized & expected to hire in early 2022)
- City of Asheville 1 staff



FY2022 Amended Budget – General Government Function – General Fund (as of 10/24/2021)



Upcoming Items

- Highest priority is to hire Internal Audit Director
- Review and recommend the FY2021 external audit report the Board of Commissioners is expected soon
- Recommending the FY2023 Internal Audit budget this month
- Request approval of revised Governance documents by the Board of Commissioners coming soon (Audit Committee Charter and Internal Audit Charter)





Buncombe County Board of Commissioners
Request for Board Action
Meeting Date: 11/2/2021

Public Hearings

Department: Strategy & Innovation

Presenter(s): Rafael Baptista, Strategy & Innovation Director

Sharon Burke, Human Resources Director

Rusty Mau, Budget Analyst

Contact(s): Rafael Baptista, Strategy & Innovation Director

Subject: Public Hearing for County Personnel Ordinance Update

Brief Summary:

A public hearing will be held regarding proposed updates to the Personnel Ordinance. These updates including moving Health and Human Services employees from the State Personnel System to the County Personnel System, updates to the Cost of Living Adjustment, removal of four policies from the Ordinances and updating our on-call compensation language within the ordinance.

Recommended Motion & Requested Action: Staff recommend that the Board take the following actions:

- **Hold a public hearing for the Personnel Ordinance Updates**
- **Approve the resolution to move HHS Employees to the County Personnel System**
- **Approve the resolution updating the Personnel Ordinance**
- **Approve the resolution approving the Conflict of Interest Policy for County Employees**

County Manager's comments and Recommendation: Recommends approval

RESOLUTION NO. 21-11-03

RESOLUTION PLACING LOCAL EMPLOYEES WHO SERVICE THE INTEGRATED HEALTH AND HUMAN SERVICES AGENCY UNDER THE BUNCOMBE COUNTY PERSONNEL ORDINANCE.

WHEREAS, pursuant to N.C. Gen. Stat. § 153A-77, the General Assembly granted the County Commissioners the ability to create an integrated Health and Human Service Board; and

WHEREAS, on November 20, 2012, the Board of Buncombe County Commissioners passed Resolution #12-11-11 creating an Integrated Health and Human Services Board in Buncombe County pursuant to N.C. Gen. Stat. 153A-77; and

WHEREAS, pursuant to N.C. Gen. Stat. § 153A-77(d), the Board of Commissioners can decide whether employees of the Integrated Health and Human Services Department are subject to the county's personnel ordinance or the State Personnel Act; and

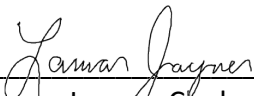
WHEREAS, the Board of Commissioners has determined it would be in the best interest of Buncombe County that the employees of the Integrated Health and Human Services Department are subject to the County's Personnel Ordinance.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County of Buncombe as follows:

Pursuant to N.C. Gen. Stat. § 153A-77(d) that staff of the Buncombe County's Integrated Health and Human Services Department are subject to the Buncombe County Personnel Ordinance and no longer subject to the provisions of the State Personnel Act.

ADOPTED this the 2nd day of November, 2021.

ATTEST



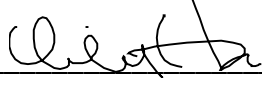
Lamar Joyner, Clerk

**BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE**

BY: 

Brownie Newman, Chairman

APPROVED AS TO FORM



County Attorney

ORDINANCE NO. 21-11-04

AN ORDINANCE AMENDING BUNCOMBE COUNTY'S PERSONNEL ORDINANCE

WHEREAS, pursuant to N.C. Gen. Stat. § 153A-94, a county may by ordinance adopt personnel rules that promote the hiring and retention of capable, diligent and honest career employees; and

WHEREAS, on October 15, 1996, Buncombe County adopted the Buncombe County Personnel Ordinance; and

WHEREAS, on October 3, 2017, the County adopted a comprehensive update to the existing Personnel Ordinance; and

WHEREAS, the Buncombe County Board of Commissioners desire to make additional amendments to the Personnel Ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE BUNCOMBE COUNTY BOARD OF COMMISSIONERS THAT:

Section 1. The Personnel Ordinance of Buncombe County as referenced in Section 3-1 of the Buncombe County Code of Ordinances on file with Buncombe County Clerk to the Board of Commissioners dated May 4, 2021 shall be amended as follows:

- a. By deleting Article I, Section 1 in its entity and replacing it with the following:

“Section 1. Purpose.

The purpose of this Personnel Ordinance is to establish a personnel system that shall promote a fair and effective means of employee recruitment and selection; develop and maintain an effective and responsible work force; promote understanding, cooperation, equal treatment, and efficiency; and provide the means for removal of unsatisfactory employees. This Ordinance is established under the authority of Chapter 153A, Article 5 of the North Carolina General Statutes.”

- b. By deleting Article I, Section 2.F of the Buncombe County Personnel Ordinance in its entirety.

- c. By deleting Article I, Section 4 definition of “Grievance” of the Buncombe County Personnel Ordinance in its entirety and replacing the definition of Grievance with the following:

“**Grievance.** A claim or complaint alleging an event or condition which affects the circumstances under which an employee works, allegedly caused by misinterpretation,

unfair application, or lack of established ordinance pertaining to employment conditions. A grievance may involve allegations of bullying, sexual harassment, discriminatory practices, and/or hostile work environment. A grievance is not allowed for Investigatory Suspension with pay or voluntary demotion or a written warning or reassignment that does not involve a reduction in pay.”

- d. By deleting Article III, Section 10.I in its entirety.
- e. By deleting Article III, Section 13 “Consumer Price Index Salary Adjustment” of the Buncombe County Personnel Ordinance in its entirety and replace it with the following:

“Section 13. Cost of Living Adjustment.

Each year, the Board of County Commissioners may grant a salary increase based on a cost-of-living adjustment (COLA) calculation to all employees occupying a regular position, and to any grant-funded position for which the funding source allows.

During the budget planning process of each year, County Budget and Human Resources staff shall present a COLA calculation to the Board. The calculation shall be the 2-year average annual change in the CPI-W, measured as of the December data release next preceding the date of such presentation. The index to be used is the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), published by the U.S. Bureau of Labor Statistics (BLS). This COLA calculation will represent the maximum COLA adjustment.

The Board will make its election on whether or not to grant a COLA adjustment through the Budget Ordinance. If the Board elects to provide an annual COLA, the COLA shall be effective July 1 of the following fiscal year.

When an employee’s base salary reaches the maximum of the salary range for the employee’s pay grade, the COLA adjustment or any portion of the COLA adjustment granted to the employee for that specific fiscal year will come in the form of a one-time lump sum payment. The lump sum payment does not constitute a salary increase as set forth in Article III, Section 6.B of this Personnel Ordinance.”

- f. By deleting the entire last sentence of Article IV, Section 11 “Valid Driver’s License Requirement” of the Buncombe County Personnel Ordinance.
- g. By deleting Article V, Section 2 “Gift and Favors” of the Buncombe County Personnel Ordinance in its entirety.
- h. By deleting Article V, Section 3 “Conflicts of Interest” of the Buncombe County Personnel Policy in its entirety.

- i. By deleting Article V, Section 8 “Outside Employment” of the Buncombe County Personnel Ordinance in its entirety.
- j. By deleting Article V, Section 9 “Limitations of Employment of Relatives” of the Buncombe County Personnel Ordinance in its entirety.
- k. By deleting Article V, Section 10 “Limitations of Consensual or Sexual Relationships” of the Buncombe County Personnel Ordinance in its entirety.
- l. By deleting Article V, Section 14 “Information Technology Acceptable Usage Policy” of the Buncombe County Personnel Ordinance in its entirety.
- m. By deleting Article V, Section 15 “Social Media” of the Buncombe County Personnel Ordinance in its entirety.
- n. By deleting Article VI, Section 30 “Leave—Adverse Weather Conditions and Disasters” of the Buncombe County Personnel Ordinance in its entirety.
- o. By deleting Article VII, Section 5.B of the Buncombe County Personnel Ordinance in its entirety.
- p. By deleting Article VIII, Section 13.A of the Buncombe County Personnel Ordinance in its entirety and replacing it with the following:

“A. A Covered Employee has the right to appeal a demotion, a suspension without pay, reduction in force or a dismissal.”
- q. By deleting Article 9, Section 2.A of the Buncombe County Personnel Ordinance in its entirety and replacing it with the following:

“A. This Grievance Procedure applies to all eligible employees as set forth in *ARTICLE I. ORGANIZATION OF PERSONNEL SYSTEM, Section 2. Coverage.*”
- r. By deleting Article 9, Section 3.C of the Buncombe County Personnel Ordinance in its entirety.
- s. By deleting Article 9, Section 4.C of the Buncombe County Personnel Ordinance in its entirety and replacing it with the following:

“C. Step Three. (Not applicable to elected official employees)”
- t. By deleting Appendix F, Section 4.C “Unlawful Workplace Harassment” from the Ordinance in its entirety.

- u. By deleting Appendix H: Buncombe County Vehicle Usage Policy from the Ordinance in its entirety.
- v. By deleting Appendix J: Buncombe County IT Acceptable Usage Policy from the Ordinance in its entirety.

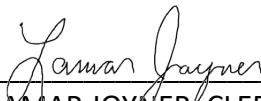
Section 2. All ordinances or portions of ordinances in conflict herewith are hereby repealed.

Section 3. Should any provision of the attached personnel ordinance be declared invalid or unconstitutional by any court of any competent jurisdiction, such declaration shall not affect the validity of the personnel ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

Section 4. This ordinance shall take effect and be in force upon adoption.

ADOPTED the 2nd day of November, 2021.

ATTEST



LAMAR JOYNER, CLERK

**BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE**

BY: 

BROWNIE NEWMAN, CHAIRMAN

APPROVED AS TO FORM



COUNTY ATTORNEY

RESOLUTION NO. 21-11-05

RESOLUTION APPROVING THE BUNCOMBE COUNTY CONFLICT OF INTEREST POLICY FOR
EMPLOYEES.

- WHEREAS, pursuant to N.C. Gen. Stat. § 153A-94, the Board of Commissioners has the authority to establish rules and regulations affecting the workplace; and
- WHEREAS, the Board of County Commissioners find that it is in the best interest of its citizens that County employees conduct County business in a fair and unbiased manner and that its business decisions are not impacted by the appearance of personal self-interest; and
- WHEREAS, the Board of Commissioners desires that the County update its written policies to govern the identification and management of potential conflicts between the financial and personal interests of its employees and their obligations to the County.

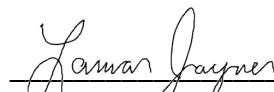
NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County of Buncombe as follows:

1. That the County adopt the Conflict of Interest Policy attached as Exhibit A to this resolution.
2. That this resolution shall be effective upon its adoption.

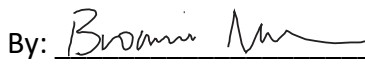
This the 2nd day of November, 2021.

ATTEST

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE



Lamar Joyner, Clerk

By: 

Brownie Newman, Chairman

APPROVED AS TO FORM



County Attorney



Conflict of Interest

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1. **Purpose**

The purpose of this policy is to ensure that Buncombe County employees, board members, and non-profits that receive money from the County to perform their duties as public employees in a fair and unbiased way, ensuring that decisions made are not impacted by, or appear to have personal self-interest, private affiliations, or the likelihood of gain or loss for them or others that they may wish to benefit or disadvantage.

2. **Applicability**

This policy applies to all Buncombe County departments and employees. Where there is conflict with any department-specific policy, this document will supersede.

3. **Policy**

3.1. A conflict of interest involves a conflict between the public duty and private interests of a public employee in which the employee has private-capacity interests which could improperly influence the performance of their official duties and responsibilities. The fundamental idea is that where there is, in fact, an unacceptable possibility of conflict between a public employee's interests as a private citizen (private-capacity interests) and their duty as a public servant (official duty), a conflict of interest can be said to exist.

A conflict of interest occurs when private interests interfere or appear to interfere with the performance of official duties. Private interests include personal, professional or business interests, as well as the interests of individuals that employees associate with, such as family members, dependents and friends.

Conflicts of interest fall into three categories.

- Actual – there is a direct conflict between an employee's current duties and their existing private interests
- Potential – an employee's duties and private interests could conflict in the future
- Perceived – the appearance that an employee's private interests could improperly influence the performance of their duties exists.

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Conflicts of interest can arise inside or outside of the workplace. They may be:

- **Monetary** – where there is a reasonable likelihood of financial loss or gain. May result from an employee (or a relative or close associate) owning property, holding shares or a position in a company bidding for government work or accepting gifts or benefits
- **Non-monetary** – where there is no financial component, but may involve self-interest, personal or family relationships or other affiliations. Includes any tendency toward favor or prejudice resulting from friendship, animosity or other personal involvement that could bias an employee's judgement or decisions.

While it is best to avoid conflicts of interest, this is not always possible. Identifying and resolving conflict of interest situations is crucial to good governance and maintaining public trust. Public employees are obligated to identify and disclose any actual, potential, or perceived conflicts of interest.

It is not possible to give an exhaustive list of situations that might involve violations of this policy. However, the primary aim for the following policy sections is to help employees identify and avoid situations that would constitute a conflict of interest.

3.2. Gifts/Favors

3.2.1. No public employee of the County shall:

- Accept any gift, whether in the form of a meal, service, loan, thing of value, or a promise from any person or vendor that, in the employee's knowledge, is interested directly or indirectly in any manner whatsoever in business dealings with the County.
- Accept any gift, favor, or thing of value that may tend to influence that employee in the discharge of their duties.
- Grant any improper favor, service, or thing of value in the discharge of duties.

3.2.2. Certain items and situations are excluded from the definition of a gift/favor and this policy does not prohibit County employees from accepting the following:

- Items or souvenirs of nominal value (under \$35.00).
- Modest items of food and refreshments not offered as part of a meal.
- Prizes at conferences available to all participants or the general public.
- Meals furnished at conferences, trade shows or trainings available to all participants.
- Free attendance or expenses to include meals, travel and lodging provided by the sponsor of an event where the employee is a speaker or participant invited in their official capacity or has been assigned to present information on behalf of the agency.

3.3. Outside Engagements and Secondary Employment

3.3.1. The County recognizes the right of employees to engage in activities outside of their employment which are of a private nature and unrelated to County business.

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Secondary employment, board service, and other civic activities may be a conflict of interest if it impacts an employee's work performance, or health and wellbeing. Alternatively, these activities could provide the opportunity for personal loss or gain, such as using confidential information obtained from the public sector workplace or conducting personal business during work time.

- 3.3.2. An employee working full-time for Buncombe County has primary employment responsibility to the County. All other employment outside of the County, including self-employment, is considered secondary employment and must be disclosed to County personnel via Workday. Additionally, outside engagements including service on boards or entities with which Buncombe County conducts business, must also be disclosed to County personnel via Workday.
- 3.3.3. All requests for outside engagements and secondary employment must be submitted in advance of starting the engagement or employment. Requests must be disclosed in Workday as well as submitted to the immediate supervisor and Department Director (or appointing authority) for approval.
- 3.3.4. Annual disclosure is required of all employees to communicate outside engagements and/or secondary employment.
- 3.3.5. No County employee shall engage, accept private employment or render service for private interest, when such employment or service creates a conflict of interest or the appearance of a conflict with the employee's primary employment responsibility to the County.
- 3.3.6. Secondary employment approval may be withdrawn by Human Resources for any of the following reasons:
 - The secondary employment has a present or possible conflict of interest with the employee's primary employment.
 - The supervisor believes that the secondary employment has caused the employee's overall work performance to drop below an acceptable level.
 - The supervisor becomes aware of secondary employment that the employee has not reported and there is evidence that the failure to report has been willful.

3.4. Family Member Employment/Relationships

As a large employer, Buncombe County does have members from the same family who work for the County. Our goal is to have in place safeguards that address concerns regarding conflict of interest, favoritism and/or the perception of these being present.

- 3.4.1. No County employee shall serve in a position that results in a family member supervising the other or in one family member occupying a position that has influence over the other's employment, promotion, salary administration or related management, or personnel considerations. In addition, if there is a situation that would result in the perception of or the possibility of a conflict of interest in carrying out the duties of a position then satisfactory safeguards shall be enacted that remove the possibility of conflict, and shall be approved by the County Manager. This includes situations where there are relationships that exist where a member of the Buncombe County workforce is in the chain of command but not otherwise supervised directly by a person with whom they are related.

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- 3.4.2. For those situations where the circumstances of employment change due to marriage or a domestic partner relationship, those involved are required to document the relationship in Workday and notify the Human Resources (HR) Department immediately. In response, the HR Department will take such actions as necessary to remedy the situation.
- 3.4.3. Annual disclosure of any family member employment and relationships in Workday is required of all employees.
- 3.4.4. The Board of County Commissioners (BOCC) shall approve the hiring of a relative by blood or marriage of nearer kinship than first cousin for the County Manager, Sheriff or Register of Deeds.
- 3.4.5. The BOCC shall approve any existing employment relationship for which the County Manager has a family member within the Manager's chain of command.

3.5. Limitations of Consensual Relationship

- 3.5.1. Buncombe County prohibits romantic or sexual relationships between a supervisor and anyone within the supervisor's chain of command because such relationships create compromising conflicts of interest or the appearance of such conflicts. In addition, such a relationship may give rise to the perception by others that there is favoritism or bias in employment decisions affecting the employee.
- 3.5.2. Moreover, given the uneven balance of power within such relationships, consent by the subordinate is suspect and may be viewed by others or, at a later date, by the individual as having been given as the result of coercion or intimidation. The atmosphere created by such appearances of bias, favoritism, intimidation, coercion or exploitation undermines the spirit of trust and mutual respect that is essential to a healthy work environment. If there is such a relationship, the parties need to be aware that one or both may be moved to a different department, or other actions may be taken to remedy the situation.
- 3.5.3. This requirement does not apply to parties who do not supervise or otherwise manage responsibilities over the other. Because of potential issues regarding quid pro quo harassment, Buncombe County has made reporting mandatory. This requirement does not apply to employees who do not work in the same department or to parties who do not supervise or otherwise manage responsibilities over the other.
- 3.5.4. In addition, if there is a situation that would result in the perception of or the possibility of a conflict of interest in carrying out the duties of a position then satisfactory safeguards shall be enacted that remove the possibility of conflict, and shall be approved by the County Manager.

3.6. Confidential Information

No County public employee shall disclose confidential information concerning the property, government or affairs of the County in such a manner as to advance the financial or other private interest of their own private interests. Examples include but are not limited to:

- Acquire a financial interest in any property transaction or enterprise
- Gain any financial benefit from the transaction

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- Intentionally help another gain financial benefit from the transaction

3.7. **Contracts/Insider Trading**

Buncombe County public employees are prohibited from having a direct or indirect formal interest that conflicts substantially with their Government duties and responsibilities; or, from joining in, directly or indirectly, a formal transaction as a result of, or primarily relying upon, information obtained through their Government employment. Additionally, they should refrain from transmitting any knowledge learned as a result of their employment with the County to any person other than in connection with the discharge of their official responsibilities.

4. **Policy Non-Compliance**

Employees willfully violating the terms and conditions of this policy may be subject to appropriate disciplinary action, up to and including dismissal.

5. **Audit**

All policies for Buncombe County may be subject to audit or review as outlined in the [Internal Auditor's Statement](#).

6. **Definitions**

- 6.1. Public Employee – All County employees including public servants, civil servants, or any other kind of official who performs public functions or duties on behalf of the County.
- 6.2. Vendor – a supplier of goods and/or services that does business or intends to do business with Buncombe County.
- 6.3. Workforce – employees, volunteers, contract staff, and other persons whose conduct, in the performance of work for Buncombe County, is managed by Buncombe County. The County's management of these persons may include training and development, direction of work activities, provision of resources, and policy oversight.
- 6.4. Outside Engagements – employee involvement with any company, trust, organization, enterprise, government agency, or other entity other than the employee's primary position with Buncombe County, including for-profit and non-profit organizations.
- 6.5. Family member – a relative by blood or marriage of nearer kinship than first cousin. (ex: Spouse, domestic partner, parent, guardian, child, sibling, grandchild, grandparent, cousin, aunt, uncle, niece, nephew, and the various combinations of half, step, in-law, and adopted relationships that can be derived from the family members named herein or other relationships that would suggest a familial bond such as loco parentis).
- 6.6. Consensual Relationship – Any relationship which is romantic, intimate, or sexual in nature and to which both parties' consent.

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7. Approval and Revision History

Policy Origination Date:	Click for Date
Requires Board Approval:	☐ Yes ☒ No
Board Approval Date:	Click for Date
Revision History:	Enter Dates and changes

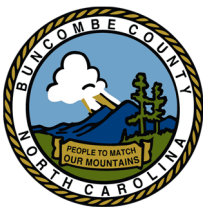
8. Background

This is a controlled document for internal use only. Any documents appearing in paper form are not controlled and should be verified with the electronic file version prior to use. For support related to this policy and procedures, contact the Human Resources Department.

Personnel Ordinance

BUNCOMBE COUNTY

North Carolina



Revised November 2, 2021

ARTICLE I. ORGANIZATION OF PERSONNEL SYSTEM

Section 1. Purpose

The purpose of this Personnel Ordinance is to establish a personnel system that shall promote a fair and effective means of employee recruitment and selection; develop and maintain an effective and responsible work force; promote understanding, cooperation, equal treatment, and efficiency; and provide the means for removal of unsatisfactory employees. This Ordinance is established under the authority of Chapter 153A, Article 5, ~~and Chapter 126 of the North Carolina General Statutes.~~

Section 2. Coverage

- A. All employees in the County's service are subject to this Ordinance, except as provided in this section.
- B. County Board of Commission members shall be exempt from the provisions of this Ordinance except for Article VII, Employee Benefits.
- C. The County Manager, the County Attorney, the Head of the Internal Audit Department, the Finance Director, the Clerk to the Board and the Director of the Board of Elections are exempt from the provisions of this Personnel Ordinance which relate to hiring, disciplinary actions including but not limited to suspension without pay, dismissal, grievances, and appeals.¹
- D. Consultants, temporary employees, and volunteers are exempt from the provisions of this Personnel Ordinance except where made specifically subject to any provision.
- E. To the extent that this Personnel Ordinance relates to hiring, disciplinary actions including but not limited to suspension without pay, dismissal, grievances, and appeals, these provisions shall not apply to the Sheriff and all employees of the Sheriff, the Register of Deeds and all employees of the Register of Deeds, and the Director of Elections and all employees of the Board of Elections.
- ~~F. Employees subject to the jurisdiction of the North Carolina State Personnel Commission shall be subject to all articles except the provisions regarding appeals and grievances. Additionally, in accordance with Chapter 126 of the North Carolina General Statutes, to the extent that the provisions of this Personnel Ordinance are inconsistent for employees subject to the North Carolina State Personnel Act as well as the North Carolina Administrative Code relative to such employees, the State Personnel Act and the North Carolina Administrative Code will control.~~

¹ Approved by County Commissioners' on September 4, 2018 and effective on September 4, 2018

- 6 F. To the extent the provisions of this Personnel Ordinance conflict with federal or state law, the provisions of the federal and state law shall prevail and the provision shall not be applicable to the respective employee.

Section 3. Employee Status

- A. At the time employees are hired, they are classified as either full-time regular, part-time regular or temporary employees and are also told whether they are eligible to earn overtime pay. In addition, employees hired into a full-time regular or part-time regular position are eligible to earn Covered Employee status.
- B. Unless otherwise specified, the benefits described in this Personnel Ordinance apply only to full-time regular or part-time regular employees in an established regular position of which the duties and responsibilities are required to be performed on a continuous basis.

1. Full-Time Regular Employees. Full-time employees who are hired into a regular position and scheduled to work at least 2,080 hours in a year are full-time regular employees. Full-time regular employees are:

- a. Eligible to use accrued earned leave from date of hire;
- b. Eligible to enroll in health insurance benefits pursuant to the terms of the applicable plans after the first thirty days of consecutive employment effective October 3, 2017.
- c. Members in the North Carolina Local Governmental Employees' Retirement System upon date of hire,
- d. Eligible for other benefits in accordance with the terms of the applicable plans after the first six months of consecutive employment;
- e. Granted "Covered Employee" status after the first twelve (12) months of consecutive service.

2. Part-Time Regular Employees. Part-time employees who are hired into a regular position and scheduled to work less than 2,080 hours in a year are part-time regular employees. Part-time regular employees are:

- a. Eligible to use pro-rated accrued earned leave from date of hire;
- b. Members in the North Carolina Local Governmental Employees' Retirement System upon date of hire for those employees who are scheduled to work 1000 hours and less than 2080 in a twelve-month period;
- c. Eligible to enroll in health insurance benefits pursuant to the terms of the applicable plans after the first six months of consecutive employment and after thirty days of consecutive employment effective October 3, 2017 for those employees who are scheduled to work at least thirty hours per week;

- d. Eligible for other benefits in accordance with the terms of the applicable plans and eligibility criteria after the first six months of consecutive employment;
 - e. Granted “Covered Employee” status after the first twelve (12) months of consecutive service.
- 3. Temporary Employees.** Temporary employees are hired for specific periods of time not to exceed a year and are at-will employees. Temporary employees who are hired into a position the duties of which require not less than 1,000 hours in a twelve month period shall be required to join the N.C. Local Governmental Employees’ Retirement System. Temporary employees who work less than 1,000 hours or are hired into a job with the expectation of working less than 1,000 hours in a twelve-month period but due to unforeseen circumstances work more than 1,000 hours but not more than a year will not be required to join the N.C. Retirement System. Temporary employees are not eligible for other benefits.
- 4. Non-Exempt Employee (Fair Labor Standards Act Status).** Full- and part-time employees who have been classified as “Non-Exempt” from the overtime provisions of the Fair Labor Standards Act will be paid for overtime hours worked or given compensatory time off in accordance with the guidelines in this Personnel Ordinance. Overtime is paid or compensatory time off is given to non-exempt employees for hours worked in excess of the standard work periods established by the County.
- 5. Exempt Employee (Fair Labor Standards Act Status).** Full- and part-time employees who have been classified as “Exempt” from the overtime provisions of the Fair Labor Standards Act are paid for the accomplishment of assigned accountabilities rather than being paid for the number of hours worked in a work period. These include executive, administrative and professional staff of the County.
- 6. Covered Employee.** A full-time regular or part-time regular employee occupying a regular position who has completed twelve (12) months of continuous service and has a “Meets Expectations” or higher overall rating on the employee’s performance evaluation will be a Covered Employee with a property interest in his/her job. If an employee does not receive an evaluation before the official review date, the employee will be considered to have performed in a satisfactory manner and be a Covered Employee.

Section 4. Definitions (Listed Alphabetically)

Aggregate Service. The employee's combined total period of countable service of employment within a regular position as an employee of Buncombe County, exclusive of any time allowed as transfer credit from another jurisdiction, for the purpose of determining entitlement to the particular benefit in question.

Aggregate service for retirement purposes refers to total length of service under which retirement contributions are paid into the N.C. Local Governmental Employees’ Retirement System by the employee. Aggregate service for determining the rates at which longevity and annual leave are

earned by an employee is determined from the total years of service with Buncombe County only.

Rehired employees, or new hires from other government employers will be eligible for Annual Leave Accrual at rates commensurate with total years in service of Buncombe County plus other government employer(s) consistent with the Personnel Ordinance at the date as a new hire as described above.²

Except as otherwise provided, rehired employees, and new hires from other North Carolina government employers, will be eligible only for the existing benefits at the time they are rehired, e.g., current health insurance plan, current 401K plan, etc. In addition, rehired employees will be eligible for a longevity rate with said accrual calculated based on the date of rehire (previous years of service will not be counted).

For an employee hired on or after July 1, 2016, the employee shall not be eligible for a pro-rated longevity payment upon separation by retirement if the employee retires before December 1.

Appeal. An appeal is a formal process for a Covered Employee to contest a final decision made after a pre-disciplinary hearing involving an involuntary demotion, suspension without pay, dismissal, or a reduction in force.

Appointing Authority. Any County official with legal authority to make hiring decisions or elected official with the legal authority to make hiring decisions.

At-Will Employee. An individual who is free to resign at any time with or without notice or cause and whose employment may be terminated at any time, with or without notice or cause.

Classification. A class or group of job classes having similar duties and responsibilities requiring similar qualifications, which can be properly designated by one title indicative of the nature of work performed, and which carry the same salary range.

County Whistleblower Hotline. A toll-free number (1-866-908-7236) that is answered by an independent third party source and available to the public and employees to register a complaint or concern anonymously. Anonymous reports are directed to the Internal Auditor to investigate and ensure appropriate follow up action if appropriate.

Covered Employee. A full-time regular or part-time regular employee occupying a regular position who has completed twelve (12) months of continuous service and has a “Meets Expectations” or higher overall rating on the employee’s performance evaluation and has obtained a property interest in his/her job. If an employee does not receive an evaluation before the official review date, the employee will be considered to have performed in a satisfactory manner and be a Covered Employee. Absences of less than thirty-one days shall not be considered a break in service. This definition does not include employees in positions such as temporary, temporary grant, or time-limited employees.

² Adopted by the County Commissioners on October 30, 2018 and effective on October 30, 2018

Demotion. Demotion is an action that:

- Lowers the salary of an employee within their current pay grade or places the employee in a position at a lower pay grade with or without lowering the employee's salary, and
- The action was involuntary, and
- The action taken was to discipline the employee.

Employee Protection Hotline. A toll-free number (1-866-908-7236) that is answered by an independent third party source and available to employees as well as the public to register a complaint or concern anonymously. Anonymous reports are directed to the Internal Auditor to investigate and ensure appropriate follow up action if appropriate.

Exempt Employee (Fair Labor Standards Act Status). Full- and part-time employees who have been classified as "Exempt" from the overtime provisions of the Fair Labor Standards Act are paid for the accomplishment of assigned accountabilities rather than being paid for the number of hours worked in a work period. These include executive, administrative and professional staff of the County.

Full-Time Regular Employee. An employee appointed to a regular position and scheduled to work at least 2,080 hours per year. Employees in these positions are eligible for Covered status as well as specified employee benefits.

Grievance. A claim or complaint alleging an event or condition which affects the circumstances under which an employee works, allegedly caused by misinterpretation, unfair application, or lack of established ordinance pertaining to employment conditions. A grievance may involve allegations of bullying, sexual harassment, discriminatory practices, and/or hostile work environment. A grievance is not allowed for Investigatory Suspension with pay or voluntary demotion or a written warning or reassignment that does not involve a reduction in pay. ~~Employees covered under the State Personnel Act should refer to the Appeals and Grievance specific to their Department.~~

Hatch Act. A federal act limiting political activity for state and local government employees whose principal employment is in an activity that is financed either in whole or in part by loans or grants from the federal government in order to limit possible bias and political coercion.

Hiring Rate. The salary paid an employee when hired into County service, normally within the first quartile of the salary range.

Maximum Salary Rate. The maximum salary authorized by the pay plan for an employee within an assigned salary grade.

Non-Exempt Employee (Fair Labor Standards Act Status). Full- and part-time employees who have been classified as "Non-Exempt" from the overtime provisions of the Fair Labor Standards Act will be paid for overtime hours worked or given compensatory time off in accordance with the guidelines in this Personnel Ordinance. Overtime is paid or compensatory

time off is given to non-exempt employees for hours worked in excess of the standard work periods established by the County.

Part-Time Regular Employee. An employee appointed to a regular position and scheduled to work less than 2,080 hours per year. Employees in these positions are eligible for Covered status as well as specified employee benefits.

Pay Plan. A schedule of pay ranges arranged by sequential rates for each classification assigned to a salary range.

Position Classification Plan. A plan approved by the Board of County Commissioners that assigns classes (positions) to the appropriate pay grade.

Promotion. The reassignment of an employee to an existing position or classification in the County service having a higher salary range than the position or classification from which the reassignment is made.

Reassignment. Reassignment is a change in status resulting from assignment to a position having a lower salary grade based on a mutual agreement between the employee and employer (e.g., choice of the employee; organizational needs, such as reorganization or reduction in force; or other mutually agreed upon arrangement).

Reclassification. The change of an existing position's classification from one classification to another based on changes in job or job class content.

Regular Position. A group of current duties and responsibilities, the need for which is on-going for an unspecified period of time and requiring the full or part-time employment of one person. Persons assigned to regular positions are entitled to benefits under *ARTICLE VII. ADDITIONAL EMPLOYEE BENEFITS* and eligible for Covered Employee status.

Salary. Consistent with North Carolina General Statutes, "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid to a Buncombe County employee.

Salary Grade. All positions which are sufficiently comparable to warrant one range of pay rates.

Salary Plan Revision. The uniform adjustment of the salary ranges of every grade within the pay plan.

Salary Range. The minimum and maximum salary levels for a given classification.

Salary Range Revision. The adjustment of the salary range for one or more specific classifications of positions within the classification plan.

Salary Schedule. A listing by grade and quartile of all the approved minimum and maximum salary ranges authorized by the Board of County Commissioners for various position classifications of the County.

Temporary Employee. Temporary employees are hired for specific periods of time not to exceed a year and are at-will employees. Temporary employees may be hired to perform hourly work on an as needed basis or to complete a specific job or project. Temporary employees are not eligible for benefits.

Temporary Position. A position for which the duties and responsibilities are required for a specified period of time, not to exceed a year.

Trainee. An employee designated as such, appointed to a position in any class for which the appointing authority, County Manager, or his/her designee, and/or Human Resources Director has authorized “trainee” appointments. An individual may not be appointed as a trainee if he/she possesses the acceptable training and experience for the regular class, and must be appointed to the regular class when he/she gains the acceptable training and experience. A trainee must be paid at a rate below the minimum of the regular classification.

Transfer. The reassignment of an employee from one position or department to another.

Work-Against Appointment. When suitable qualified applicants are unavailable, and there is no trainee provision for the classification of the vacancy, the appointing authority may appoint an employee below the level of the regular classification in a work-against situation, provided an appropriate work-against classification is available. A work-against appointment is for the purpose of allowing the employee to gain the qualifications needed for the full class through on the job experience. The appointee must meet the minimum education and experience requirements of the class to which he or she was initially appointed.

For example, an applicant meeting the education and experience requirements for a Social Worker I classification may be hired in work-against status to fill a vacancy for a Social Worker III position for which the County has been unable to recruit a suitable applicant possessing the education and experience requirements of a Social Worker III position. An employee thus hired would be classified and paid as a Social Worker I until such time as the minimum education and experience requirements are met. A work-against appointment may not be made when applicants deemed suitable for the position are available who meet the education and experience requirements for the full class for the position in question.

Work Day. Those hours an employee is scheduled to work; for law enforcement a work day is referred to as a shift.

Section 5. Merit Principle

All appointments and promotions hereunder shall be made solely on the basis of merit. All positions requiring the performance of the same duties and fulfillment of the same responsibilities shall be assigned to the same class and the same salary range. No applicant for County employment or employee shall be deprived of employment opportunities or otherwise adversely affected as an employee because of such individual's race, color, religion, sex, national origin, political affiliation, physical or mental disability, age, veteran status, genetic information, sexual orientation, gender identity or any other legally protected class under federal or NC State law.

Section 6. Responsibility of Board of County Commissioners

The Board of County Commissioners shall establish a Personnel Ordinance, including the classification and pay plan, and shall make and confirm appointments when required by law.

Neither the Board of County Commissioners nor any of its committees or members shall direct or request the appointment of any person to or his removal from office by the County Manager or by any head of a department or officer authorized by such Manager to make such appointment, nor shall the Board of County Commissioners or any of its committees or members take any part in the appointment or removal of officers and employees in the administrative service of the County, other than those positions for which the Commissioners are responsible for appointing as set out in Chapter 153A of the North Carolina General Statutes.

Except for the purpose of an internal inquiry, the Board of County Commissioners and its members shall deal with that portion of the administrative service for which the County Manager is responsible through the County Manager and neither the Board of County Commissioners nor any member thereof shall give any directive to any county employee in the administrative service of the County, other than the County Manager, relating to any matter in the line of his or her employment.

Section 7. Responsibility of County Manager

The County Manager shall be responsible to the Board of County Commissioners for the administration of the personnel program subject to his/her authority. The County Manager shall appoint, suspend, and remove all County employees under guidelines established in this Personnel Ordinance, except those elected by the people or whose appointment is otherwise provided for by law. The County Manager shall make appointments, dismissals, and suspensions in accordance with N.C. Gen. Stat. § 153A-82 and this Personnel Ordinance.

An official copy of the Personnel Ordinance and rules shall be available in the County Manager's office and/or Human Resources Department. The appointing authority, County Manager, or his/her designee, and/or Human Resources Director shall provide written procedures and forms necessary for the proper administration of the Personnel Ordinance set forth in this manual and shall instruct staff in their appropriate use. Any questions concerning the application or interpretation of the Personnel Ordinance's guidelines or rules stated herein shall be directed by employees through appropriate Supervisory channels. Any questions on the part of Department Heads concerning the applicability or interpretation of the Personnel Ordinance's guidelines or rules should be directed to the appointing authority, County Manager, or his/her designee, and/or Human Resources Director before proceeding.

Section 8. Responsibility of the Human Resources Director

- A. Unless otherwise stated in the policies of this Personnel Ordinance, the Human Resources Director or their designee shall be responsible for the following items:
1. The administration of the policies and procedures in this Personnel Ordinance;

2. Recommending the following types of revisions to this document to the County Manager for approval by the Board of County Commissioners;
 - a. Classification Plan
 - b. Pay plan
 - c. Leave policies
 - d. Retirement, health insurance, and other employee benefits
 3. Investigating periodically the operation and effect of this document;
 4. Establishing and maintaining a roster of all persons in County services (setting forth the following items);
 - a. Each Supervisor and employee
 - b. Position
 - c. Salary
 - d. Any change in position and status
 - e. Such data as may be deemed desirable or useful
 5. Developing and administering such recruiting programs as may be necessary to obtain an adequate supply of competent applicants to meet the needs of the County.
- B. The Human Resources Director, or their designee, shall be responsible for keeping policies and procedures in conformance with any legal requirements which may be imposed by other levels of government.
- C. The Human Resources Director shall be responsible for furnishing advice, technical direction, and assistance to County Department Heads and administrative staff in effectuating this Personnel Ordinance, including devising and implementing detailed procedures and records.
- D. The Human Resources Director shall designate those employees who are exempt from the Fair Labor Standards Act.
- E. The Human Resources Director shall also be responsible for performing such other duties as may be assigned by the County Manager, not inconsistent with this document.

Section 9. Responsibility of Employees

Buncombe County is committed to providing services with an efficient, effective, and professional staff.

- A. County employees are expected to be at work on time and must schedule leave according to agency leave policies. As a service agency, it is essential that our employees be available to

serve the public during business hours (unless an employee is working a pre-approved flex schedule). In emergency cases, an employee must notify his or her Supervisor as soon as possible.

- B. County employees are expected to perform ethically, adhering to individual professional code of ethics when applicable. Actions that undermine the credibility of the County such as, but not limited to, lying, falsifying records, or breaches of confidentiality are subject to disciplinary action up to and including dismissal.
- C. County employees must keep a neat and well-groomed appearance and dress according to the specific conditions of the employee's work environment.
- D. County employees must treat county property with care and safeguard all county property from theft and misuse.
- E. County employees should refrain from off-duty conduct which undermines their ability to perform their job and/or undermines the credibility of the County Government such that there is sufficient connection between the employee's conduct and the employee's job.

In addition to these expectations, staffs' actions should reflect the County's core values, as described in *Appendix A: Buncombe County Core Values for Employee Conduct*.

ARTICLE II. POSITION CLASSIFICATION PLAN

Section 1. Policy Statement

All positions covered by this Personnel Ordinance are to be classified according to their duties, responsibilities, qualifications needed of incumbent employees, and other related factors. In order to assure its continuing value as a personnel management tool, the Position Classification Plan shall be maintained to reflect the current work assignments and other conditions and requirements which are factors in proper classification and allocation of positions.

Section 2. Allocation of Positions

The Human Resources Director shall allocate each position covered by the Position Classification Plan to its appropriate class and salary grade in the plan. New positions shall be established only with the approval of the Board of Commissioners upon recommendation of the County Manager and/or the Human Resources Director. Any grant application that involves additional staff (independent contractor, temporary, designated grant FTE) must be reviewed and approved at the County Manager/Assistant County Manager level prior to submission of application.

Section 3. Administration

- A. The County Manager or Human Resources Director, as designed by the County Manager, shall be responsible for the administration and maintenance of the Position Classification Plan so that it shall accurately reflect the duties performed by employees in the classes to which their positions are allocated. After classification, each position shall be assigned to a pay grade in the Position Classification Plan.

Department Heads shall be responsible for bringing to the attention of the County Manager and/or Human Resources Director (1) the need for new positions, and (2) material changes in the nature of duties, responsibilities, working conditions, or other factors affecting the classification of any existing positions.

- B. New positions shall be established with the recommendation of the County Manager and/or Assistant County Manager and approval of the Board of County Commissioners after which the Human Resources Director shall either (1) allocate the new position to the appropriate class within the existing Position Classification Plan or (2) recommend that the Board of County Commissioners amend the Position Classification Plan to establish a new class to which the new position may be allocated.
- C. When the Human Resources Director finds that a substantial change has occurred in the nature of level of duties and responsibilities of an existing position, the Human Resources Director, upon the County's Manager's and/or Assistant County Manager's recommendation, shall (1) direct that the existing class specification be revised, (2) reallocate the position to the appropriate class within the existing Position Classification Plan, or (3) recommend that

the Board of County Commissioners amend the Position Classification Plan to establish a new class to which the position may be allocated.

Section 4. Amendments

Classes of positions shall be added to and deleted from the Position Classification Plan by the Board of County Commissioners based on the recommendation of the County Manager and/or Human Resources Director.

Section 5. Procedures for Change

- A. The Position Classification Plan may have additional classes added or have classes deleted from time to time as needs of the County organization requires. The Board of County Commissioners shall approve the creation or deletion of any class.
- B. When a Department Head believes that a new class is needed, either to add a new field of employment or to reflect additional levels of work within an existing series of classes, the Human Resources Director shall be furnished a written statement of proposed duties for the new class and other information as necessary.
- C. A class shall be deleted from the Position Classification Plan when the Board of County Commissioners, with the recommendation of the County Manager and/or Human Resources Director, has determined that it no longer is being used or needed for the positions within the County organization.

Section 6. Reclassification of Positions

An employee may request that the classification of his/her position be changed, or the position be reallocated to another class.

- A. The employee shall submit the request in writing to the immediate Supervisor.
- B. The Supervisor shall transmit the employee's request to the Human Resources Director, together with his/her recommendations and approval of the Department Head.
- C. The Human Resources Director shall, upon the County Manager's and/or Assistant County Manager's recommendation, approve, disapprove, or reclassify the position to an existing classification or establish a new class for approval by the Board of County Commissioners.

ARTICLE III. PAY PLAN

Section 1. Adoption

The salary schedule, as approved by the Board of County Commissioners, is hereby adopted as the Pay Plan for Buncombe County.

Section 2. Maintenance

The Human Resources Director shall be responsible for the administration and maintenance of the Pay Plan. The Pay Plan is intended to provide equitable compensation for all positions when considered in relation to each other, to comparable rates of pay for similar employment in the private and public sector in the competitive labor market, to changes in the cost of living, to financial conditions of the County, and other objective factors. To this end, the Human Resources Director may, from time to time, conduct comparative studies of all factors affecting the level of salary ranges.

Section 3. Administration

The Pay Plan shall be administered in a fair and systematic manner in accordance with work performed. The pay structure should be externally competitive and should maintain proper internal relationships among all positions based on relative duties and responsibilities.

Section 4. Hiring Rate/Starting Salary

- A. The minimum rate established for the class is the lowest rate of the first quartile on the salary scheduled.
- B. Appointment may be made anywhere within the first or second quartile upon recommendation of the Department Head and approval of the Human Resources Director.
- C. Appointment in the third quartile and above may be made upon the recommendation of the Department Director and Human Resources Director and approval by the County Manager.
- D. Above the second quartile, appointment shall be based on such factors as the qualifications of the applicant being hiring than the minimum education and/or training for the class, and/or shortage of qualified applicants to accept employment within the first or second quartile on the salary schedule.

Section 5. Salary Advancement

- A. Upon successful completion of the first six months of continuous employment, an employee may receive a pay increase of between zero and four and one-half percent in salary upon recommendation of the Supervisor and approval by the Department Head and Human Resources Director.
- B. The Supervisor shall review the work performance of the employee just prior to the end of the employee's first six months of continuous employment and submit recommendations in writing to the Department Head and Human Resources Director as to whether or not the

employee should receive a salary increase using the County's Employee Performance Evaluation.

- C. If a Supervisor has recommended that an employee receive a salary increase, the Department Head shall transmit the recommendations to the County Manager and/or Human Resources Director for his/her consideration and approval.
- D. All salary increases shall be granted subject to availability of funds in the departmental appropriations.
- E. The County Manager has the authority to award bonuses and incentive payments up to one thousand dollars per person subject to availability of funds in the departmental appropriations. These funds are to be used to reward employees and teams who have done work that exceeds the expectations of their job description and is outside their normal job duties, and, impacts the efficiency and effectiveness of the agency. All bonuses and incentive payments shall be reported to the Board at a regular meeting of the Board of Commissioners no later than sixty days from the award.

The majority of the Board of Commissioners shall have the authority to award bonuses and incentive payments to employees in appointed positions subject to availability of funds in the departmental appropriations, and any such bonus or incentive shall be made public at the Board of Commissioner meeting within sixty days of award.

Section 6. Payment at a Rate within the Salary Range

- A. Employees covered by the salary plan shall be paid at a rate within the salary ranges established for their respective job classes except for employees in a trainee status or employees whose present salaries are above the established maximum rate following transition to a new pay plan or workweek hours.
- B. When an employee attains the maximum rate of a salary range for his/her present position, no further salary increase shall be received unless:
 - 1. The position is reclassified to a higher salary range;
 - 2. The employee is promoted to another position with a higher salary range; or
 - 3. The salary range for the present position is increased.

Section 7. Trainee Salary

An applicant hired or an employee promoted to a position in a higher class who does not meet all the established requirements of the position, shall be appointed with the approval of the appointing authority, County Manager, or his/her designee, and/or Human Resources Director in a "trainee" or "work-against" status. In either the "trainee" or "work-against" status, employees shall be paid at a lower-level position salary grade which does not exceed the minimum of the higher level position for which the employee is training. An employee in a "trainee" or "work-against" status shall continue to receive a reduced salary until the appointing authority, County

Manager, or his/her designee, and/or Human Resources Director shall determine that the employee is qualified to assume the full responsibilities of the position.

Section 8. Pay Rates in Promotion, Demotion, Transfer, and Reclassification

When an employee is promoted, demoted, transferred or reclassified, the rate of pay for the new position shall be established as follows:

- A. An employee who is promoted may receive a pay increase within the approved salary plan and subject to availability of funds in the departmental appropriations and based upon the recommendation of the Department Director and approval of the County Manager and/or Human Resources Director.
- B. An employee who is demoted may have his/her salary reduced to any rate in the lower grade.
- C. An employee transferring from a position in one class to a position in another class assigned to the same pay range may continue to receive the same salary.
- D. An employee whose position is reclassified to a class having a higher salary range may receive a pay increase within the approved salary plan and subject to availability of funds in the departmental appropriations and based upon the recommendation of the Department Director and approval of the County Manager and/or Human Resources Director. If an employee's position is reclassified to a lower pay range, then the salary of the employee will be reduced to the average pay for employees in that position's pay range or upon the approval of the County Manager or Assistant County Manager may be reduced up to the maximum of the pay range for the position's salary grade.

Section 9. Pay Rates in Salary Range Revision

When the Board of County Commissioners approves a change in salary range for a class of positions, the salaries of employees whose positions are allocated to that class may be affected as follows:

- A. When a class of positions is assigned to a higher pay range, employees in that class may receive a pay increase based within the approved salary plan subject to availability of funds in the departmental appropriations and based upon the recommendation of the Department Director and approval of the County Manager and/or Human Resources Director.
- B. When a class of positions is assigned to a lower pay range, the salaries of employees in that class will be reduced to the average pay for employees in that position's pay range or upon the approval of the County Manager or Assistant County Manager may be reduced up to the maximum of the pay range for the position's salary grade.
- C. If the Board of County Commissioners, at its discretion, provides funds through appropriation for an across-the-board increase, then the pay plan shall be revised upward for all grades and ranges, so that employees receive a percentage increase. Each employee's grade assignment shall remain the same.

Section 10. Overtime

- A. The County abides by all applicable sections of the Fair Labor Standards Act and any Fair Labor Standard Amendments. The County shall properly record all applicable overtime accrued for each Covered Employee. This overtime policy is applicable only to employees of Buncombe County who are “Non-Exempt” under the Fair Labor Standards Act. If any area of this section is in conflict with the FLSA, then the FLSA shall supersede.
- B. Every employee must record his/her timecard accurately to reflect all time worked. Failure to do so may result in disciplinary action up to and including dismissal. Should an employee be aware of any violation of this requirement or of any practice that discourages an employee from accurately recording his/her time, then the employee should report such concerns to the employee’s Department Head or County’s Human Resource Director or anonymously through the County Whistleblower Hotline (1-866-908-7236).
- C. Employees are expected to work during all assigned periods except mealtimes. Employees are not to perform work during any time that they are not scheduled to work unless they receive approval from their Supervisor, Department Head, County Manager, or his/her designee, or appointing authority except in cases of emergency. An emergency exists if a condition arises that could reasonably result in damage to property or persons or that requires the immediate attention of the employee. Employees who work excess hours because of an emergency shall advise their immediate Supervisor of the overtime worked as soon as practical following completion of the work.
- D. Department heads are responsible for ensuring that overtime hours are authorized, recorded, and properly documented for compensatory time off or overtime pay in accordance with the established record keeping forms and instructions.
- E. Computation for overtime shall include actual work hours worked over and above forty hours in any work week for non-law enforcement employees. For non-law enforcement personnel, computation for overtime hours shall be at the standard rate of one hour per hour worked up to forty hours per week, and at one and one-half hours per hour worked above forty hours per week.
- F. Computation for overtime shall include actual hours worked over and above the scale set for EMS and Sheriff’s employees in accordance with FLSA.
- G. Any form of leave taken such as sick leave, holidays, annual leave, and compensatory time off in a work period shall not count toward computing overtime hours.
- H. It is the goal of Buncombe County to provide a workload that can be processed within the normal working day. Work in excess of the regular schedule is discouraged unless absolutely necessary. Compensatory time is earned by all non-exempt employees who work additional time in conducting County business. The Human Resources Director's Office maintains a listing of all non-exempt and exempt positions.
- I. ~~Non-exempt personnel scheduled to work on an on-call basis shall earn one and one-half hours compensatory time for each hour actually worked during on-call duty outside of~~

~~normally scheduled work hours and beyond forty hours of actual time worked within a work week. The time these employees work should be recorded daily on their time sheets. If work is conducted outside of regular hours, the nature of work should be recorded on the time sheet.~~

- J. Department heads shall be responsible for administering their compensatory policies by allowing employees to take accrued compensatory time in a timely manner so that compensatory hours shall not accrue to excessive levels. In situations in which compensatory time off is not practical, non-exempt employees shall be paid monetary compensation included in the employee's regular paycheck for overtime; however, overtime monetary compensation must be approved by the immediate Supervisor and/or Department head.
- K. All non-exempt employees may accrue not more than eighty hours of compensatory time for overtime hours worked.
- L. On-Call Time spent by an employee who is engaged to wait and unable to use the time for his/her own purposes is considered working time. Employees who are waiting to be engaged and merely required to be able to be contacted to come into work and are free to use their time as they choose are not considered to be working during their on-call time.
- M. Employees who work on a holiday shall receive either payment for two days of work or payment for one day and receive a compensatory day off with pay at a later date. This choice shall be the employees with the approval required from the Department Head.
- N. An employee who is "Called Back" to work for a Call-Back Emergency situation, outside his/her regularly scheduled hours, shall be paid a minimum of three hours base hourly pay for the first call and a minimum of two hours for the second call. For Sheriff's department employees with issued vehicles, a minimum of one hour of base pay for the first and second call shall be allowed. If further calls back to work are made during the same twenty-four hour period, the employee shall receive actual (portal to portal) time for these calls.
- O. Law enforcement on-call periods should not be counted for the purpose of computing work hours. On-call is considered to be a back-up position for an emergency situation. Individuals that are assigned to be on-call are not restricted to the employer's premises or their own residences but must remain in their respective response area and must keep the County Communications Center or their Supervisor informed of their location and telephone number. Since the employee can use this time for their own purposes it is not work time.

Section 11. Payroll Deductions

Federal and state income taxes, Social Security tax, withholding for court-ordered child support payments (upon receipt of appropriate notices to withhold or by other order of a court of competent jurisdiction), and retirement contributions shall be deducted as authorized by law and the Board of County Commissioners. Credit Union deductions, insurance premiums and other deductions requested by the employee and not paid by the County may also be deducted. In addition, in accordance with the appropriate federal, state or local law, the County may have to garnish an employee's wages. Because these deductions are calculated on the basis of

information provided by the employee, it is mandatory that the employees keep the County informed of their personal status for withholding purposes.

Section 12. Payroll Procedure

All employees shall be compensated bi-weekly and must utilize direct deposit at the bank of his/her choice as the payment method.

Section 13. ~~Consumer Price Index Salary Adjustment~~ Cost of Living Adjustment

~~Each year, effective during the month of April, employees occupying a regular position shall receive an annual salary percent increase equal to the percentage increase in the annual consumer price index for the prior calendar year. The pay plan shall be revised upward for all grades and ranges to reflect an increase in the consumer price index.~~

~~The index to be used is the Consumer Price Index, Urban Wage Earners and Clerical Workers, U. S. City Average, All Items, published by the United States Department of Labor, Bureau of Labor Statistics and in effect as of December 31st next preceding the date of the salary adjustment. Seasonally adjusted data will not be used.~~

Each year, the Board of County Commissioners may grant a salary increase based on a cost of living adjustment (COLA) calculation to all employees occupying a regular position, and to any grant-funded position for which the funding source allows.

During the budget planning process of each year, County Budget and Human Resources staff shall present a COLA calculation to the Board. The calculation shall be the 2-year average annual change in the CPI-W, measured as of the December data release next preceding the date of such presentation. The index to be used is the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), published by the U.S. Bureau of Labor Statistics (BLS). This COLA calculation will represent the maximum COLA adjustment.

The Board will make its election on whether or not to grant a COLA adjustment through the Budget Ordinance. If the Board elects to provide an annual COLA, the COLA shall be effective July 1 of the following fiscal year.

When an employee's base salary reaches the maximum of the salary range for the employee's pay grade, the COLA adjustment or any portion of the COLA adjustment granted to the employee for that specific fiscal year will come in the form of a one-time lump sum payment. The lump sum payment does not constitute a salary increase as set forth in Article III, Section 6.B of this Personnel Ordinance.

ARTICLE IV. RECRUITMENT AND SELECTION

Section 1. Policy Statement

The Directors of the departments of Social Services, Public Health, Sheriff, Register of Deeds, and Board of Elections shall have authority over and be responsible for the recruitment, application submission, employment, selection, appointment, supervision, and discharge of employees in their respective departments with the County Manager and/or Human Resources Director approving the salary and classification of the new employees.

Section 2. Statement of Equal Employment Opportunity Policy

- A. Buncombe County is committed to the principles of equal employment opportunity. It is the policy of the County to maintain a systematic, consistent recruitment program, to promote equal employment opportunities, and to identify and attract the most qualified applicants for employment with the County.
- B. Firm practices and employment decisions regarding recruitment, hiring, assignment, promotion, and compensation shall not be based on any individual's race, color, religion, sex, national origin, political affiliation, physical or mental disability, age, veteran status, genetic information, sexual orientation, gender identity or any other legally protected class under federal or NC State law.
- C. Any person with concerns or suggestions about our hiring process should contact to the Buncombe County Human Resources Director, any member of senior management, or anonymously through the County Whistleblower Hotline (1-866-908-7236). For further information on Buncombe County's nondiscrimination policy, see *Appendix F: Unlawful Workplace Harassment*.

Section 3. Recruitment

- A. The Human Resources Director is responsible for an active recruitment program to meet current and projected staffing needs, using procedures that shall ensure equal employment opportunities based on job-related requirements.
- B. Recruitment efforts shall be coordinated in a timely manner.
- C. The Human Resources Director and the Department Head may jointly determine whether a position vacancy shall be filled by outside recruitment or promotion.
- D. In case of disagreement, determination shall be made by the appointing authority or County Manager, or his/her designee.

Section 4. Position Vacancy Announcements

- A. Vacant positions shall be reviewed by the applicable Department Head and the County Manager and/or Human Resources Director to determine whether they should be filled.

- B. Applicants shall be recruited for vacant positions which are to be filled by posting position vacancy announcements for a minimum of five working days on the Buncombe County website and the local office of the Employment Security Commission if external candidates are being sought and/or at the Human Resources Department and within each County Department should internal applicants be sufficient.
- C. Optional recruiting publicity may be carried out through the media, as appropriate.
- D. Position vacancy announcements shall contain, at a minimum:
 - 1. The title and the hiring range;
 - 2. The closing date of the announcement;
 - 3. A summary of the duties of the position;
 - 4. A summary of the minimum qualifications;
 - 5. The procedures for making application; and
 - 6. A statement of equal employment opportunity.

Section 5. Application Submission

- A. The Buncombe County Electronic Employment Application shall be the standard application accepted for any and all position listings.
- B. Applications are accepted through the Buncombe County website (www.buncombecounty.org).

Section 6. Application for Employment

- A. All persons expressing interest in employment with the County are given an opportunity to file an application for employment with the Human Resources Department. For most positions, applications are accepted for publicized vacancies only. A separate application must be submitted for each position applied. Copies are not accepted.
- B. Applications are logged according to job classification and remain in active status for six months.

Section 7. Qualification Standards

- A. All applicants considered for employment or promotion shall meet the qualification standards established by the class specifications and/or job description for the vacant position.
- B. All appointments shall be made on the basis of merit and in accordance with the Statement of Equal Employment Opportunity Policy. See *ARTICLE IV. RECRUITMENT AND SELECTION, Section 2. Statement of Equal Employment Opportunity Policy.*

- C. Consideration may be given to “Trainee” appointments or “Work-Against” appointments when there is an absence of suitable qualified applicants from which to make a selection. In this instance, the deficiencies may be eliminated through orientation and on-the-job training and experience, and the employee is designated a “Trainee” or a “Work-Against” appointment by the Human Resources Director and/or appointing authority.

In either event, the appointee must meet the minimum education and experience standard of the class to which initially appointed. When an applicant is selected to a “Work-Against” or “Trainee” appointment to fill a vacancy for which one or more other applicants met the minimum qualifications on the basis of education and experience, documentation must be provided to support the selection decision which includes findings determining other applicant(s) qualified on the basis of education and experience to be unsuitable for the position.

Section 8. Selection

After applicants have been properly recruited for by the Human Resources Department, the applications are forwarded to the Supervisor. The Supervisor makes the decision as to employment, subject to the approval of the Department Head, Human Resources Director, and/or the County Manager.

- A. All persons who have applied for employment are considered on the basis of bona-fide occupational qualifications. All applicants must meet the minimum training, education and experience, certification or license requirements established for the position, except for established trainee positions. In addition, applicants must meet other minimum standards as to character, aptitude, ability to meet the public, and the ability to perform the essential job functions with or without accommodation, as may be required by the position.
- B. If training and experience are among the criteria for employment in a job, the Department Head shall determine a procedure for the evaluation of the training and experience of the various applicants. This procedure shall give due regard to recentness, quality, and quantity of the applicant’s experience and training.
- C. Applicants will generally not be notified of the outcome of their application for employment unless they are interviewed by a Supervisor or Department Head. Notification shall be from the department with the vacancy or from the Human Resources Department. Concerned applicants may check the status of their application by contacting the Human Resources Department or appointing authority.
- D. Provided qualified applicants are available, a minimum of three applicants should generally be interviewed for each position.
- E. At the end of the selection process of each vacancy, the Supervisor is responsible for completing an Application Selection/Rejection Data Form. The original copy must be submitted to the Human Resources Department at the time of selection. The Application Selection/Rejection Data Form provides documentation for EEO purposes and is a record of those applicants to be notified of the outcome of the selection process.

- F. The position of Head of the Internal Audit Department shall not be filled without a recommendation by majority vote of the County's Audit Committee. If a majority of the Audit Committee votes in favor of the selection of a candidate for the position then such recommendation must be considered by the Board of Commissioners for final approval.³

Section 9. Applicant Drug Screening through Urinalysis

- A. As a public employer, the County of Buncombe is entrusted with the health and safety of its citizens. In keeping with this obligation and as a condition of employment, prior to the offer of employment, the applicant shall be required to submit to a urinalysis drug screening procedure for the purpose of screening for the presence of illegal drugs or an abusive level of prescribed medication. It shall be the policy of the County of Buncombe that a negative result from this screening is a condition of employment. A confirmed positive test result indicating the presence of illegal drugs or an abusive level of prescribed medication, shall result in a rejection of the applicant for employment and shall bar the applicant from securing employment with the County of Buncombe for at least one year from the time of the drug screen.
1. Drug screening results shall be held in the strictest confidence. Applicants who are tested shall be provided with a copy of the test results if requested. Specimens shall be checked by a lab utilizing strict chain of custody procedures.
 2. Drug screen testing shall be limited to the top finalist upon completion of the employment selection process.
 3. All individuals applying for employment with the County of Buncombe must sign the Drug Screening through Urinalysis Applicant Consent Form for drug screen testing.
 4. Applicants who refuse to sign the Drug Screening through Urinalysis Applicant Consent Form shall not be considered for employment.
 5. This applicant drug testing through urinalysis policy shall be posted and prominently displayed in the Human Resources Department where applications are obtained and processed.
- B. Applicants who have a positive result or for other details see *Appendix I H: Buncombe County Drug and Alcohol Testing Policy*.

Section 10. Background Records Check.

The finalist for a position will be asked for information so that a full and complete disclosure of records pertaining to the applicant's education, previous employment, and criminal records background check may be verified.

³ Approved by County Commissioners' on September 4, 2018 and effective on September 4, 2018

Section 11. Valid Driver's License Requirement.

If the duties of the position include operation of County-owned or County-insured vehicles, or driving is a requirement of the employee's job duties, the Department Head shall, before issuing an offer of employment conduct a review of the driving record of the person to be hired, which record shall become a part of the personnel file. All employees required to drive as a function of their job responsibilities must maintain a valid driver's license and car insurance and notify their Supervisor of any change in status immediately. ~~For more information on requirements, see Appendix H: Buncombe County Vehicle Usage Policy.~~

Section 12. Appointments

The Board of County Commissioners shall approve the appointment by the Sheriff or Register of Deeds of a relative by blood or marriage of nearer kinship than first cousin, or of a person who has been convicted of a crime involving moral turpitude as required by N.C. Gen. Stat. § 153A-103(1).

Section 13. At-Will Periods of Employment

- A. An employee appointed to a regular position will be an employee at-will with no property interest in his or her position from the time of the appointment to the position until the employee has successfully completed twelve (12) months of continuous service.

Once an employee has achieved Covered Employee status then the employee may only be disciplined as provided in *ARTICLE VIII. SEPARATION, DISCIPLINARY ACTION, AND EMPLOYEE APPEALS*.

During the at-will period an employee may be separated upon the approval of the Department Head, with concurrence by the Human Resources Director, or appointing authority without the right of appeal.

- B. The work of a new employee shall receive a special performance rating at six months and twelve months. An overall rating of "Meets Expectations" or better must be received to continue employment. Should an employee receive a rating below a "Meets Expectations" in any portion of the six- or twelve- month appraisal, continued employment must be approved by the Department Head and a timeframe must be set to reassess the employee's performance not to exceed three months so that a final decision of continued employment may be made.

Section 14. Promotion

Candidates for promotion shall be chosen on the basis of their qualifications and in accordance with the in accordance with the Statement of Equal Employment Opportunity Policy in *ARTICLE IV. RECRUITMENT AND SELECTION, Section 2. Statement of Equal Employment Opportunity Policy*. Current employees may be given preference for certain promotional opportunities. If a

current County employee is chosen for promotion, the Department Head shall forward information to the Human Resources Director with recommendations for salary rate.

Section 15. Demotion and Reassignment

- A. A Covered Employee whose work is unsatisfactory may be demoted, provided that the employee shows promise of becoming a satisfactory employee in another position. Such a demotion shall be made in accordance with procedures in *ARTICLE VIII. SEPARATION, DISCIPLINARY ACTION, AND EMPLOYEE APPEALS* for Covered Employees only.

The Covered Employee shall be provided with written notice citing the recommended effective date of the demotion, the reasons for the demotion, the impact on his/her annual income and bi-weekly payments, and the appeal rights available to the Covered Employee as stated in *ARTICLE VIII. SEPARATION, DISCIPLINARY ACTION, AND EMPLOYEE APPEALS, Section 13. Employee Appeal Procedure.*

- B. An employee who wishes to accept a position with less complex duties and reduced responsibilities may request a voluntary reassignment. If the reassignment results in a salary reduction, the employee will be notified in writing of the impact on his/her annual income and bi-weekly payments. A voluntary reassignment is not a disciplinary action and the employee has no right to appeal said decision, pursuant to *ARTICLE VIII. SEPARATION, DISCIPLINARY ACTION, AND EMPLOYEE APPEALS.*

Section 16. Transfer

- A. If a vacancy occurs and an employee eligible for transfer from another department wishes to be considered for the appointment, a written request and application must be forwarded to the Human Resources Department during the recruitment period for the position. The request for transfer shall be subject to approval of both affected Department Heads, and approval by the Human Resources Director. An employee transferred without request may file a grievance in accordance with *ARTICLE IX. GRIEVANCE PROCEDURE.*
- B. A Covered Employee transferring from one department to another within the County is required to serve a six-month period during which time the employee's status is at-will. This change to at-will status does not affect any other condition of the employee's employment such as benefits.

ARTICLE V. CONDITIONS OF EMPLOYMENT

Section 1. Workweek

A. Standard Workweek

1. The standard workweek for Buncombe County regular employees shall be from 8:00 A.M. until 5:00 P.M., Monday through Friday with one hour permitted for lunch.
2. Law enforcement employees shall have an assigned shift with accumulation of those hours required in an approved FLSA work schedule with time permitted for meals during the respective shift.
3. When the activities of a particular department require some other schedule to meet the work needs, the Department Director or appointing authority may authorize a deviation from the established standard schedule.

B. Flex-time Workweek

1. County employees have the ability to deviate slightly from the Standard Workweek as established in *ARTICLE V. CONDITIONS OF EMPLOYMENT, Section 1. Workweek, Subsection A.*
2. Regular employees may initiate a flexible daily work schedule. Employees who elect a flex-time schedule must do so with Department Head approval and must exercise a consistent schedule for no less than three month intervals.
3. Flex time is a privilege and may be revoked at any time by the Supervisor or Department Head.

Section 2. Gifts and Favors

- ~~A. No official or employee of the County shall accept any gift, whether in the form of a service, a loan, a thing of value, or a promise from any person, firm, or corporation that, in the employee's knowledge, is interested directly or indirectly in any manner whatsoever in business dealings with the County.~~
- ~~B. No official or employee shall accept any gift, favor, or thing of value that may tend to influence that employee in the discharge of duties.~~
- ~~C. No official or employee shall grant any improper favor, service, or thing of value in the discharge of duties.~~

Section 3. Conflict of Interest Policy

- ~~A. It shall be the duty of all Buncombe County employees to recognize and report to the County Manager, or his/her designee, and/or Human Resources Director or appointing authority, any and all part-time employment opportunities or formal interest in any outside undertaking that~~

~~may be considered a conflict of interest in their employment with Buncombe County Government.~~

- ~~1. All requests for employment opportunities outside of employees' normal County jobs, or any financial interest or relationship an employee may have in any outside venture, should be approved in advance by the County Manager, or his/her designee, and/or Human Resources Director or appointing authority.~~
 - ~~2. Other incompatible activities include, but are not limited to, acceptance of a favor, pay, gift, payment of expenses, or any other thing of monetary value under circumstances in which acceptance may result in or create the appearance of conflicts of interest.~~
- ~~B. It shall be the policy of Buncombe County that no manager, Department Head, Supervisor, or any employee may use their position, or the knowledge gained therein, in such a manner that a conflict between Buncombe County's interests and their personal interests should arise. Both the fact and the appearance of the conflicting interests are to be avoided.~~
- ~~1. An employee is prohibited from having a direct or indirect formal interest that conflicts substantially with his/her Government duties and responsibilities; or, from joining in, directly or indirectly, a formal transaction as a result of, or primarily relying upon, information obtained through his/her Government employment.~~
 - ~~2. Employees should refrain from transmitting any knowledge learned as a result of their employment with the County to any person other than in connection with the discharge of their official responsibilities.~~
- ~~C. Adherence to this policy, as herein above set out, is a condition of employment. Failure to comply may result in disciplinary action, up to, and including termination of employment.~~

Section 4-2. Political Activity Restricted

- A. Every employee of Buncombe County has a civic responsibility to support good government by every available means and in every appropriate manner. Any employee may join or affiliate with civic organizations of a partisan or political nature, may attend political meetings, may advocate and support the principles or policies of civic or political organizations in accordance with the Constitution and the laws of the State of North Carolina and by the Constitution and the laws of the United States of America. However, while on duty, no employee of Buncombe County shall:
1. Engage in any political or partisan activity;
 2. Use official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;
 3. Be required as a duty or a condition of employment, promotion, or tenure of office to contribute funds for political or partisan purposes;

4. Coerce or compel contributions for political or partisan purposes by another employee of the County; or
 5. Use funds, supplies, or equipment of the County for political or partisan purposes.
- B. Employees subject to the Hatch Act (see *ARTICLE I. ORGANIZATION OF PERSONNEL SYSTEM, Section 4. Definitions* (Listed Alphabetically)) may not be candidates for elected office in a partisan election.
- C. Any violation of this section may subject such employee to dismissal or other disciplinary action.

Section 5 3. Employee Protection and No Retaliation

Buncombe County is committed to a safe workplace where employees are able to responsibly voice their concerns regarding business operations, the use of resources and assets, the adherence to workplace practices and policies, unethical behavior, and unsafe work practices and to do so without fear of reprisal, intimidation and/or retaliation. There are different ways that employees can voice their concern. These include:

- Addressing concerns with the appropriate member of management,
- Using the Grievance Procedure when applicable (See Article IX. Grievance Procedure), or
- Using the Employee Protection Hotline: a toll free number (1-866-908-7236) that is answered by an independent third party source and available to employees as well as the public to register a complaint or concern anonymously. Anonymous reports are directed to the Internal Auditor to investigate and ensure follow up action if appropriate.

Buncombe County is committed to ensuring that every employee is treated fairly who lodges a concern, and the County will handle all concerns swiftly and confidentially to the extent possible in light of the need to take appropriate corrective action. Lodging a concern will in no way be used against the employee or have an adverse impact on the individual's employment status. However, filing groundless or malicious concerns is an abuse of this policy and will be treated as a violation. (For full policy see Employee Protection and No Retaliation Policy – Appendix N.)

Section 6 4. Unlawful Workplace Harassment

- A. Buncombe County is committed to a work environment that is free from harassment and discrimination. Harassment based on an individual's race, color, religion, sex, national origin, political affiliation, physical or mental disability, age, veteran status, genetic information, sexual orientation, gender identity or any other legally protected class under federal or NC State law will not be tolerated. All employees, including Supervisory and management personnel, are expected and required to refrain from any activity or action that contributes to harassment in the workplace. Harassment of employees by Supervisors or co-workers is forbidden in any form.

B. Definitions

Unlawful Workplace Harassment. This is specifically defined as unwelcome or unsolicited speech or conduct based upon race, color, religion, sex, national origin, political affiliation, physical, or mental disability, age, veteran status, genetic information, ¹sexual orientation, gender identity or any other legally protected class under federal or NC State law that creates a hostile work environment or circumstances involving quid pro quo.

Hostile Work Environment. This is an environment that both a reasonable person would find hostile or abusive and one that the particular person who is the object of the harassment perceives to be hostile or abusive. Hostile work environment is determined by looking at all of the circumstances, including the frequency of the allegedly harassing conduct, its severity, whether it is physically threatening or humiliating, and whether it unreasonably interferes with an employee's performance.

Quid Pro Quo Harassment. This consists of unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when (1) submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment, or (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

- C. Employees who believe they have been harassed in violation of this policy should make a report to their immediate Supervisor, or the Department Head, or the Assistant County Manager, or the County Manager, or the Human Resources Director or to the County Employee Protection Hotline (1-866-908-7236). If the complaint is against the County Manager or an elected official, the complaint can be filed with the Chairman of the Board of County Commissioners. All complaints of harassment will be promptly investigated and appropriate corrective action where necessary will be taken based upon the findings of the investigation.
- D. Substantiated claims of harassment may result in disciplinary action, up to and including dismissal. For additional information regarding harassment and the methods to report harassment, employees should see *Appendix F: Unlawful Workplace Harassment*.

Section 7 5. No Retaliation Policy for Workplace Discrimination or Harassment

- A. No person will be adversely affected in employment with the employer because of bringing complaints of discrimination and unlawful harassment or participating in a discrimination and unlawful workplace harassment investigation or concerns or complaints under the Workplace Violence Policy (see *Appendix E: Workplace Violence Policy*).
- B. Other protected activity includes, but is not limited to:
1. Initiating an internal complaint or report of discrimination or harassment;
 2. Filing a claim of discrimination;
 3. Requesting an accommodation for a disability;

4. Filing a Workers' Compensation claim following a work-related injury;
 5. Requesting leave under the Family and Medical Leave Act; or
 6. Filing a safety or environmental related complaint with state and/ or federal oversight agencies.
- C. An employee who believes they are the subject of retaliation should follow *Appendix G: No Retaliation Policy* or call the Employee Protection Hotline (1-866-908-7236) to report the situation.

Section 8. Outside Employment

~~The work of the County shall take precedence over other employment interests of employees. All outside employment for salaries, wages, or commission, and all self-employment must be reported in writing to the employee's Department Head before such work is to begin. The Department Head, appointing authority, or the Human Resources Director shall determine whether the outside work would create a conflict of interest or otherwise be incompatible with County service. The assumption of outside employment without prior approval by the Department Head may be deemed improper conduct and subject the employee to disciplinary action, up to and including dismissal.~~

Section 9. Limitation of Employment of Relatives

- ~~A. As a large employer, Buncombe County does have members from the same family who work for the County. Our goal is to have in place safeguards that address concerns regarding conflict of interest, favoritism and/or the perception of these being present.~~
- ~~—No County employee shall serve in a position that results in one family member supervising the other or in one family member occupying a position that has influence over the other's employment, promotion, salary administration or related management, or personnel considerations. In addition, if there is a situation that would result in the perception of or the possibility of a conflict of interest in carrying out the duties of a position then satisfactory safeguards shall be enacted that remove the possibility of conflict, and shall be approved by the County Manager. This includes situations where there are relationships that exist where an employee is in the chain of command but not otherwise supervised directly by a person with whom they are related (as defined in Section B).~~
- ~~B. The term "immediate family" means an employee's wife, husband, domestic partner, mother, father, guardian, son, daughter, brother, sister, grandchild, and grandparent, as well as the various combinations of half, step, in-law, and adopted relationships that can be derived from the family members named herein or other relationships that would suggest a familial bond such as loco parentis.~~
- ~~C. For those situations where the circumstances of employment change due to marriage or a domestic partner relationship, those involved shall notify the human resources department~~

~~immediately. In response, the Human Resources Department will take such actions as are necessary to remedy the situation.~~

~~D. The Board of County Commissioners shall approve the appointment by the Sheriff, or Register of Deeds of a relative by blood or marriage of nearer kinship than first cousin, as required by N.C. Gen. Stat. § 153A-103(1).~~

~~E. If the County Manager should desire to appoint or hire any member of his/her immediate family then such appointment or hire shall require prior approval of the Board of County Commissioners. Further the Board of County Commissioners shall approve any existing employment relationship for which the County Manager has direct or indirect authority over a family member as defined in Section B.~~

Section 10. Limitations of Consensual or Sexual Relationships

~~Buncombe County prohibits romantic or sexual relationships between a manager or other supervisory employee and his or her staff (an employee who reports directly or indirectly to that person) because such relationships create compromising conflicts of interest or the appearance of such conflicts. In addition, such a relationship may give rise to the perception by others that there is favoritism or bias in employment decisions affecting the staff employee. Moreover, given the uneven balance of power within such relationships, consent by the staff member is suspect and may be viewed by others or, at a later date, by the staff member as having been given as the result of coercion or intimidation. The atmosphere created by such appearances of bias, favoritism, intimidation, coercion or exploitation undermines the spirit of trust and mutual respect that is essential to a healthy work environment. If there is such a relationship, the parties need to be aware that one or both may be moved to a different department, or other actions may be taken.~~

~~If any employee of Buncombe County enters into a consensual relationship that is romantic or sexual in nature with a member of his or her staff (an employee who reports directly or indirectly to him or her), or if one of the parties is in a supervisory capacity in the same department in which the other party works, the parties must notify the human resource director or other appropriate management staff. Because of potential issues regarding quid pro quo harassment, Buncombe County has made reporting mandatory. This requirement does not apply to employees who do not work in the same department or to parties who do not supervise or otherwise manage responsibilities over the other.~~

~~Once the relationship is made known to the human resources director or a member of the management team, the Human Resources Department will take such actions as are necessary to remedy the situation.~~

Section 14 6. Drugs at the Workplace Prohibited

~~A. Any location at which County business is conducted is declared to be a drug-free environment. Workplace is defined as the site for the performance of work done and includes, but is not limited to, any Buncombe County building, premises, or vehicle.~~

- B. All employees are prohibited from unlawfully manufacturing, distributing, dispensing, partaking, possessing, or using any controlled or uncontrolled substance or alcohol in the workplace, or reporting to work under the influence of any controlled substance or alcohol, except medications prescribed by a licensed health care provider and taken in the prescribed dosage and certified by said provider not to constitute a workplace hazard.
- C. As a condition of employment, all employees are required to follow the Buncombe County Drug Policy and may be tested in accordance with this policy (see *Appendix I H: Buncombe County Drug and Alcohol Testing Policy*).

Section 12 7. Workplace Violence

- A. Buncombe County is committed to preventing workplace violence and to maintaining a safe work environment. Toward that end, Buncombe County has adopted a Workplace Violence policy (see *Appendix E: Workplace Violence Policy*). The intent of the policy is to ensure that our employees are free from intimidation, harassment or other threats of or actual violence that may occur on-site or off-site during work-related activities. Additionally, the policy makes employees aware of their responsibility to report any concerns so that these concerns may be addressed in a timely and effective manner. Employees are protected against retaliation for making in good faith a report of workplace violence.
- B. Employees seeking to report a concern regarding the Workplace Violence policy should consult the policy in *Appendix E: Workplace Violence Policy*.

Section 13 8. Tobacco Product Policy

- A. No person shall use any tobacco product, including but not limited to: snuff, chewing tobacco, smokeless tobacco, e-cigarette or vaping tool⁴, smoking, carrying or possessing a lighted cigar, cigarette, pipe or other lighted smoking equipment/paraphernalia while in any Buncombe County buildings, on Buncombe County grounds, or in Buncombe County vehicles.
- B. Should a County employee violate the tobacco ban, they shall be subject to disciplinary action, up to and including dismissal.

~~Section 14. Information Technology Acceptable Usage Policy~~

~~Employees must use all IT equipment and IT resources in an acceptable manner. For further information on the use of technology, see *Appendix J: Buncombe County IT Acceptable Usage Policy*.~~

⁴ Amended by Commissioners on February 18, 2020 and effective on February 18, 2020.

Section 15. Social Media

~~Social media should never be used in a way that violates any County policies or employee obligations. If an employee's post would violate any of the County's policies in another forum, it will also violate them in an online forum. For further information on the use of technology, see *Appendix J: Buncombe County IT Acceptable Usage Policy*.~~

ARTICLE VI. HOLIDAYS AND LEAVE

Section 1. Paid Holidays Observed

A. The following days and such other days as the Board of Commissioners may designate are holidays with pay for full-time regular employees and officers of the County working the standard workweek.

- New Year's Day
- Martin Luther King Jr. Birthday (Observed)
- Easter
- Memorial Day
- Juneteenth
- Independence Day
- Labor Day
- Veteran's Day
- Thanksgiving (2 days: Thanksgiving and the following Friday)
- Christmas (3 days)

B. Part-time regular employees receive holidays on a pro-rata basis.

C. Temporary employees are not eligible for paid holidays.

Section 2. Effect of Work on Holidays and Other Types of Paid Leave

Regular holidays that occur during a vacation, sick or other paid leave period of any officer or employee of the County shall not be charged as vacation, sick, or other paid leave.

Section 3. Holidays—When Work Is Required

Regular employees required to work on an observed holiday may be granted compensatory time off at the rate of one hour off for each hour worked on the holiday. Compensatory time for holiday hours worked shall be granted within three months of the time it is earned. If it is not feasible to allow compensatory time off within the three-month period, employees may receive monetary compensation in lieu of time off calculated at their standard hourly rate.

Section 4. Annual Leave

A. Annual leave shall be used for rest and relaxation and may be used for medical appointments.

B. Annual leave may be taken only with the prior approval of the employee's immediate Supervisor.

Section 5. Transfer of Annual Leave Time

The County shall not transfer annual leave from another county, municipality, or state government.

Section 6. Annual Leave—Manner of Accumulation

- A. Any full-time regular employee working within the basic work week (forty hours) or on paid leave shall earn annual leave at the following rates, accrued pro-rata on a bi-weekly basis:

YEARS OF SERVICE	DAYS EARNED PER YEAR IF HIRE DATE IS		
	BEFORE 8/1/2002	ON OR AFTER 8/1/2002	ON OR AFTER 2/15/2011
Less than 2 years	12 days	10 days	10 days
2 but less than 5 years	14 days	12 days	12 days
5 but less than 10 years	18 days	16 days	14 days
10 but less than 15 years	21 days	19 days	16 days
15 but less than 20 years	24 days	22 days	18 days
20 or more years	27 days	25 days	20 days

- B. An employee must work one-half or more of the scheduled work days in a payroll period in order to earn annual leave.
- C. Part-time regular employees annual leave:
1. A part-time regular employee shall earn annual leave on a pro-rata basis if he/she works one-half or more of the scheduled work days in a payroll period.
 2. The leave shall be computed as a percentage of total amounts earned by a full-time regular employee.
- D. Maximum accumulation:
1. Any employee with more than two years of annual leave at their existing accrual rate shall have the excess accumulation converted to sick leave once per year.

2. On January 1 of each year, any balance of annual leave over the two-year maximum shall be converted to sick leave.⁵

Section 7. Annual Leave—Manner of Taking Leave

- A. Departmental annual leave schedules shall be governed by employee seniority within the department.
- B. Annual leave should be scheduled at a time consistent with the operating needs of the department.
- C. Employee annual leave schedules must be approved in advance by the employee's immediate Supervisor.

Section 8. Annual Leave—Separation Pay

- A. Employees shall receive pay for their accumulated annual leave upon resignation, dismissal, retirement, or layoff unless the employee elects to transfer the leave balances to another accepting jurisdiction. Should an employee die, payment of annual leave credit shall be made to the employee's estate. No more than two years of earned annual leave accumulation at the existing rate will be paid.
- B. Should an employee die, resign, retire, or be laid off with a debt to the County, the County may withhold the amount of the debt from the employee or his/her estate in its final payment to the employee or estate.

Section 9. Sick Leave

- A. Sick leave with pay is not a right which an employee may demand, but instead a privilege granted by the Board of County Commissioners for the benefit of a regular employee when sick.
- B. Sick leave shall be used by an employee absent from work for any of the following reasons: sickness, bodily injury, required physical or dental examinations or treatment, pregnancy, childbirth and postpartum care, or exposure to a contagious disease when continuing to work might jeopardize the health of others. Sick leave may also be used for illness or injury of a member of the employee's immediate family which requires that the employee to provide care to the family member. See definition of "Immediate Family" in *ARTICLE VI. HOLIDAYS AND LEAVE, Section 20. Funeral Leave.*
- C. Full-time regular and part-time regular employees following initial appointment may accumulate sick leave and shall be permitted to take available sick leave immediately.

⁵ Adopted by the County Commissioners on November 20, 2018 and effective on January 1, 2019.

- D. Employees who leave the employment of the County under any circumstance shall receive no monetary compensation for unused sick leave.

Section 10. Notification to Take Sick Leave

The employee's Supervisor shall be promptly notified, no later than thirty minutes and, if possible, before the beginning of the work day, when an employee proposes to take sick leave. Failure to do so may constitute a basis for denial of sick leave. For Emergency Medical Service personnel, notification to take sick leave must be given at least one and one-half (1½) hours prior to the beginning of the employee's next assigned work shift.

Section 11. Sick Leave Amount Earned

- A. All full-time regular employees working or on paid leave for one-half or more of the regularly scheduled work days in any payroll period shall earn sick leave accrued on a pro-rated basis at the following rates:

Days Earned/Year

12 days

- B. A part-time regular employee shall earn sick leave on a pro-rata basis if one-half or more of the scheduled work days in a payroll period are worked. The leave shall be computed as a percentage of the total amount earned by a full-time regular employee.

Section 12. Sick Leave Accumulation

Sick leave is cumulative indefinitely.

Section 13. Sick Leave Advancement

- A. A regular employee who does not have sick leave days available may, at the discretion of their Supervisor and with the approval of the Department Head, be allowed to borrow a maximum of ten days if necessary.
- B. If the regular employee leaves County service before earning back such leave, payment shall be deducted from the employee's final paycheck.

Section 14. Sick Leave Verification

- A. If an employee takes sick leave due to the employee's own illness or medical condition, the Department Head may require medical certification from a physician for absences of three days or more in duration.
- B. In addition, employees who have a pattern of absences such as absent from work on multiple Friday or Monday may be required to provide medical certification.

Section 15. Sick Leave Transferable

- A. After completion of the first six months of continuous employment, the County of Buncombe may allow a new County regular employee to transfer all days of previously accumulated sick leave accrued while employed by a State of North Carolina, County, or Municipal jurisdiction.
- B. Sick leave is allowed creditable service at the time of retirement to employees who are members of the N.C. Local Governmental Employees' Retirement System.
- C. One month of credit is allowed for each twenty days of unused sick leave when the employee retires and an additional month for any part of twenty days left over.

Section 16. Calculation of Annual Leave and Sick Leave

- A. Annual leave and sick leave earned by full-time regular or part-time regular employees in regular positions having a workweek with fewer hours than the basic workweek shall be determined in accordance with the following parameters.
- B. The number of hours worked by such employees shall be divided by the number of hours in the basic workweek.
- C. The proportion obtained in step B., Section 16, shall be multiplied by the number of hours of leave earned annually by employees working the basic workweek.
- D. The number of hours in step C., Section 16, divided by twenty-six, shall be the number of hours of leave earned each payroll period by the employee concerned.

Section 17. Annual Leave--Emergency Medical Service Annual Leave Earned

Emergency Medical Service Annual Leave Earned is calculated based on a twelve-hour workday being equivalent to one shift.

YEARS OF SERVICE	SHIFTS EARNED PER YEAR IF HIRE DATE IS	
	BEFORE 8/1/2002	ON OR AFTER 8/1/2002
Less than 2 years	12 shifts	10 shifts
2 but less than 5 years	14 shifts	12 shifts
5 but less than 10 years	18 shifts	16 shifts

10 but less than 15 years	21 shifts	19 shifts
15 but less than 20 years	24 shifts	22 shifts
20 or more years	27 shifts	25 shifts

Section 18. Sick Leave–Emergency Medical Service

Shifts Earned/Year

12

Section 19. Holiday Leave–Emergency Medical Service

Each holiday is equivalent to one shift.

Section 20. Funeral Leave

- A. In case of death of a member of the regular employee's immediate family or household, special leave with pay of up to three days shall be permitted.
- B. Leave exceeding this may be charged to sick leave or leave without pay.
- C. Immediate family is defined as wife, husband, mother, father, son, daughter, sister, brother, grandfather, grandmother, grandson, granddaughter, and also included are in-law and step relationships as appropriate based on the above listing, (excluding in-law grandparents).
- D. Leave for death of other relatives may be charged to sick leave or leave without pay.

Section 21. Mandatory Court Appearances

- A. Jury Duty. A regular employee called for jury duty in State or Federal Court shall receive leave with pay for such duty during the required absence without charge to accumulated annual leave or sick leave. All fees and allowance received by the employee for jury duty must be turned over to the County upon receipt.
- B. Witness. A regular employee subpoenaed as a witness in a case in State or Federal Court in connection with his/her official duties shall receive regular compensation for said court appearance. All witness fees and travel allowances received by the employee must be submitted to the County upon receipt.
- C. A regular employee subpoenaed as a witness in State or Federal Court in a case which is unrelated to his/her official duties shall not receive leave with pay during his absence but same shall be charged to accumulated annual leave or leave without pay. Witness fees and travel expenses are to be retained by the employee.
- D. While on jury duty or when subpoenaed as a witness in connection with his/her official duties, benefits and leave shall accrue as though the employee were on regular duty.

Section 22. Conference Attendance

A regular employee may be permitted leave with pay for the purposes of attending professional conferences, workshops, or educational meetings or classes when directly related to the employees' field of work.

- A. Request for such leave shall be submitted in writing to the Supervisor for his/her approval and final approval by the Department Head prior to the leave being taken.
- B. The County shall reimburse the employee for approved fees of the conferences, provided the employee submits the proper receipts.

Section 23. Parental Leave

- A. Regular employees of school-aged children may take up to four hours of unpaid leave a year for participation in their child's school events and conferences.
- B. Such leave must be planned with the Supervisor in advance.
- C. The Supervisor may ask for written confirmation that the employee has attended the school event as planned.

Section 24. Leave Without Pay

- A. Regular employees may be granted a leave of absence without pay for compelling personal reasons for up to thirty working days per year. Such leave must be approved by the Department Head and Human Resources Director. If leave without pay is requested by a Department Head it shall be recommended by the Human Resources Director and approved by the County Manager. Approval of leave will be based on many factors, including but not limited to, agency needs, staffing levels, reason for the leave, and employee's use of previous leave, performance and tenure with the agency. In extenuating circumstances, additional leave without pay may be requested and approved by the County Manager.
- B. The employee shall apply in writing to the Supervisor for leave without pay. The employee is obligated to return to duty within or at the end of the time determined appropriate by the appointing authority. Upon returning to duty after being on leave without pay, the employee shall be entitled to return to the same position held at the time leave was granted or to one of like classification, seniority, and pay.
 - 1. If the employee decides not to return to work, the Supervisor should be notified immediately. The Supervisor shall report this decision to the Department Head and Human Resources Director.
 - 2. Failure to report at the expiration of a leave of absence, unless an extension has been requested, shall be considered resignation.
- C. Employees on leave without pay shall not earn leave of any kind.

Section 25. Leave Without Pay–Retention and Continuation of Benefits

An employee ceases to earn leave credits on the date leave without pay begins. The employee may continue to be eligible for benefits under the County's group insurance plans, subject to any regulations adopted by the Board of County Commissioners and the regulations of the respective insurance carriers.

Section 26. Absence from Duty

- A. An employee shall promptly, and no later than thirty minutes prior to the start of the work day, notify his Supervisor when planning to be absent from duty for any reason other than sick leave. Failure to do so without good reason may be cause for disapproval of leave for which the employee might have been eligible and for disciplinary action.
- B. An employee who is absent from duty for three days without notification to the immediate Supervisor shall be considered to have resigned, unless failure to notify was demonstrably beyond the employee's control.

Section 27. Military Leave

- A. Regular employees who are members of the National Guard or Armed Forces Reserve shall be allowed fifteen work days military training leave annually with partial compensation.
- B. If the compensation received while on military leave is less than the salary that would have been earned during this same period as a County employee, the employee shall receive partial compensation to equal the difference in the base salary earned as a reservist or a guardsman and the salary that would have been earned during this same period as a County employee. The effect shall be to maintain the employee's salary at the normal level during this period.
- C. If such military duty is required beyond the fifteen work day period, the employee shall be eligible to take accumulated leave or be placed in a leave without pay status.
- D. Additionally, Buncombe County complies with all requirements of the Uniformed Services Employment & Reemployment Rights Act.

Section 28. Educational Leave with Pay

- A. A leave of absence at full or partial pay during regular working hours may be granted to a regular employee to take a course or courses which shall better equip the employee to perform assigned duties upon the approval of the Department Head.
- B. The County shall reimburse the employee for tuition and fees for the course, provided the employee submits a receipt of course expenses and a notice of successful completion (passing grade or better) of the course.
- C. An employee on educational leave with full pay shall continue to earn leave credits and any other benefits to which the employee is entitled.

Section 29. Notification of Leaves of Absence

Each department shall notify the Human Resources Department in a timely manner of **all** leaves of absences **without pay** and employee medical absences that exceed three days. In addition, those employees who have a pattern of unexplained absences such as frequent Friday or Monday absences should be reported.

~~Section 30. Leave Adverse Weather Conditions and Disasters~~

~~If employees are unable to report to work, or feel it necessary to leave work due to severely inclement weather, road conditions and natural or manmade disasters, they may elect to take the day off as a day of vacation, compensatory time or if all applicable leave balances have been exhausted a day off without pay. This section shall not be applicable to Emergency Services personnel or other personnel in key positions needed to maintain County services.~~

Section 34 30. Family and Medical Leave Act

It is the policy of Buncombe County to comply with the Family and Medical Leave Act and Amendments. Buncombe County posts the mandatory FMLA Notice and upon hire provides new employees with notices required by the U.S. Department of Labor (DOL) on Employee Rights and Responsibilities under the Family and Medical Leave Act.

Section 32 31. Lactation Support at Work for Nursing Mothers

As part of our family-friendly policies and benefits, Buncombe County supports breastfeeding mothers by accommodating the mother who wishes to express breast milk during her workday when separated from her newborn. These provisions will meet the requirements of the Fair Labor Standards Act as it relates to breaks for nursing mothers. See *Appendix C: Lactation Support at Work for Nursing Mothers Policy*.

Section 33 32. Personal Time Off (PTO)

- A. Full-time regular employees shall receive two days per calendar year for PTO. Any unused PTO at the end of the calendar year shall be forfeited
- B. Part-time regular employees shall receive PTO on a pro-rata basis computed as a percentage of the total amount received by a full-time employee.
- C. Employees may use PTO for rest and relaxation, medical/dental appointments for themselves or immediate family members or any other reason for time off.
- D. PTO may be taken only with the prior approval of the employee's immediate Supervisor. The leave should be scheduled at a time consistent with the operating needs of the department. If PTO is used in place of sick leave, the employee's Supervisor shall be promptly notified, certainly no later than thirty minutes and, if possible, before the beginning of the work day.

- E. The County shall not transfer PTO from another county, municipality, or state government.
- F. Upon an employee's resignation or termination, no payment shall be made for any remaining PTO and such PTO is forfeited.

Section 34 33. Annual Leave–Cash Conversion

Upon approval of the Departmental Director, regular employees may convert up to 40 annual leave hours to cash subject to the following conditions:

- a. the conversion, or sale, of annual leave hours is limited to a maximum of 40 hours per regular employee per calendar year;
- b. a minimum of 8 annual leave hours must be sold in any transaction;
- c. each regular employee converting annual leave hours balance to cash shall retain a balance after any sale of at least 40 annual leave hours; and
- d. any request to convert annual leave hours balance to cash must be made by the regular employee and approved by the Departmental Director such that the employee is paid before the end of the calendar year.

Notwithstanding the foregoing, employees may convert all currently available annual leave hours to cash through and including January 18, 2019.⁶

Section 35 34. Voluntary Shared Leave

In catastrophic cases where employees are without leave due to a prolonged medical condition, the employee may petition their department director to be considered for Voluntary Shared Leave. If the department director approves the request, then final approval will be given by the County Manager. Factors to consider when considering approval will be the circumstances of the employee and the current organizational needs of the department. Employees who are approved for Voluntary Shared Leave must follow the Voluntary Shared Leave policy in Appendix L.

⁶ Adopted by the County Commissioners on November 20, 2018 and effective on January 1, 2019.

ARTICLE VII. ADDITIONAL EMPLOYEE BENEFITS

Section 1. Social Security

Employment with Buncombe County is covered under the Federal Social Security System. Further information about Social Security benefits can be obtained from the local office of the Social Security Administration.

Section 2. Unemployment Compensation

Employees are covered for unemployment compensation benefits as provided under North Carolina State Law. The purpose is to provide temporary income to employees who, through no fault of their own, are unemployed. Applications for benefits are made through the State Division of Employment Security.

Section 3. Worker's Compensation

All County employees are covered by the North Carolina Workers' Compensation Act. Employees must notify their Supervisor as soon as possible and no later than twenty-four hours of any on-the-job injury.

Section 4. Deferred Compensation

A. Local Government Retirement

1. Every full-time and part-time employee who works at least 1,000 hours per year becomes a member of the N.C. Local Governmental Employees' Retirement System.
2. All employees will be enrolled upon date of hire into the N.C. Local Governmental Employees' Retirement System or the N.C. Local Governmental Employees' Retirement System for Law Enforcement Officers.
3. After five years of creditable service in the N.C. Local Governmental Employees' Retirement System, employees are vested for purposes of retirement benefits in accordance with the eligibility requirements established by the State Department of the Treasurer, Retirement Systems Division.

B. Supplemental Retirement Income Plan, 401(k)

1. As a supplement retirement plan all regular employees who are members of the N.C. Local Governmental Employees' Retirement System may participate in the Supplemental Retirement Income Plan of North Carolina or as it is sometimes referred to, the 401(k) program.
2. The plan is designed to supplement the regular employee's retirement income. It allows the regular employee to contribute by payroll deduction to an investment program which shall defer income taxes on both the employee's investment and the income in the investment until a later date. Employees may select from a variety of investment plans.

Buncombe County contributes an eight percent amount of the regular employee's salary to the plan. Additional employee participation is voluntary.

3. Employees are not eligible until after successful completion of the first six months of continuous employment. All sworn Law Enforcement Officers begin in plan upon date of employment. All amounts contributed are vested immediately.

C. 457 Plan

1. Through payroll deduction, employees may defer a portion of their salary on a regular basis through the 457 Plan. The program provides a tax shelter and investment opportunity.
 - a. Taxes on the deferred amount and earnings are deferred until they are withdrawn, usually at retirement or termination.
 - b. Deferred amounts may be invested in one fund or in a combination of funds to maximize the investment return.
 - c. Gross wages are deferred to the program. The result is a smaller net income on which to pay federal tax, reducing current taxes.
 - d. Both the amount deferred and what it earns are permitted to accumulate tax deferred in the employee's account.
 - e. Federal income taxes on the deferred amount and earnings are not payable until payments are received from the accumulated account.
2. Buncombe County contributes eight percent of the County Commissioner's salary to the plan. Additional Commissioner Participation is voluntary.

D. Longevity Compensation

Buncombe County does not have a merit pay system; instead, regular employees are rewarded for their increasing depth of knowledge and skills acquired through years of service with longevity compensation. Longevity pay serves to place a positive pressure to retain and reward high-performing seasoned employees for continued employment and thereby avoid expenses involved in recruiting and training replacement workers. Longevity shall be paid to all full-time regular and part-time regular employees as follows.

1. Time and Method of Pay
 - a. Longevity pay is automatic; payment shall be made when all eligibility requirements are met as specified in the following criteria.
 - b. Longevity payment shall be made in a lump sum each year on or before December 31.
 - c. Payment shall be made to otherwise eligible employees who are on military leave, worker's compensation and approved medical leave of absence without pay.

- d. Eligibility for payment shall be based on full years of service as of December 1 of each year.
 - e. Employees working in a regular part-time position, but otherwise meeting eligibility requirements shall receive a pro rata payment based on the percentage of hours actually worked divided by full-time hours for the position.
 - f. Pro rata payments for partial year service shall not be made. Eligibility is dependent upon employee status on December 1 except for individuals who are separated by retirement or death. Pro rata payment in these cases shall be made based on the date of retirement or death and computed on the longevity pay scale then in effect. If deceased, payment shall be made to the estate. For an employee hired on or after July 1, 2016, the employee shall not be eligible for a pro-rated longevity payment upon separation by retirement if the employee retires before December 1.
 - g. Payment shall be made to the nearest cent rather than the nearest dollar.
2. Amount of longevity pay

Annual longevity pay amounts are based on the length of aggregate total service to Buncombe County. The amount of payment shall be based on length of service and the annual salary of the employee in existence on the eligibility date of December 1. For purposes of Buncombe County Longevity Compensation for all Buncombe County employees, except for EMT's, "annual salary" means base annual pay only as set forth and established through each employee's current position classification and does not include annual leave sales, benefits, incentives, bonuses and other forms of deferred compensation. Because EMT's work mandatory overtime, EMT's Longevity Compensation is based on a prorated salary – straight hourly at 112 hours biweekly without including the overtime pay.⁷

The following table shall be in effect for longevity purposes.

TOTAL YEARS AGGREGATE LONGEVITY COUNTY SERVICE	PAY RATE
Less than 1 year	\$100.00
1 year but less than 2 years	1.00%
2 years but less than 5 years	3.00%
5 years but less than 10 years	4.00%

⁷ Approved by County Commissioners' on November 7, 2017 and effective on November 7, 2017.

10 years but less than 15 years	5.00%
15 years but less than 25 years	6.00%
25 years plus	7.00%

3. Eligibility requirements

- a. An employee must have an appointment in either a full-time regular or part-time regular position and regularly scheduled to work at least twenty hours or more per week. No other employees are eligible for longevity payment.
- b. Credit for the aggregate total service requirement shall not be given for temporary employment.
- c. Upon change of appointment to temporary part-time or less than half-time (twenty hours per week) the employee is ineligible for continued longevity pay.
- d. Credit shall not be given towards aggregate service time for any employment other than with Buncombe County.
- e. For persons rehired after July 1, 2016, the individual's total aggregate longevity county service shall be calculated from the date of rehire.

4. Effect of longevity pay

Longevity pay is not considered a part of annual base pay for classification and pay purposes, nor is it to be recorded in personnel records as a part of annual pay.

E. Severance pay

Severance pay is also considered a form of deferred compensation and *ARTICLE VIII. SEPARATION, DISCIPLINARY ACTION, AND EMPLOYEE APPEALS, Section 5. Reduction in Force* is hereby incorporated into this section.

F. Law Enforcement Officers Special Separation Allowance

This provides separation benefits to Law Enforcement Officers who complete thirty or more years of creditable service or be at least age fifty-five with five years of service, and have not attained age sixty-two.

G. Health Insurance Coverage after Retirement

1. Health insurance upon retirement per this Personnel Ordinance is considered deferred compensation. Upon retirement, eligibility for health insurance coverage is eliminated for all employees hired after June 30, 2015.

2. Costs of coverage:

- a. The cost of such group medical/hospitalization insurance shall be paid entirely by the County for the employee only and shall be paid only until attainment of age sixty-five by the employee.
- b. The qualifying retiree may also continue family coverage for dependents by paying the full difference between the total insurance cost and the cost of the individual coverage provided by the County. Provided, however, that qualifying retirees with dependents still entitled to coverage when the retiree reaches age sixty-five shall continue to receive the County paid premium for individual coverage and may continue dependent coverage at their own expense as long as they have eligible dependents.
- c. Effective March 1, 2004, employees retiring with twenty or more years of service with Buncombe County are able to continue health insurance coverage for their dependents at the same premium that active employees pay for dependent coverage. Dependents still eligible for coverage when the retiree reaches age sixty-five may continue coverage at the same premium that active employees pay for dependent coverage. This action will not be retroactive to employees who retired prior to March 1, 2004.

3. Eligibility for Coverage

- a. Any regular employee who, upon retirement qualifies for a monthly retirement benefit in accordance with the provisions of the N.C. Local Governmental Employees' Retirement System and has been covered by the County group medical/hospitalization plan for the three years immediately preceding retirement, shall be eligible to remain in the County group medical/hospitalization plan.
- b. Regular employees hired on or after July 1, 2008 must have twenty years of service with Buncombe County to be eligible for health insurance coverage after retirement.
- c. Any individual having held the office of County Commissioner for at least three terms shall be eligible for the same health insurance coverage as a retiring County regular employee.
- d. Eligible disabled retirees eligible for benefits under Title XVIII (Medicare) of the Social Security Act may remain covered hereunder until attainment of age sixty-five. Benefits hereunder will be paid with Medicare as the primary coverage and the County group medical/hospitalization plan as secondary coverage.
- e. Coverage for dependents may be continued until age sixty-five and/or Medicare coverage entitlement in the case of the spouse and until attainment of age twenty-six in the case of dependents. To the extent the provisions of this Personnel Ordinance are inconsistent with the Patient Protection and Affordable Care Act, the Patient Protection and Affordable Care Act will control. In any case, coverage ceases upon entitlement for Medicare/Medicaid. Upon the death of a retiree, insurance may be maintained by the decedent's dependents as long as the dependent premium is paid as established above.

H. Retirement Incentive Benefits

1. Eligibility

Any individual having held elected office for fifteen continuous years. Any regular employee having completed a minimum of twenty-five years of service with Buncombe County (fifteen continuous years for those employees required to be appointed by the Buncombe County Board of Commissioners) and having contributed to the N.C. Local Governmental Employees' Retirement System for a minimum of twenty-five years (fifteen continuous years for those employees required to be appointed by the Buncombe County Board of Commissioners) shall upon retirement be eligible for the following benefit options.

2. Benefits Options:

The qualifying retiree or elected official may choose from one of the following:

a. Medicare Supplement Purchase Plan

- i. Upon the attainment of age sixty-five and eligibility for Medicare, the County of Buncombe shall purchase a monthly Medicare Supplement Plan F coverage and monthly Medicare Part D Prescription Plan for the remainder of the participant's life.
- ii. As future Medicare revisions and reforms take effect, should the current benefits of the Medicare Supplement Plan F and/or Medicare Part D no longer be offered, the County of Buncombe will provide the Medicare Supplement Plan and prescription drug plan that most closely mirrors the benefits of the Medicare Supplement Plan F and Medicare Part D.
- iii. Purchase of all coverage shall be from an authorized carrier of the County's choice.

b. Medicare Supplement Payment Plan

- i. Upon the attainment of age sixty-five and eligibility for Medicare, the County of Buncombe shall pay a monthly sum of \$268.00 for the purpose of purchasing a Medicare Supplement and assisting in prescription drug cost.
- ii. This amount shall be paid to the participant for the remainder of the participant's life.
- iii. The amount of \$268.00 shall not be decreased or increased as future Medicare reforms and revisions take effect.
- iv. Any and all payments shall terminate upon the participant's death.

c. Lump Sum Payment Plan

- i. Receive a lump sum payment equal to one-half the participant's annual salary.

3. Restrictions

- a. Any participant who accepts the benefits under this section or any other Buncombe County Retirement Incentive Agreement shall only be eligible to return to work in temporary non-benefited positions.
- b. The benefits in this section shall not be retroactive to employees who retired prior to September 1, 2006.

- c. Employees hired after June 30, 2014 are not eligible for the benefits in this section.

I. N.C. Firemen's and Rescue Squad Worker's Pension Fund

1. Any eligible Emergency Medical Service employee may make application for membership in this pension fund.
2. Membership in the program is on a voluntary basis and requires a monthly payment by the employee.
3. Benefits are payable to retired members who have served twenty years as an eligible Emergency Medical Service Employee in the State of North Carolina, as provided in N.C. Gen. Stat. § 118-38 and N.C. Gen. Stat. § 118-39 and who have attained the age of fifty-five years.

Section 5. Group Health Insurance

- A. Employees in a regular position who work at least 1,560 hours per year (thirty hours per week) may participate in the group hospitalization and medical care plan upon the completion of the first six months of continuous service and after ninety days of employment effective 01/01/2013, with costs shared between the employee and the County at varying ratios depending upon the type of coverage selected.
- ~~B. Employees placed in a grant-funded position will not be eligible for health and dental insurance coverage, but may be eligible for other employee benefits.~~

Section 6. Health Insurance Coverage after Employment Termination

- A. Employees who leave employment with Buncombe County may be eligible for a temporary extension of their health insurance coverage benefits that would otherwise end upon termination pursuant to the Consolidated Omnibus Budget Reconciliation Act or COBRA.
- B. The insurance coverage may also be available to the employee's spouse and/or dependents.
- C. If the employee, spouse, or dependent chooses this temporary continuation coverage, they must pay the total monthly premium charged Buncombe County for coverage for other employees and dependents.
- D. Upon employment termination, employees should check with the Human Resources Office for details concerning length of coverage, cost, etc.

Section 7. Life Insurance

- A. All eligible employees in regular positions are covered with Basic Life and Accidental Death and Dismemberment Insurance. The County pays 100% of the premium.
- B. In addition to the Basic Life Insurance, each eligible employee has the opportunity to enroll in additional life insurance in optional amounts. The employee pays the entire cost of the premium, but low group wholesale rates are available on a convenient payroll deduction basis.
- C. Employee may purchase coverage on eligible dependents.
- D. All eligible employees may purchase coverage on their spouse.

Section 8. Death Benefit

After completing one year of service an employee shall be eligible for a death benefit payment equal to the calendar year's salary up to a maximum of \$50,000 but no less than \$25,000, if the employee is accepted and covered by the N.C. Local Governmental Employees' Retirement System.

Section 9. Employee Assistance Program

The services of the Employee Assistance Program are available to Buncombe County Employees and their immediate family members. The program is designed to assist employees with a variety of problems which may affect their job performance or conduct. The cost of the initial diagnostic and referral session is provided at no cost to the employee or their immediate family.

Section 10. Dental Insurance

Regular employees and their dependents may enroll in the Buncombe County Dental Insurance Program.

Section 11. Short Term Disability

Benefits are payable due to accident, sickness, or pregnancy. The employee pays the entire cost of the plan and low group rates are available.

Section 12. Section 125 Pre-Tax Premium Plan

The Pre-Tax Premium Plan allows employee payments of insurance benefits with before tax dollars.

Section 13. Flexible Spending Accounts

Employees may choose to have some of their income set aside in a reimbursement account on a pre-tax basis used to reimburse out-of-pocket medical expenses and/or dependent care expenses.

Section 14. Credit Union

Membership is open to employee and family for various loan services, checking and savings accounts.

Section 15. Separate Insurance Benefit Plans for Sworn Law Enforcement Officers

Eligible active Law Enforcement Officers and those retired through the NC Local Governmental Employees' Retirement System are eligible for certain temporary disability and death benefits.

Section 16. Board Approval Required

No change in employee benefits structure and options as set forth herein shall be effective without Board approval.

ARTICLE VIII. SEPARATION, DISCIPLINARY ACTION, AND EMPLOYEE APPEALS

Section 1. Policy Statement

- A. Regular employees who have not achieved Covered Employee status and all temporary employees are considered at-will employees and have no right of appeal. At-will employees may be demoted or dismissed at any time without further notice upon the recommendation of the Department Head and approval of the Human Resources Director, or appointing authority, so long as the demotion or dismissal is not otherwise prohibited by law.
- B. A Covered Employee who fails to perform satisfactorily or engages in unacceptable personal conduct, upon the recommendation of the Department Head and approval of the Human Resources Director, or corresponding authority, he/she may be suspended without pay, demoted, or dismissed per the following practice.

Section 2. Types of Separation

- A. All separations of employees from positions in the service of the County shall be designated as either voluntary or involuntary.
 - 1. Employees may be voluntarily separated from County service either by resignation, retirement, or failing to report to work for three consecutive days.
 - 2. Employees may be involuntarily separated from County service by reduction in force, dismissal, unavailability for work when leave is exhausted or death.
- B. The degree and type of action taken based on misconduct or poor performance shall be based on the sound and considered judgment in accordance with the provisions of this Article.
- C. When just cause exists the only disciplinary actions are: written warning, disciplinary suspension without pay, demotion, and dismissal.

Section 3. Resignation

- A. Employees may resign either in “Good Standing” or “Not in Good Standing.”
- B. Resignation in Good Standing occurs when an employee submits a letter of resignation a minimum of ten working days prior to the effective date of resignation. Such notice shall be provided to the immediate Supervisor (or in the case of Department Heads, to the County Manager, or his/her designee, or appropriate appointing authority, and the appropriate governing body, if applicable). Employees who resign in Good Standing may be considered for future employment with the County. The County reserves the right to pay out an employee’s notice period in lieu of having the employee work the notice period in its sole discretion.
- C. Resignation Not in Good Standing occurs when:
 - 1. An employee fails to submit a letter of resignation at least ten working days prior to the effective date of resignation unless this has been approved by the Department Head;
 - 2. An employee fails to report to work one working day following a leave of absence without pay;

3. An employee is absent from work three working days without authorized leave—separation pursuant to this policy should not occur until the employing agency has undertaken reasonable efforts to locate the employee and determine when or if the employee is intending to return to work;
 4. An employee resigns to avoid announced disciplinary action.
- D. An employee who resigns from County employment “Not in Good Standing” is normally ineligible for future employment with the County.

Section 4. Retirement

When an employee meets the conditions set forth under the provisions of any retirement plan adopted by the Board of County Commissioners for County employees, he or she may elect to retire and receive all benefits earned under the retirement plan.

Section 5. Reduction in Force

- A. Reduction in Force is the involuntary separation of an employee due to lack of work or funds, or elimination of the employee’s position due to reorganization. If a reduction in force occurs:
1. Together with the Department Head(s) involved, the Human Resources Director shall determine the employee(s) affected by the reduction in force.
 2. The Human Resources Director shall determine and list all employees, subject to the authority or control of the County Manager, serving in the same class throughout the County who are on that date listed as temporary or probationary employees. Furthermore, the Human Resources Director shall add to that list any position(s) which, on that date, is not filled or is being advertised within the same class which is affected by the reduction in force.
 3. No employee with Covered Employee status, subject to the authority or control of the County Manager, shall be separated due to a reduction in force while there are unfilled positions or temporary or at-will employees serving within the County in the same class unless the Covered Employee is not willing to transfer to the position held by the temporary or at-will employee.
 4. The Department Director involved and the Human Resources Director shall make their final determination(s) by considering the following:
 - a. Organizational needs;
 - b. Performance of the employees at issue; and
 - c. Seniority of the employees at issue.
 5. The Departmental Director involved and the Human Resources Director shall advise and provide documented recommendations to the County Manager as to those employees who shall be separated because of reduction in force.
 6. Rather than just the involved departments, the County Manager, who has the final authority to determine the employee(s) to be separated because of reduction in force, may consider the entire County work force, subject to his or her authority or control when making his or her decision.

- B. Employees who are subject to a reduction in force are given at least two weeks' notice of the anticipated lay-off.
- C. Any reduction in force employee accepting a transfer shall be subject to a new six month at-will period in accordance with the guidelines of this Personnel Ordinance.

Section 6. Severance Pay Policy for Reductions in Force

If a reduction in force occurs, employees terminated as a result shall receive severance paid as follows:

- A. Full-time and part-time regular employees shall be paid severance at the rate of one weeks' pay for each full year of service to the County, up to a maximum payment equal to twelve weeks.
- B. Any remaining portion of a year's service to the County shall be paid at a pro-rata basis.
- C. An employee receiving severance pay shall not be eligible for re-employment with the County for the number of weeks calculated in the severance pay off, unless repayment is made in advance of re-employment for any severance in excess of the period of actual separation from the County.
- D. The following employees shall not be eligible for severance payment:
 - 1. Temporary employees
 - 2. Any employee who is in a time-limited/grant-funded or contract position
 - 3. Any employee for whom the County has arranged employment in a benefited position with a non-county agency
 - 4. Any employee who declines an offer of employment in a new or different benefited position with the County and within 10% of the salary of the employee's previous position prior to his/her date of separation

Section 7. Disciplinary Actions (Written Warning, Suspension without Pay, Demotion, and Dismissal) for Unsatisfactory Job Performance and/or Unacceptable Personal Conduct Policy

- A. Covered Employees may only be suspended without pay, demoted, or dismissed when just cause exists. Written warnings may also be issued to Covered Employees when just cause exists; however, a written warning is not grievable and cannot be appealed. For purposes of this policy, the County has determined two types of actions that establish just cause for implementing disciplinary and/or dismissal action on an employee. The two types of employee actions are: (1) Unacceptable Personal Conduct and (2) Unsatisfactory Job Performance. Both types of the above-mentioned employee actions may result in any of the following disciplinary actions: written warning, suspension without pay, demotion, or dismissal as explained in the following section.
- B. Unacceptable Personal Conduct
 - 1. Unacceptable Personal Conduct includes, but is not limited to:
 - a. Conduct for which no reasonable person should expect to receive prior warning including but not limited to lying, falsification of records, bullying, or unethical behavior; or,
 - b. Job related conduct which constitutes a violation of federal, state, or local law; or,

- c. Conviction of a felony or an offense involving moral turpitude that is detrimental to or impacts the employee's service to the agency; or,
 - d. The willful violation of known or written work rules; or,
 - e. Conduct unbecoming an employee that is detrimental to the agency's service; or,
 - f. The abuse of client(s), patient(s), student(s), or a person(s) over whom the employee has charge or to whom the employee has a responsibility, or of an animal owned or in the custody of the agency; or,
 - g. Falsification of an employment application or other employment documentation that is related to the position requirements; or,
 - h. Failure to obtain or maintain any license, registration, or certification required by a relevant law, rule, or provision when the duties of the position require that license, registration, or certification; or,
 - i. Unauthorized absence from work after all authorized leave credits and benefits have been exhausted; or,
 - j. Insubordination which is the willful failure or refusal to carry out a reasonable order from an authorized Supervisor. Insubordination is considered unacceptable personal conduct for which any level of discipline, including dismissal, may be imposed without prior warning; or
 - k. Negligent conduct that results in significant fiscal loss or liability, and/or significant detrimental impact to the safety or well-being of a person being served by the County.
2. Disciplinary action for Unacceptable Personal Conduct
- a. After a single incident of Unacceptable Personal Conduct any of the following actions may be taken:
 - i. Written warning; or
 - ii. Suspension without pay; or
 - iii. Demotion; or
 - iv. Dismissal
 - b. If the Department Head recommends to the County Manager, or his/her designee, or appointing authority, that the employee be suspended without pay, demoted, or dismissed then these actions must be preceded by a pre-disciplinary conference which must be conducted by the County Manager, or his/her designee, and/or Human Resources Director or the appointing authority. Dismissal shall be the final decision of the County Manager, or his/her designee, or appointing authority.
 - c. All disciplinary actions submitted against the Covered Employee become inactive after eighteen months after the date the disciplinary action was issued.

C. Unsatisfactory Job Performance

1. Unsatisfactory Job Performance occurs when a Covered Employee's performance fails to satisfactorily meet job requirements. Such employee actions are subject to progressive disciplinary actions as described below. The goal of this progressive disciplinary process is to give the Covered Employee specific notice concerning an identified deficiency and what corrections are necessary to bring performance to a satisfactory level. In addition, it is not required, nor necessary that successive disciplinary actions all concern the same actions on the part of the Covered Employee.
2. Disciplinary Action for Unsatisfactory Job Performance
 - a. A Covered Employee who does not have an active disciplinary action may receive a written warning after a single incident of Unsatisfactory Job Performance.
 - b. A Covered Employee who has an active disciplinary action may receive a written warning, suspension without pay, or demotion after a single incident of unsatisfactory job performance.
 - c. A Covered Employee may be dismissed for Unsatisfactory Job Performance if the Covered Employee has at least two active disciplinary actions and has a current unresolved performance issue. Except, when the performance-related inadequacies are of such a serious nature as determined by the County Manager that they create a major operational issue, significant financial impacts, damage to the reputation of the County, or are so egregious that they warrant immediate, more severe disciplinary action, then the County Manager may authorize the imposition of a more serious disciplinary penalty up to and including dismissal for the first offense, without going through all the progressive disciplinary steps set out in this subsection. The pre-disciplinary process as set forth in Article VIII, Section 9, Procedural Guidelines for Disciplinary Dismissal, otherwise remain in full force and effect.⁸
 - d. If the Department Head recommends to the County Manager, or his/her designee, or appointing authority, that the Covered Employee be suspended without pay, demoted, or dismissed then these actions must be preceded by a pre-disciplinary conference which must be conducted by the County Manager, or his/her designee, and/or Human Resources Director or the appointing authority. Dismissal shall be the final decision of the County Manager, or his/her designee, or appointing authority.
3. Disciplinary actions remain active for 18 months unless further disciplinary action occurs prior to the action becoming inactive. Should further disciplinary action occur within the active 18 month period, then all active disciplinary actions will be extended for the time period of the most recently issued actions.

D. Procedural Guidelines for Disciplinary Suspension without Pay

1. Disciplinary suspension without pay of a Covered Employee shall be applicable as follows:

⁸ Approved by County Commissioners' on September 4, 2018 and effective on September 4, 2018

- a. For Unsatisfactory Job Performance after the receipt of at least one active disciplinary action.
 - b. For any instance of Unacceptable Personal Conduct.
2. Essential considerations for disciplinary suspension without pay of a Covered Employee are as follows:
- a. A pre-disciplinary conference is required prior to the suspension of a Covered Employee following applicable procedure from the steps outlined below in *ARTICLE VIII. SEPARATION, DISCIPLINARY ACTION, AND EMPLOYEE APPEALS, Section 9. Procedural Guidelines for Disciplinary Dismissal*, for conducting a pre-disciplinary conference. Advance written notice of the conference is required.
 - b. Deductions from pay for unpaid disciplinary suspension of one or more full days for infractions of workplace conduct rules are applicable to all employees – exempt and non-exempt pursuant to FLSA DOL regulations.
 - c. If the result of the pre-disciplinary conference is to suspend the Covered Employee, the Covered Employee must be furnished with a written statement setting forth the specific reasons for the suspension without pay and notice of the length of suspension.
 - d. A copy of the appeal procedure.
 - e. This action is a matter of public record pursuant to N.C. Gen. Stat. § 153A-98(b) or as amended.

Section 8. Procedural Guidelines for Disciplinary Demotion

A. Disciplinary demotion of a Covered Employee shall be applicable as follows:

1. For Unsatisfactory Job Performance after the receipt of at least one active disciplinary action.
2. For any instance of Unacceptable Personal Conduct.

B. Essential considerations for disciplinary demotion of a Covered Employee are as follows:

1. A pre-disciplinary conference is required prior to the demotion of a Covered Employee following applicable procedure from the steps outlined below in *ARTICLE VIII. SEPARATION, DISCIPLINARY ACTION, AND EMPLOYEE APPEALS, Section 9. Procedural Guidelines for Disciplinary Dismissal*, for conducting a pre-disciplinary conference. Advance written notice of the conference is required.
2. If the result of the pre-disciplinary conference is to demote the Covered Employee, the Covered Employee must be furnished with a written statement setting forth the specific reasons for the demotion. Include in the statement:
 - a. How and to what extent the demotion will affect the Covered Employee's salary and pay grade
 - b. If appropriate, a revised job description outlining the Covered Employee's revised duties and responsibilities
 - c. A copy of the appeal procedure

- d. This action is a matter of public record pursuant to N.C. Gen. Stat. § 153A-98(b) or as amended

Section 9. Procedural Guidelines for Disciplinary Dismissal

A. Disciplinary dismissal of a Covered Employee shall be applicable as follows:

1. For any instance of Unacceptable Personal Conduct
2. For Unsatisfactory Job Performance as applied pursuant to Article VIII.⁹

B. Essential considerations for dismissal of a Covered Employee are as follows:

1. A pre-disciplinary conference is required prior to the dismissal of a Covered Employee following applicable procedure from the steps outlined below in *ARTICLE VIII. SEPARATION, DISCIPLINARY ACTION, AND EMPLOYEE APPEALS, Section 9. Procedural Guidelines for Disciplinary Dismissal*, for conducting a pre-disciplinary conference. Advance written notice of the conference is required.
2. If the result of the pre-disciplinary conference is to dismiss the Covered Employee, the Covered Employee must be furnished with a:
 - a. Written statement shall set forth the specific acts or omissions that are the basis of the employee's dismissal.
 - b. A copy of the appeal procedure.
 - c. The employee shall be informed in the agency final decision letter that a copy of the written notice of the final decision of the County is a public record pursuant to N.C. Gen. Stat. § 153A-98(b) or as amended and that the agency is required by law to release it pursuant to any public record requests. Further, if the employee appeals his dismissal through the agency appeal procedure, the resultant letter shall also be a matter of public record.

Section 10. Procedural Guidelines for Pre-disciplinary Conference

A pre-disciplinary conference must be held for a Covered Employee when a disciplinary action of suspension without pay, demotion, or dismissal is being considered.

- A. The conference should include the Human Resources Director and/or the County Manager, or his/her designee, or corresponding appointing official who has jurisdiction over the employee (Department Head and/or Supervisors who prepared any and all written warnings and who have knowledge of the employee's performance or conduct which has led to the proposed disciplinary action) and the Covered Employee.
- B. Advance written notice of the pre-disciplinary conference is required. The Covered Employee should be given as much time as is practical under the circumstances surrounding the Covered Employee's performance or conduct. Preference would be a minimum of one day notice generated through the

⁹ Approved by County Commissioners' on September 4, 2018 and effective on September 4, 2018

Human Resources Department and signed by the management members involved (Department Head and Supervisor(s) involved) and a minimum of four hours.

C. The notice to the Covered Employee should include the following:

1. Inform the Covered Employee there shall be a pre-disciplinary conference and include the time, date, and location of the conference.
2. Provide a summary of the evidence and the issues for which disciplinary action is being conducted.
3. Indicate that the organization is **considering** disciplinary action, but that the conference is to aid in reaching a final decision.
4. Inform the Covered Employee that he/she shall be given an opportunity to respond to the evidence at the conference.

D. The conference is to be conducted by the County Manager, or his/her designee, and/or Human Resources Director or appointing authority. In cases where the Human Resources Director may be the employee in question or where the Human Resources Director is the Supervisor of an employee in question then the conference shall be conducted by the County Manager and/or the Assistant County Manager. It is necessary that during the conference the following procedures should occur:

1. All evidence and related information regarding the performance and or conduct be reviewed orally.
2. Management may request to have present a second representative and, if necessary, security personnel.
3. No attorneys are allowed in the pre-disciplinary conference.
4. No recording devices are allowed to be used during the pre-disciplinary conference.
5. Specific reasons and supporting documentation, to include all written warnings, should be presented which support the proposed action.
6. Insure the employee at the onset of the conference that no final decision has been made.
7. Solicit information from the Covered Employee which shall allow him/her to present their side or perspective of the issue(s).
8. The Covered Employee does not have the option of presenting witnesses but may give the County Manager, or his/her designee, a list of names of persons who have information related to the disciplinary action.
9. Terminate the conference for the purpose of evaluating and weighing all information/evidence presented.

E. To render a final decision on the appropriate course of action, a meeting with the necessary management, staff, and an investigation of other sources may follow the pre-disciplinary conference to evaluate information obtained in the pre-disciplinary conference. Following the conference, management shall review and consider the response of the employee and reach a decision on the proposed recommendation. If management's decision is to dismiss the employee, a written letter of

dismissal containing the specific reasons for dismissal, the effective date of the dismissal and the employee's appeal rights shall be issued to the employee in person or by certified mail, return receipt requested, to the last known address of the employee. To minimize the risk of dismissal upon erroneous information, and to allow time following the conference for management to review all necessary information, the decision to dismiss should not be communicated to the employee in accordance with this Paragraph, prior to the beginning of the next business day following the conclusion of the pre-dismissal conference or after the end of the second business day following the completion of the pre-dismissal conference except in those cases where further time is needed to investigate additional information in an effort to make an informed decision. Should a delay be necessary, management will inform the employee and provide them with a deadline for a decision.

Section 11. Placement on Investigatory Status with Pay

- A. Investigatory Status with Pay (herein "ISP") may be used to provide time to investigate, establish facts, and reach a decision concerning an employee's status. Placement on ISP may be appropriately used to provide time to schedule and hold a pre-disciplinary conference. Also, the County may elect to use ISP to avoid undue disruption of work or to protect the safety of persons or property. An ISP placement shall not exceed thirty calendar days unless extended by management. Extensions shall be in writing to the employee and include the specific reason for the extension and the length of the extension.
- B. Placing an employee on ISP shall not be used for the purpose of delaying an administrative decision on an employee's work status pending the resolution of a civil or criminal court matter involving the employee. Being placed on ISP is not a disciplinary action.

Section 12. Separation Procedure

Prior to separation, an employee separating from employment with the County may have an exit interview with the Human Resources Department and the employee's Department Head. Any County property in the employee's possession shall be returned to the County prior to separation. If the separation is involuntary, the covered employee shall be informed of the right to appeal.

Section 13. Employee Appeal Procedure

- A. A Covered Employee has the right to appeal a demotion, a suspension without pay, reduction in force or a dismissal. ~~Employees who are covered under the State Personnel Act will follow the Appeals and Grievance Policy specific to the employee's department. Appeal rights for employees covered by the State Personnel Act shall prevail.~~
- B. All appeals based on dismissal, suspension without pay, demotions and reduction in force shall be appealed directly to the County Manager, or his/her designee, or appointing authority. Employees shall have fifteen calendar days from the date of receipt of written notice of such action to file an appeal.
- C. After reviewing the appeal, the County Manager, or his/her designee, or corresponding appointing official shall issue a final decision. Upon receiving the final decision of the County Manager, or his/her designee, or corresponding appointing official, the County Manager, or his/her designee, and/or Human Resources Director or other appointing authority shall inform the employee, immediate Supervisor, and the Department Head, in writing, of the final decision and any prescribed

relief to resolve the appeal. The decision shall be furnished within ten days and the decision is final. It is not grievable under *ARTICLE IX. GRIEVANCE PROCEDURE*.

- D. Appeals filed on an untimely basis must be dismissed.
- E. Covered Employees are required to exhaust their administrative remedies prior to taking further legal action outside the Personnel Ordinance.

Section 14. Disciplinary actions involving the Internal Audit Director.

The Head of the Internal Audit Department position cannot be disciplined in any manner without a recommendation by majority vote of the County's Audit Committee. Any member of the Audit Committee may initiate a disciplinary action against the Head of the Internal Audit Department. If a majority of the Audit Committee votes in favor of disciplinary action up to and including termination then such recommendation must be considered by the Board of Commissioners for the final disciplinary decision.¹⁰

¹⁰ Approved by County Commissioners' on September 4, 2018 and effective on September 4, 2018

ARTICLE IX. GRIEVANCE PROCEDURE

Section 1. Grievance

The Grievance Procedure provides an adequate and fair means for hearing and resolving matters of employment conditions of County employees. Nothing herein shall prohibit from filing complaints of unlawful discrimination, harassment, or retaliation in accordance with County policy, or applicable State and federal laws.

Section 2. Coverage

- A. This Grievance Procedure applies to all eligible employees as set forth in *ARTICLE I. ORGANIZATION OF PERSONNEL SYSTEM, Section 2. Coverage* ~~except for Covered Employees who are covered under the State Personnel Act; these employees will follow the Appeals and Grievance Policy and/or the Unlawful Workplace Harassment Policy specific to their Department policies. Grievance and Appeal rights for employees covered by the State Personnel Act shall prevail.~~
- B. A grievance is defined as a claim or complaint of an event or condition which affects the circumstances under which an employee works, allegedly caused by misinterpretation, unfair application, discrimination, bullying or lack of established policy pertaining to employment conditions. A voluntary demotion, a written warning, and Investigatory Suspension with Pay are not grievable in accordance with the remedies and issues utilized in the process described in this policy.

Section 3. Policy

- A. Every eligible employee shall have the right to present a grievance in accordance with these procedures, with or without a representative, free from interference, coercion, restraint, discrimination, penalty, or reprisal. Employees shall be permitted time away from regular duties as may be necessary and reasonable as determined by the Department Head or the County Manager, or his/her designee, to prepare and present a grievance. All grievances based on alleged discrimination may be appealed directly to the County Manager, or his/her designee, or appointing authority, indicating whether the alleged discrimination was based on race, color, religion, sex, national origin, political affiliation, physical or mental disability, age, veteran status, genetic information, sexual orientation, gender identity or any other legally protected class under federal or NC State law. Filing a grievance pursuant to this section does not toll the statute of limitations applicable to filing a charge of discrimination with the Equal Employment Opportunity Commission.
- B. Grievances filed on an untimely basis must be dismissed. Allegations of discrimination, if raised more than thirty calendar days after the party alleging discrimination became aware of or should have become aware of the alleged discrimination, shall be dismissed.
- ~~C. Employees who are covered by the State Personnel Act must follow the administrative procedures outlined per specific Departmental policy, and, specifically for Unlawful Workplace Harassment, for filing a complaint of discrimination or harassment.~~
- D C. The dismissal of your grievance related to discrimination has no bearing on your ability to bring a charge of discrimination with the Equal Employment Opportunity Commission.

Section 4. Procedure

A. Step One.

1. An employee must file a grievance, either orally or in writing, with the immediate Supervisor within fifteen days of the date of a grievable incident having occurred. The immediate Supervisor shall meet with the employee within five days of receipt of the grievance and attempt to informally and expeditiously resolve the grievance. If the grievance is not settled, then the employee and immediate Supervisor should document a statement of relief which describes the action the employee desires the immediate Supervisor or organization should take to resolve the grievance.
2. If the immediate Supervisor's informal resolution efforts fail, the immediate Supervisor must issue a written decision to the employee and the Department Head on the grievance and submit it no later than five days following the meeting which summarized the grievance, the requested statement of relief, and documentation as to why the grievance was not resolved. The grievance procedure would at this point move to Step Two.
3. If the employee alleged sexual harassment or hostile work environment by the immediate Supervisor, the employee may file the complaint with the Department Head, Assistant County Manager, County Manager, or his/her designee, Human Resources Director, or appointing authority. Alternatives as to who to report alleged harassment or hostile work environment to are outlined in *ARTICLE V. CONDITIONS OF EMPLOYMENT*,

B. Step Two.

1. Employees not reaching resolution with the informal response at Step One may file the grievance and statement of relief desired, in writing, with the Department Head within five days of receipt of the immediate Supervisor's written decision and shall state the basis for the complaint, and, if based on alleged discrimination, indicate whether the alleged discrimination was based on race, color, religion, sex, national origin, political affiliation, physical or mental disability, age, veteran status, genetic information, sexual orientation, gender identity or any other legally protected class under federal or NC State law.
2. The Department Head shall meet with the employee within five days of receipt of the Step Two grievance, and review the decision at Step One, and make an independent determination on the merits of the grievance. Within ten days of the meeting with the employee, the Department Head shall issue a written decision to the employee with copies to the immediate Supervisor and the Human Resources Department. If the employee and Department Head reach an agreement at this step, the decision and statement of relief shall be issued and the grievance will be considered resolved.
3. Should the grievance not be resolved at the Department Head level, Step 3 of this procedure is available to the employee.

C. Step Three. (Not applicable to elected official employees or to employees subject to the jurisdiction of the North Carolina State Personnel Commission)

1. Employees not reaching a resolution or timely response in Step 2 are able to take the grievance from the department level to the Human Resources Director. This enables the employee, immediate Supervisor, and Department Head to have the grievance reviewed by someone

external to the department. The grievance may be filed with the Human Resources Director within ten working days of the decision or decision due date of Step 2. The Human Resources Director shall review the grievance and render a decision within ten working days.

2. The decision, in writing, shall be provided to the employee, immediate Supervisor, and Department Head. Should the employee and Human Resources Director reach a resolution, the prescribed relief shall be outlined and the grievance shall be resolved.
3. If no resolution is reached at this level, the employee may proceed to Step 4 of the prescribed grievance process.

D. Step Four.

1. Employees not reaching resolution at Step 3 may forward the written grievance to either the County Manager, or his/her designee, or the appointing authority within five days of receipt of the Step 3 decision. The employee may request a decision from the corresponding appointing official or County Manager, or his/her designee, directly.
2. At Step 4 in the grievance procedure, either the corresponding appointing official or County Manager, or his/her designee, must be utilized for a final and binding decision.
3. If the employee requests a decision directly, the appointing authority and/or County Manager, or his/her designee, shall render a written decision to the employee, immediate Supervisor, Department Head, and Human Resources Director within fifteen days of receipt of the grievance. The decision issued and applicable relief to resolve the grievance is at this stage final and binding and in itself is not grievable.
4. The decision shall be furnished within ten days and in itself is not grievable.

Section 5. Employee Protection and No Retaliation

Buncombe County is committed to a safe workplace where employees are able to responsibly voice their concerns regarding business operations, the use of resources and assets, the adherence to workplace practices and policies, unethical behavior, and unsafe work practices and to do so without fear of reprisal, intimidation and/or retaliation. There are different ways that employees can voice their concern. These include:

- a. Addressing concerns with the appropriate member of management;
- b. Using the Grievance Procedure when applicable (See Article IX. Grievance Procedure); or
- c. Using the Employee Protection Hotline: a toll-free number (1-866-908-7236) that is answered by an independent third party source and available to employees as well as the public to register a complaint or concern anonymously. Anonymous reports are directed to the Internal Auditor to investigate and ensure follow up action if appropriate.

Buncombe County is committed to ensuring that every employee is treated fairly who lodges a concern, and the County will handle all concerns swiftly and confidentially to the extent possible in light of the need to take appropriate corrective action. Lodging a concern will in no way be used against the employee or have an adverse impact on the individual's employment status. However, filing groundless or malicious concerns is an abuse of this policy and will be treated as a violation. (For full policy see Employee Protection and No Retaliation Policy – Appendix N).

Section 6. Maintenance of Records

All documentation, records, and reports shall be retained for a minimum of three years and shall be held by the Human Resources Department. These records shall be subject to review by the grievant, the employee's Department Head, the County Manager, or his/her designee, and/or Human Resources Director, or other appointing authority, and by the Board of County Commissioners.

ARTICLE X. PERSONNEL RECORDS

Section 1. Personnel Records Maintenance

Such personnel records as are necessary for the proper administration of the personnel system shall be maintained by the appointing authority or Human Resources Department. The County shall maintain in personnel records only information that is necessary and relevant to accomplishing legitimate personnel administration needs. Medical information shall be kept in a separate medical file with limited access and in compliance with the Americans with Disabilities Act and all privacy laws.

Section 2. Information Open to the Public (N.C. Gen. Stat. § 153A-98(b))

Pursuant to N.C. Gen. Stat. § 153A-98(b), the following information with respect to each County employee is a matter of public record:

1. Name;
2. Age;
3. Date of original employment or appointment to County service;
4. The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its possession;
5. Current position;
6. Title;
7. Current "salary;"
8. Date and amount of each increase or decrease in salary with the County;
9. Date and type of each promotion, demotion, transfer, suspension, separation or other change in position classification with the County;
10. Date and general description of the reasons for each promotion with the County;
11. Date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the County. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the County setting forth the specific acts or omissions that are the basis of the dismissal; and,
12. Office to which the employee is currently assigned.

For the purposes of this Personnel Ordinance, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

Section 3. Access to Personnel Records

As required by G. S. 153A-98, any person may have access to the information listed in Section 2 of this article for the purpose of inspection, examination, and copying, during the regular business hours, subject only to such rules and regulations for the safekeeping of public records as the Board of County

Commissioners may adopt. Any person denied access to any record shall have a right to compel compliance with these provisions by application to a court for writ of mandamus or other appropriate relief.

Section 4. Confidential Information

- A. All information contained in a County employee's personnel file, other than the information listed in Section 2 of this article, shall be maintained as confidential in accordance with the requirement of G. S. 153A-98 and shall be open to public inspection only accordance with 153A-98 (c).
- B. Each individual requesting access to confidential information shall be required to submit satisfactory proof of identity.
- C. A record shall be made of each disclosure to third parties and placed in the employee's file.

Section 5. Remedies of Employees Objecting to Material in File

An employee who objects to material in his or her personnel file may place in the file a statement relating to the material the employee considers to be inaccurate or misleading. A Covered Employee may seek the removal of such material in accordance with established grievance procedure.

Section 6. Improper Access Unlawful

Any official or employee who knowingly permits improper access to confidential information contained in a personnel file may be subject to criminal conviction and a fine as provided by law. Likewise, any individual who knowingly accesses confidential personnel information may also be subject to criminal conviction and a fine as provided by law.

Section 7. Destruction of Records

No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with N.C. Gen. Stat. § 121-5 (b), without the consent of the State Department of Cultural Resources. Individuals who unlawfully remove public records or who alter, deface, mutilate, or destroy a public record may be subject to criminal conviction and a fine as provided by law.

ARTICLE XI. IMPLEMENTATION OF PERSONNEL ORDINANCE

Before adopting or amending any provision of this Personnel Ordinance, the Board of Commissioners shall hold a public hearing on the ordinance or amendment. The Board shall cause notice of the hearing to be published at least once not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

Section 1. Conflicting Policies and Resolution Repealed

All policies, ordinances, or resolutions that conflict with the provisions of this Personnel Ordinance are hereby repealed.

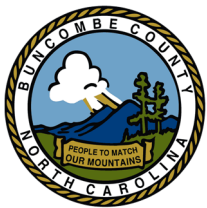
Section 2. Severability

If any provision of this Personnel Ordinance or any rule, regulations, or order thereunder or the application of such provision to any person or circumstance is held invalid, the remainder of this Personnel Ordinance and the application of such remaining provisions of this Personnel Ordinance of such rules, regulations, or orders to persons or circumstances other than those held invalid, shall not be affected thereby.

This Ordinance adopted and effective by the Board of County Commissioners, Buncombe County, State of North Carolina, this 3rd day of October, 2017.

Appendices

BUNCOMBE COUNTY POLICIES



Appendix A: Buncombe County Core Values for Employee Conduct

Section 1. Purpose

As an anchor institution, we want our employees to reflect the best aspects of our community. Through their actions each day, our employees help shape the character of our community. Our commitment in County government is to foster a safer, healthier community and one where every person is treated with dignity and respect and has the best chance to lead a productive and sustainable way of life.

Section 2. Core Values

A. Eight core values define our culture. Our core values determine how we act each day in the choices we make and the interactions we have. Make a difference in our community through the way you connect with those you serve by:

1. **Choosing the action that strengthens our community:** Each decision you make shapes the character of our community. Make sure that the actions you take are ones that strengthen our community – from your day-to-day interactions with people to how you deliver your services make sure that you intentionally choose the “right” decision for both the short and the long term success of our community.
2. **Demonstrating “You Matter to Me” in all your actions:** Choose your words and actions with intention to show, “**You Matter to Me.**” Keep this phrase at the center of your actions and when in doubt about what to do, or how to respond, or what to say, think how you can show each person you serve that they matter to you.
3. **Leading from a place of professional pride:** The way we deliver services defines what is important to us. Make sure you exemplify what is best in your profession and/or role. Professionals lead from a place where they are agents in their environment by:
 - a. **Connecting.** They participate in activities that produce a high “return on connection.”
 - b. **Shaping.** They seize opportunities to customize their professional experience.
 - c. **Learning.** They become self-directed learners at or above the speed of change.
 - d. **Stretching.** They move out of their comfort zone and move toward their outer limits.
 - e. **Achieving.** They regenerate through the intrinsic rewards of meaningful achievement.
 - f. **Contributing.** They direct their effort beyond themselves to create growth in others and value in the organization.
4. **Paying attention for ways to improve things:** Our signature approach is to relentlessly look for ways to deliver services better, making sure that we are not only efficient but effective.
5. **Building a positive team and family spirit:** How we treat each other shows our community how we want to live. Create each day a welcoming environment that brings out the best in you, your coworkers, and the people we serve.
6. **Using your time wisely:** Time is our most precious resource. Learn to manage yourself and your duties efficiently and effectively.

7. **Opening yourself up to the rich diversity of people and perspectives:** Buncombe County crosses 660 square miles of varied neighborhoods and people. Lead from a place that seeks out and benefits from these varied perspectives and needs.
 8. **Being honest and ethical:** It defines our public trust.
- B. **These responsibilities and core values are essential to the successful performance and behavior of our employees.**

Appendix B



Family Medical and Paid Leave Policy¹¹

1.0 Purpose

The Family and Medical Leave Act of 1993 was passed by Congress to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity; to minimize the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons; and to promote the goal of equal employment opportunity.

The function of this policy is to provide employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law. If you have any questions, concerns, or disputes with this policy, you must contact the Human Resources Director in writing.

2.0 Applicability

This policy applies to all Buncombe County departments and eligible employees. To qualify to take family or medical leave under this policy, the employee must meet all of the following conditions:

- a. The employee must have worked for the County for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations or when there is a written agreement, including a collective bargaining agreement, stating the employer's intention to rehire the employee after the service break. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.
- b. The employee must have worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave. The 1,250 hours do not include time spent on paid or unpaid leave. Consequently, these hours of leave should not be counted in determining the 1,250 hours eligibility test for an employee under FMLA.
- c. The employee must work in a worksite where 50 or more employees are employed by Buncombe County within 75 miles of that office or worksite. The distance is to be calculated

¹¹ Amended by the Board of Commissioners on November 17, 2020 and effective on November 17, 2020.

by using available transportation by the most direct route.

3.0 Policy

a. Type of Leave Covered

To qualify as FMLA leave under this policy, the leave must be for one of the reasons listed below (see definitions below):

- i) The birth of a child and in order to care for that child.
- ii) The placement of a child for adoption or foster care and to care for the newly placed child.
- iii) To care for a spouse, child or parent with a serious health condition.
- iv) The serious health condition of the employee. An employee may take leave because of a serious health condition that makes the employee unable to perform the functions of their position.

This policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of three consecutive days of incapacity with the first visit to the health care provider within seven days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.

Employees with questions about what illnesses are covered under this FMLA policy or under the County's sick leave policy are encouraged to consult with the Benefits Administrator.

If an employee takes paid sick leave for a condition that progresses into a serious health condition and the employee requests unpaid leave as provided under this policy, the County will designate all related leave taken as qualifying FMLA leave under this policy, to the extent that the earlier leave meets the necessary qualifications.

- v) Qualifying exigency leave for families of members of the National Guard or Reserve or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.
 - (1) An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to covered active military duty or who is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following:
 - 1. short-notice deployment
 - 2. military events and activities
 - 3. child care and school activities
 - 4. financial and legal arrangements
 - 5. counseling
 - 6. rest and recuperation
 - 7. post-deployment activities

8. additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

Eligible employees are entitled to FMLA leave to care for a current member of the Armed Forces, including a member of the National Guard or Reserve, or a member of the Armed Forces, the National Guard or Reserve who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list. Eligible employees may not take leave under this provision to care for former members of the Armed Forces, former members of the National Guard and Reserve, or members on the permanent disability retired list.

- a. To care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the covered service member. The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave except that the person does not have to be a minor.) This type of leave would be counted toward the employee's 12-week maximum of FMLA leave in a 12- month period.
- b. Military caregiver leave (also known as covered service member leave) to care for an injured or ill service member or veteran.
 - (1) An employee whose son, daughter, parent or next of kin is a covered service member may take up to 26 weeks of leave in a single 12-month period to care for that service member. Next of kin is defined as the closest blood relative of the injured or recovering service member.

b. Amount of Leave

An eligible employee can take up to 12 weeks for the FMLA circumstances (a) through (e) above under this policy during any 12-month period. The County will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the County will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.

An eligible employee can take up to 26 weeks for the FMLA circumstance (f) above (military caregiver leave) during a single 12-month period. For this military caregiver leave, the County will measure the 12-month period as a rolling 12-month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

Employee Status and Benefits During Leave

While an employee is on leave, the County will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the

employee's control, the County will require the employee to reimburse the County the amount it paid for the employee's health insurance premium during the leave period.

Under current County policy, the employee pays a portion of the health care premium. While on paid leave, the employer will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received in the Finance Department by the 1st day of each month. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave. The employer will provide 15 days' notification prior to the employee's loss of coverage.

If the employee contributes to a life insurance or disability plan, the employer will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee may request continuation of such benefits and pay their portion of the premiums, or the employer may elect to maintain such benefits during the leave and pay the employee's share of the premium payments. If the employee does not continue these payments, the employer may discontinue coverage during the leave. If the employer maintains coverage, the employer may recover the costs incurred for paying the employee's share of any premiums, whether or not the employee returns to work.

c. Employee Status After Leave

An employee who takes leave under this policy will be asked to provide a fitness for duty (FFD) clearance from a health care provider. This requirement will be included in the employer's response to the FMLA request. Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The position will be the same or one that is virtually identical in terms of pay, benefits and working conditions. The County may choose to exempt certain key employees from this requirement and not return them to the same or similar position when doing so will cause substantial and grievous economic injury to business operations. Key employees will be given written notice at the time FMLA leave is requested of their status as a key employee.

d. Certification for the Employee's Serious Health Condition

The County will require certification for the employee's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Employee's Serious Health Condition.

The County may directly contact the employee's health care provider for verification or clarification purposes using a health care or HR professional. The County will not use the employee's direct supervisor for this contact. Before the County makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the County will obtain the employee's permission for clarification of individually identifiable health information.

The County has the right to ask for a second opinion if it has reason to doubt the certification. The County will pay for the employee to get a certification from a second doctor, which the County will select. The County may deny FMLA leave to an employee who refuses to release relevant

medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the County will require the opinion of a third doctor. The County and the employee will mutually select the third doctor, and the County will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

e. Certification for the Family Member's Serious Health Condition

The County will require certification for the family member's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Family Member's Serious Health Condition.

The County may directly contact the employee's family member's health care provider for verification or clarification purposes using a health care or HR professional. The County will not use the employee's direct supervisor for this contact. Before the County makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the County will obtain the employee's family member's permission for clarification of individually identifiable health information.

The County has the right to ask for a second opinion if it has reason to doubt the certification. The County will pay for the employee's family member to get a certification from a second doctor, which the County will select. The County may deny FMLA leave to an employee whose family member refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the County will require the opinion of a third doctor. The County and the employee will mutually select the third doctor, and the County will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

f. Certification of Qualifying Exigency for Military Family Leave

The County will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification of Qualifying Exigency for Military Family Leave.

g. Certification for Serious Injury or Illness of Covered Service member for Military Family Leave

The County will require certification for the serious injury or illness of the covered service member. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification for Serious Injury or Illness of Covered Service member.

h. Recertification

The County may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days unless circumstances have changed significantly, or if the employer receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of their leave. Otherwise, the County may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with an FMLA absence. The County may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

i. Requesting FMLA Leave

All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to the Benefits Administrator or Benefits Specialist. Within five business days after the employee has provided this notice, the Benefits representative will complete and provide the employee with the DOL Notice of Eligibility and Rights.

When the need for the leave is foreseeable, the employee must provide the employer with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day the need for leave is discovered or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the County's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

j. Designation of FMLA Leave

Within five business days after the employee has submitted the appropriate certification form, the Benefits Representative will complete and provide the employee with a written response to the employee's request for FMLA leave using the DOL Designation Notice.

k. Intent to Return to Work from FMLA Leave

On a basis that does not discriminate against employees on FMLA leave, the County may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

l. Intermittent Leave or a Reduced Work Schedule

The employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill service member over a 12-month period).

The County may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth or placement for adoption or foster care.

For the birth, adoption or foster care of a child, the County and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced- hour

schedule. Leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of the child.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with the County before taking intermittent leave or working a reduced-hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary.

m. Paid Parental and Family Leave

- i. Eligibility: To be eligible for Paid Parental and Family Leave, the employee must be a qualified employee under the Family Medical Leave Act (FMLA) and on approved FMLA Leave for one of the following reasons:
 1. To bond with a newborn child within one year of birth; or to bond with a child following adoption or foster care placement within one year of adoption or placement. Part-time and Temporary employees are not eligible for Paid Family Leave.
 2. To care for a spouse, child or parent with a serious health condition (described below).
- ii. Paid Leave Benefit:
 1. Compensation. Paid Parental and Family Leave will provide salary continuation of:
 - a. 100% for Parental Leave.
 - b. 100% for Family Care Leave.
 2. Duration.
 - a. Up to eight (8) weeks for Parental Leave.
 - b. Up to six (6) weeks for Family Care Leave.
 - i. Employees may use this time in a single continuous block or intermittently. Paid Parental and Family Leave runs concurrent with FMLA Leave.
 - ii. The amount of paid Parental and Family leave for any one person shall not exceed the employees approved FMLA period.
 1. If the employee has used unpaid Family Medical Leave, they will only be eligible to use the remaining balance of their leave to apply to this paid benefit.
 3. Considerations:
 - a. All leave must be completed within twelve (12) months of the qualifying event.
 - b. If the employee is using consecutive days of this approved leave, they may not use vacation, sick leave, or holiday pay.
 - c. If the employee is utilizing their paid Parental and Family Leave intermittently, they may use their accrued but unused leave in accordance with the Personnel Ordinance.
 - d. Employees may not receive Temporary Disability Income (TDI) while receiving Paid Family Leave. An employee may receive Paid Parental and Family Leave prior to obtaining TDI or after TDI ends.
 - e. If an employee receives Paid Parental and Family Leave, they will not be available to sell back vacation time for 12-months from the end of the approved leave.
 - f. Employees receiving Paid Parental and Family Leave may not work off duty employment.

n. Other Leave – Paid Time Off (Sick, Vacation, Compensatory Time) or Unpaid Leave All approved periods of paid leave and periods of leave without pay beyond the allotted Paid

Parental and Family Leave benefit (including leave without pay) count towards the workweeks to which the employee is entitled. The employee must use all paid vacation, personal or compensatory leave prior to being eligible for unpaid leave. An employee who is using military FMLA leave for a qualifying exigency must use all paid leave prior to being eligible for unpaid leave. An employee using FMLA military caregiver leave must also use all paid leave (as long as the reason for the absence is covered by Buncombe County's sick leave policy) prior to being eligible for unpaid leave.

4.0 Policy Non-Compliance

Employees willfully violating the terms and conditions of this policy may be subject to appropriate disciplinary action, up to and including dismissal.

5.0 Audit

All policies for Buncombe County may be subject to audit or review as outlined in the [Internal Auditor's Statement](#). The Internal Auditor's Statement is incorporated into all County policies through this reference.

6.0 Definitions

- a. Parent - A biological, adoptive, step or foster father or mother or an individual who stood in loco parentis (a person who is in the position or place of a parent) to an employee when the employee was a child. This term does not include parents "in-law".
- b. Child – A son or daughter who is:
 - i. under 18 years of age, or
 - ii. is 18 years of age or older and incapable of self-care because of a mental or physical disability and who is:
 - i. a biological child,
 - ii. an adopted child,
 - iii. a foster child (a child for whom the employee performs the duties of a parent as if it were the employee's child),
 - iv. a step-child (a child of the employee's spouse from a former marriage),
 - v. a legal ward (a minor child placed by the court under the care of a guardian), or
 - vi. a child of an employee standing in loco parentis.
- c. Spouse - A couple who is recognized under state law for purposes of marriage in the State in which the marriage was entered into. This definition includes an individual in a same-sex or common law marriage that was entered into in a State that recognizes such marriages. In the case of a marriage entered into outside of any State, the marriage is recognized if the marriage is valid in the place where entered into and could have been entered into in at least one State.
- d. Incapable of Self Care – the individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living including cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephone and directories, using a post office, etc.
- e. Serious Health Condition – A condition that requires inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed health care provider.

- f. **Workweek** – The number of hours an employee is regularly scheduled to work each week, including holidays.
- g. **Reduced Work Week** – A work schedule involving less hours than an employee is regularly scheduled to work.
- h. **Intermittent Work Week** – A work schedule in which an employee works on an irregular basis and is taking leave in separate blocks of time, rather than for one continuous period of time, usually to accommodate some form of regularly scheduled medical treatment due to a single qualifying reason.
- i. **12-Month Period** – The 12-month period measured forward from the date any employee's family and medical leave begins.
- j. **Holidays** – Holidays occurring during a FMLA period of a full week count toward the FMLA leave entitlement. Holidays occurring during a partial week of FMLA leave do not count against the FMLA leave entitlement, unless the employee was otherwise scheduled and expected to work during the holiday.
- k. **Agency Closures** – If the agency closes for more than one full day, any subsequent days that the agency is closed do not count against the employees' FMLA leave entitlement.
- l. **Worker's Compensation Leave** – If an employee is out on workers' compensation leave drawing temporary total disability, the time away from work is not considered as a part of the FMLA entitlement.
- m. **Son or daughter of a covered service member** – means the covered service member's biological, adopted, or foster child, stepchild or legal ward, or a child for whom the covered service member stood in loco parentis, and who is of any age.
- n. **Parent of a covered service member** – means a covered service member's biological, adoptive, step or foster parent, or any other individual who stood in loco parentis to the covered service member. This term does not include parents in law.
- o. **Next of kin of a covered service member** – is the nearest blood relative, other than the covered service member's spouse, parent, son or daughter, in the following order of priority: blood relatives who have been granted legal custody of the service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as their nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member's next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered service member's only next of kin. For example, if a covered service member has three siblings and has not designated a blood relative to provide care, all three siblings would be considered the covered service member's next of kin. Alternatively, where a covered service member has siblings and designates a cousin as their next of kin for FMLA purposes, then only the designated cousin is eligible as the covered service member's next of kin. An employer is permitted to require an employee to provide confirmation of covered family relationship to the covered service member pursuant to § 825.122(k).
- p. **Covered active duty** – for members of a regular component of the Armed Forces, means duty during deployment of the member with the Armed Forces to a foreign country.
- q. **Covered Service Member** – a member of the Armed Forces (including a member of the

National Guard or Reserve) who is undergoing medical treatment, recuperation, or therapy; is otherwise in outpatient status; or is otherwise on the temporary disability retired list, for a serious injury or illness; or a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserve) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy.

- r. **Serious Injury or Illness** – in the case of a member of the Armed Forces (including a member of the National Guard or Reserve), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating; in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserve) at any time during a period when the person was a covered service member, means a qualifying (as defined by the Secretary of Labor) injury or illness incurred by a covered service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of their office, grade, rank or rating. Outpatient status, with respect to a covered service member, means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

Appendix C: Lactation Support at Work for Nursing Mothers Policy

Section 1. Purpose

- A. As part of our family-friendly policies and benefits, Buncombe County supports breastfeeding mothers by accommodating the mother who wishes to express breast milk during her workday when separated from her newborn. These provisions will meet the requirements of the Fair Labor Standards Act as it relates to breaks for nursing mothers.

Section 2. Policy

- A. For up to one year after the child's birth, any employee who is breastfeeding her child will be provided reasonable break times to express breast milk for her newborn. It is suggested that mothers work with Human Resources prior to the birth of the employee's child or immediately upon return to work so that a smooth transition back to work may be made.
- B. Nursing mothers should work with Buncombe County Human Resources to identify a room in the employee's work area where employees may express milk.
- C. A small refrigerator reserved for the specific storage of breast milk will be available.
 - 1. Any breast milk stored in the refrigerator must be labeled with the name of the employee and the date of expressing the breast milk.
 - 2. Any non-conforming products stored in the refrigerator may be disposed of.
 - 3. Employees storing milk in the refrigerator assume all responsibility for the safety of the milk and the risk of harm for any reason, including improper storage, refrigeration and tampering.
 - 4. Rules for use of a room and refrigerator storage will be posted in the room.
 - 5. Employees who work off-site or in other locations will be accommodated with a private area as necessary.

Appendix D: Disability Policy

Section 1. Purpose

- A. It is the policy of Buncombe County to comply with all federal and state laws concerning the employment of persons with disabilities. Furthermore, it is our policy not to discriminate against qualified individuals with disabilities in regard to application procedures, hiring, advancement, discharge, compensation, training or other terms, conditions, and privileges of employment.

Section 2. Policy

- A. Buncombe County will work with qualified individuals with a disability requesting a reasonable accommodation so that they can perform the essential functions of a job. Buncombe County will not grant a reasonable accommodation if doing so causes a direct threat to the requesting individual or others in the workplace and the threat cannot otherwise be eliminated and/or if the accommodation creates an undue hardship to Buncombe County. Contact the Human Resources Department with any questions or requests for accommodation.
- B. All employees are required to comply with the company safety standards. Current employees who pose a direct threat to the health and/or safety of themselves or other individuals in the workplace will be placed on appropriate leave until an organizational decision has been made in regard to the employees' immediate employment situation.
- C. The Human Resources department is responsible for implementing this policy, including resolution of reasonable accommodation, safety/direct threat, and undue hardship issues.

Appendix E: Workplace Violence Policy

Section 1. Purpose

- A. Buncombe County is committed to preventing workplace violence and to maintaining a safe work environment. Toward that end, Buncombe County has adopted this Workplace Violence policy. The intent of the policy is to ensure that our employees are free from intimidation, harassment, or other threats of or actual violence that may occur on-site or off-site during work-related activities. **All employees, customers**, vendors and business associates should be treated with courtesy and respect at all times. Employees are expected to refrain from fighting, bullying, “horseplay,” or other conduct that may be dangerous to others.

Section 2. Policy

- A. Conduct that threatens, intimidates, or coerces another employee, customer, vendor or business associate will not be tolerated. County resources may not be used to threaten, stalk, or harass anyone at the workplace or outside of the workplace. The County treats threats coming from an abusive personal relationship as it does other forms of violence.
- B. Indirect or direct threats of violence, incidents of actual violence and suspicious individuals or activities should be reported as soon as possible to a Supervisor, security personnel, human resources, member of the Buncombe County Threat Assessment Team, or any member of senior management. When reporting a threat or incident of violence, the employee should be as specific and detailed as possible and use the Violent Incident Form. Employees should not place themselves in peril, nor should they attempt to intercede during an incident.
- C. Employees should promptly inform the Human Resources department of any protective or restraining order that they have obtained that lists the workplace as a protected area. Employees are encouraged to report safety concerns with regard to partner violence. Buncombe County will not retaliate against employees making good-faith reports. Buncombe County is committed to supporting victims of intimate partner violence by providing referrals to Buncombe County’s EAP and community resources and providing time off for reasons related to intimate partner violence.
- D. Buncombe County will promptly and thoroughly investigate all reports of threats of violence or incidents of actual violence and of suspicious individuals or activities. The County may bring together a Threat Assessment Team to investigate and manage an identified threat. The identity of the individual making a report will be protected as much as possible. Buncombe County will not retaliate against employees making good-faith reports of violence, threats or suspicious individuals, or activities. In order to maintain workplace safety and the integrity of its investigation, Buncombe County may suspend employees suspected of workplace violence or threats of violence, either with or without pay, pending investigation.
- E. Anyone found to be responsible for threats of or actual violence or other conduct that is in violation of these guidelines will be subject to prompt disciplinary action up to and including termination of employment.
- F. Buncombe County encourages employees to bring their disputes to the attention of their Supervisors or the Human Resources department before the situation escalates. Buncombe County will not discipline employees for raising such concerns.

Appendix F: Unlawful Workplace Harassment

Section 1. Purpose

- A. Buncombe County is committed to a work environment that is free from harassment and discrimination.

Section 2. Policy

- A. Harassment based on an individual's race, color, religion, sex, national origin, political affiliation, physical or mental disability, age, veteran status, genetic information, sexual orientation, gender identity or any other legally protected class under federal or NC State law will not be tolerated.
- B. All employees, including Supervisor and management personnel, are expected and required to refrain from any activity or action that contributes to harassment in the workplace.
- C. Harassment of employees by Supervisors or co-workers is forbidden in any form.

Section 3. Definitions

Unlawful Workplace Harassment is specifically defined as: Unwelcome or unsolicited speech or conduct based upon race, color, religion, sex, national origin, political affiliation, physical or mental disability, age, veteran status, genetic information, ¹sexual orientation, gender identity or any other legally protected class under federal or NC State law that creates a hostile work environment or circumstances involving quid pro quo.

Hostile Work Environment harassment includes, but is not limited to, unwelcome statements or actions as a result of the individual being a member of a legally protected class that are sufficiently severe or pervasive as to unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive work environment.

- In determining whether a hostile work environment exists, you consider both whether a reasonable person would find the harassment hostile or abusive and whether the particular person who is the object of the harassment perceives it to be hostile or abusive.
- Hostile work environment is determined by looking at all of the circumstances, including the frequency of the allegedly harassing conduct, its severity, whether it is physically threatening or humiliating, and whether it unreasonably interferes with an employee's performance.
- Use of the employer's computer system for the purpose of viewing, displaying, or disseminating material that is sexual in nature also may constitute harassing behavior. See *Appendix J: Buncombe County IT Acceptable Usage Policy*.

Quid Pro Quo harassment consists of unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when:

- Submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment, or;
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

Sexual harassment is defined by federal guidelines as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when one or more of the following occur:

- Submission to such conduct is made, either explicitly or implicitly, a term or a condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or;
- Such conduct has the purpose or the effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Section 4. Reporting Procedures

A. Employees who believe they have been harassed in violation of this policy should make an immediate report. Employees may make a report in any of the following ways:

1. The employee may notify his or her immediate Supervisor of the situation. The immediate Supervisor is responsible for notifying County Human Resources within twenty-four hours of becoming aware of the situation and working with County Human Resources to investigate the situation and taking corrective action when appropriate.
2. If the complaint of harassment is against the immediate Supervisor, the immediate Supervisor is not available, or the employee is otherwise uncomfortable reporting to his/her immediate Supervisor, the employee may report the situation to the Department Head. The Department Head is responsible for notifying County Human Resources within twenty-four hours of becoming aware of the situation and working with County Human Resources to investigate the situation and taking corrective action when appropriate.
3. If the allegation is against the Department Head, the Department Head is unavailable or the employee is otherwise uncomfortable reporting to the Department Head, the complaint may be reported to the Human Resources Department at 828-250-4166 or email HR@buncombecounty.org and who shall then assume responsibility for investigating the situation and recommending appropriate corrective action to the County Manager, or his/her designee.
4. If at any point in the process the employee prefers to do so, he/she may report the situation directly an Assistant County Manager, County Manager, or Human Resources Director who shall then assume immediate responsibility for investigating the situation and recommending appropriate corrective action to the County Manager, or his/her designee.
5. Employees may also make a direct report through the County Whistleblower Hotline (1-866-908-7236). Reports made through the hotline will be directly investigated by the appropriate member of Senior Management in coordination with Human Resources.
6. If the allegation of harassment is against the County Manager or an elected official, the complaint should be filed with the Chairman of the Board of County Commissioners, who shall personally investigate the complaint, or designate a representative to conduct the investigation and advise the employee and Board of County Commissioners on the outcome of the investigation.

- B. All complaints of harassment will be promptly investigated and appropriate corrective action where necessary based upon the findings of the investigation. Substantiated claims of harassment may result in disciplinary action, up to and including termination.
- ~~C. Employees who are covered by the State Personnel Act (SPA) need to follow the Unlawful Workplace Harassment Policy specific to their Department for reporting harassing behavior prior to taking legal action.~~
- D-C. Reporting harassment pursuant to this policy does not in any way toll the statute of limitations for reporting harassment to the appropriate governmental agency or through administrative process set forth in the SPA.

Appendix G: No Retaliation Policy for Discrimination and Harassment Complaints

Section 1. Policy

- A. No person will be adversely affected or otherwise retaliated against in his/her employment with the County because of bringing a good faith complaint of unlawful harassment or participating in an unlawful workplace harassment investigation or for making in good faith a complaint about the violation of discrimination, anti-harassment, workplace violence, or other unlawful behavior or conduct that violates the County's policy(ies).

Section 2. Other Protected Activity

- A. Other protected activity includes, but is not limited to:
1. Initiating an internal complaint or report of discrimination or harassment;
 2. Filing a claim of discrimination;
 3. Requesting an accommodation for a disability;
 4. Filing a Workers' Compensation claim following a work-related injury;
 5. Requesting leave under the Family and Medical Leave Act; or
 6. Filing a safety or environmental related complaint with state and/ or federal oversight agencies.

Section 3. Procedure

- A. Reports of retaliatory conduct will be promptly and objectively investigated in accordance with the County's investigation procedures.
- B. If a retaliation complaint is substantiated, appropriate disciplinary action, up to and including termination, will be taken against those who have engaged in such behaviors, as the County deems appropriate in its sole discretion.
- C. Co-workers are prohibited from engaging in retaliation against other employees and will be subject to discipline, up to and including termination, for such conduct.
- D. If an employee (or applicant) feels as if they have suffered an adverse action for making a complaint or for testifying, assisting, or participating in any manner in any investigation, proceeding or hearing conducted by Buncombe County and/or a federal or state enforcement agency, the employee should contact the Human Resources Director or any member of the County Manager's Senior Leadership Team or call the County Whistleblower Hotline (1-866-908-7236) and file a complaint.

~~Appendix H: Buncombe County Vehicle Usage Policy¹²~~

~~Section 1. Purpose~~

~~This policy establishes uniform vehicle use practices and requirements for County employees of all departments, as well as partners and affiliated agencies that operate motor vehicles to conduct County business including but not limited to use vehicles owned by the County, vehicles leased or rented by the County, or an employee's personal vehicle or otherwise within the possession and control of the County, to ensure safe driving and efficient use of public property. For purposes of this policy, County "department" shall include the Sheriff's Office and Register of Deeds. The following provisions shall apply unless in conflict with or exempt by State or federal statute.~~

~~Section 2. Overview~~

~~County employees in various departments may be required to use/operate a motor vehicle to conduct business on behalf of the County. The purpose of this policy is to ensure that County employees are properly licensed to operate said motor vehicle and that the vehicles are used in a safe and efficient manner.~~

~~Section 3. Use of Vehicles~~

~~All employees from every department in the County must be properly licensed to operate a motor vehicle to use a motor vehicle to conduct business on behalf of the County. "Conducting business" shall mean any time an employee using a motor vehicle to perform a job function, at the direction of his or her Supervisor or travel for the County.~~

~~Section 4. Driver's Responsibilities~~

- ~~A. While on County business, employees shall operate all vehicles in a safe and courteous manner. Employees shall not exceed the speed limit and shall obey all traffic laws.~~
- ~~B. Violations, citations, fines, and other actions taken by any enforcement agency against any employee while operating a motor vehicle for County business shall be the responsibility of the employee and may be cause for disciplinary action by the County.~~
- ~~C. All employees are subject to random reviews of their Motor Vehicle Record (MVR) by the Safety Officer. Upon request, all employees must provide a copy of their current license to the safety officer.~~
- ~~D. Every employee is required to notify his or her Department Director within one business day of any change in the employee's driver's status this includes but is not limited to civil revocations for impaired driving, suspensions and revocations. Failure to notify one's Department Director of said change shall result in discipline up to and including termination.~~
- ~~E. No vehicle used for County business shall be driven if the driver has consumed or is under the influence of alcohol or any controlled substance.~~

¹² Amended by the Board of Commissioners on October 6, 2020 and effective on October 6, 2020.

~~F. The use of tobacco in any form is prohibited in County-owned vehicles.~~

~~G. Possession, transportation or consumption of alcohol or illegal drugs by anyone in the vehicle is prohibited. Law enforcement personnel may transport lawfully confiscated items as required and within the scope and course of their official duties.~~

~~H. Distracted Driving~~

~~Buncombe County has a vital interest in maintaining a safe, healthy and efficient working environment for its employees. This includes a safe and appropriate environment while traveling on County business. Distracted driving is a serious safety risk, not only to the driver, but also to other occupants in the vehicle, other vehicles on the road and pedestrians. In order to reduce the risks associated with distracted driving, certain conduct is prohibited while driving a County-owned motor vehicle or while driving a personal vehicle while on County business, including:~~

- ~~i. Use of cell phone or other mobile device to text or email while operating a vehicle;~~
- ~~ii. Operating laptops, tablets, portable media devices, and GPS devices; and~~
- ~~iii. Reading maps or any type of document, printed or electronic.~~

~~Drivers must pull over safely to the side of the road or another safe location before checking messages, returning calls, text messaging, emailing, reading maps for directions, or programming/resetting GPS devices.~~

~~Section 5. Use of County Vehicles~~

~~A. County vehicles are assigned to one or more employees for their primary use for County business and obligations. At the end of the workday, all County vehicles are to be parked in their assigned parking area unless specifically otherwise authorized by the respective Department Director.~~

~~B. Employees driving County vehicles must be at least twenty-one years of age.~~

~~C. Employees assigned County-owned vehicles are to take proper care of the interior and exterior appearance and servicing of County-owned vehicles at the scheduled times and/or every 4,000 miles. Failure to do so may result in disciplinary action. Upholding the maintenance requirement is the responsibility of the Department Director.~~

~~D. The vehicle operator of is responsible for routinely checking for proper oil level, water and antifreeze levels, wear on belts, and adequate inflation of tires by reviewing the vehicle manual. The Garage Supervisor will provide training as needed.~~

~~E. When fueling vehicles, the grade of fuel used shall be consistent with the lowest grade as stated in the operator's manual. Exceptions shall only be granted by the expressed written consent of the Department Director.~~

~~Section 6. Private Use~~

~~A. General Statutes §14-247, Private Use of Publicly Owned Vehicles, provides:~~

~~—“It shall be unlawful for any officer, agent or employee of the State of North Carolina, or... County ... to use for any private purpose whatsoever any motor vehicle of any type or description whatsoever belonging to the ...County It is not a private purpose to drive a permanently assigned state-owned~~

~~motor vehicle between one's official work station and one's home as provided in G.S. 143-341(8)i7a."~~

- ~~B. Personal use is prohibited. County vehicles are to be used for official County business only and shall not be used for the convenience of the employee with regard to transportation needs or other non-business activities.~~
- ~~C. The County acknowledges that its employees may need at times, to keep personal items and information stored in or on County Owned Property. However, due to security and accountability concerns, all employees can have no expectation of privacy for personal items/information stored on or in Publicly Owned Vehicles and Publicly Owned Vehicles are subject to inspection at any time without any prior notice. This includes the installation of a GPS device to track the whereabouts of the Publicly Owned Vehicles.~~
- ~~D. County vehicles may be used to travel to a nearby restaurant for lunch where the cost-benefit in travel time to the work quarters for a personal vehicle would not be in the best interest of the County.~~
- ~~E. Each Department Director will provide the General Services Department a list of County vehicles assigned for overnight use. The list must include the vehicle number, driver's name, and driver's license number.~~
- ~~F. Department Directors shall immediately notify the General Services Department of any driver changes to assigned vehicles. Failure to provide driver changes may result in revocation of an assigned vehicle.~~

~~Section 7. Commuting~~

- ~~A. Consistent with policies and procedures for State-owned take-home vehicles, employees assigned County-owned take home vehicles shall reimburse the County for using these vehicles for commuting to and from work. This rate shall be set at \$3 per day, which also satisfies Internal Revenue Service (IRS) fringe benefit requirements. As a result, no additional attributed income is added to the employee's gross income for taxation purposes.~~
- ~~B. Reimbursement shall be made by payroll deduction and based upon average annual usage. The bi-weekly deduction is calculated as follows:
 - ~~— 365 Average number of days per year~~
 - ~~— (104) Less average number of Saturdays and Sundays per year~~
 - ~~— (11) Less average number of Holidays per year~~
 - ~~— (23) Less average number of PTO/Annual Leave days per year~~~~

~~227 Average number of days vehicle will be used to commute X \$ 3.00 Per day rate= \$ 681.00 Total annual charge for commuting 26 Pay periods per year\$ 26.20 Payroll deduction per pay period~~
- ~~C. Certain vehicles are excluded from the commuting reimbursement requirement. These exceptions are consistent with those as outlined in IRS Publication15-B, Employer's Tax Guide to Fringe Benefits. They include most all Sheriff's Office vehicles, the Fire Marshal's vehicle, certain other public safety vehicles, any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 pounds, dump trucks (including garbage trucks), flatbed trucks and "qualified specialized utility trucks" which is defined as any truck (not including a van or pick-up truck) specifically~~

~~designed and used to carry heavy tools, equipment, or parts, if shelves, racks or other permanent interior construction have been installed to carry and store such items. A pick-up truck with only a toolbox attached is therefore not exempt.~~

- ~~D. If more than one employee is required to commute in the same County owned or leased vehicle for an official government purpose, each employee will be charged the \$3.00 per day commuting charge, based upon IRS requirements.~~

~~Section 8. Overnight Assignment (Take-home Vehicle)~~

- ~~A. Authorized employees may be assigned a take-home vehicle when the best interest of the public is served by providing County employees with safe, dependable transportation for extensive travel during or after working hours, for after-hours response to emergency requests for service, or for an approved, official purpose.~~
- ~~B. Authorization for use of County vehicles overnight may be granted by the Department Director to specified employees based on the following criteria:~~
- ~~1. Employees whose regular duties require frequent use of a County vehicle overnight and whose responsibilities involve emergency response, afterhours response, evening and weekend duties, public meetings, or other business activities.~~
 - ~~2. Employees assigned to stand-by duty who are subject to call or who respond to service requests.~~
 - ~~3. Employees on temporary overnight assignment by the Department Director for emergencies or an approved, official purpose.~~
 - ~~4. Employees expected to respond when called after hours, unless specifically excused due to authorized leave.~~

~~Section 9. Violations~~

~~Violations of this policy are considered unacceptable personal conduct and/or misuse of County property. Employees violating the terms and conditions of this policy or misusing or abusing County-owned vehicles may be subject to appropriate disciplinary action, up to and including dismissal.~~

~~Section 10. Vehicle Need~~

- ~~A. County Department's must justify to the satisfaction of the County Manager, or his/her designee, the need for a County-owned vehicle based on whether a vehicle will be used a minimum of 9,900 miles per year. The cost benefit of paying an employee mileage for use of the personal vehicle versus use of a County-owned vehicle must be documented before a County-owned vehicle is considered. Evaluation of the ongoing need for County-owned vehicles assigned to a department will be made on an annual basis before bidding new County vehicles.~~
- ~~B. The County Board of Commissioner's must approve all new vehicle purchases and requests for a vehicle from the surplus list when that vehicle increases the fleet assigned to a department.~~
- ~~C. Public Safety and special use vehicles required for a specific job function will be considered based on need, usage, and cost benefits over the life of the vehicle versus mileage limitations.~~

- ~~D. Each Department Director shall send the County Manager, or his/her designee, a written request for a vehicle to be classified as "special use." If the request is granted, the vehicle shall be coded as "special use" in the vehicle maintenance program.~~
- ~~E. The County Manager, or his/her designee, may, at the request of the General Services Department, remove or recall any County vehicle from a department for one of the following:~~
- ~~1. The vehicle does not meet the minimum mileage requirement, excluding "special use" vehicles.~~
 - ~~2. Vehicle abuse, which includes but is not limited to, inadequate care or maintenance and damage to a vehicle caused by disregard or improper use.~~
 - ~~3. The termination of an employee or position with an assigned vehicle that will not be replaced within a reasonable time period.~~
- ~~F. Department Directors may submit a written request to the County Manager, or his/her designee, justifying retention of a vehicle removed or recalled because of underutilization.~~
- ~~G. A Department shall turn in the old vehicle before receiving a replacement vehicle to prevent unnecessary growth of the fleet. Any exception to this requires approval of the Board of County Commissioners.~~
- ~~H. Department Directors shall complete a vehicle change form in the General Services Department for such action as purchase, sale, disposal, or transfer of vehicle.~~

~~Section 11. Department Directors' Responsibilities~~

~~It is the responsibility of the Department Director to administer this County Vehicle Usage Policy properly in regards to all County vehicles in his or her department.~~

~~Section 12. Exemptions~~

~~Sheriff's Office, Emergency Medical Services Department, and Emergency Management Department personnel operating County vehicles are exempt from this policy only to the extent that they are operating within the scope and course of their official duties and such operation is not in violation of North Carolina General Statutes.~~

Appendix I H: Buncombe County Drug and Alcohol Testing Policy

Section 1. Purpose

- A. Buncombe County (the “County”) acknowledges the problem of substance abuse (including alcohol) in our society. Furthermore, we see substance abuse as a serious threat to our organization, employees, and clients. We are addressing this problem by introducing a substance abuse policy to ensure the County will have a drug free workplace.
- B. The ultimate goal of this policy is to balance our respect for individual privacy with our need to keep a safe, productive, drug free environment. Our intention is to prevent substance abuse. We would like to encourage those who use illegal drugs or abuse alcohol to seek help in overcoming their problem. With these basic objectives in mind, the County has established the following substance abuse policy.

Section 2. Policy

- A. Illegal or unauthorized involvement with drugs on County time or County property, or at any time or place during the workday, or at any time in a County vehicle, or at any time while on County business will subject employees to immediate discharge.
- B. The term “illegal or unauthorized involvement” means illegal or unauthorized possession, use, manufacture, dispensation, distribution, purchase, or being under the influence of any controlled substance, violation of any applicable federal or state criminal drug statute, or a confirmed positive drug test result as verified in accordance with applicable federal and state law.
- C. Employees who use alcoholic beverages on the job, or report or return to work under the influence of alcohol, will be subject to immediate discharge.
- D. Employees’ persons and belongings, offices, desks, lockers, County vehicles, privately-owned vehicles on County property, and work sites are subject to searches by management for illegal drugs or other evidence of violations of this policy. Individuals may be requested to display personal property for visual inspection upon management request. Refusal to consent to search or to display personal property for visual inspection upon management request may be cause for immediate discharge.
- E. Adherence to the County’s policy on drugs and alcohol is a condition of employment for all employees.
- F. All employees must notify the County of any criminal drug statute conviction within five days of such conviction.
- G. All employees are responsible for preventing and reporting violations of the County’s drug and alcohol policy or other actions that threaten harm to the County or to their fellow employees. Employees are expected to use good judgment and common sense in exercising this responsibility.

Section 3. Drug/Alcohol Testing

Employees will be tested as set forth below.

- A. Pre-Employment Testing

Employees will be tested prior to beginning their employment with the County.

B. Reasonable Cause Testing

Employees will submit to urinalysis drug testing or other diagnostic tests whenever, in the opinion of the County, reasonable grounds exist to believe that the employee is in violation of this policy.

C. Post-Accident or Work-Related Personal Injury Testing

Employees may be required to submit to urinalysis drug testing or other diagnostic tests after any workplace accident including a car accident or work-related injury when medical treatment is necessary. Failure to report for such testing at the first medical treatment following an accident or when requested within fourteen days of notice to the County that an injury may be work-related will be regarded as a refusal to be tested. In accordance with State law, employees who refuse to submit to or cooperate with drug or alcohol testing after an accident may forfeit any rights to recover workers' compensation benefits.

D. Random Testing

Employees may be tested from time to time on a random basis without notice during working hours. Each random selection will be made from all County management and its employees without discrimination. Random selections will be made by a lottery method. A number will be assigned to each individual to ensure the integrity of the selection.

E. Follow-up Programs

As part of a follow-up program to treatment for drug abuse.

F. Routinely Scheduled Fitness-for-Duty Exams

When a substance abuse test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the employer's established policy or that is scheduled routinely for all members of an employment classification or group. Periodic testing will be scheduled without discrimination by anniversary dates.

Section 4. Refusal to Be Tested

- A. Any employee who refuses to be tested will be removed from the workforce and will be subject to immediate discharge.
- B. At the time of testing, employees will be required to sign a consent form authorizing the required medical and laboratory tests.
- C. Any employee who refuses to sign the consent form will be removed from the workforce and will be subject to immediate discharge.

Section 5. General Testing Procedures

- A. All testing will be performed by an independent and highly reputable laboratory or health care provider that has been certified by the National Institute on Drug Abuse as qualified to perform drug testing under federal workplace testing programs.
- B. Reasonable measures will be taken to ensure privacy during administration of the test.

- C. All positive test results will be subject to confirmation testing by the laboratory or health care provider which conducted the original screening and verification by a qualified Medical Review Officer. Such confirmation testing and verification will be accomplished using the original test sample, and not by retesting the employee or applicant. A portion of all test samples that produce confirmed positive results will be preserved by the testing laboratory for at least ninety days from the date the test results are mailed or otherwise delivered to the County.

Section 6. Confidentiality

- A. Results of an applicant's or employee's test for the use of illegal drugs or alcohol abuse shall be transmitted to the appropriate management official. In order to address illegal drug use effectively, it may be necessary for the appropriate management official to consult with other persons in the process. However, such results will be disseminated only on a need-to-know basis.
- B. All information received through substance abuse testing is confidential, but may be used or received in evidence, or disclosed in any civil or administrative proceeding when the information is relevant to the employer's defense, e.g., a workers' compensation hearing.
- C. Drug test results and substance abuse documents will be maintained in a separate, locked, confidential file aside from the personnel files.
- D. **Employees who are deemed to have a confirmed positive test under this policy will be subject to immediate discharge.**
- E. **Employees who receive a confirmed positive test as verified by a Medical Review Officer may request in writing that the original sample be retested by the same or another approved laboratory. Such a request must be made during the ninety-day period that the original sample is retained. Employees must specify to which approved laboratory the sample is to be sent. Employees will incur all reasonable expenses related to any request for retesting, including expenses for chain of custody procedures, shipping, and retesting of the positive sample.**

Section 7. Employee Assistance

The County encourages an employee with drug or alcohol problems to seek counseling. The Human Resource Department will be happy to refer employees to outside agencies for assistance in coping with such problems.

BUNCOMBE COUNTY

DRUG AND ALCOHOL POLICY ACKNOWLEDGEMENT AND CONSENT

I, _____, have read and been given a copy of the County's policy on drugs and alcohol. I understand that I am subject to its provisions, and to changes that may be made in the policy from time to time. I further understand that the County may conduct drug and alcohol tests and/or searches of the persons and belongings of its applicants and employees under the circumstances described in the policy. I hereby give my consent to the County and any laboratory/health-care provider that the County may designate, to collect and test samples from me to identify the presence of drugs and alcohol. I also authorize any such laboratory/health-care provider that performs such test(s) to release the test results to the County and any Medical Review Officer designated by the County.

Date: _____ Signed: _____

Witness: _____

BUNCOMBE COUNTY

APPLICANT/EMPLOYEE DRUG/ALCOHOL SCREENING TEST CONSENT

I, _____, understand and agree that the test I am about to receive includes
a:

- ☐ Blood test to determine the presence of drugs or alcohol.
- ☐ Urine test to determine the presence of drugs or alcohol.

I authorize the testing laboratory to release the results of the tests to the County and any Medical Review Officer designated by the County.

I understand and agree that if the tests performed on the blood or urine sample taken from me indicate that I have violated the County drug and alcohol testing policy, I may be subject to disciplinary action up to and including discharge.

I understand that all testing for controlled substances will conform to the provisions of the Controlled Substance Examination Regulation Act, which requires the use of an approved laboratory, the testing be performed under reasonable and sanitary conditions, the tests be confirmed by a second examination utilizing certain scientifically accepted methods, and chain of custody procedures be utilized. I understand that the testing laboratory is required to retain a portion of the original sample that has been confirmed positive for at least ninety days from the date that the test results are mailed or otherwise delivered to the County. If my test results are confirmed positive, I understand that I may request in writing that the original sample be retested by the same or another approved laboratory. I understand that such request must be made within the ninety-day period that the testing laboratory retains the original sample. I understand that my request must specify to which approved laboratory the sample is to be sent. I further understand that I will incur all reasonable expenses related to any request for retesting, including expenses for chain of custody procedures, shipping, and retesting of the positive sample.

I hereby ☐ consent ☐ refuse to consent

to the test(s) as noted above.

Date: _____ Signed: _____

Witness: _____

Appendix J: Buncombe County IT Acceptable Usage Policy

Section 1. Purpose

This document establishes the Countywide policy for the proper use of all County information technology including, but not limited to computer systems and their attached peripherals, laptop computers, phones, cellular phones, beepers, faxes, smartphones, voicemail systems, e-mail systems, network resources, and internet resources.

Section 2. Policy

All technology resources owned by Buncombe County are in place to enable the County to provide its services in a timely and efficient manner. Any activity or action that interferes with this purpose is prohibited. Because technology systems are constantly evolving, Buncombe County requires its employees to use a common sense approach to the rules set forth below, complying not only with the letter, but also the spirit of this policy. Appropriate use of this technology must reflect Countywide standards and be legal, ethical, and show restraint in the consumption of shared resources.

Section 3. Definitions

Client. The computer “end user” or actual PC workstation connected to the server in a network environment.

Computer Virus. A malicious computer program designed to interfere or harm normal daily computer operations.

Data Streaming. A technique of transferring data in a steady and continuous flow. Typical applications are for accessing audio and/or video. Since the flow of data is constant and ongoing, this process has the potential to slow the response time of the entire network.

Desktop themes. A set of programs typically downloaded from the internet that can change many attributes of your computer screen.

E-Mail. The distribution of messages, documents, files, software, or images by electronic means. This includes internal e-mail, external e-mail, and internet e-mail.

Encryption. A security method of using a computer program to scramble a message to hide its contents.

Firewall. A security system used to prevent unauthorized access to Buncombe County’s computer servers, networks, and clients.

Hot Bar. An additional toolbar you would load off of the internet onto your desktop allowing you access to selected websites or features.

Internet (or the World Wide Web). A public electronic medium through which information and

electronic mail travels.

Public Domain Software. Computer systems that do not retain any copyright claims. The authors of these programs want computer users to have them free of charge.

Server. A central computer or device that connects computers on a network allowing users to share services as well as data.

TCP/IP. Abbreviation for Transmission Control Protocol/Internet Protocol, which is the communication protocol utilized by the majority of computer networks.

Work Response Time. Also known as user response time, it is the time it takes a computer to interact with the network server.

Smartphone. A mobile phone that includes advanced functionality beyond making phone calls and sending text messages. Typical smartphone functionality includes the ability to synchronize email messages, calendar and contact information with Buncombe County's email system.

Section 4. Responsibilities

- A. Department Supervisors are responsible for their staff complying with all provisions of this technology usage policy, and to investigate in a timely manner, document and report any alleged or suspected non-compliance to their department director.
- B. All non-compliance documentation should be sent to the Information Systems Security Officer by way of the Director of the Information Technology department.
- C. Employee use of the Buncombe County information technologies is a revocable privilege. User accounts and password access may be suspended or permanently revoked based on violations of this information technology usage policy. Violations may also result in disciplinary action up to and including termination in accordance with *ARTICLE VIII. SEPARATION, DISCIPLINARY ACTION, AND EMPLOYEE APPEALS* of the Buncombe County Personnel Ordinance. Severe violations of this policy may also result in employee criminal prosecution and/or civil liability.

Section 5. Procedure

A. Information Access and Ownership

- All technology resources and all information transmitted by, received from, or stored on Buncombe County systems are the property of Buncombe County and as such, are subject to inspection by County officials. The County reserves the right for business purposes to enter, review, and monitor the information on all systems, including voice mail, electronic mail, and information stored on computer systems or media without advance notice. This might include investigating theft, unauthorized disclosure of business, proprietary, or personal information, personal abuse of the system, or monitoring workflow and productivity.

~~B. Security~~

- ~~— Each user is responsible for all actions taken while using their profile, password, or access code. Great care must be taken by all employees to follow appropriate security procedures to protect the rights of our citizens with regard to unauthorized access of sensitive and confidential data.~~

~~C. Account Access~~

- ~~— Employees may only access accounts for which they are authorized and take reasonable precautions against unauthorized access to their accounts. Employees may not share a password and should always log off of their PC, or lock their computer when it is unattended. Each user will be held responsible for the actions taken by his or her assigned user id(s) on any County electronic system.~~

~~D. Honest Representation~~

- ~~— Each user shall identify themselves honestly, accurately, and completely when using any technology media. This includes telephone, email, social media, on line user groups, or when setting up computer accounts. Only those employees who are authorized to speak or write to the media on behalf of Buncombe County may do so, even in a casual user group or chat room. Chat and newsgroups are strictly limited to County business need purposes.~~

~~E. Copyrighted Material~~

- ~~— Employees should always assume that information on the internet is copyrighted unless otherwise indicated. Users who download and use copyrighted material must be in compliance with current copyright laws. The Federal Copyright Act 17 U.S.C. 101 *et. Seq.*, (1988) protects and prohibits misuse of all original works of authorship in any tangible medium of expression. Most State and Federal Government documents contain a statement of permission to copy.~~

~~F. Electronic Mail Appropriate Usage Guidelines~~

- ~~1. E mail is considered an official form of communication between departments and employees. Computer users must check for the receipt of e-mail messages each working day, except while on vacation or those days designated official County holidays. On days taken as personal time off, employees should employ the “out of office” message.~~
- ~~2. Sending large attachments to outside addresses can dramatically affect the internet connection for the entire infrastructure. Consider the need, and if deemed appropriate, have the IT department place your document on a secure file transfer appliance where the recipient will be able to retrieve it.~~
- ~~3. Any e-mail to an address outside of the Buncombe County domain will be traveling across the internet, and therefore should be considered public domain. You should refrain from sending confidential or sensitive information by these means unless proper, formalized security tools (such as encryption) have been established. It is the responsibility of each~~

~~department and user to protect confidential and sensitive information where intentional, inappropriate, or accidental disclosure of the information might expose the County or an individual to loss or harm.~~

- ~~4. Users shall not automatically forward a County e-mail account to an internet email address. This practice may jeopardize the confidentiality and integrity of County e-mail messages. It also can give the sender a false sense that the message is protected by internal e-mail systems. Electronic services created by County administrators are exempt. Additionally, users are not allowed to access third party e-mail services to conduct County business.~~
- ~~5. Users must always protect the privacy and confidentiality of others.~~
- ~~6. Users must delete and purge all unnecessary mail that does not require retention.~~
- ~~7. Users must be courteous and follow accepted standards of etiquette.~~

~~G. Electronic Documents/Email Privacy and Usage Guidelines~~

- ~~1. **Electronic Documents:** Any document created or stored on an electronic computing device is considered an “electronic document” and is subject to all privacy and data retention statutes of North Carolina. Files created in Word, Excel, Access, Power Point, and Visio are examples of electronic documents. Although e-mail is considered a temporary communication, the content of e-mail is still subject to N.C. Gen. Stat. § 121-8 and N.C. Gen. Stat. § 132-1.~~
- ~~2. **Privacy:** To the greatest extent possible, effort has been made to preserve all employees’ individual privacy. However, Buncombe County computer systems and networks are public property and subject to the North Carolina Public Access statutes. Employees therefore should have no reasonable expectation of privacy in the use of these resources. Buncombe County reserves the right to trace and document any email generated by County provided resources. Emails not subject to public access containing sensitive or confidential information should have the following statement on the subject line of the document address: “CONFIDENTIAL” or “CONFIDENTIAL SUBJECT TO GENERAL STATUTE.” If this is done, the IT department is not required to release the information without proper legal directive.~~
- ~~3. **Not all “official” records are open to the public:** Many records are protected from general access or casual reference on a “need to know” basis by federal or state laws, or by legal precedent, and can only be seen by a court order. Therefore, certain records should be considered confidential to protect the privacy rights of employees and the general public. Employees should consult with their department Supervisor prior to releasing any information.~~

~~H. Data Protection~~

- ~~—Buncombe County uses internet firewalls, virus protection, data encryption, and other mechanisms to ensure the safety and security of all data. Any employee who attempts to~~

circumvent these mechanisms, or who knowingly propagates any computer virus into the system may be subject to disciplinary action in accordance with ~~ARTICLE VIII. SEPARATION, DISCIPLINARY ACTION, AND EMPLOYEE APPEALS.~~

~~I. Standard Practices – Equipment Safety~~

- ~~1. All electronic equipment shall be maintained and cared for in an appropriate manner. If personal negligence should cause the equipment to become lost or stolen, the user may be held financially responsible.~~
- ~~2. The County will consider negligence on a case-by-case basis. In addition, the user should consider the following guidelines:~~
 - ~~a. All users assigned a laptop computer or handheld device will be personally liable for the care and condition of the equipment.~~
 - ~~b. Computers are sensitive to extreme temperatures. This includes external hard drives, CD-ROMs, batteries, disks, etc. Safeguard equipment appropriately during times of extreme heat or cold.~~
 - ~~c. Laptops, handheld devices, and associated materials are to be transported in appropriate carrying cases when available to ensure safety.~~
 - ~~d. Users must exercise care at all times to preclude theft. Portable devices such as laptop computers, handheld devices, memory sticks, etc. should not be left unattended when outside of County facilities. Should an electronic system be lost or stolen, the responsible user must contact the help desk immediately.~~
 - ~~e. All users must be aware of the damage that a malicious application (i.e., virus, worm, Trojan horse, etc.) can cause the County's electronic systems. Report suspected incidents immediately to the service desk.~~

~~J. Sexually Explicit Material:~~ ~~Employees shall not access, store, or distribute any electronic media that contains pornography or sexually explicit material.~~

~~K. Harassment:~~ ~~No employee shall use any County electronic medium to libel, slander, harass, or threaten another person.~~

- ~~1. It is also against County policy to send the following:~~
 - ~~a. Unsolicited e-mail advertising (SPAM) or junk mailings~~
 - ~~b. Chain letter emails/Solicitation of funds~~
 - ~~c. E-mails containing fake or anonymous e-mail addresses~~
 - ~~d. E-mails containing jokes, stories, or material unrelated to County business~~
 - ~~e. E-mails that contain profanity, obscenity, or discriminatory remarks~~

~~2. Any County employee who violates the provisions of 6.10, 6.11, or 6.11.1 thru 5, will be subject to disciplinary action in accordance with *ARTICLE VIII. SEPARATION, DISCIPLINARY ACTION, AND EMPLOYEE APPEALS.*~~

~~L. **Unnecessary or Unlawful Usage of the Internet:** Excessive personal internet usage causes network and server congestion. It can slow down other employees work response time and it consumes shared resources. Each computer will be configured to allow screening and review of the web sites visited on the internet. Employees should understand that when they log onto the internet through the County infrastructure that their movement on the internet may be logged and tracked. Unlawful internet usage may also create negative publicity for the County and expose us to significant legal liabilities. Any Buncombe County employee who knowingly uses the internet or intranet unlawfully may be subject to disciplinary action in accordance with *ARTICLE VIII. SEPARATION, DISCIPLINARY ACTION, AND EMPLOYEE APPEALS.*~~

~~M. **Personal/Political Business:** Political advertising, campaigning, or personal commercial business is strictly forbidden on County resources.~~

~~N. **Data Streaming:** Internet data streaming websites carrying music or video feeds are also prohibited unless authorized for use in appropriate County, state, federal, or educational applications.~~

~~O. **Downloading or Uploading Licensed Software:** The IT department must install all software. No software may be installed, copied, or used on County computers without the involvement of the IT department. Software subject to licensing must be properly licensed, and all license provisions must be strictly obeyed.~~

~~P. **Configuration of County Computers:** Employees may not modify the software configuration of their computers other than to change their screen resolution, wallpaper, and screen saver settings. Downloading desktop themes, wallpapers, hot bars, and similar program changes is prohibited.~~

~~Q. **Employee Termination:** Employees who are terminated have no rights to the content of their e-mail messages and will not be allowed access to the e-mail system. A terminated employee who files a grievance procedure in a timely fashion in accordance with the provisions of *ARTICLE IX. GRIEVANCE PROCEDURE* and believes information contained in their e-mail account to be relevant to said procedure may request in writing that the County Manager, or his/her designee, authorize access to said information. The County Manager, or his/her designee, may grant such a request if the information is not deemed detrimental to the interests of the County.~~

Appendix K: Respectful Workplace Policy

~~It is the policy of Buncombe County to maintain a professional and respectful work and public service environment where all employees contribute to a safe, supportive, and inclusive work environment that is free of offensive remarks, material, or behavior.~~

~~The goal of this policy is to support a culture where employees feel safe to address these issues constructively and with management support. The hope is to stop disrespectful behavior in the work environment before it crosses the line into disciplinary action, however, when necessary management will use disciplinary action up to and including dismissal if warranted. The County will not tolerate disrespectful behavior by or towards any employee or other individual by employees, visitors or vendors.~~

~~This policy provides for:~~

- ~~a. Fostering a workplace which values diversity; personal dignity; courteous conduct; mutual respect, fairness and equality; positive communication between people; collaborative working relationships;~~
- ~~b. A reporting/complaint procedure for any individual who experiences or witnesses behavior prohibited by this policy;~~
- ~~c. A response procedure for supervisors who become aware of behavior prohibited by this policy;~~
- ~~d. Accountability for violations or enforcement failures through appropriate disciplinary actions;~~
- ~~e. Actions by the County to heighten employees' and supervisors' awareness of workplace violence issues, including domestic violence as it relates to the workplace.~~

~~This policy prohibits disrespectful behavior, including but not limited to, the following:~~

- ~~a. Offensive and inappropriate remarks, gestures, material and behavior;~~
- ~~b. Comments or actions that either groups people or isolates individuals along personal characteristics that result in negative or inappropriate stereotyping;~~
- ~~c. Yelling;~~
- ~~d. Belittling;~~
- ~~e. Reprimanding in the presence of others;~~
- ~~f. Aggressive or patronizing behavior;~~
- ~~g. Embarrassing or humiliating behavior;~~
- ~~h. Damaging gossip or rumors;~~
- ~~i. Covert behavior, i.e., inappropriately withholding information, undermining, underhandedness;~~
- ~~j. Unlawful discrimination or harassment as defined by federal and state laws;~~

Employee Responsibilities:

- a. ~~Treat others with respect;~~
- b. ~~Set an example by respecting the dignity and human rights of all employees and members of the public;~~
- c. ~~Recognize and refrain from actions that offend, embarrass, isolate, or humiliate others;~~
- d. ~~Name and address disrespectful conduct with the employee displaying it or with a person in authority as soon as possible;~~
- e. ~~Do not make allegations of disrespectful behavior that are frivolous or vindictive;~~
- f. ~~Make every effort to contribute to a safe and respectful work environment by resolving issues as they arise and/or reporting the issue to his/her supervisor or the Human Resources Department.~~

Supervisory/Management Responsibilities:

~~Supervisors and managers are responsible to immediately act upon any situation involving disrespectful behavior. They will:~~

- a. ~~Promote awareness of this policy;~~
- b. ~~Recognize and address actions that offend, embarrass, isolate, or humiliate others;~~
- c. ~~Treat each situation as a serious matter;~~
- d. ~~Manage the situation towards a resolution between the parties if possible, with a view to educating and correcting behavior and preserving long term working relationships;~~
- e. ~~Ensure that there are no reprisals against employees making a complaint or participating in an investigation (in compliance with the Buncombe County No Retaliation Policy);~~
- f. ~~Provide support to employees who are experiencing the effects of disrespectful behavior;~~
- g. ~~Inform employees of Employee Assistance Program services;~~
- h. ~~Consult with Human Resources if the situation cannot be resolved and/or rises to the level of potential discrimination or harassment in the workplace.~~

Respectful Workplace Policy Procedures Reporting Violations

~~An employee who believes he or she has been subjected to a violation of this policy and who has either opted not to try to personally resolve the situation or who has been unsuccessful in attempting a resolution should report the violation immediately to his or her supervisor. If the employee's supervisor is the source of the alleged policy violation, or if the employee's supervisor does not respond to the report in a timely and/or appropriate manner, the employee should contact the Human Resources Department and/or may follow the steps outlined in the County Grievance Procedure.~~

Respectful Workplace Policy Procedures—Investigating Reports of Violations

~~Buncombe County will promptly and thoroughly investigate any verbal or written report of a violation of this policy, and will respond to the reporting employee or other individual regarding~~

~~the results of the investigation, except that specific personnel actions taken may not be revealed. The investigation will be kept carried out in a circumspect manner and with an eye toward respecting every employee's privacy as much as possible and in compliance with N.C. Gen. Stat. 153A-98 or as amended.~~

~~Respectful Workplace Policy Procedures—Corrective Actions~~

~~Any employee found to have acted in violation of this policy shall be subject to appropriate corrective and disciplinary actions, up to and including dismissal as this constitutes unacceptable personal conduct. Any visitor or vendor found to have acted in violation of this policy shall be subject to responsive action as determined appropriate by the County, up to and including being removed from the workplace and being prohibited from returning in the future.~~

~~Respectful Workplace Policy Procedures—Retaliation~~

~~Buncombe County will not tolerate retaliation or intimidation directed towards any employee or other individual who makes a verbal or written report of a violation of this policy and/or participates in an investigation around a complaint generated from a violation of this policy. Any individual who retaliates against or intimidates an employee who has made a report and/or participated in an investigation shall be subject to disciplinary action, up to and including dismissal.~~

~~Employee Protection Hotline.~~ ~~A toll free number (1-866-908-7236) that is answered by an independent third party source and available to employees as well as the public to register a complaint or concern anonymously. Anonymous reports are directed to the Internal Auditor to investigate and ensure appropriate follow up action if appropriate.~~

Appendix LI. Voluntary Shared Leave Program

- A. Purpose - There are occurrences brought about by prolonged medical conditions that cause employees to exhaust all available leave and therefore be placed on leave without pay. It is recognized that such employees forced to go on leave without pay could be without income at the most critical point in their work life. It is also recognized that fellow employees may wish to voluntarily donate some of their annual leave so as to provide assistance to a fellow County employee. This policy provides an opportunity for employees to assist another affected by a medical condition that requires absence from duty for a prolonged period of time resulting in possible loss of income due to lack of accumulated leave.
- B. Policy - In cases of a prolonged medical condition an employee may apply to become a recipient of leave transferred from the annual leave account of another employee. For purposes of this policy, medical condition means medical condition of an employee or a family member (spouse, parents, children - including step relationships, or other dependents living in the employee's household) of such employee that is likely to require an employee's absence from duty for a prolonged period, generally considered to be at least twenty (20) consecutive working days. If an employee has had a previous, but different, prolonged medical condition within the last twelve months, an exception to the twenty (20) day period may be made. The intent of this policy is to allow one employee to assist another in case of a prolonged medical condition that results in exhaustion of all earned leave.
- C. General Guidelines
 - 1. Establishment of a leave "bank" for use by unnamed employees is expressly prohibited. Leave must be donated on a one-to-one personal basis.
 - 2. An employee may not directly request or indirectly intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce, any employee for the purpose of interfering with any right which such employee may have with respect to donating, receiving or using annual leave under this program. Such action by an employee shall be grounds for disciplinary action up to and including dismissal. Individual leave records are confidential and only individual employees may reveal their donation or receipt of leave. The employee donating leave cannot receive remuneration for the leave donated.
- D. Eligibility
 - 1. The employee must be either in a full-time regular or part-time regular position and have achieved Covered status. (The limitation and leave balance for part-time regular

employees is pro-rated.) Participation in the program shall be based on the employees past compliance with leave rules.

2. An employee with a compensable Worker's Compensation claim is not eligible to participate in this program.¹³
3. Non-qualifying conditions: The policy shall not ordinarily apply to short-term or sporadic conditions or illnesses. This would include such things as sporadic, short-term recurrences of chronic allergies or conditions; short-term absences due to contagious diseases; or short-term recurring medical or therapeutic treatments. These examples are illustrative, not all inclusive. Each case must be examined and decided based on its conformity to policy intent and must be handled consistently and equitably.

E. Application Procedure

1. By letter of application to the departmental director, a recipient shall apply to participate in the program. A nomination will be accepted only from the recipient.
2. The application should include a description of the medical condition and estimated length of time needed to participate in the program. A doctor's statement must be attached to the employee's request.
3. The Departmental Director shall review the merits of the request and approve or disapprove.
4. If donations of leave are being made between departments, these transfers of leave must be approved by the receiving director's department.

F. Recipient Guidelines

1. A prospective recipient may make application for voluntary share leave at such time as medical evidence is available to support the need for leave beyond the employee's available accumulated leave.

¹³ Approved by County Commissioners' on December 5, 2017 and effective on December 5, 2017.

2. Participation in this program is limited to 1040 hours (and pro-rated for part-time employees), either continuously or, if for the same condition on a recurring basis. However, management may grant employee continuation in the program, month by month, for a maximum of 2080 hours, if management would have otherwise granted leave without pay.
3. Subject to the maximum of 1040 hours, the number of hours of leave an employee can receive is equal to the projected recovery or treatment period, less the employee's combined annual and sick leave balance as of the beginning of the recovery or treatment period. The employee must exhaust all available leave before using donated leave.
5. At the expiration of the medical condition, as determined by the Departmental Director, any unused leave in the recipient's donated leave account shall be treated as follows:
 - a. The annual and sick leave account balance shall not exceed a combined total of 40 hours (pro-rated for part-time employees).
 - b. Any additional unused donated leave shall be returned to the donor(s) on a pro rata basis and credited to the leave account from which it was donated. Fractions of one hour shall not be returned to an individual donor.
6. If a recipient separates from County government, participation in the program ends. Donated leave shall be returned to donor(s) on a pro rata basis.

G. Donor Guidelines

1. Only annual leave may be donated to another employee.
2. The minimum amount to be donated is four (4) hours.

3. The maximum amount of annual leave allowed to be donated by one individual is to be no more than the amount of the individual's annual accrual rate. However, the amount donated is not to reduce the donor's annual leave balance below one-half of the annual leave accrual rate.

H. Leave Accounting Procedures

1. To facilitate the administration of the program, the Departmental Director may establish a specific time period during which leave can be donated.
2. The Human Resources Department shall establish a system of leave accountability which shall accurately record leave donations and recipient's use. Such accounts shall provide a clear and accurate record for financial and management audit purposes. The Buncombe County Voluntary Shared Leave Program Request to Transfer Shared Leave Form shall be used for this purpose.
3. Withdrawals from recipient's leave account shall be charged to the recipient's account according to usual leave policies.
4. Leave transferred under this program shall be available for use on a current basis or may be retroactive for up to 30 calendar days to substitute for leave without pay or advanced annual or sick leave already granted to the leave recipient.
5. Each approved medical condition shall stand alone and donated leave not used for each approved incident shall be returned to the donor(s). Employees who donate "excess" leave (any amount above the maximum allowable) may have it returned and converted to sick leave.

Appendix M J: No Retaliation Policy (effective October 3, 2017)

Buncombe County requires board members and employees to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. As employees and representatives of Buncombe County, we must practice honesty and integrity in fulfilling our responsibilities and comply with all applicable laws and regulations.

Reporting Responsibility

This Employee Protection Policy is intended to encourage and enable employees and board members to raise serious concerns internally so that Buncombe County can address and correct inappropriate conduct and actions. It is the responsibility of all board members and employees to report concerns about violations of Buncombe County's policies and practices or suspected violations of law or regulations that govern Buncombe County's operations.

No Retaliation

It is contrary to the values of Buncombe County for anyone to retaliate against any board member or employee who in good faith reports an ethics violation, or a suspected violation of law or policy, such as a complaint of discrimination (see protections also listed under Appendix G: No Retaliation Policy for Discrimination and Harassment), or suspected fraud, or suspected violation of any regulation governing the operations of Buncombe County. An employee who retaliates against someone who has reported a violation in good faith is subject to discipline up to and including termination of employment. The right of an employee or a board member for protection against retaliation does not include immunity for any personal wrongdoing.

Reporting Procedure

Buncombe County has an open door policy and suggests that employees share their questions, concerns, suggestions or complaints with their supervisor. If you are not comfortable speaking with your supervisor or you are not satisfied with your supervisor's response, you are encouraged to speak with the Human Resources Director or the Internal Auditor. Supervisors and managers are required to report complaints or concerns about suspected ethical and legal violations in writing to Buncombe County's Internal Auditor, who has the responsibility to investigate all reported complaints. Employees with concerns or complaints may also use the confidential Employee Protection Hotline to submit their concerns.

Internal Auditor

Buncombe County's Internal Auditor is responsible for ensuring that all complaints about unethical or illegal conduct are investigated and resolved. The Internal Auditor will advise the Audit Committee of the Board of Commissioners at least annually of all complaints and their resolution.

Human Resource Director

The Human Resources Director will work in partnership with the Internal Auditor to investigate and address any concerns related to personnel matters.

Accounting and Auditing Matters

Buncombe County's Internal Auditor shall immediately notify the Audit Committee of any concerns or complaint regarding organizational accounting practices, internal controls or auditing and work with the committee and the Human Resources Director as appropriate until the matter is resolved.

Acting in Good Faith

Anyone filing a complaint concerning a violation or suspected violation must be acting in good faith and have reasonable grounds for believing the information disclosed indicates a violation. Any allegations that prove not to be substantiated and which prove to have been made maliciously or knowingly to be false will be viewed as a serious disciplinary offense.

Confidentiality

Violations or suspected violations may be submitted on a confidential basis by the complainant. Reports of violations or suspected violations will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation.

Handling of Reported Violations

All reports will be promptly investigated and appropriate corrective action will be taken if warranted by the investigation.



Conflict of Interest

Presented by

Rafael Baptista

Strategy & Innovation



Conflict of Interest

Strategy & Innovation: Heather Parkinson

EMS: Jaime Judd

Finance: Glenn Murray

Human Resources: Melissa Reichmann

Legal: Curt Euler



Tracking of Changes

Item in Ordinance Being Moved	New Location of Item
Gift and Favors	Conflicts of Interest Policy
Conflicts of Interest	Conflicts of Interest Policy
Outside Employment	Conflicts of Interest Policy
Limitations of Employment of Relatives	Conflicts of Interest Policy
Limitations of Consensual or Sexual Relationships	Conflicts of Interest Policy
IT Acceptable Usage	IT Acceptable Usage Policy
Social Media	IT Acceptable Usage Policy
Leave – Adverse Weather Conditions and Disasters	Inclement Weather Policy





Policy Overview

Brief Synopsis – Approval Requested



Key Considerations

- Clearer definitions of Conflict of Interests including gifts, potential conflicts, secondary employment and consensual relationships with other employees
- Clear guidance to County Management and Employees how to handle conflicts of interests
- Requires tracking of all real and potential conflicts of interest



Key Concepts

- **General Conflict of Interest**
- **Conflict Tracking**
- **Secondary Employment**
- **Employment of Relatives**
- **Consensual relationships between employees**



Board's Role

- **Adopts and reviews policy**
- **Responsible for oversight of Board appointed employees in regards to policy**



Other Policies Impacted

- Acceptable IT Usage
- Vehicle Usage
- Inclement Weather



Next Steps

- **Board adoption** of Policy
- **Implementation** of new policy and procedures effective upon approval





Safety Update/ Alertus

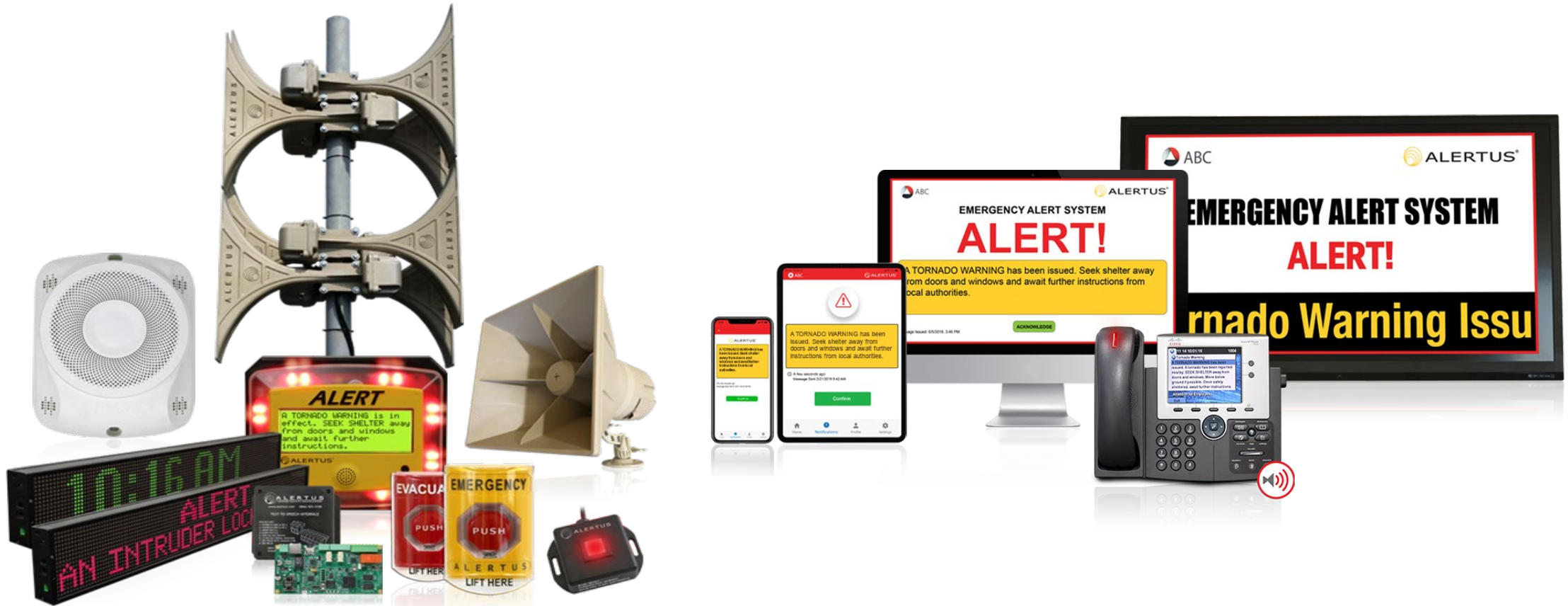
Presented by

Chris Austin

Risk, Safety, and Compliance



Alertus



Current progress

- ✓ We have completed the initial installation of the Alertus Hardware for phase 1 and we have all of the equipment on hand to complete phase 2. We will purchase and install equipment for the final phase next fiscal year.
- ✓ I.T. has plans to install the Alertus software on employees' computers the week of Nov 1st. This will allow all county employees to receive messages.
- ✓ Alertus training has already begun. Our goal is for the training to be completed within the next 6 months.





COUNTY JOB FAIR

Presented by

Human Resources Recruitment Division



When: Saturday, November 6th

Where: 40 Coxe Ave (HHS Building)

Time: 10am – 3pm

- On-site interviews for qualified applicants
- Department leaders available to discuss current & future jobs
- Parking garage available/validated parking
- Parent friendly event



SAMPLE OF AVAILABLE POSITIONS

Clerical / Administrative:

- 911 Operators / Telecommunicator
- Administrative & Medical Office Assistants
- Elections Technical Specialist
- Income Maintenance Caseworker
- Planner - Parks & Recreation
- Quality Assurance

Financial:

- Accountant / Account Technicians
- Business Administrator
- Internal Auditor
- Property Appraiser
- Tax System Technician

Criminal Justice Services:

- Pre-trial Release Coordinators
- Program Coordinators

Information Technology:

- Database Administrator
- Service Desk Supervisor
- Software Administrator
- Systems Administrator

Human Services & Safety:

- Case Workers
- Detention Officers
- EMT/Paramedics
- Environmental Health
- Registered Nurses
- Social Workers
- Uniformed Patrol Deputy

Maintenance / Technical:

- Groundskeeper/Technician
- HVAC Technician
- Transfer Station Utility Worker

Managerial / Professional:

- Department Director
- Internal Auditor Director
- Program Coordinators
- Program Analyst
- Program Managers
- Program Supervisors
- Recruiting Manager
- Veteran Services Officer

FOR MORE INFORMATION

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Caroline Long, Recruiter

Recruiting@buncombecounty.org
(828) 250-4166



BUNCOMBE COUNTY



Buncombe County Board of Commissioners
Request for Board Action
Meeting Date: 11/2/2021

Old Business

Department: Library

Presenter(s): Jim Blanton, Library Director

Contact(s): Jim Blanton, Library Director

Subject: Library Facilities Study Status Update

Brief Summary:

On May 18, 2021, the Board of Commissioners received a presentation from Maureen Arndt, the consultant engaged to conduct a facilities study for Buncombe County Public Libraries. The Board provided guidance at that time for the Library to obtain further community input in response to the consultant recommendations. Working with the Library Advisory Board and Communications and Public Engagement, the Library held 10 input sessions in person and virtually. In person sessions began in July and shifted to a virtual format in August when pandemic conditions worsened. The Library Advisory Board agreed that it would be most appropriate to collect this critical feedback in person. Accordingly, the sessions were paused until in person meetings can be resumed safely.

Recommended Motion & Requested Action: Provide guidance on how to move forward with community input sessions and study recommendations

County Manager's comments and Recommendation: Staff to provide update and take guidance from Board of Commissioners on how to proceed.



Buncombe County Public Libraries Facilities Study & Input Session Update

Presented by



Library Facilities Study Update

- May 18, 2021 presentation from facilities study consultant with preliminary recommendations.
- Board of Commissioners provided guidance to seek additional community input.
- Library Advisory Board held 10 input sessions July – September.
- Included in person and virtual sessions.



Library Facilities Study Update

- Input sessions switched to a virtual format in August due to pandemic conditions.
- The Library Advisory Board determined that in person sessions is most appropriate and has paused until in person sessions can resume safely.



Request for Board Action

- Provide guidance on how to move forward with community input sessions and study recommendations





Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 11/2/2021

New Business

Department: Tax Assessment

Presenter(s): Keith Miller

Contact(s): Sybil Tate

Subject: Appointment of Tax Assessor

Brief Summary:

Pursuant to North Carolina General Statute (NCGS) §105-294 the Board of County Commissioners for each County shall appoint a County Assessor to serve a term not less than two, not more than four years, and requires that the compensation and expense allowances be set by the governing body.

Keith Miller was appointed County Assessor November 7, 2017 for a four year term. Mr. Miller meets the statutory requirements and is fully qualified to serve as County Assessor.

Recommended Motion & Requested Action: Reappoint Keith Miller as Tax Assessor for a four-year term.

County Manager's comments and Recommendation: Recommends approval.

RESOLUTION #21-11-06

RESOLUTION APPOINTING TAX ASSESSOR

-
- WHEREAS, pursuant to North Carolina General Statutes ("NCGS") §105-294 the board of county commissioners for each county shall appoint a county assessor to serve a term of not less than two nor more than four years;
- WHEREAS, R. Keith Miller (hereinafter sometimes "Miller") has been employed by Buncombe County since January 1996, and has served as the Real Estate Manager, Interim Tax Director, Chief Real Property Appraiser, and was appointed Tax Assessor on November 7, 2017;
- WHEREAS, Miller is certified by the Department of Revenue as having successfully completed the requirements of the North Carolina General Statutes for Certification of County Assessor;
- WHEREAS, County staff recommends to this Board that Miller is a person of character and integrity whose experience and service as Buncombe County Tax Assessor make him well-suited for reappointment;
- WHEREAS, general statutes require that the compensation and expenses of the tax assessor shall be determined by the board of county commissioners; this Board desires that this position shall be subject to the County position classification plan in the discretion of the county manger consistent with the County Personnel Ordinance and that this position shall answer administratively to the Assistant County Manager;
- WHEREAS, on the recommendation of Human Resources, the tax assessor position shall be a grade 84-S with a salary of \$118,453.09; and the tax assessor shall have no expense allowances; and
- WHEREAS, this Board is of the opinion that it is in the best interests of the citizens and residents of the County to appoint a Tax Assessor.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County of Buncombe as follows:

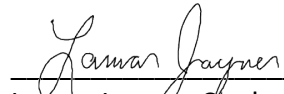
1. That the Recitals set forth above, along with the definitions of certain terms, are incorporated herein by reference as if fully restated.
2. R. Keith Miller is hereby appointed as Tax Assessor of Buncombe County to act as its Tax Assessor pursuant to NCGS §105-294.

3. That R. Keith Miller is appointed to serve a term of four (4) years running through and including November of 2025.
4. That this resolution shall be effective upon its adoption.

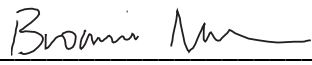
Adopted this 2nd day of November, 2021.

ATTEST

BOARD OF COMMISSIONERS
FOR THE COUNTY OF BUNCOMBE



Lamar Joyner, Clerk

By: 

Brownie Newman, Chairman

APPROVED AS TO FORM



County Attorney



Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 11/2/2021

New Business

Department: Finance

Presenter(s): Jennifer Pike

Contact(s): Don Warn

Subject: Appointment of Tax Collector

Brief Summary: Pursuant to North Carolina General Statutes ("NCGS") §105-349 the governing body of each county shall appoint a tax collector to serve for a term to be determined by the appointing body and requires that the compensation and expense allowances of the tax collector be set by the governing body.

Jennifer Pike was appointed as Tax Collector on November 7, 2017 for a four-year term. Ms. Pike meets all the statutory requirements as a person of character and integrity whose experience in business and service as Buncombe County Tax Collector make her well-suited for reappointment.

Recommended Motion & Requested Action: Reappoint Jennifer Pike as Tax Collector for a four-year term.

County Manager's comments and Recommendation: Recommends approval.

RESOLUTION #21-11-07

RESOLUTION APPOINTING TAX COLLECTOR

- WHEREAS, pursuant to North Carolina General Statutes ("NCGS") §105-349 the governing body of each county shall appoint a tax collector to serve for a term to be determined by the appointing body and until his/her successor has been appointed and qualified;
- WHEREAS, Jennifer Pike (hereinafter sometimes "Pike") has been with Buncombe County since 2000 having served as an Accountant in various departments, and was appointed as Tax Collector on November 7, 2017;
- WHEREAS, County staff recommends to this Board that Pike is a person of character and integrity whose experience in business and service as Buncombe County Tax Collector make her well-suited for reappointment;
- WHEREAS, general statute requires that the compensation and expense allowances of the tax collector shall be fixed by the governing body; this Board desires that this position shall be subject to the County position classification plan in the discretion of the county manger consistent with the County Personnel Ordinance and that this position shall answer administratively to the Buncombe County Finance Director;
- WHEREAS, on the recommendation of Human Resources, the tax collector position shall be a grade 84-S with a salary of \$111,760 (effective when the Compensation Plan is approved); and the tax collector shall have no expense allowances;
- WHEREAS, Cincinnati Insurance Companies has approved and issued a fidelity insurance bond in Pike's name to secure honest and faithful service as Tax Collector in the amount of \$100,000.00; and
- WHEREAS, this Board is of the opinion that it is in the best interests of the citizens and residents of the County to appoint a Tax Collector.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County of Buncombe as follows:

1. That the Recitals set forth above, along with the definitions of certain terms are incorporated herein by reference as if fully restated.
2. That Jennifer Pike is hereby appointed as Tax Collector of Buncombe County to

act as its Tax Collector pursuant to NCGS §105-349.

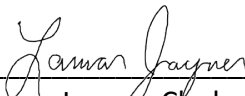
3. That Jennifer Pike is appointed to serve a term of four (4) years running through and including November of 2025.

That this resolution shall be effective upon its adoption.

Adopted this 2nd day of November, 2021.

ATTEST

BOARD OF COMMISSIONERS
FOR THE COUNTY OF BUNCOMBE



Lamar Joyner, Clerk

By: 

Brownie Newman, Chairman

APPROVED AS TO FORM



County Attorney



Buncombe County Board of Commissioners
Request for Board Action
Meeting Date: 11/2/2021

New Business

Department: Solid Waste

Presenter(s): Kristy Smith

Contact(s): kristy.smith@buncombecounty.org

Subject: Landfill Gas to Energy Update

Brief Summary:

The Buncombe County Landfill has been producing renewable electricity from landfill gas since 2011 under a Power Purchase Agreement (PPA) with Duke Energy. The PPA expires 11/21/2021. A new 3-year power purchase agreement with Duke is recommended in order to continue producing renewable electricity for our community.

Recommended Motion & Requested Action: Sign 3 year Power Purchase Agreement

County Manager's comments and Recommendation: Recommends approval



POWER PURCHASE AGREEMENT

Buyer: Duke Energy Progress, LLC

Overnight Mail: 400 South Tryon Street
Mail Code: ST 14Q
Charlotte, North Carolina 28202
Regular Mail: PO Box 1006
Mail Code: ST 14Q
Charlotte, NC 28201-1006
Attn.: Contract Administrator
DERContracts@duke-energy.com

*With Additional Notices of Events of Default
Or Potential Event of Default to:*
Overnight Mail: 550 S. Tryon St.
Charlotte, North Carolina 28202
Regular Mail: P.O. Box 1321, DEC45
Charlotte, North Carolina 28201-1321
Attn.: VP Commercial Legal Support

Seller: Buncombe County, North Carolina
Buncombe County Solid Waste
81 Panther Branch Road
Alexander, North Carolina 28701
Attn.: Dane Pedersen

This Power Purchase Agreement, including Exhibits 1-4 hereto, which are incorporated into and made part hereof (collectively, the "Agreement"), is made and entered into by and between Buncombe County, North Carolina ("Seller") and Duke Energy Progress, LLC ("Buyer") under the terms specified herein, effective as of the 21st day of November, 2021 (the "Effective Date"). Buyer and Seller may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Seller owns the Facility (as defined herein) located in Buncombe County, North Carolina which is a "qualifying facility" under PURPA;

WHEREAS, Seller and Buyer entered into that certain Power Purchase Agreement effective as of October 31, 2011 (the "Previous PPA"), pursuant to which Seller agreed to sell all capacity and energy from the Facility to Buyer; and

WHEREAS, the Previous PPA has or will expire by its terms on November 20, 2021 and the Parties desire to enter into this Agreement to supersede and replace the Previous Agreement in its entirety and to document the terms and conditions pursuant to which Seller shall sell and deliver and Buyer shall purchase the capacity and energy from the Facility for the Term as defined herein.

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the Parties hereto mutually contract and agree as follows:

1. Definitions

Unless defined in the body of the Agreement, any capitalized term herein shall have the meaning set forth below:

- 1.1. "AAA" is defined in Section 23.2.1.
- 1.2. "Abandon(s)" means the relinquishment of control or possession of the Facility and/or cessation of operations of or at the Facility by Seller. "Abandon" excludes cessation of generation to comply with Prudent Utility Practices, Permitted Excuse to Perform, or due to maintenance or repair of the Facility (including Maintenance Outages and Planned Outages), provided that such maintenance or repair activities are being performed in a Commercially Reasonable Manner and with Prudent Utility Practice.
- 1.3. "Affiliate" means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with "control" meaning the possession, directly or indirectly, of the power to direct management and policies, or otherwise have control of an entity, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding the foregoing, with respect to Buyer the term Affiliate does not include any subsidiaries or affiliates whose activities are subject to the oversight or regulation of any state commission(s) and/or federal energy regulatory commission.
- 1.4. "Agreement" is defined in the introductory paragraph hereof.
- 1.5. "Assignment" is defined in Section 24.1.
- 1.6. "Back-Up Tapes" is defined in Section 16.3.
- 1.7. "Bankrupt" means, with respect to a Party or any Affiliate of such Party that is currently acting as its credit support provider, that such Party or Affiliate acting as credit support provider: (a) makes an assignment or any general arrangement for the benefit of creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors; (c) has such a petition filed against it as debtor and such petition is not stayed, withdrawn, or dismissed within sixty (60) Business Days of such filing; (d) seeks or has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; (e) has a distress, execution, attachment, sequestration or other legal process levied or enforced on or against all or substantially all of its assets; (f) is unable to pay its debts as they fall due or admits in writing of its inability to pay its debts generally as they become due; and/or (g) otherwise becomes bankrupt or insolvent (however evidenced).
- 1.8. "Billing Meter" is defined in Section 10.
- 1.9. "Billing Period" is defined in Section 11.
- 1.10. "Business Day" means any day on which the Federal Reserve member banks in New York City are open for business. A Business Day shall run from 8:00 a.m. to 5:00 p.m. Eastern Prevailing Time.
- 1.11. "Buyer" shall have the meaning specified in the first paragraph of this Agreement.
- 1.12. "Capacity" means and includes the electric generation capability and ability of the Facility and all associated characteristics and attributes, inclusive of the ability to contribute to peak system demands, as well as reserve requirements.
- 1.13. "Change of Control" means a transaction or series of related transactions (by way of merger, consolidation, sale of stock or assets, or otherwise) with any person, entity or "group" (within the meaning of Section 13(d)(3) of the U.S. Securities Exchange Act of 1934) of persons pursuant to which such person, entity, or group would directly or indirectly acquire (i) 50% or more of the voting interests in Seller or (ii) substantially all of the assets of Seller. Notwithstanding the foregoing, a Change of Control shall not be deemed to occur based on an internal reorganization where the ultimate parent of the Seller (as of the Effective Date) directly or indirectly retains 50% or more of the voting interests in Seller or substantially all of its assets and provided that Seller has provided Buyer no less than thirty (30) days prior written notice of such reorganization.

- 1.14. "Commercially Reasonable Manner" or "Commercially Reasonable" means, with respect to a given goal or requirement, the manner, efforts and resources a reasonable person in the position of the promisor would use, in the exercise of its reasonable business discretion and industry practice, so as to achieve that goal or requirement, which in no event shall be less than the level of efforts and resources standard in the industry for comparable companies with respect to comparable products. Factors used to determine whether a goal or requirement has been performed in a "Commercially Reasonable Manner" may include, but shall not be limited to, any specific factors or considerations identified in the Agreement as relevant to such goal or requirement.
- 1.15. "Commission" means the North Carolina Utilities Commission, or any successor thereto.
- 1.16. "Contract Price" is defined in Section 4.3.
- 1.17. "Contract Quantity" is defined in Section 4.2.
- 1.18. "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions, and other similar third party transaction costs and expenses, and other costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the terminated transaction(s), and all reasonable attorneys' fees and other legal expenses incurred by the Non-Defaulting Party in connection with the termination.
- 1.19. "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as a corporate or issuer rating.
- 1.20. "Creditworthy" or "Creditworthiness" - means (i) a Person with an investment grade Credit Rating from two (2) of the three (3) Rating Agencies such that its senior unsecured debt (or issuer rating if such Person has no senior unsecured debt rating) is rated at least (A) BBB- by S&P, if rated by S&P, (B) Baa3 by Moody's, if rated by Moody's, and (C) BBB- by Fitch, if rated by Fitch, respectively, or (ii) has satisfactory and verifiable creditworthiness determined in Buyer's reasonable discretion.
- 1.21. "Defaulting Party" is defined in Section 19.1.
- 1.22. "Delivery Period" is defined in Section 4.1.
- 1.23. "Delivery Point" means the point of interconnection between the Facility and the System on the high side (Buyer or Transmission Provider side) of the System.
- 1.24. "Dispatch Down" is defined in Section 8.6.
- 1.25. "Dispatch Down Payment Event" is defined in Section 8.6.
- 1.26. "Disputes" is defined in Section 23.1.
- 1.27. "Early Termination Date" is defined in Section 20.1.
- 1.28. "Effective Date" is defined in the introductory paragraph hereto.
- 1.29. "Emergency Condition" means, no matter the cause: (a) any urgent, abnormal, operationally unstable, dangerous, or public safety condition that is existing on the System or any portion thereof; (b) any urgent, abnormal, operationally unstable, dangerous, and/or public safety condition that is likely to result in any of the following: (i) loss or damage to the Facility or the System, (ii) disruption of generation by the Facility, (iii) disruption of service or stability on the System, or (iv) condition that may result in endangerment to human life or public safety; or, (c) any circumstance that requires action by the System Operator to comply with standing NERC regulations or standards, including without limitation actions to respond to, prevent, limit, or manage loss or damage to the Facility, loss or damage to the System, disruption of generation by the Facility, disruption of service on the System, an abnormal condition on the System, and/or endangerment to human life or safety. An Emergency Condition will be an excuse to Seller's performance only if such condition is not due to Seller's negligence, willful misconduct, and/or Seller's failure to perform as required under this Agreement.

- 1.30. "Energy" means three-phase, 60-cycle alternating current electric power and energy, expressed in either kWh or MWh, as the case may be.
- 1.31. "EPT" or "Eastern Prevailing Time" means the time in effect in the Eastern Time Zone of the United States of America, whether it be Eastern Standard Time or Eastern Daylight Savings Time.
- 1.32. "Estimation Methodology" is defined in Section 8.6.2.
- 1.33. "Event of Default" is defined in Section 19.1.
- 1.34. "Facility" means Seller's 1.415 MW electric generating facility, using landfill gas as a fuel source and located in Buncombe County, North Carolina, at 85 Panther Branch Road, Alexander, North Carolina 28701, as further identified in Exhibit 3.
- 1.35. "FERC" means the Federal Energy Regulatory Commission or any successor thereto.
- 1.36. "Fitch" - means Fitch Ratings Ltd. or its successor.
- 1.37. "Force Majeure" is defined in Section 14.1.
- 1.38. "GAAP" is defined in Section 9.1.
- 1.39. "Gains" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic benefit to the Non-Defaulting Party, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term, determined in a Commercially Reasonable Manner. Factors used in determining the economic benefit may include, without limitation, reference to information available either internally or supplied by third parties, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, or other relevant market data, comparable transactions, settlement prices or market prices for comparable transactions, forward price curves, production by comparable facilities, expected and historical production, all calculated for the remaining Term of the Agreement for the Product (inclusive of all components).
- 1.40. "Governmental Authority" means any federal, state or local government, legislative body, court of competent jurisdiction, administrative agency or commission or other governmental or regulatory authority or instrumentality or authorized arbitral body, including, without limitation, the Commission.
- 1.41. "Guarantor" means any Creditworthy Person having the authority and agreeing to guarantee a Party's obligations under this Agreement and is otherwise acceptable to Buyer in its reasonable discretion.
- 1.42. "Guaranty" means a parent company guaranty, in substantially the form set forth in Exhibit 5 attached hereto, provided by a Guarantor in favor of Buyer guaranteeing the obligations of Seller under this Agreement.
- 1.43. "Interconnection Agreement" means the separate interconnection and transmission service agreement (or agreements) to be negotiated and executed between Seller and the Transmission Provider concerning the interconnection of the Facility with the System and the requirements for transmission service.
- 1.44. "Interconnection Instruction" means any order, action, signal, requirement, demand, and/or direction, howsoever provided or implemented by the System Operator due to, in response to, or to address any condition relating to any service and/or obligation occurring under the Interconnection Agreement.
- 1.45. "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%); and, (b) the maximum rate permitted by applicable law.
- 1.46. "kW" means kilowatt.

- 1.47. "kWh" means kilowatt-hour.
- 1.48. "Letter(s) of Credit" means one or more irrevocable standby letters of credit substantially in the form of Exhibit 6 attached hereto (with only such changes as the issuing bank may reasonably require and as may be acceptable to Buyer in its reasonable discretion), issued by a U.S. commercial bank or other financial institution reasonably acceptable to Buyer,, which is not an Affiliate of Seller, which has and maintains a Credit Rating of at least A- from S&P and A3 from Moody's, for the Security Period, permitting Buyer to draw the entire amount if either such amount is owed or such Letter of Credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date.
- 1.49. "Lien" means any mortgage, deed of trust, lien, pledge, charge, claim, security interest, easement, covenant, right of way, restriction, equity, or encumbrance of any nature whatsoever.
- 1.50. "Losses" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to the Non-Defaulting Party, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term, determined in a Commercially Reasonable Manner. Factors used in determining the economic loss or loss of economic benefit may include, without limitation, reference to information available either internally or supplied by third parties, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, or other relevant market data, comparable transactions, settlement prices or market prices for comparable transactions, forward price curves, production by comparable facilities, expected and historical production, all calculated for the remaining Term of the Agreement for the Product (inclusive of all components).
- 1.51. "Maintenance Outage" means the temporary operational removal of the Facility from service to perform work on specific components of the Facility, at a time when the Facility must be removed from service before the next Planned Outage in the interest of safety or the prevention of injury or damage to or undue wear and tear on the Facility or any component thereof.
- 1.52. "Moody's" means Moody's Investors Service, Inc. or any successor-rating agency thereto.
- 1.53. "MW" means megawatt.
- 1.54. "MWh" means megawatt-hour.
- 1.55. "Nameplate Capacity Rating" means the maximum generating capability of the Facility as measured at the Delivery Point (AC) as set forth in Exhibit 3.
- 1.56. "NERC" means the North American Electric Reliability Corporation. For purposes of this Agreement, NERC includes any applicable regional entity with delegated authority from NERC, such as the SERC Reliability Corporation (SERC).
- 1.57. "Non-Defaulting Party" is defined in Section 20.
- 1.58. "Party" or "Parties" is defined in the introductory paragraph hereto.
- 1.59. "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit, or a Guaranty that is acceptable to Buyer in its sole discretion, in each case that meets the requirements set forth in this Agreement (including, without limitation, Section 5) provided by Seller to Buyer for the benefit of Buyer pursuant to this Agreement, as credit support, adequate assurances, and security to secure Seller's performance under this Agreement.
- 1.60. "Permit" means any permit, license, registration, filing, certificate of occupancy, certificate of public convenience and necessity, approval, variance or any authorization from or by any Governmental Authority and pursuant to any Requirements of Law.
- 1.61. "Permitted Excuse to Perform" means that Seller's obligation to generate, deliver, and sell and Buyer's obligation to receive and purchase is excused and no damages will be payable by either Party to the other Party, if and to the extent such failure is due solely to any of the following occurrences: (a) an Emergency Condition and/or (b) a Force Majeure event.
- 1.62. "Person" means any individual, entity, corporation, general or limited partnership, limited

liability company, joint venture, estate, trust, association or other entity or Governmental Authority.

- 1.63. "Planned Outage" means the temporary operational removal of the Facility from service to perform work on specific components in accordance with a pre-planned operations schedule, such as for a planned annual overhaul, inspections, or testing of specific equipment of the Facility.
- 1.64. "Product" means the Capacity of the Facility and Energy generated by the Facility.
- 1.65. "Protected Information" is defined in Section 16.1
- 1.66. "Prudent Utility Practice" means those practices, methods, equipment, specifications, standards of safety, and performance, as the same may change from time to time, as are commonly used in the construction, interconnection, operation, and maintenance of electric power facilities similar to the Facility, inclusive of delivery, transmission, and generation facilities and ancillaries, which in the exercise of good judgment and in light of the facts known at the time of the decision being made and activity being performed are considered: (i) good, safe, and prudent practices; (ii) are in accordance with generally accepted standards of safety, performance, dependability, efficiency, and economy in the United States; (iii) are in accordance with generally accepted standards of professional care, skill, diligence, and competence in the United States; and, (iv) are in compliance with applicable regulatory requirements and/or reliability standards. Prudent Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of others, but rather are intended to include acceptable practices, methods and acts generally accepted in the energy generation and utility industry.
- 1.67. "PURPA" means the Public Utility Regulatory Policies Act of 1978, as amended, and as may be amended from time to time.
- 1.68. "PURPA Fuel Requirements" means the requirements set forth in 18 C.F.R. § 292.204 OR 205, as may be amended and/or restated.
- 1.69. "Qualifying Facility" means an electric generating facility that has been registered and certified by FERC as generator that qualifies for and meets the requirements set forth in PURPA, as it may be amended, and associated rules, regulations, orders.
- 1.70. "Rating Agency" or "Rating Agencies" - means the rating entities of S&P, Moody's or Fitch.
- 1.71. "Regulatory Event" is defined in Section 15.1.
- 1.72. "Required Approval" is defined in Section 6.1.
- 1.73. "Requirements of Law" means any applicable federal, state, and local law, statute, regulation, rule, code, ordinance, resolution, order, writ, judgment, decree or Permit enacted, adopted, issued or promulgated by any Governmental Authority, including, without limitation, (i) PURPA, (ii) those pertaining to the creation and delivery of the Product, (iii) those pertaining to electrical, building, zoning, occupational safety, health requirements or to pollution or protection of the environment, and (iv) principles of common law under which a person may be held liable for the release or discharge of any hazardous substance into the environment or any other environmental damage.
- 1.74. "Security Period" is defined in Section 5.7.
- 1.75. "Seller" shall have the meaning specified in the first paragraph of this Agreement.
- 1.76. "S&P" means Standard & Poor's Ratings Services, Inc. or any successor-rating agency thereto.
- 1.77. "Station Power" means the Energy generated by the Facility and, whether metered or unmetered, used on-site to supply the Facility's auxiliary load and parasitic load and/or for powering the electric generation equipment. Station Power shall not include any Energy generated by the Facility and stored for later delivery to the Buyer under this Agreement.
- 1.78. "System" means the transmission, distribution, and generation facilities that are owned, directed, managed, interconnected, controlled, and/or operated by Buyer and/or the Transmission Provider, including, without limitation, facilities to provide retail and/or

wholesale service, substations, circuits, reinforcements, meters, extensions, and equipment associated with or connected to any interconnected facility or customer.

- 1.79. "System Operator" means the operators of the System that have the responsibilities for ensuring that the System as a whole or any part thereof operates safely, efficiently and reliably, including without limitation, the responsibilities to comply with any applicable operational or reliability requirements, the responsibilities to balance generation supply with customer load, the responsibilities to comply with any other regulatory obligation and the responsibilities to provide dispatch and curtailment instructions to generators supplying Energy to the System, and includes any person or entity delivering any such instruction to Seller.
- 1.80. "System Operator Instruction" means any order, action, requirement, demand, or direction, from the System Operator in accordance with Prudent Utility Practice, and delivered to Seller in a non-discriminatory manner, to operate, manage, and/or otherwise maintain safe and reliable operations of the System, including, without limitation those undertaken and implemented by the System Operator, in its sole discretion based on relevant System factors and considerations, including any and all operating characteristics, maintenance requirements, operational limitations, reliability (including, without limitation, standing NERC regulations or standards), safety, dispatch, constraints, discharge, emissions limitations, compliance requirements, communications, resource ramp-up and ramp-down constraints and implementation, and any other System considerations, which may include, without limitation, an order or action to: (i) interconnect, disconnect, integrate, operate in parallel, or synchronize with the System, (ii) increase (based on generator characteristics and Prudent Utility Practices), reduce, or cease generation output to comply with standing NERC regulations or standards; (iii) respond to any transmission, distribution, or delivery limitations or interruptions; (iv) perform or cease performing any activity so as to operate in accordance with System limitations, including, without limitation, operational constraints that would require the System Operator to force offline or reduce generation output from reliability generators to accommodate generation by the Facility; and, (v) suspend or interrupt any operational activity for an Emergency Condition or Force Majeure event; provided however, a System Operator instruction in response to an Emergency Condition, Force Majeure event, or operational condition relating specifically to or created by the Facility shall not be deemed or considered discriminatory.
- 1.81. "Taxes" means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, together with any interest and penalties thereon.
- 1.82. "Term" is defined in Section 3.1.
- 1.83. "Transmission Provider" means the entity or division within Duke Energy Progress, LLC that will provide interconnection and/or electric distribution or transmission service to enable delivery of Energy generated by the Facility to Buyer, and any such entity or division will include any successor or replacement thereto, including without limitation, a consolidated control area or a regional transmission organization.

2. **Interpretation**

- 2.1. **Intent.** Unless a different intention clearly appears, the following terms and phrases shall be interpreted as follows: (a) the singular includes the plural and vice versa; (b) the reference to any Person includes such Person's legal and/or permitted successors and assignees, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually; (c) the reference to any gender includes the other gender and the neuter; (d) reference to any document, including this Agreement, refers to such document as it may be amended, amended and restated, modified, replaced or superseded from time to time in accordance with its terms, or any successor document(s) thereto; (e) reference to any section or exhibit means such section or exhibit of this Agreement unless otherwise indicated; (f) "hereunder", "hereof", "hereto", "herein", and words of similar import shall be deemed references to this Agreement as a whole and not to any particular section or other provision; (g) "including" (and with correlative meaning "include") means "including without limitation"

and, when following any general statement or term, is not to be construed as limiting the general statement or term to the specific items or matters set forth or to similar items or matters, but rather as permitting the general statement or term to refer to all other items or matters that could reasonably fall within its broadest possible scope; (h) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including"; (i) reference to any Requirements of Law refers to such Requirements of Law as it may be amended, modified, replaced or superseded from time to time, or any successor Requirements of Law thereto; and (j) all exhibits and attachments to this Agreement are hereby incorporated into this Agreement. Other terms used, but not defined in Section 1 or in the body of the Agreement, shall have meanings as commonly used in the English language and, where applicable, in the electric utility industry. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

3. Term and Termination

- 3.1. Term. This Agreement shall be effective on the Effective Date and shall remain in full force and effect until the third (3rd) anniversary of the Effective Date ("Term"), unless terminated earlier pursuant to the provisions of this Agreement.
- 3.2. Termination and Survival. This Agreement may be terminated as provided for herein prior to the expiration of the Term. If this Agreement is terminated earlier than the expiration of the Term for any reason, including, without limitation, whether by its terms, mutual agreement, early termination, and/or event of default, such termination shall not relieve any Party of any obligation accrued or accruing prior to the effectiveness of such termination. Furthermore, any obligations, limitations, exclusions and duties which by their nature or the express terms of this Agreement extend beyond the expiration or termination of this Agreement, including, without limitation, provisions relating to compliance requirements, accounting, billing, billing adjustments, limitations or liabilities, dispute resolution, Performance Assurance, and any other provisions necessary to interpret or enforce the respective rights and obligations of the Parties hereunder, shall survive the expiration or early termination of this Agreement.

4. Purchase and Sale Obligations

- 4.1. Delivery Period. The "Delivery Period" for the Product to be generated by the Facility and sold by Seller to Buyer shall be for all hours starting at 12:00:01 AM EPT on the Effective Date through 11:59:59 PM EPT on the last day of the Term, unless this Agreement is terminated earlier pursuant to its terms and conditions.
- 4.2. Contract Quantity. The "Contract Quantity" will be one hundred percent (100%) of the Capacity, output of Energy (including stored Energy) produced by the Facility, less that associated with Station Power.
 - 4.2.1. Seller shall sell and deliver the Contract Quantity of the Product exclusively and solely to Buyer. Seller's failure to generate, sell, and deliver the Contract Quantity of the Product to Buyer will be excused with no damages payable to Buyer solely to the extent such failure is due to a Permitted Excuse to Perform.
 - 4.2.2. Buyer shall have no obligation to receive, purchase, pay for, or pay any damages associated with not receiving the Product due to a Permitted Excuse to Perform. Buyer shall have full and exclusive rights to the Product, and will be entitled to full and exclusive use of the Product (inclusive of all components) for its purposes and in its sole and exclusive discretion.
 - 4.2.3. The estimated monthly and annual Energy production of the Facility during the Delivery Period is set forth in Exhibit 1 hereto. Notwithstanding any provision herein, Seller is under no obligation to produce and deliver any minimum quantity of Energy and shall suffer no liability if it produces a smaller amount of Energy than the estimated monthly and annual Energy production of the Facility.
- 4.3. Contract Price. The "Contract Price" for the Product shall be the price corresponding to the relevant portion of the Delivery Period as set forth in Exhibit 2.

- 4.4. Energy Delivery. Seller shall deliver the Contract Quantity of the Product at the Delivery Point, and Seller shall be fully responsible for all costs, charges, expenses, and requirements associated with delivering the Product to the Delivery Point. Buyer will have no obligation to pay for any Product not delivered to the Delivery Point.
- 4.5. Payment for Product. During the Term of this Agreement, Buyer agrees to pay Seller the product of (i) the Contract Price for the Product, as applicable, multiplied by (ii) the amount of Energy delivered by Seller to Buyer at the Delivery Point during the Delivery Period.
- 4.6. Transfer. In no event will Seller procure or have the right to procure the Product or any component of the Product from any source other than the Facility for sale and delivery pursuant to this Agreement. Title to and risk of loss to the Product sold and delivered hereunder shall transfer from Seller to Buyer after completion of delivery at the Delivery Point. Seller shall be responsible for any costs and charges imposed on or associated with the Product and the delivery of the Product at the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product after the Delivery Point.
- 4.7. Power Factor Correction. Unless the Seller is required by a separate operating agreement with Buyer to adjust VAR production to support voltage control, when the Seller consumes VARs supplied by the Buyer or the Seller delivers VARs to Buyer, the Buyer may reduce the purchased energy measured in kilowatt-hours for that month by multiplying by the average consumed power factor. The average consumed power factor shall be the calculated by Buyer on a monthly basis as the average kWh delivered by Seller under this Agreement divided the average kVAh, where average kVAh shall be the square root of the sum of the average kWh squared plus the average consumed and delivered kVARh squared. Buyer reserves the right to install facilities necessary for the measurement of power factor and to adjust the Interconnection Facilities Charge accordingly, solely at the option of Buyer.

Credit and Related Provisions.

- 4.8. Performance Assurances. If at any time during the Term of this Agreement, Seller ceases to be Creditworthy due to a change in its Credit Rating Buyer may, by providing written notice to Seller, request that Seller provide Buyer with Performance Assurance in an amount reasonably determined by Buyer relative to Seller's performance obligations under this Agreement. Upon receipt of such notice, Seller shall have five (5) Business Days to provide such Performance Assurance to Buyer. Notwithstanding the foregoing, any Performance Assurance required under this Section 5.1 shall not exceed thirteen thousand U.S. dollars (\$13,000) (the "Posting Cap").
- 4.9. Netting. If an Event of Default has not occurred and a Party is required to pay an amount to the other Party under this Agreement, then such amounts shall be netted, and the Party owing the greater aggregate amount shall pay to the other Party any difference between the amounts owed. All outstanding obligations to make payment under this Agreement may be netted, offset, set off, or recouped therefrom, and payment shall be owed as set forth above. Unless Buyer notifies Seller in writing (except in connection with a liquidation and termination) all amounts netted pursuant to this section shall not take into account or include any credit support, which may be in effect to secure Seller's performance under this Agreement. The netting set forth above, shall be without prejudice and in addition to any and all rights, liens, setoffs, recoupments, counterclaims and other remedies and defenses (to the extent not expressly herein waived or denied) that such Party has or to which such Party may be entitled arising from or out of this Agreement.
- 4.10. Set-off. In addition to any rights of set-off a Party may have as a matter of law or otherwise and subject to applicable law, upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right (but shall not be obligated to) without prior notice to the Defaulting Party or any other person to set-off any obligation of the Defaulting Party owed to the Non-Defaulting Party under this Agreement (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation) against any obligations of the Non-Defaulting Party owing to the Defaulting Party under this

Agreement (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation). If any such obligation is unascertained, the Non-Defaulting Party may in a Commercially Reasonable Manner estimate that obligation and set-off in respect of the estimate, subject to the relevant Party providing an accounting and true-up to the other Party after the amount of the obligation is ascertained.

- 4.11. Performance Assurance Requirements. Seller shall ensure that any Performance Assurance, if required hereunder, remains in full force and effect and outstanding for the duration required by this Agreement. All applicable Performance Assurance, in the amount required pursuant to the terms of this Agreement, shall remain in full force and effect and outstanding for the benefit of Buyer until sixty (60) days following the later of (a) the end of the Term or (b) the date on which Seller has fully satisfied all obligations to Buyer under this Agreement (the "Security Period"). If at any time any Performance Assurance fails to meet any of the requirements under this Agreement, Seller shall replace such Performance Assurance with alternative Performance Assurance that meets each of the requirements under this Agreement. Seller will be solely responsible for any and all costs incurred with providing and maintaining any Performance Assurance to the full amount required by this Agreement. If Seller fails to replace, renew, or otherwise maintain the required Performance Assurance as and when required by this Agreement, then Buyer: (a) shall be entitled to draw and retain hereunder the full amount of the Performance Assurance; (b) shall not be obligated to make any further payments to Seller until Seller shall have provided Buyer with the replacement Performance Assurance; and, (c) shall be entitled to give Seller notice of an Event of Default and pursue the termination rights and remedies provided for in this Agreement.

5. **Seller Compliance Requirements.**

- 5.1. Required Approvals. Seller shall at its sole cost and expense timely obtain, maintain, and comply with all Required Approvals (definition follows) during the Term of this Agreement. "Required Approvals" means all of the following:
- 5.1.1. All approvals and certifications that the Facility is a Qualifying Facility.
- 5.1.2. All required Permits, authorizations, certifications, and/or approvals from any Governmental Authority and under any Requirements of Law, including, without limitation, from the Commission or FERC, for Seller to construct, build, own, operate, and maintain the Facility and sell and deliver the Product to Buyer in accordance with the requirements under this Agreement.
- 5.2. Seller Covenants. Seller covenants and represents and warrants to Buyer as of the Effective Date of this Agreement and throughout the Term of this Agreement that: (a) Seller has obtained an approved and valid certificate of public convenience and necessity for the Facility from the Commission; (b) Seller has obtained or shall obtain if determined to be necessary by Buyer, an Interconnection Agreement for the Facility (c) Seller has secured from the Transmission Provider(s) the firm transmission required to deliver the Product to the Delivery Point; and (d) Seller has obtained all applicable certifications and/or approvals for the Facility from FERC. Seller agrees and acknowledges that Buyer has entered into this Agreement in reliance upon the covenants and warranties set forth above in this section, and in the event of a breach or failure of or relating to any of the foregoing covenants and warranties, including without limitation for being false or misleading in any respect, then this Agreement will terminate upon Buyer providing Seller with thirty (30) day's written notice, unless such breach or failure has been cured before the end of such thirty (30) day period. Seller will indemnify and hold Buyer harmless for any breach or failure relating to any of the foregoing covenants and warranties, notwithstanding anything else to the contrary in this Agreement.
- 5.3. Seller Requirements. Within twenty (20) Business Days of a written request from Buyer, Seller agrees to provide Buyer with all information, documents, and affidavits from a duly authorized representative of Seller certifying that the Facility fully complies with PURPA.

6. **Seller's Facility Requirements.**

- 6.1. Seller Requirements. Seller covenants (except to the extent expressly set forth in this Agreement) that: the Facility shall be operated, controlled, maintained, and tested at Seller's

sole cost and expense; the Facility shall be operated (inclusive, without limitation, of control, metering equipment, and personnel and staffing levels), controlled, maintained, and tested by Seller to perform as required by this Agreement and in compliance with all applicable Requirements of Law and Prudent Utility Practice; the Facility shall be capable of supplying the Product in a safe and reliable manner consistent with the requirements of each applicable Requirements of Law and Prudent Utility Practice; and, that all contracts, agreements, arrangements, and/or Permits (including, without limitation, those necessary or prudent for the construction, ownership and operation of the Facility, such as land use permits, site plan approvals, real property titles and easements, environmental compliance and authorizations, grading and building permits, and contracts and/or licenses to obtain the underlying fuel, install and operate the Facility, and deliver and sell the Product of the Facility) shall be timely obtained and maintained by Seller, at Seller's sole cost and expense. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility. Seller shall operate and maintain the Facility in accordance with Prudent Utility Practice. Seller shall be responsible for all costs, charges, and expenses associated with generating, scheduling, and delivering the Energy to Buyer.

- 6.2. Seller Responsibilities. Notwithstanding any provision of this Agreement to the contrary, the Seller agrees that: (a) Buyer shall have no responsibility whatsoever for any costs and/or Taxes relating to the design, development, construction, maintenance, ownership, or operation of the Facility (including but not limited to any financing costs, and any costs and/or Taxes imposed by any Governmental Authority on or with respect to emissions from or relating to the Facility, and including but not limited to costs and/or Taxes related to any emissions allowances *inter alia* for oxides for sulfur dioxide or nitrogen, carbon dioxide, and mercury), all of which shall be entirely at Seller's sole cost and expense; and, (b) any risk as to the availability of production tax benefits, investment tax credits, grants or any other incentives relating to the design, development, construction, maintenance, ownership, or operation of the Facility shall be borne entirely by Seller.

6.2.1. No Exclusions. If any production or investment tax credit, grants, subsidy, or any other similar incentives or benefit relating, directly or indirectly, to the Facility is unavailable or becomes unavailable at any time during the Term of this Agreement, Seller agrees that such event or circumstance will not: (a) constitute a Force Majeure or Regulatory Event; (b) excuse or otherwise diminish Seller's obligations hereunder in any way; and, (c) give rise to any right by Seller to terminate or avoid performance under this Agreement. Seller agrees that it will solely and fully bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive any such tax treatment or otherwise qualify for any preferential or accelerated depreciation, accounting, reporting, or tax treatment.

- 6.3. Transmission Provider. Seller agrees and acknowledges that the Interconnection Agreement contemplated hereunder, if required, shall be a separate agreement (or agreements) between Seller and Transmission Provider, and will exclusively govern all requirements and obligations between Seller and Transmission Provider. Only the Interconnection Agreement will govern all obligations and liabilities set forth in the Interconnection Agreement, and Seller shall be solely and fully responsible for all costs and expenses for which Seller is responsible for under the Interconnection Agreement. Seller shall comply with all Interconnection Instructions. Nothing in the Interconnection Agreement, nor any other agreement between Seller on the one hand and Transmission Provider on the other hand, nor any alleged event of default thereunder, shall affect, alter, or modify the Parties' rights, duties, obligation, and liabilities under this Agreement. This Agreement shall not be construed to create any rights between Seller and the Transmission Provider, and the terms of this Agreement are not (and will not) be binding upon the Transmission Provider. Seller agrees and acknowledges that Seller's performance under this Agreement depends on Seller's performance under the Interconnection Agreement, and Seller hereby grants Buyer the right and entitlement to obtain information from the Transmission Provider in regard to Seller's performance under the Interconnection Agreement.

- 6.4. System Operations. Seller agrees and acknowledges that the System Operator will be solely responsible for its functions, and that nothing in this Agreement will be construed to create any rights between Seller and the System Operator. Seller agrees that it is obligated to engage

in interconnected operations with Buyer and the System, and Seller agrees to fully comply with all System Operator Instructions.

- 6.5. Insurance Obligations. Throughout the Term of this Agreement, and at no additional cost to Buyer, Seller shall maintain or self-insure, occurrence form insurance coverage as follows: (a) Workers' Compensation in accordance with the statutory requirements of the state in which the Services are performed and Employer's Liability Insurance of not less than \$500,000 each accident/employee/disease; (b) Commercial General Liability Insurance having a limit of at least \$1,000,000 per occurrence/\$2,000,000 in the aggregate for contractual liability, personal injury, bodily injury to or death of persons, and damage to property, premises and operations liability and explosion, collapse, and underground hazard coverage; (c) Commercial/Business Automobile Liability Insurance (including owned (if any), non-owned or hired autos) having a limit of at least \$1,000,000 each accident for bodily injury, death, property damage and contractual liability; and (d) Property Damage insurance on the Facility written on an all risk of loss basis;. All insurance policies provided and maintained by Seller or applicable party shall: (i) be underwritten by insurers which are rated A.M. Best "A- VII" or higher; (ii) specifically include Buyer as additional insured's, excluding, however, for Worker's Compensation/Employer's Liability and Property Damage insurance; (iii) be endorsed to provide, where permitted by law, waiver of any rights of subrogation against Buyer; and (iv) provide that such policies and additional insured provisions are primary and without right of contribution from any other insurance, self-insurance or coverage available to Buyer. Any deductibles or retentions shall be the sole responsibility of Seller or the applicable party. Seller's compliance with these provisions and the limits of insurance specified herein shall not constitute a limitation of Seller's liability pursuant to this Agreement. Any failure to comply with and these provisions shall not be deemed a waiver of any rights of Buyer under this Agreement or with respect to any insurance coverage required hereunder. Buyer at its sole discretion may request Seller to provide a copy of any or all of its required insurance policies, including endorsements in which Buyer is included as an additional insured for any claims filed relative to the Facility or this Agreement.

7. **Facility Performance Requirements**

- 7.1. Planned Outages. No later than fifteen (15) Business Days prior to the end of each year during the Term, Seller shall provide to Buyer a Planned Outage schedule for the upcoming year. Seller shall provide Buyer with reasonable advance notice of any material change in the Planned Outage schedule. Seller shall determine the number and extent of Planned Outages in a Commercially Reasonable Manner recognizing that it is the intent of the Parties to maximize production of the Facility and to such extent Seller shall be excused from providing the Product during such Planned Outage(s). Unless both Parties expressly agree otherwise, any Planned Outage shall only occur during the months of March, April, May, September, October, or November.
- 7.2. Maintenance Outages. If Seller needs or desires to schedule a Maintenance Outage of the Facility, Seller shall notify Buyer, as far in advance as reasonable and practicable under the circumstances, of such proposed Maintenance Outage, and the Parties shall plan such outage to mutually accommodate the reasonable requirements of Seller and delivery expectations of Buyer. Notice of a proposed Maintenance Outage shall include the expected start date of the outage, the amount of output of the Facility that will not be available and the expected completion date of the outage. Buyer may request reasonable modifications in the schedule for the outage. Subject to its operational and maintenance needs, Seller shall comply with such requests to reschedule a Maintenance Outage. If rescheduled, Seller shall notify Buyer of any subsequent changes in the output that will not be available to Buyer and any changes in the Maintenance Outage completion date. As soon as practicable, any such notifications given orally shall be confirmed in writing.
- 7.3. Notice. Seller shall promptly provide to Buyer an oral report of all outages, Emergency Conditions, de-ratings, major limitations, or restrictions affecting the Facility, which report shall include the cause of such restriction, amount of generation from the Facility that will not be available because of such restriction, and the expected date that the Facility will return to normal operations. Seller shall update such report as necessary to advise Buyer of any material changed circumstances relating to the aforementioned restrictions. As soon as practicable, all

oral reports shall be confirmed in writing. Seller shall promptly dispatch personnel to perform the necessary repairs or corrective action in an expeditious and safe manner in accordance with Prudent Utility Practice.

- 7.4. Performance. Seller shall act in a Commercially Reasonable Manner to maximize the output of the Facility in a safe manner to generate the Product and to minimize the occurrence, extent, and duration of any event adversely affecting the generation of the Product, in each case consistent with Prudent Utility Practice.

- 7.5. System Operator Instructions and Payments. Seller shall cooperate with Buyer to immediately and fully comply with all System Operator Instructions. If the System Operator requires the Facility to reduce or stop the generation of Energy pursuant to a System Operator Instruction (such reductions or cessations of Energy, the "Dispatch Down" of production by the Facility), Buyer shall pay Seller the amount set forth below if, and only if: (i) the Facility was operating at the time of the Dispatch Down instruction, and was required to and actually reduced Energy production pursuant to a Dispatch Down instruction; (ii) the actual reduction of Energy generation by the Facility due to Dispatch Down instructions exceeds four hundred eleven (411) MWh (the "Dispatch Down Payment Threshold") in a calendar year (January – December); and, (iii) the Dispatch Down instruction was not due to an Emergency Condition or Force Majeure event (the foregoing items (i)-(iii), collectively, the "Dispatch Down Payment Event").

7.5.1. For each calendar year, after a Dispatch Down Payment Event occurs during that calendar year, Buyer shall pay Seller starting with the four hundred twelfth (412th) MWh, at the Contract Price for the Product multiplied by the units of Product not generated due to the Dispatch Down instruction(s).

7.5.2. Estimation Methodology. Buyer shall determine in a Commercially Reasonable Manner the quantity of Energy that could not be generated due to compliance with and implementation of the Dispatch Down instruction(s) based on: (i) the duration of the Dispatch Down; (ii) the amount of the generating capability of the Facility that is curtailed by the applicable Dispatch Down (e.g. 10% generation capability is curtailed); and (iii) the Facility design, performance capability, and historic performance (the "Estimation Methodology").

7.5.3. In the event Seller demonstrates that a Dispatch Down instruction issued by the System Operator does not fall within the definition of a System Operator Instruction and that the Facility actually reduced Energy production pursuant to such Dispatch Down instruction, Seller shall be entitled to a compensatory payment from Buyer, calculated using the Estimation Methodology, in the amount of the Contract Price for the Product not generated due to compliance with the Dispatch Down instruction (starting with the first MWh of Product not generated) as Seller's sole and exclusive payment and remedy for its compliance with such instruction.

8. Information Requirements

- 8.1. Accounting Information. Generally Accepted Accounting Principles ("GAAP") and SEC rules can require Buyer to evaluate various aspects of its economic relationship with Seller, e.g., whether or not Buyer must consolidate Seller's financial information. To evaluate if certain GAAP requirements are applicable, Buyer may need access to Seller's financial records and personnel in a timely manner. In the event that Buyer determines that consolidation or other incorporation of Seller's financial information is necessary under GAAP, Buyer shall require the following for each calendar quarter during the term of this Agreement, within 90 days after quarter end: (a) complete financial statements, including notes, for such quarter on a GAAP basis; and, (b) financial schedules underlying the financial statements. Seller shall grant Buyer access to records and personnel to enable Buyer's independent auditor to conduct financial audits (in accordance with GAAP standards) and internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002). Any information provided to Buyer pursuant to this section shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed, as required by GAAP, on an aggregate basis with other similar entities for which Buyer has power purchase agreements.

- 8.2. Facility Information. Seller shall promptly provide to Buyer information requested by Buyer to verify any amounts of delivered Product, or to otherwise audit the Product delivered to Buyer. Seller shall, within ten (10) Business Days of electronic or written request provide Buyer with any other information germane to this Agreement and/or Seller's performance under and compliance with this Agreement, requested by Buyer in its Commercially Reasonable discretion.
- 8.3. Other Information. Seller shall provide to Buyer all information, instruments, documents, statements, certificates, and records relating to this Agreement and/or the Facility as reasonably requested by Buyer concerning any administrative, regulatory, compliance, or legal requirements reasonably determined by Buyer to fulfill any Requirements of Law, regulatory reporting requirements or otherwise relating to any request by any Governmental Authority.

9. Metering

- 9.1. Billing Meter. In the Interconnection Agreement between Seller and Transmission Provider, Seller shall arrange with the Transmission Provider to construct and install such meters and metering equipment as are necessary to measure the Energy delivered and received in accordance with the terms and conditions of this Agreement (the "Billing Meter"). Buyer shall provide to Seller the reasonable allowable accuracy limits relating to the performance of the Billing Meter, and Seller shall arrange with Transmission Provider to install and operate a Billing Meter that meets the allowable accuracy limits. Seller shall be responsible for paying the Transmission Provider for all costs relating to the Billing Meter, including, without limitation, its procurement, installation, operation, calibration, and maintenance. Seller shall ensure in its arrangement with the Transmission Provider for the Billing Meter to include communication equipment that enables Buyer to access and read the meter from a remote location. Seller hereby grants Buyer with rights to physically access the Billing Meter. Seller shall provide Buyer (at Seller's cost) with appropriate telephonic/electronic communication to allow Buyer to remotely read the meter. Seller may, at its own expense, install and maintain additional metering equipment for purposes of monitoring, recording or transmitting data relating to its sale of Energy from the Facility, so long as such equipment does not interfere with the Billing Meter. Seller shall arrange with the Transmission Provider to test the Billing Meter at regular intervals. Seller shall also arrange for either Party to have the right to request and obtain, at reasonable intervals and under reasonable circumstances, additional/special tests of the Billing Meter. The Party making such request for the test shall incur the costs associated with such test.

10. Billing Period and Payment

- 10.1. Billing Period. Subject to Seller authorizing Transmission Provider to provide Buyer with electronic access to the Billing Meter, Buyer shall read/obtain data from the Billing Meter at regular intervals, which shall be not less than twenty-seven (27) consecutive days and not more than thirty-three (33) consecutive days (each, a "Billing Period") except for the initial and final billing periods hereunder which may be shorter to permit the readings to otherwise coincide with calendar months. Within twenty-five (25) days after reading/obtaining data from the Billing Meter, Buyer shall provide Seller with an invoice detailing the amount of Product delivered during the relevant Billing Period and the associated amount owed by Buyer to Seller for the Product, subject to Seller cooperating with Buyer and providing Buyer with such information and/or data that Buyer may request to accurately prepare the invoice. Buyer shall pay Seller the invoiced amounts for each Billing Period. Payment by Buyer shall be due thirty (30) days after the invoice date. If such amounts are not paid by the deadline, they shall accrue interest at the Interest Rate from the applicable due date until the date paid. Amounts not paid by such deadline shall accrue interest at the Interest Rate from the original due date until the date paid in accordance with this Agreement.
- 10.2. Meter Malfunction. In the event the Billing Meter fails to register accurately within the allowable accuracy limits as set forth above, then for purposes of preparing (or adjusting) any affected invoice Buyer shall adjust the amount of measured Energy for the period of time the Billing Meter was shown to be in error. If the time the Billing Meter became

inaccurate can be determined, then the adjustment to the amount of measured Energy shall be made for the entire time from the time that the Billing Meter became inaccurate until the recalibration of the Billing Meter. If the time the Billing Meter became inaccurate cannot be determined, then the Billing Meter shall be deemed to have failed to register accurately for fifty percent (50%) of the time since the date of the last calibration of the Billing Meter.

- 10.3. Out-of-Service. If the Billing Meter is out of service, then for purposes of preparing any affected invoice, the Parties shall negotiate in good faith to determine an estimate of the amount of Energy delivered during the relevant Billing Period. Seller's meter (if any), may be used to establish such estimate, if both Parties agree. If, within twenty (20) days after the date that the Billing Meter is read as set forth above, the Parties have not reached agreement regarding an estimate of the amount of Energy delivered during the relevant Billing Period, then the amount of Energy delivered during the relevant Billing Period shall be determined using the Estimation Methodology.
- 10.4. Errors. If any overcharge or undercharge in any form whatsoever shall at any time be found for an invoice, and such invoice has been paid, the Party that has been paid the overcharge shall refund the amount of the overcharge to the other Party, and the Party that has been undercharged shall pay the amount of the undercharge to the other Party, within forty-five (45) days after final determination thereof; provided, however, that no retroactive adjustment shall be made for any overcharge or undercharge unless written notice of the same is provided to the other Party within a period of twenty-four (24) months from the date of the invoice in which such overcharge or undercharge was first included. Any such adjustments shall be made with interest calculated at the Interest Rate from the date that the undercharge or overcharge actually occurred.
- 10.5. Invoice/Payment Dispute. If a Party in good faith reasonably disputes the amount set forth in an invoice, charge, statement, or computation, or any adjustment thereto, such Party shall provide to the other Party a written explanation specifying in detail the basis for such dispute. The Party disputing the invoice, if it has not already done so, shall pay the undisputed portion of such amount no later than the applicable due date. If the Parties are thereafter unable to resolve the dispute through the exchange of additional documentation, then the Parties shall pursue resolution of such dispute according to the dispute resolution and remedy provisions set forth in the Agreement. Notwithstanding any other provision of this Agreement to the contrary, if any invoice, statement charge, or computation is found to be inaccurate, then a correction shall be made and payment (with applicable interest) shall be made in accordance with such correction; provided, however, no adjustment shall be made with respect to any invoice, statement, charge, computation or payment hereunder unless a Party provides written notice to the other Party questioning the accuracy thereof within twenty-four (24) months after the date of such invoice, statement, charge, computation, or payment.

11. Audit Rights

- 11.1. Process. Buyer shall have the right, at its sole expense and during normal business hours, without Seller requiring any compensation from Buyer, to examine and copy the records of Seller to verify the accuracy of any invoice, statement, charge or computation made hereunder or to otherwise verify Seller's performance under this Agreement, including, without limitation, verifying that the delivered Product complies with the Agreement.
- 11.2. Survival. All audit rights shall survive the expiration or termination of this Agreement for a period of twenty-four (24) months after the expiration or termination. Seller shall retain any and all documents (including, without limitation, paper, written, and electronic) and/or any other records relating to this Agreement and the Facility for a period of twenty-four (24) months after the termination or expiration of this Agreement.

12. Taxes

- 12.1. Seller. Seller shall be liable for and shall pay Buyer, or Seller shall reimburse Buyer if Buyer has paid or cause to be paid, all Taxes imposed by a Governmental Authority on or with respect to the Product delivered hereunder and arising prior its delivery to and at the Delivery Point (including ad valorem, franchise or income taxes which are related to the sale

of the Product by Seller to Buyer and are, therefore, the responsibility of Seller). Seller shall indemnify, defend, and hold harmless Buyer from any liability for such Taxes, including related audit and litigation expenses.

- 12.2. Buyer. Buyer shall be liable for and shall pay Seller, or Buyer shall reimburse Seller if Seller has paid or caused to be paid, all Taxes imposed by a Governmental Authority on or with respect to the Product delivered hereunder and arising after the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product by Seller to Buyer and are, therefore, the responsibility of Seller). Buyer shall indemnify, defend, and hold harmless Seller from any liability for such Taxes, including related audit and litigation expenses.
- 12.3. Remittances. In the event Seller is required by any Requirements of Law to remit or pay Taxes that are Buyer's responsibility hereunder, Seller may request reimbursement of such payment from Buyer by sending Buyer an invoice, and Buyer shall include such reimbursement in the next monthly invoice and remit payment thereof. Conversely, if Buyer is required by any Requirements of Law to remit or pay Taxes that are Seller's responsibility hereunder; Buyer may deduct the amount of any such Taxes from the sums otherwise due to Seller under this Agreement. Any refunds or remittances associated with such Taxes shall be administered in accordance with Section 11.1.
- 12.4. Documentation. A Party, upon written request of the other Party, shall promptly provide a certificate of exemption or other reasonably satisfactory evidence of exemption if such Party is exempt from any Tax. Nothing herein shall obligate a Party to pay or be liable to pay any Taxes from which it is exempt pursuant to applicable law.

13. **Force Majeure**

- 13.1. Definition. "Force Majeure" means: (A) war, riots, floods, hurricanes, tornadoes, earthquakes, lightning, ice-storms, excessive winds, and other such extreme weather events and natural calamities; (B) explosions or fires arising from lightning or other natural causes unrelated to acts or omissions of the Party; (C) insurrection, rebellion, nationwide strikes; (D) an act of god or other such significant and material event or circumstance which prevents one Party from performing a material and significant obligations hereunder, which such event or circumstance was not anticipated as of the Effective Date, is not within the Commercially Reasonable control of, or the result of the negligence of such claiming Party, and which, by the exercise of Commercially Reasonable Efforts, the claiming Party is unable to overcome or avoid or cause to be avoided; and (E) delays in obtaining goods or services from any subcontractor or supplier to the extent caused by the occurrence of any of the events described in the immediately preceding subparts (A) through (D). The acts, events or conditions listed in subparts (A) through (E) above shall only be deemed a Force Majeure if and to the extent they actually and materially delay or prevent the performance of a Party's obligations under this Agreement and: (i) are beyond the reasonable control of the Party, (ii) are not the result of the willful misconduct or negligent act or omission of such Party (or any person over whom that Party has control), (iii) are not an act, event or condition that reasonably could have been anticipated, or the risk or consequence of which such Party has assumed under the Agreement; and, (iv) cannot be prevented, avoided, or otherwise overcome by the prompt exercise of Commercially Reasonable diligence by the Party (or any Person over whom that Party has control).
 - 13.1.1. Notwithstanding anything to the contrary herein, Force Majeure will not include the following: (a) any strike or labor dispute of the employees of either Party or any subcontractor that is not part of a regional or nationwide strike or labor dispute; (b) any difficulty in obtaining or maintaining sufficient, or appropriately skilled, personnel to perform the work in accordance with the requirements of this Agreement; (c) normal wear and tear or obsolescence of any equipment; (d) Buyer's inability to economically use or resell the Product delivered and purchased hereunder; (e) Seller's ability to sell the Product (or any component of the Product) at a more advantageous price; (f) loss by Seller of any contractual arrangement; (g) any Regulatory Event; (h) loss or failure of Seller's supply of the Product or inability to generate the Product that is not caused by an

independent Force Majeure event; (i) the cost or availability or unavailability of fuel, solar energy, wind, or motive force, as applicable, to operate the Facility; (j) economic hardship, including, without limitation, lack of money or financing or Seller's inability to economically generate the Product or operate the Facility; (k) any breakdown or malfunction of Facility equipment (including any serial equipment defect) that is not directly caused by an independent event of Force Majeure; (l) the imposition upon Seller of costs or taxes allocated to Seller hereunder or Seller's failure to obtain or qualify for any tax incentive, preference, or credit; (m) delay or failure of Seller to obtain or perform any Permit; (n) any delay, alleged breach of contract, or failure under any other agreement or arrangement between Seller and another entity, including without limitation, an agent or sub-contractor of Seller (except as a direct result of an event of Force Majeure defined in 14.1(E)); (o) Seller's failure to obtain, or perform under, the Interconnection Agreement, or its other contracts and obligations to Transmission Provider; or (p) increased cost of electricity, steel, materials, equipment, labor, or transportation.

- 13.2. Event. If either Party is rendered unable by Force Majeure to carry out, in whole or in part, any material obligation hereunder, such Party shall provide notice and reasonably full details of the event to the other Party as soon as reasonably practicable after becoming aware of the occurrence of the event (but in no event later than three (3) Business Days of the initial occurrence of the event of Force Majeure). Such notice may be given orally but shall be confirmed in writing as soon as practicable thereafter (and in any event within ten (10) days of the initial occurrence of the event of Force Majeure); provided however, a reasonable delay in providing such notice shall not preclude a Party from claiming Force Majeure but only so long as such delay does not prejudice or adversely affect the other Party.
- 13.3. Effect. Subject to the terms and conditions of Section 14, for so long as the event of Force Majeure is continuing, the specific obligations of the Party that are demonstrably and specifically adversely affected by the Force Majeure event, shall be suspended to the extent and for the duration made necessary by the Force Majeure and will not be deemed to be an Event of Default to the extent resulting therefrom. The burden of proof for demonstrating that an event of Force Majeure has occurred shall be on the Party claiming relief under this Agreement based on an event of Force Majeure.
- 13.4. Remedy. The Party claiming Force Majeure shall act in a Commercially Reasonable Manner to remedy the Force Majeure as soon as practicable and shall keep the other Party advised as to the continuance of the Force Majeure event. If a bona fide Force Majeure event persists for a continuous period of one hundred eighty (180) days, then the Party not claiming Force Majeure shall have the right, in its sole and unfettered discretion, to terminate this Agreement upon giving the other Party ten (10) Business Days advance written notice; provided, however, that where the Force Majeure event cannot be remedied within one hundred eighty (180) days and the claiming Party can demonstrate to the non-claiming Party its intention and ability to implement a Commercially Reasonable plan to remedy such Force Majeure event within an additional one hundred eighty (180) days after the initial one hundred eighty (180) day period and the claiming Party uses Commercially Reasonable efforts to implement such plan, the non-claiming Party shall not have the right to terminate the Agreement until the expiration of such additional one hundred eighty (180) day period.
- 13.5. Termination. Unless otherwise agreed upon by the Parties in writing and in each Party's sole discretion, upon the expiration of the periods set forth above in Sections 14.4, this Agreement may be terminated without any further notice and further opportunity to cure any non-performance. Upon termination becoming effective pursuant to a Force Majeure under Section 14, neither Party will have any liability to the other Party or recourse against the other Party, other than for amounts arising prior to termination. Notwithstanding the claimed existence of a Force Majeure event or any other provisions of this Agreement, nothing herein shall relieve any Party from exercising any right or remedy provided under this Agreement with respect to any liability or obligation of the other Party that is not excused or suspended by the Force Majeure event, including, without limitation, the right to liquidate and early terminate the Agreement for any Event of Default not excused by the Force Majeure event. Nothing herein shall be construed so as to obligate any Party to settle any strike, work stoppage or other

labor dispute or disturbance or to make significant capital expenditures, except in the sole discretion of the Party experiencing such difficulty.

14. Change in Law

14.1. Regulatory Event. A "Regulatory Event" means one or more of the following events:

14.1.1. Illegality. After the Effective Date, due to the adoption of, or change in, any applicable Requirements of Law or in the interpretation thereof by any Governmental Authority with competent jurisdiction, it becomes unlawful for a Party to perform any material obligation under this Agreement.

14.1.2. Adverse Government Action. After the Effective Date, there occurs any adverse material change in any applicable Requirements of Law (including material change regarding a Party's obligation to sell, deliver, purchase, or receive the Product) and any such occurrence renders illegal or unenforceable any material performance or requirement under this Agreement.

14.2. Process. Upon the occurrence of a Regulatory Event the Party affected by the Regulatory Event may notify the other Party in writing of the occurrence of a Regulatory Event, together with details and explanation supporting the occurrence of a Regulatory Event. Upon receipt of such notice, the Parties agree to undertake, during the thirty (30) days immediately following receipt of the notice, to negotiate such modifications to reform this Agreement to remedy the Regulatory Event and attempt to give effect to the original intention of the Parties. Upon the expiration of the 30-day period, if the Parties are unable to agree upon modifications to the Agreement that are acceptable to each Party, in each Party's reasonable discretion, then either Party shall have the right, in such Party's sole discretion, to terminate this Agreement with a 30-day advance written notice.

15. Confidentiality

15.1. Protected Information. Except as otherwise set forth in this Agreement, neither Party (the "Receiving Party") shall, without the other Party's (the "Disclosing Party") prior written consent, disclose any Protected Information (as defined below) of the Disclosing Party to any third person (other than the Party's employees, affiliates, advisors, counsel, accountants, and current and prospective lenders and investors in the Facility who have a need to know such information, have agreed to keep such terms confidential, and for whom the Party shall be liable in the event of a breach of such confidentiality obligation), at any time during the Term or for five (5) years after the expiration or early termination of this Agreement. As used herein the term "Protected Information" means (a) this Agreement, (b) any proprietary information of the Disclosing Party disclosed in connection with this Agreement, including without limitation, proposals and negotiations whether disclosed prior to or after the date hereof that have been clearly marked as confidential or proprietary. Notwithstanding anything to the contrary herein, in no event will Protected Information include the concept of constructing or providing energy from a power plant, using any specific fuel source, in any specific location. Each Party shall be entitled to all remedies available at law or in equity (including but not limited to specific performance and/or injunctive relief,) to enforce, or seek relief in connection with, this confidentiality obligation. Notwithstanding any other provision of this Agreement, any claim related to or arising out of any confidentiality obligations herein may be brought directly in any state or federal court of competent jurisdiction in [Mecklenburg][Wake] County, North Carolina, in accordance with Section 26.5 of this Agreement, and shall not be subject to dispute resolution or arbitration pursuant to Section 23 of this Agreement.

15.2. Non-Confidential Information. Protected Information does not include information: (i) that is or becomes available to the public other than by disclosure of Receiving Party in breach of this Agreement; (ii) known to Receiving Party prior to its disclosure; (iii) available to Receiving Party from a third party who is not bound to keep such information confidential; or, (iv) independently developed by the Receiving Party without reliance upon the Protected Information. Notwithstanding anything to the contrary herein, in no event will Protected Information include the concept of constructing or providing energy from a power plant, using any specific fuel source, in any specific location.

- 15.3. Return of Confidential Information. Upon request of Disclosing Party, Receiving Party shall either (i) return the Protected Information, including all copies, or (ii) destroy the Protected Information, including all copies, and present written assurances of the destruction to Disclosing Party. Notwithstanding the foregoing, both Parties acknowledge that Protected Information transferred and maintained electronically (including e-mails) may be automatically archived and stored by Receiving Party on electronic devices, magnetic tape, or other media for the purpose of restoring data in the event of a system failure (collectively, "Back-Up Tapes"). Notwithstanding the terms of this Agreement, in no event shall Receiving Party be required to destroy Protected Information stored on Back-Up Tapes; provided, however, any Protected Information not returned or destroyed pursuant to this Section shall be kept confidential for the duration of its existence. Furthermore, the Receiving Party may retain one (1) copy of such Protected Information in Receiving Party's files solely for audit and compliance purposes for the duration of its existence; provided, however, such Protected Information shall be kept confidential for the duration of its existence in accordance with the terms of this Agreement.
- 15.4. Required Disclosures. Notwithstanding the confidentiality requirements set forth herein, a Party may disclose Protected Information to comply with PURPA, request of any Governmental Authority, applicable Requirements of Law, or any exchange, control area or System operator rule, in response to a court order, or in connection with any court or regulatory proceeding. Such disclosure shall not terminate the obligations of confidentiality unless the Protected Information falls within one of the exclusions of this Agreement. To the extent the disclosure of Protected Information is requested or compelled as set forth above, the Receiving Party agrees to give Disclosing Party reasonable notice of any discovery request or order, subpoena, or other legal process requiring disclosure of any Protected Information. Such notice by the Receiving Party shall give Disclosing Party an opportunity, at Disclosing Party's discretion and sole cost, to seek a protective order or similar relief, and the Receiving Party shall not oppose such request or relief. If such protective order or other appropriate remedy is not sought and obtained within at least thirty (30) days of Receiving Party's notice, Receiving Party shall disclose only that portion of the Protected Information that is required or necessary in the opinion of Receiving Party's legal counsel; provided, however, Receiving Party shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to any Protected Information so disclosed.
- 15.5. Regulatory Disclosures by Buyer. This Section 16.5 will apply notwithstanding anything to the contrary in this Agreement. Seller understands and acknowledges that Buyer is regulated by various regulatory and market monitoring entities. Buyer is permitted, in its sole discretion, to disclose or to retain and not destroy (in case of a future disclosure need as determined by Buyer in its sole discretion) any information (including Protected Information) to any regulatory commission (inclusive of the NCUC, SCPSC, FERC), NERC, market monitor, office of regulatory staff, and/or public staff, or any other regulator or legislative body without providing prior notice to the Seller or having obtained the consent from the Seller, using Buyer's business judgment and the appropriate level of confidentiality Buyer seeks for any such disclosures or retentions in its sole discretion. In the event of the establishment of any docket or proceeding before any regulatory commission, public service commission, public utility commission, or other agency, tribunal, or court having jurisdiction over Buyer, the Protected Information shall automatically be governed solely by the rules and procedures governing such docket or proceeding to the extent such rules or procedures are additional to, different from, or inconsistent with this Agreement. In regulatory proceedings in all state and federal jurisdictions in which Buyer does business, Buyer will from time-to-time be required to produce Protected Information, and Buyer may do so without prior notice to Seller or consent from Seller, using Buyer's business judgment, and the appropriate level of confidentiality Buyer seeks for such disclosures in its sole discretion. When a request for disclosure of information, including Protected Information, is made to Buyer, Buyer may disclose the information, including Protected Information, without prior notice to the Seller or consent from the Seller, using Buyer's business judgment and the appropriate level of confidentiality Buyer seeks for such disclosures in its sole discretion. Seller further acknowledges that Buyer is required by law or regulation to report certain information that could embody Protected Information from time-to-time, and Buyer may from time-to-time make such reports, without providing prior notice to Seller or consent from Seller, using

Buyer's business judgment and the appropriate level of confidentiality Buyer seeks for such disclosures in its sole discretion.

- 15.6. Notwithstanding the foregoing, Buyer acknowledges that the Seller, by law, must comply with Chapter 132 of the North Carolina General Statutes and that records and/or information constituting public records and/or information under said law do not constitute Protected Information under this Agreement.

16. Mutual Representations and Warranties

- 16.1. As of the Effective Date and throughout the Term, each Party represents and warrants to the other Party that:

- 16.1.1. It is duly organized, validly existing and in good standing under the Requirements of Law of the jurisdiction of its organization or formation and has all requisite power and authority to execute and enter into this Agreement;
- 16.1.2. It has all authorizations under the Requirements of Law (including but not limited to the Required Approvals), necessary for it to legally perform its obligations and consummate the transactions contemplated hereunder or will obtain such authorizations in a timely manner prior to the time that performance by such Party becomes due;
- 16.1.3. The execution, delivery, and performance of this Agreement will not conflict with or violate any Requirements of Law or any contract, agreement or arrangement to which it is a party or by which it is otherwise bound;
- 16.1.4. This Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms, and such Party has all rights necessary to perform its obligations to the other Party in accordance with the terms and conditions of this Agreement;
- 16.1.5. It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether or not this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the representations, advice or recommendations of the other Party in so doing, is capable of assessing the merits of this Agreement, and understands and accepts the terms, conditions, and risks of this Agreement for fair consideration on an arm's length basis;
- 16.1.6. No Event of Default or event which with notice or lapse of time, or both, would become an Event of Default, has occurred with respect to such Party, and that such Party is not Bankrupt and there are no proceedings pending or being contemplated by it, or to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- 16.1.7. There is no pending, or to its knowledge, threatened legal proceeding at law or equity against it or any Affiliate, that materially adversely affects its ability to perform its obligations under this Agreement;
- 16.1.8. It is a "forward contract merchant" and this Agreement constitutes a "forward contract" as such terms are defined in the United States Bankruptcy Code;
- 16.1.9. It is an "eligible commercial entity" within the Commodity Exchange Act;
- 16.1.10. It is an "eligible contract participant" within the Commodity Exchange Act; and;
- 16.1.11. Each person who executes this Agreement on behalf of such Party has full and complete authority to do so, and that such Party will be bound by such execution.

17. Seller Representations and Warranties to Buyer

- 17.1. For all Product and every aspect thereof, Seller represents, warrants, and reaffirms to Buyer as a continuing warranty and representation that:
- 17.1.1. All Product will meet the specifications and requirements in this Agreement, including

without limitation, compliance with PURPA;

- 17.1.2. Seller has provided and conveyed and will provide and convey to Buyer all Capacity rights associated with the Facility and Energy Produced by the Facility;
- 17.1.3. Seller holds all the rights to all the Product from the Facility, Seller has the right to sell the Product to Buyer, and Seller agrees to convey and does convey to Buyer all rights and good title to the Product free and clear of any Liens, encumbrances, or title defects;
- 17.1.4. Seller has not and will not double claim or double count the Product (including, without limitation, any Capacity of the Facility) in any manner (including, for example, by issuing a press release or otherwise claiming that Seller is creating any Capacity benefit, or selling the Product to any person other than exclusively to and for Buyer); and
- 17.1.5. Seller has not and will not in any manner interfere with, encumber or otherwise impede Buyer's use, transfer, and sale of the Product.

18. Events of Default

- 18.1. An "Event of Default" means with respect to the non-performing Party (such Party, the "Defaulting Party"), the occurrence of any one or more of the following events set forth below in this Section 18, each of which, individually, shall constitute a separate Event of Default:
- 18.2. The failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after the Defaulting Party's receipt of written notice; *provided, however*, a Party will have two (2) Business Days to remedy any failure to make payment required under Section 21;
- 18.3. Any covenant or warranty made by Seller under Section 6.2 (Seller Covenant) is false or misleading in any respect when made or when deemed made or repeated.
- 18.4. Any representation or warranty made by a Party under Section 17 and elsewhere in this Agreement (except Section 18 which is a separate Event of Default) is false or misleading in any material respect when made or when deemed made or repeated;
- 18.5. Any representation or warranty made by Seller under Section 18 (Seller Representations and Warranties to Buyer) is false or misleading in any respect when made or when deemed made or repeated;
- 18.6. The actual Nameplate Capacity Rating of the Facility is higher than the Nameplate Capacity Rating set forth in Exhibit 3, or is lower than the Nameplate Capacity Rating by more than five (5) percent of the Nameplate Capacity Rating set forth in Exhibit 3.
- 18.7. Seller Abandons the Facility for more than sixty (60) consecutive days;
- 18.8. Seller adds an energy storage device to the Facility without obtaining Buyer's prior written consent.
- 18.9. Seller fails to fully meet all the insurance requirements set forth in Section 7.5, and such failure is not cured within five (5) Business Days.
- 18.10. Seller fails to obtain or maintain the Facility's registration or certification as a Qualifying Facility under PURPA.
- 18.11. Seller fails to fully comply with the PURPA Fuel Requirements.
- 18.12. Seller delivers or attempts to deliver to Buyer any Product (or any component thereof) that was not generated by the Facility.
- 18.13. Seller fails to promptly and fully comply with a System Operator Instruction.
- 18.14. Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and: (i) at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to

assume all the obligations of Seller under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party; or (ii) the resulting, surviving, transferee or successor entity fails to assume all the obligations of Seller under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

- 18.15. An assignment by or Change of Control with respect to Seller, other than in compliance with Section 24;
- 18.16. A Party becomes Bankrupt;
- 18.17. Seller transfers or assigns or otherwise conveys any of its rights or obligations under this Agreement to another Person in violation of the terms and conditions of this Agreement; and
- 18.18. Except to the extent constituting a separate Event of Default (in which case the provisions applicable to that separate Event of Default shall apply) the failure to perform any material covenant or obligation set forth in this Agreement, if such failure is not remedied within thirty (30) days after the Defaulting Party's receipt of written notice.

19. Early Termination.

- 19.1. Early Termination Date. If an Event of Default with respect to a Defaulting Party has occurred and is continuing, then the other Party (such Party, the "Non-Defaulting Party") shall have the right, in its sole discretion and upon written notice to the Defaulting Party, to pursue any or all of the following remedies: (a) withhold payments due to the Defaulting Party under this Agreement; (b) suspend performance under this Agreement; and/or (c) designate a day (which day shall be no earlier than the day such notice is effective and shall be no later than twenty (20) days after the delivery of such notice is effective) as an early termination date to accelerate all amounts owing between the Parties, liquidate, net, recoup, set-off, and early terminate this Agreement and any other agreement between the Parties (such day, the "Early Termination Date").
- 19.2. Effectiveness of Default and Remedies. Where an Event of Default is specified herein and is governed by a system of law which does not permit termination to take place upon or after the occurrence of the relevant Event of Default in accordance with the terms of this Agreement an Event of Default and Early Termination Date shall be deemed to have occurred immediately upon any such event and no prior written notice shall be required. All of the remedies and provisions set forth in this section shall be without prejudice to any other right of the Non-Defaulting Party to accelerate amounts owed, net, recoup, setoff, liquidate, and early terminate this Agreement.
- 19.3. Net Settlement Amount. If the Non-Defaulting Party establishes an Early Termination Date, then the Non-Defaulting Party shall calculate its Gains or Losses and Costs resulting from the termination as of the Early Termination Date, in a Commercially Reasonable Manner. The Non-Defaulting Party shall aggregate such Gains or Losses and Costs with respect to the liquidation of the termination and any other amounts due under this Agreement and any other agreement between the Parties into a single net amount expressed in U.S. dollars (the "Net Settlement Amount"). The Non-Defaulting Party shall then notify the Defaulting Party of the Net Settlement Amount. The Defaulting Party shall pay the Non-Defaulting Party the full amount of the Net Settlement Amount within five (5) Business Days of delivery to the Defaulting Party of the notice of the Net Settlement Amount that the Defaulting Party is liable for.
- 19.4. Payment. Any Net Settlement Amount will only be due and payable only to the Non-Defaulting Party from and by the Defaulting Party. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Net Settlement Amount will be deemed to be zero and no payment will be due or payable. The Non-Defaulting Party shall under no circumstances be required to account for or otherwise credit or pay the Defaulting Party for economic benefits accruing to the Non-Defaulting Party as a result of the Defaulting Party's default. The Non-Defaulting Party shall be entitled to recover any Net Settlement Amount by netting or set-off or to otherwise pursue recovery of damages. Additionally, Buyer will be entitled to recover any Net Settlement Amount by

drawing upon any Performance Assurance or by netting or set-off, or to otherwise pursue recovery of damages. Any calculation and payment of the Net Settlement Amount will be independent of and in addition to Seller's obligation to reimburse Buyer for overpayments pursuant to Section 20.6.

19.5. Overpayment Reimbursement. Notwithstanding anything else in this Agreement to the contrary, including without limitation the Net Settlement Amount calculation and payment provisions set forth in Sections 20.1 through 20.4, and without limiting any of Buyer's other rights or remedies hereunder, Seller agrees and acknowledges that in the event this Agreement is terminated prior to the expiration of the Term for any reason other than an Event of Default by Buyer, that Seller will reimburse Buyer for all amounts paid by Buyer to Seller under this Agreement in excess of Buyer's avoided cost for energy and capacity over the period starting from the commencement of the Delivery Period through the date of termination of this Agreement plus interest on such amount calculated at the rate of 2.5% to be adjusted annually until repaid (the "Overpayment Amount"). Seller agrees to reimburse Buyer for the Overpayment Amount notwithstanding anything to the contrary in this Agreement and without regard to whether Seller is or may be liable to Buyer for any additional amounts under this Agreement, including, without limitation, any Net Settlement Amount, Gains, and/or Losses determined or to be determined pursuant to this Agreement. The Seller will pay Buyer the Overpayment Amount no later than three (3) Business Days after the Early Termination Date.

19.6. Survival. This Section 20 will survive any expiration or termination of this Agreement.

20. Cover Costs.

20.1. Exclusive Remedies. Except where a specific and exclusive remedy is otherwise set forth in this Agreement, the remedies set forth in this Section shall be a Party's exclusive remedies prior to termination for the other Party's failure to deliver the Product or to receive the Product pursuant to and in accordance with this Agreement.

20.2. Seller's Failure to Deliver. If Seller fails to deliver Product that complies with the requirements set forth in this Agreement or fails to deliver all or part of the Contract Quantity (each will be deemed as a failure to deliver for purposes of calculating damages), and such failure is not excused by a Permitted Excuse to Perform or Buyer's failure to perform, then Buyer shall elect in its sole discretion: (i) to terminate and liquidate this Agreement if such failure is an Event of Default as set forth herein, and in which case Buyer shall calculate its termination payment in accordance with this Agreement as though it were the Non-Defaulting Party; or, (ii) to require Seller to pay Buyer within three (3) Business Days of invoice receipt, liquidated damages in the amount obtained by multiplying the number of units of Product (or component thereof) that Seller failed to deliver to Buyer multiplied by two (2) times the per unit Contract Price (or component thereof).

20.3. Buyer's Failure to Accept Delivery. If Buyer fails to receive all or part of the Contract Quantity that Seller attempted to deliver to Buyer in accordance with this Agreement, and such failure by Buyer is not excused by a Permitted Excuse to Perform or Seller's failure to perform, then Seller shall elect in its sole discretion either to: (i) terminate and liquidate this Agreement if such failure is an Event of Default as set forth herein, and in which case Seller shall calculate its termination payment in accordance with this Agreement as though it were the Non-Defaulting Party; or, (ii) require Buyer to pay Seller within three (3) Business Days of invoice receipt, liquidated damages in the amount obtained by multiplying the number of units of Product (or component thereof) that Buyer failed to receive multiplied by two (2) times the per unit Contract Price (or component thereof).

20.4. Event of Default. Any failure by Seller to pay amounts due under this Section 21 will be an Event of Default under Section 19.2.

20.5. Survival. This Section 21 will survive any expiration or termination of this Agreement.

21. Limitation of Liabilities & Liquidated Damages.

21.1. Reasonableness. THE EXPRESS REMEDIES AND MEASURES OF DAMAGES, INCLUDING WITHOUT LIMITATION DETERMINATION OF LIQUIDATED DAMAGES, COVER COSTS, AND

NET SETTLEMENT AMOUNT DAMAGES PROVIDED FOR IN THIS AGREEMENT (i) ARE REASONABLE AND SATISFY THE ESSENTIAL PURPOSES HEREOF FOR BREACH OF ANY PROVISION FOR WHICH THE EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, AND (ii) UNLESS OTHERWISE STATED IN SUCH PROVISIONS, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISIONS, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. TO THE EXTENT ANY PROVISION OF THIS AGREEMENT PROVIDES FOR, OR IS DEEMED TO CONSTITUTE OR INCLUDE, LIQUIDATED DAMAGES, THE PARTIES STIPULATE AND AGREE THAT THE ACTUAL DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO ESTIMATE OR DETERMINE, THE LIQUIDATED AMOUNTS ARE A REASONABLE APPROXIMATION OF AND METHODOLOGY TO DETERMINE THE ANTICIPATED HARM OR LOSS TO THE PARTY, AND OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT. THE PARTIES FURTHER STIPULATE AND AGREE THAT ANY PROVISIONS FOR LIQUIDATED DAMAGES ARE NOT INTENDED AS, AND SHALL NOT BE DEEMED TO CONSTITUTE, A PENALTY, AND EACH PARTY HEREBY WAIVES THE RIGHT TO CONTEST SUCH PROVISIONS AS AN UNREASONABLE PENALTY OR AS UNENFORCEABLE FOR ANY REASON.

21.2. Limitation. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, (i) THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED; AND (ii) NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, EVEN IF SUCH DAMAGES ARE ALLOWED OR PROVIDED BY STATUTE, STRICT LIABILITY, ANY TORT, CONTRACT, OR OTHERWISE.

21.3. Damages Stipulation. Each Party expressly agrees and stipulates that the terms, conditions, and payment obligations set forth in Sections 20 and 21 are a reasonable methodology to approximate or determine harm or loss, each Party acknowledges the difficulty of determining actual damages or loss, and each Party hereby waives the right to contest such damages and payments as unenforceable, as an unreasonable penalty, or otherwise for any reason. The Parties further acknowledge and agree that damages and payments determined under Sections 20 and 21 are direct damages, will be deemed to be a direct loss, and will not be excluded from liability or recovery under the Limitations of Liabilities provisions of this Section 22.

21.4. Survival. This Section 22 will survive any expiration or termination of this Agreement.

22. Disputes

22.1. Resolution by the Parties. The Parties shall attempt to resolve any claims, disputes and other controversies arising out of or relating to this Agreement (collectively, "Dispute(s)") promptly by negotiation between executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. A Party may give the other Party written notice of a Dispute that has not been resolved in the normal course of business. Such notice shall include: (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive. Within ten (10) Business Days after delivery of the notice, the receiving Party shall respond with (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within twenty (20) Business Days after delivery of the initial notice, the executives of both Parties shall meet at Buyer's offices, and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute. At the request of either Party, the Parties shall enter into a confidentiality agreement to cover any Dispute and discussions related thereto.

22.2. Should Dispute arise between the Parties that cannot be resolved amicably pursuant to this Section, either Party shall be free to pursue an action to enforce or interpret its terms in any

state or federal court of competent jurisdiction located in North Carolina.

22.3. Survival. This Section 23 will survive any expiration or termination of this Agreement.

23. Assignment

- 23.1. Limitation. Except as set forth below in Section 24.2 with respect to pledging as collateral security, Seller shall not assign or encumber (collectively, the "Assignment") this Agreement, any rights or obligations under the Agreement, or any portion hereunder, without Buyer's prior written consent. Seller shall give Buyer at least thirty (30) days prior written notice of any requested Assignment. Subject to Seller providing Buyer with information demonstrating to Buyer, in Buyer's Commercially Reasonable Discretion, that Seller's proposed assignee has the technical, engineering, financial, and operational capabilities to perform under this Agreement, Buyer may not unreasonably withhold its consent; *provided, however*, that any such assignee shall agree in writing to be bound by the terms and conditions hereof and shall deliver to Buyer Performance Assurance in the amount required under this Agreement, and such enforceability assurance as the Buyer may request in its Commercially Reasonable discretion. Notwithstanding anything to the contrary herein, Buyer may pledge, encumber, or assign this Agreement without the consent of Seller to any Person that is Creditworthy, or that has provided Seller with a guaranty substantially in the form of Exhibit 5 from a Creditworthy credit support provider guaranteeing the assignee's obligations hereunder, and that has agreed in writing to assume the obligations of Buyer hereunder.
- 23.2. Pledge. Seller may, without prior consent of Buyer but with no less than ten (10) Business Days prior written notice to Buyer, pledge as collateral security this Agreement to a financing party in connection with any loan, lease, or other debt or equity financing arrangement for the Facility. Any pledge of this Agreement as collateral security will not relieve Seller of any obligation or liability under this Agreement or compromise, modify or affect any rights, benefits or risks of Buyer under this Agreement, and it will not create any rights, including any third party beneficiary rights, for any Person under this Agreement.
- 23.3. Acknowledgement of Non-Default. Provided that Seller is not in default of its obligations under this Agreement, upon reasonable request by Seller, Buyer will execute a written acknowledgement of non-default in the form of Exhibit 7 attached hereto (the "Acknowledgement") which shall be based on the actual knowledge of Buyer's personnel responsible for administering the Agreement at the time of the execution of the Acknowledgement and after due inquiry of Buyer's internal records only. Notwithstanding any provision to the contrary set forth in the Acknowledgement, Buyer reserves all rights and defenses available to it under the Agreement, and nothing stated therein shall be deemed to have waived, amended or modified any such rights or defenses. In no event shall the issuance of any Acknowledgement introduce any third party to this Agreement or create any rights, including third party beneficiary rights for any Person under this Agreement.
- 23.4. Change of Control. Any Change of Control of Seller (however this Change of Control occurs) shall require the prior written consent of Buyer, which shall not be unreasonably withheld or delayed. Seller shall give Buyer at least thirty (30) days prior written notice of any such requested consent to a Change of Control.
- 23.5. Delivery of Assurances & Voidable. Any Assignment or Change of Control will not relieve Seller of its obligations hereunder, unless Buyer agrees in writing in advance to waive the Seller's continuing obligations under this Agreement. In case of a permitted Assignment, such requesting party or parties shall agree in writing to assume all obligations of Seller and to be bound by the terms and conditions of this Agreement and shall deliver to Buyer such tax, credit, performance, and enforceability assurances as Buyer may request, in its Commercially Reasonable discretion. Further, Buyer's consent to any Assignment may be conditioned on and subject to Seller's proposed assignee having first obtained all approvals that may be required by any Requirements of Law and from all applicable Governmental Authorities. Any sale, transfer, Change of Control, and/or Assignment of any interest in the Facility or in the Agreement made without fully satisfying the requirements of this Agreement shall be null and void and will be an Event of Default hereunder with Seller as

the Defaulting Party.

- 23.6. Cost Recovery. Without limiting Buyer's rights under this Section 24, to the extent Buyer agrees to a request from Seller for one or more consent(s) to an Assignment or Change of Control under this Agreement, Seller shall pay Buyer ten thousand dollars (\$10,000) prior to Buyer processing Seller's request.

24. **Notices**.

- 24.1. Process. All notices, requests, or invoices shall be in writing and shall be sent to the address of the applicable Party as specified on the first page of this Agreement. A Party may change its information for receiving notices by sending written notice to the other Party. Notices shall be delivered by hand, certified mail (postage prepaid and return receipt requested), or sent by overnight mail or courier. This section shall be applicable whenever words such as "notify," "submit," "give," or similar language are used in the context of giving notice to a Party.
- 24.2. Receipt of Notices. Hand delivered notices shall be deemed delivered by the close of the Business Day on which it was hand delivered. Notices provided by certified mail (postage prepaid and return receipt requested), mail delivery or courier service, or by overnight mail or courier service will be deemed received on the date of delivery recorded by the delivery service or on the tracking receipt, as applicable. Notwithstanding anything to the contrary, if the day on which any notice is delivered or received is not a Business Day or is after 5:00 p.m. EPT on a Business Day, then it shall be deemed to have been received on the next following Business Day.

25. **Miscellaneous**.

- 25.1. Costs. Each Party shall be responsible for its own costs and fees associated with negotiating or disputing or taking any other action with respect to this Agreement, including, without limitation, attorney costs.
- 25.2. Access. Upon reasonable prior notice, Seller shall provide to Buyer and its authorized agents (including contractors and sub-contractors), employees, auditors, and inspectors reasonable access to the Facility to: (i) tour or otherwise view the Facility; (ii) ascertain the status of the Facility with respect to construction, start-up and testing, or any other obligation of Seller under this Agreement; and, (iii) read meters and perform all inspections, maintenance, service, and operational reviews as may be appropriate to facilitate the performance of this Agreement or to otherwise audit and/or verify Seller's performance under this Agreement. Upon reasonable prior notice, Seller shall provide to Buyer and its guests or customers reasonable access to the Facility to only tour or otherwise view the Facility. While at the Facility, the foregoing agents, employees, auditors, inspectors, guests, and customer shall observe such reasonable safety precautions as may be required by Seller, conduct themselves in a manner that will not interfere with the operation of the Facility, and adhere to Seller's reasonable rules and procedures applicable to Facility visitors. Seller shall have the right to have a representative of Seller present during such access.
- 25.3. Safe Harbor and Waiver of Section 366. Each Party agrees that it will not assert, and waives any right to assert, that the other Party is performing hereunder as a "utility," as such term is used in 11 U.S.C. Section 366. Further, each Party hereby waives any right to assert and agrees that it will not assert that 11 U.S.C. Section 366 applies to this Agreement or any transaction hereunder in any bankruptcy proceeding. In any such proceeding each Party further waives the right to assert and agrees that it will not assert that the other Party is a provider of last resort with respect to this Agreement or any transaction hereunder or to otherwise limit contractual rights to accelerate amounts owed, net, recoup, set-off, liquidate, and/or early terminate. Without limiting the generality of the foregoing or the binding nature of any other provision of this Agreement on permitted successors and assigns, this provision is intended to be binding upon all successors and assigns of the Parties, including, without limitation, judgment lien creditors, receivers, estates in possession, and trustees thereof.
- 25.4. Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED, AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT REGARD

TO PRINCIPLES OF CONFLICTS OF LAW, AND, IF APPLICABLE, BY THE FEDERAL LAW OF THE UNITED STATES OF AMERICA.

- 25.5. Limitation of Duty to Buy. If this Agreement is terminated due to a default by Seller, neither Seller, nor any affiliate and/or successor of Seller, nor any affiliate and/or successor to the Facility, including without limitation owner and/or operator of the Facility will require or seek to require Buyer to purchase any output (Energy or otherwise) from the Facility under any Requirements of Law (including without limitation PURPA) or otherwise for any period that would have been covered by the Term of this Agreement had this Agreement remained in effect at a price that exceeds the Contract Price. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, and on behalf of any successor to the Seller or successor to the Facility, hereby agrees to the terms and conditions in the above sentence, and hereby waives its right to dispute the above sentence. Seller authorizes the Buyer to record notice of the foregoing in the real estate records.
- 25.6. Entire Agreement and Amendments. This Agreement represents the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, binding documents, representations and agreements, whether written or oral. No amendment, modification, or change to this Agreement shall be enforceable unless agreed upon in a writing that is executed by the Parties.
- 25.7. Drafting. Each Party agrees that it (and/or its counsel) has completely read, fully understands, and voluntarily accepts every provision, term, and condition of this Agreement. Each Party agrees that this Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties, and no Party shall have any provision hereof construed against such Party by reason of such Party drafting, negotiating, or proposing any provision hereof, or execution of this Agreement. Each Party irrevocably waives the benefit of any rule of contract construction that disfavors the drafter of a contract or the drafter of specific language in a contract.
- 25.8. Headings. All section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.
- 25.9. Publicity.
- 25.9.1. Limitation on the Parties. Neither Party shall make any use of the other Party's name, logo, likeness in any publication, promotional material, news release, or similar issuance or material without the other Party's prior review, approval, and written consent. Seller agrees and acknowledges that any reference or likeness to "Duke" shall be a prohibited use of Buyer's name, logo, likeness. Seller agrees and acknowledges that any direct or indirect implication of any endorsement, partnership, support, or testimonial of Seller by Buyer is prohibited, and any such use, endorsement, partnership, support, and/or testimonial will be an Event of Default under this Agreement. Subject to the foregoing, either Party may disclose to the public general information in connection with the Party's respective business activities; *provided, however*, no such disclosure or publicity by Seller will directly or indirectly imply any endorsement, partnership, support, or testimonial of Seller by Buyer.
- 25.10. Waiver. No waiver by any Party of any of its rights with respect to the other Party or with respect to any matter or default arising in connection with this Agreement shall be construed as a waiver of any subsequent right, matter or default whether of a like kind or different nature. Any waiver under this Agreement will be effective only if it is in writing that has been duly executed by an authorized representative of the waiving Party.
- 25.11. Partnership and Beneficiaries. Nothing contained in this Agreement shall be construed or constitute any Party as the employee, agent, partner, joint venture, or contractor of any other Party. This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and their permitted successors and assigns. No other person or entity, including, without limitation, a financing or collateral support provider, will be a direct or indirect beneficiary of or under this Agreement, and will not have any direct or indirect cause of action or claim under or in connection with this Agreement.

- 25.12. Severability. Any provision or section hereof that is declared or rendered unlawful by any applicable court of law, or deemed unlawful because of a statutory change, shall not, to the extent practicable, affect other lawful obligations under this Agreement.
- 25.13. Counterparts. This Agreement may be executed in counterparts, including facsimiles hereof, and each such executed document will be deemed to be an original document and together will complete execution and effectiveness of this Agreement.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed by their respective duly authorized officers as of the Effective Date.

DUKE ENERGY PROGRESS, LLC

BY: _____

NAME: _____

TITLE: _____

DATE: _____

BUNCOMBE COUNTY, NORTH CAROLINA

BY: _____

NAME: _____

TITLE: _____

DATE: _____

Exhibit 1

Estimated Monthly Energy Production of the Facility

<u>Month</u>	<u>Estimated Facility Energy Production (MWh)</u>
January	<u>685</u>
February	<u>685</u>
March	<u>685</u>
April	<u>685</u>
May	<u>685</u>
June	<u>685</u>
July	<u>685</u>
August	<u>685</u>
September	<u>685</u>
October	<u>685</u>
November	<u>685</u>
December	<u>685</u>
Total	<u>8220</u>

Exhibit 2
Contract Price
3 Year Term

CAPACITY PRICING			ENERGY PRICING								
Summer Months PM \$/MWh	Winter Months AM \$/MWh	Winter Months PM \$/MWh	Summer Prem Pk \$/MWh	Summer On-Peak \$/MWh	Summer Off-Peak \$/MWh	Winter Prem Pk \$/MWh	Winter On-Peak AM \$/MWh	Winter On-Peak PM \$/MWh	Winter Off-Peak \$/MWh	Shoulder On-Peak AM/PM \$/MWh	Shoulder Off-Peak \$/MWh
\$ -	\$ -	\$ -	\$ 39.32	\$ 36.05	\$ 31.97	\$ 50.95	\$ 36.60	\$ 39.60	\$ 33.15	\$ 32.58	\$ 28.60
\$ -	\$ -	\$ -	\$ 39.32	\$ 36.05	\$ 31.97	\$ 50.95	\$ 36.60	\$ 39.60	\$ 33.15	\$ 32.58	\$ 28.60
\$ -	\$ -	\$ -	\$ 39.32	\$ 36.05	\$ 31.97	\$ 50.95	\$ 36.60	\$ 39.60	\$ 33.15	\$ 32.58	\$ 28.60

For Energy Credit purposes, Summer months are defined as calendar months June through September, Winter months are defined as calendar months December through February, and Shoulder months are defined as March through May and October through November. Summer on-peak hours shall be Monday through Friday from 1:00 p.m. to 4:00 p.m. and 8:00 p.m. to 9:00 p.m. Winter on-peak hours shall be Monday through Friday with morning hours from 4:00 a.m. to 6:00 a.m. and 9:00 a.m. to 11:00 a.m., plus evening hours from 6:00 p.m. to 10:00 p.m. Shoulder on-peak hours shall be Monday through Friday with morning hours from 5:00 a.m. to 10:00 a.m. plus evening hours from 5:00 p.m. to 11:00 p.m. Summer premium peak hours shall be Monday through Friday from 4:00 p.m. to 8:00 p.m. Winter premium peak hours shall be Monday through Friday from 6:00 a.m. to 9:00 a.m. There are no premium peak hours for Shoulder months. All other hours, plus the following holidays, shall be off-peak: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after, and Christmas Day. When a holiday falls on a Saturday, the Friday before the holiday will be considered off-peak; when the holiday falls on a Sunday, the following Monday will be considered off-peak

Capacity Credit shall only be applicable in Summer months defined as the calendar months of July and August and Winter months defined as calendar months of December through March. Summer on-peak hours shall be 4:00 p.m. to 8:00 p.m. during all Summer days. During Winter months, the morning on[1]peak hours shall be all Winter days from 6:00 a.m. to 9:00 a.m. and evening on-peak hours shall be all Winter days from 6:00 p.m. to 9:00 p.m. Capacity credits are not applicable in all other months.

Exhibit 3

Facility Information

1. Facility Name: Buncombe County Landfill
2. Facility Address: 81Panther Branch Rd. Alexander NC, 28701
3. Description of Facility (include number, manufacturer and model of Facility generating units, and layout): [to be provided by Seller] Single internal combustion genset Jenbacher model 420 s/n 1234747
4. Nameplate Capacity Rating (MW):1426KW
5. DC/AC Ratio: N/A
6. Fuel Type/Generation Type: Landfill gas / 480v 3 phase

UPON EXECUTION OF THE AGREEMENT TO WHICH THIS EXHIBIT IS ATTACHED, ANY MATERIAL MODIFICATION TO THE FACILITY SHALL REQUIRE BUYER'S PRIOR APPROVAL, AND SHALL BE MEMORIALIZED IN WRITING IN AN AMENDMENT TO THE AGREEMENT.

Exhibit 4

Expected Annual Output

Year	MWh
1-3	8220

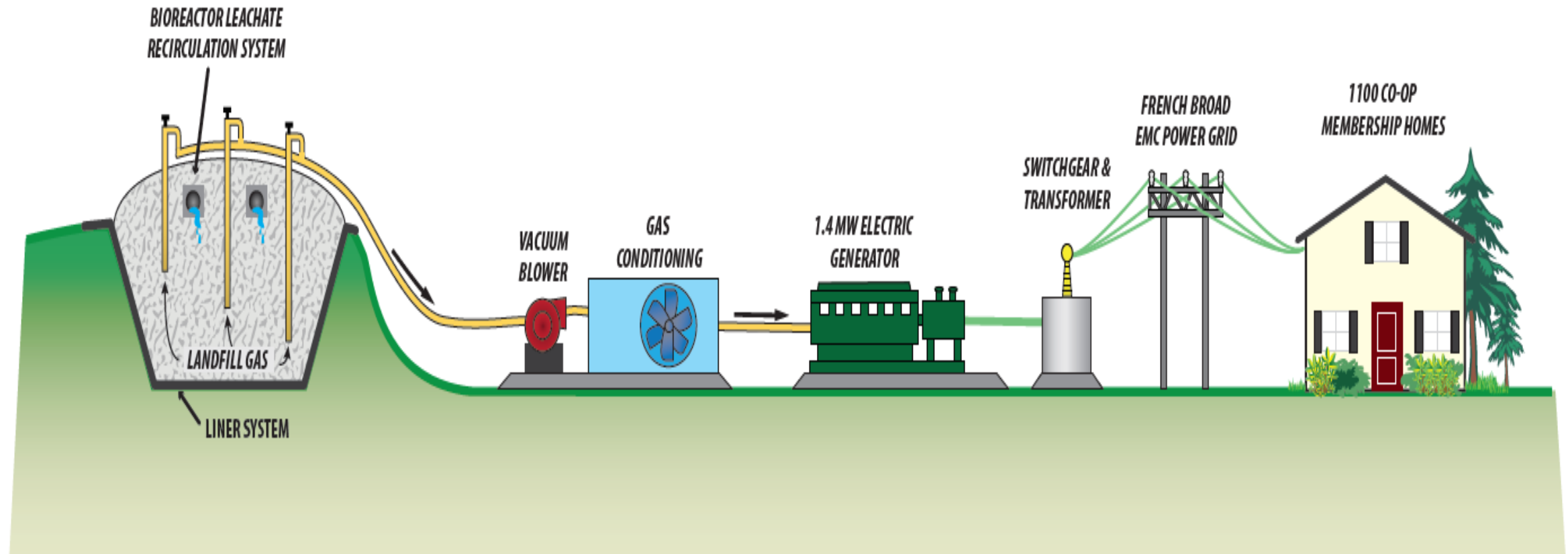


SOLID WASTE

Landfill Gas to Energy Update

November 2nd, 2021

Diagram of LFGTE Process



Benefits of Landfill Gas to Energy

- Methane is a potent greenhouse gas our landfill gas collection system actively collects and combusts in the flare or the generator; significantly reducing greenhouse gas emissions
- Landfill gas is used by the generator to produce renewable electricity.
- Duke is obligated to purchase renewable electricity we produce
- Duke's power purchase agreement allows continued production of renewable electricity for Buncombe County

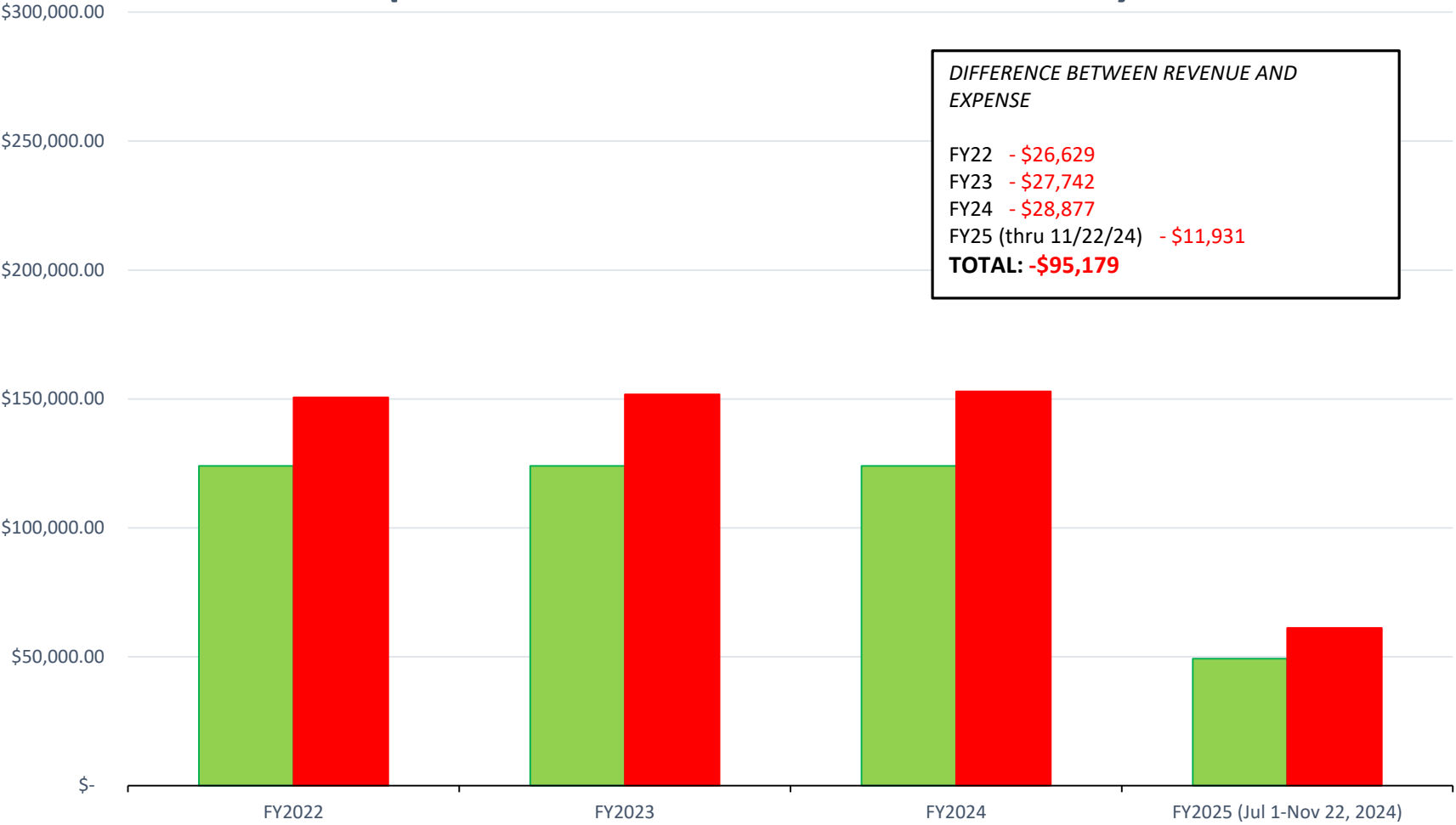


3 scenarios

1. Landfill Gas Collection and Control System (Flare only)
2. LFGCCS and Produce Renewable Electricity with 1 year Duke PPA
3. LFGCCS and Produce Renewable Electricity with 3 year Duke PPA



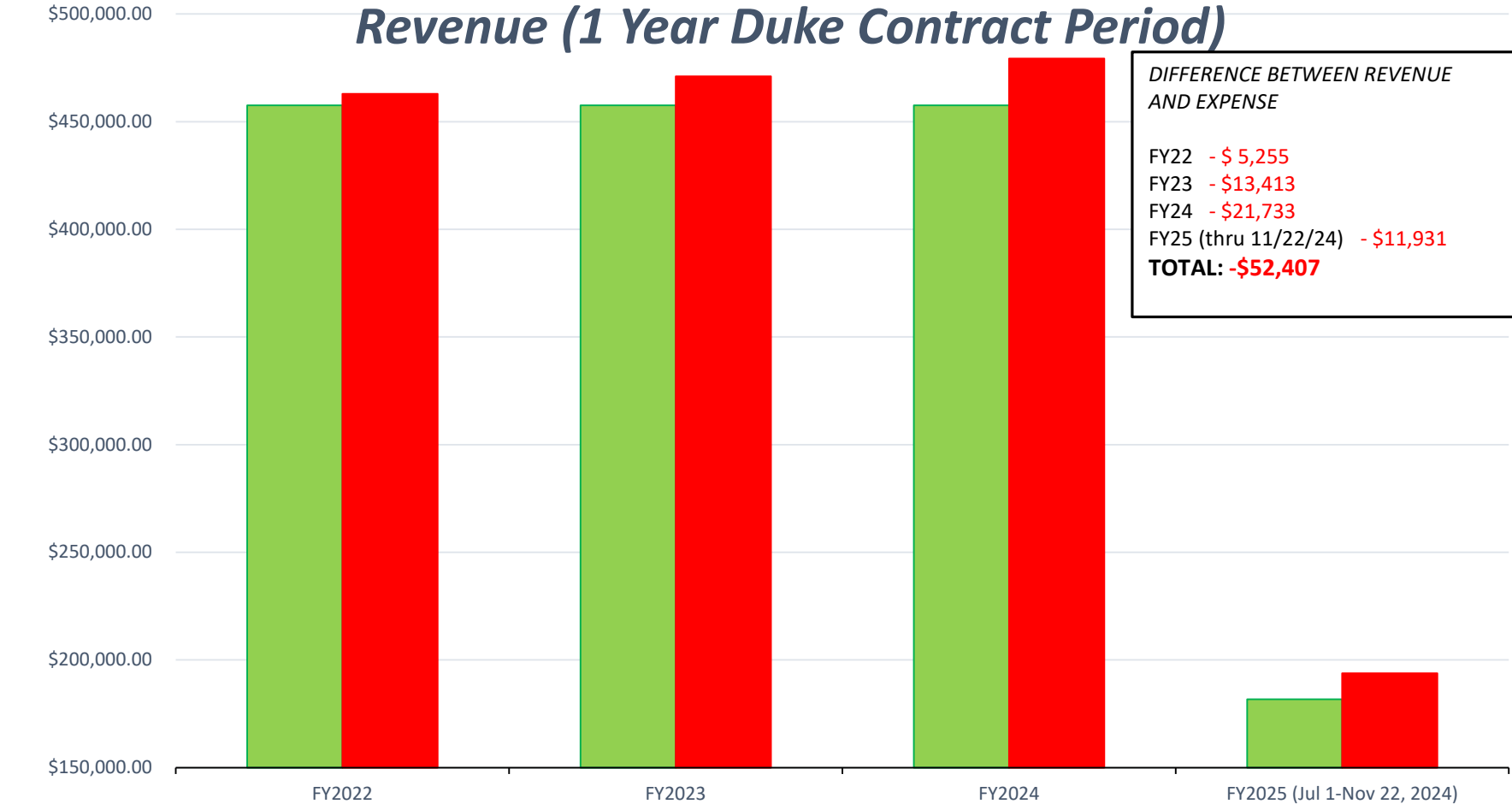
Scenario 1: Flare Only
(Carbon Credit revenue assumed)



Expenses: Historic Expense Budgets w/est. staffing; projected based on historic escalated at published inflation forecast
C. Credit revenue assumed at \$124K/yr

Carbon Credit Revenue Budgetary Expenses

Scenario 2: Landfill-Gas-to-Energy Program
Expenses and Energy,RECs Revenue, Carbon Credit
Revenue (1 Year Duke Contract Period)



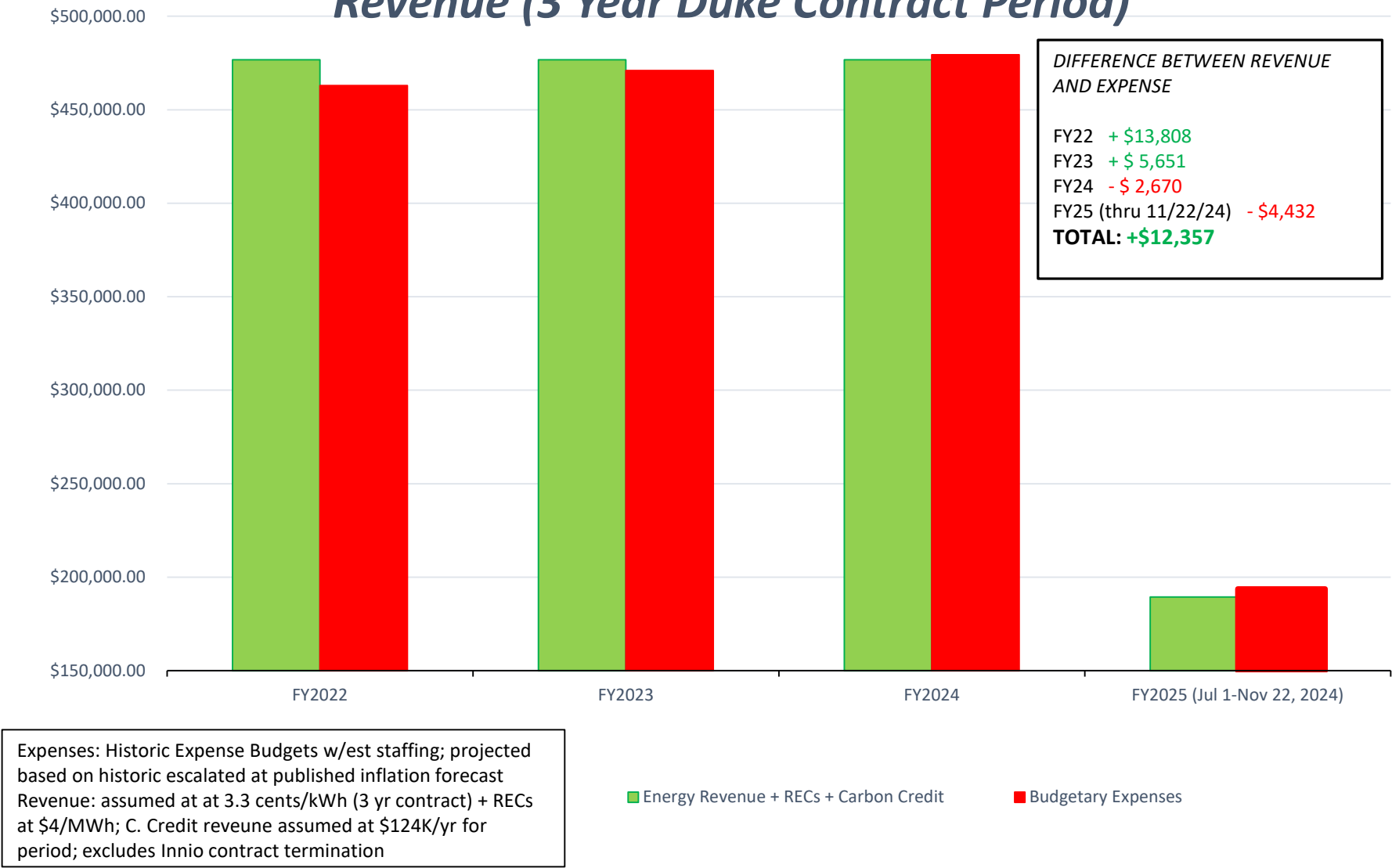
DIFFERENCE BETWEEN REVENUE AND EXPENSE

FY22	- \$ 5,255
FY23	- \$13,413
FY24	- \$21,733
FY25 (thru 11/22/24)	- \$11,931
TOTAL:	-\$52,407

Expenses: Historic Expense Budgets w/est staffing; projected based on historic escalated at published inflation forecast
Revenue: assumed at at 3.1 cents/kWh (1 yr contract) + RECs at \$4/MWh; C. Credit revenue assumed at \$124K/yr for period; excludes Innio contract termination

Energy Revenue + RECs + Carbon Credit Budgetary Expenses

Scenario 3: Landfill-Gas-to-Energy Program Expenses and Energy, RECs Revenue, Carbon Credit Revenue (3 Year Duke Contract Period)



Long-Term Financial Considerations

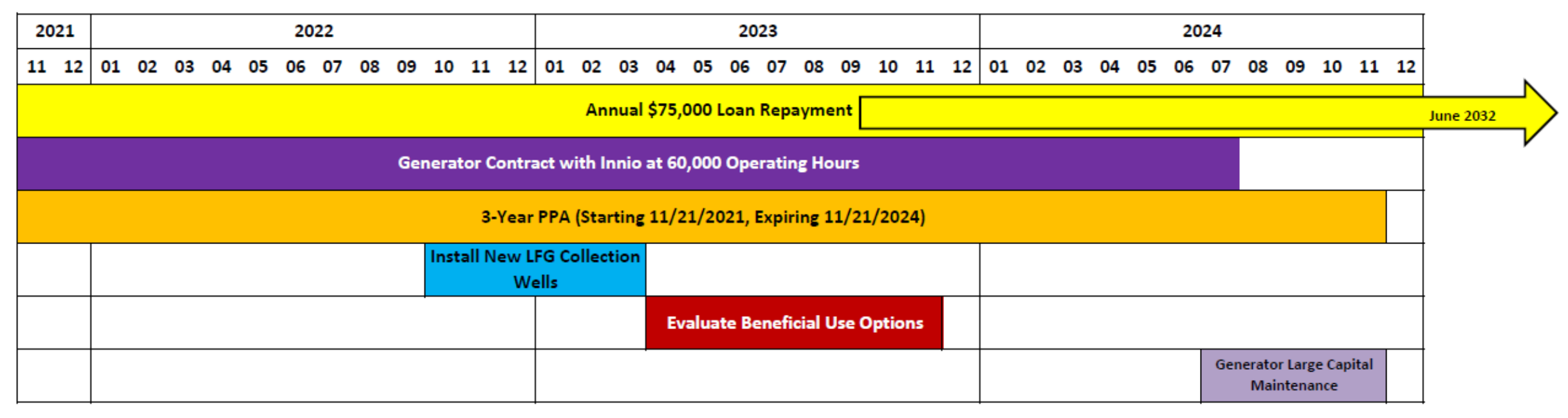
1. Capital Investment-The generator manufacturer recommends engine block replacement at 60,000 OPH
 - (Approx. July 2024)
 - (\$567,000)
2. Annual \$75,000 loan repayment until FY32



Staff will need to analyze long-term financial impacts and return to the Board in 2023 with a recommendation on whether to continue renewable energy generation



TIMELINE



Staff Recommendation

- 3 year PPA contract is least expensive option and continues production of renewable electricity
- Evaluate other beneficial uses of landfill gas
- Return to the board in 2023 to discuss long-term strategy for LFGTE project





Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: November 2, 2021

New Business

Presenter(s):

Jennifer Barnette, Budget

Requesting Department: Emergency Services

Budget Amendment Item: Positions and funding for Emergency Services Response

Contact(s): Taylor Jones, Emergency Services
Rafael Baptista, Strategy and Innovation

Subject: Emergency Services Response

Brief Summary:

As discussed at the 10/19/21 Commissioner Briefing, Emergency Services is struggling to meet the demands of service due to significantly increased call volume, staff quarantines, and hospital turnaround times. Response times for ambulances and 911 call answer time both exceed industry standard at this time due to the increased volume. Additional vehicles and staff are needed to improve response times. The department is asking for funding to increase the number of units by stocking spare ambulances, purchasing two quick response vehicles (QRV's) and the associated staff as well as provide shift differential and on-call pay to retain existing staff in both Emergency Medical Services and 911 Communications.

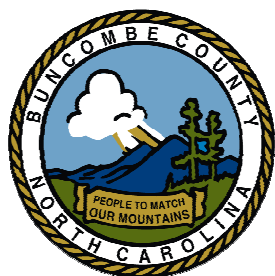
This amendment requests \$360,000 for two QRV's, associated equipment, and additional equipment to stock spare ambulances from appropriated fund balance. The request also asks to establish 18 new regular paramedic positions (14 full-time, 4 part-time). Estimated lapse salary in the function will be used to cover new positions and salary changes. This will be monitored and if unable to cover, we would plan to bring another amendment back to the Board.

Recommended Motion & Requested Action:

1. Approve budget amendment
2. Approve 18 additional regular paramedic positions

County Manager's Comments & Recommendation:

County Manager recommends as presented



ORDINANCE #21-11-08

BUNCOMBE COUNTY, NORTH CAROLINA
General Fund

BOARD MEETING DATE: November 2, 2021

WHEREAS, the Budget Director recommends and the Board now desires to amend the FY2021-2022 General Fund as outlined below in Exhibit "A" to the budget, **NOW THEREFORE**,

BE IT ORDAINED by the Board of Commissioners for the County of Buncombe as follows:

1. That the FY 2021-2022 amendments listed in Exhibit A below be hereby adopted.
2. That this ordinance shall be effective upon adoption.

ADOPTED this 2nd day of November, 2021.

Requesting Department:	Emergency Services
Budget Amendment Item:	Positions and funding for Emergency Services Response

Description: As discussed at the 10/19/21 Commissioner Briefing, Emergency Services is struggling to meet the demands of service due to significantly increased call volume, staff quarantines, and hospital turnaround times. Response times for ambulances and 911 call answer time both exceed industry standard at this time due to the increased volume. Additional vehicles and staff are needed to improve response times. The department is asking for funding to increase the number of units by stocking spare ambulances, purchasing two quick response vehicles (QRV's) and the associated staff as well as provide shift differential and on-call pay to retain existing staff in both Emergency Medical Services and 911 Communications.

This amendment requests \$360,000 for two QRV's, associated equipment, and additional equipment to stock spare ambulances from appropriated fund balance. The request also asks to establish 18 new regular paramedic positions (14 full-time, 4 part-time). Estimated lapse salary in the function will be used to cover new positions and salary changes. This will be monitored and if unable to cover, we would plan to bring another amendment back to the Board.

Funding Source: Appropriated Fund Balance

Exhibit A: Account Description	Increase (Decrease)	
	Revenues	Expenditures
Appropriated Fund Balance	\$ 360,000	
Fleet/Emergency Services: Capital Outlay and Non-Capital Equipment		\$ 360,000
TOTAL	\$ 360,000	\$ 360,000

ATTEST:


Clerk to the Board

**BOARD OF COMMISSIONERS FOR
THE COUNTY OF BUNCOMBE:**

By: 
Chairman of the Board



Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 11/2/2021

New Business

Department:

Budget

Presenter(s):

Jennifer Barnette, Budget

Contact(s):

Matt Evans, Finance

Subject:

School Capital Fund Commission Recommended School Year 2023 Projects

Brief Summary:

At the October 11, 2021 School Capital Fund Commission meeting, the Commission approved for recommendation to the Board of Commissioners \$21,998,175 of new projects for the 2023 School Capital Fund Commission Funding Cycle. \$7,502,175 is recommended for Asheville City Schools and \$14,496,000 is recommended for Buncombe County Schools. The project list is attached in the Ordinance. Buncombe county will issue debt and will pay for the debt service using the Article 39 sales tax designated for the School Capital Fund Commission.

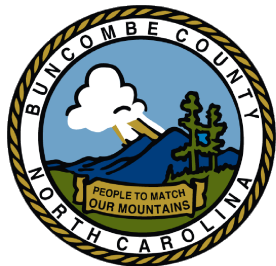
Recommended Motion & Requested Action:

Approve budget amendment

County Manager's Comments & Recommendation:

County Manager recommends as presented

ORDINANCE #21-11-09



BUNCOMBE COUNTY, NORTH CAROLINA
Public School Capital Needs Fund Project Ordinance

BOARD MEETING DATE: November 2, 2021

WHEREAS, the Budget Director recommends and the Board now desires to amend the FY2021-2022 Public School Capital Needs Fund Projects outlined below in Exhibit "A" to the budget,

BE IT ORDAINED by the Board of Commissioners for the County of Buncombe as follows:

1. That the FY2021-2022 amendments listed in Exhibit A below be hereby adopted.
2. That this ordinance shall be effective upon adoption.

ADOPTED this 2nd day of November, 2021.

Project Name: School Capital Fund Commission School Year 2023 Project Recommendations

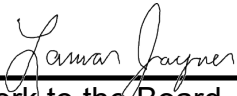
Description:

At the October 11, 2021 School Capital Fund Commission meeting, the Commission approved for recommendation to the Board of Commissioners \$21,998,175 of new projects for the 2023 School Capital Fund Commission Funding Cycle. \$7,502,175 is recommended for Asheville City Schools and \$14,496,000 is recommended for Buncombe County Schools. These projects are listed on the next page.

Funding Source:

Buncombe county will issue debt and will pay for the debt service using the Article 39 sales tax designated for the School Capital Fund Commission.

Exhibit A:	Increase (Decrease)	
Account Description	Revenues	Expenditures
Fund 326 - Bond Proceeds	\$ 21,998,175	
Fund 326 - Multiple ACS Schools - Safety and Security Concerns		\$ 129,800
Fund 326 - Asheville High Main Bldg Water & Sewer		\$ 3,481,293
Fund 326 - Asheville High Arts Bldg HVAC Piping & Abatement		\$ 2,416,082
Fund 326 - Asheville High New Track		\$ 1,180,000
Fund 326 - Asheville High Fencing		\$ 118,000
Fund 326 - Asheville High Storm Water Drainage		\$ 177,000
Fund 326 - Multiple BCS Schools - High Priority Security Upgrades		\$ 660,000
Fund 326 - North Buncombe MS - On Campus Softball Field		\$ 1,380,000
Fund 326 - WD Williams ES - 2023 Renovations		\$ 5,250,000
Fund 326 - Priority School 1- Lobby Security Upfit		\$ 928,000
Fund 326 - Oakley Elem - Reroofing		\$ 750,000
Fund 326 - Erwin High - Elevator Replacement		\$ 300,000
Fund 326 - North Buncombe MS - Additions and Renovations		\$ 985,000
Fund 326 - Roberson High School - Reroofing		\$ 418,000
Fund 326 - North Buncombe MS - Reroofing		\$ 710,000
Fund 326 - Reynolds High School - Fire Alarm Replacement		\$ 300,000
Fund 326 - Reynolds Middle - Electrical Switch Gear		\$ 250,000
Fund 326 - Johnston Elem - Reroofing		\$ 265,000
Fund 326 - Priority School 2 - Lobby Security Upfit		\$ 850,000
Fund 326 - Fairview Elem - Paving		\$ 300,000
Fund 326 - Erwin High - Storm Sewer		\$ 250,000
Fund 326 - Roberson High School - Phase 5 of 12 Reroofing		\$ 900,000
TOTAL	\$ 21,998,175	\$ 21,998,175

ATTEST:**BOARD OF COMMISSIONERS FOR
THE COUNTY OF BUNCOMBE:**


 Clerk to the Board

 By: 

 Chairman of the Board



Buncombe County Board of Commissioners
Request for Board Action
Meeting Date: 11/2/2021

New Business

Department: Governing Board

Presenter(s): Commissioners Newman, Sloan, Edwards, and Wells

Contact(s): Commissioners

Subject: Trust for Public Lands feasibility study

Brief Summary: Members of the Affordable Housing and Environmental and Energy Stewardship subcommittees have reviewed and voted to forward to the full Board of Commissioners a draft letter to the Trust for Public Lands requesting technical assistance and research on funding strategies for land conservation and affordable housing. The research would provide feedback on the public's priorities and the feasibility of funding options.

Recommended Motion & Requested Action: Approve the letter as presented.



November 2, 2021

Mr. Will Abberger
Vice President
Director of Conservation Finance
The Trust for Public Land
306 N. Monroe Street
Tallahassee, FL 32301

Mr. Adam Snyder
Conservation Campaigns Manager
The Nature Conservancy
120 19th Street North, Suite 200
Birmingham, AL 35203

Dear Mr. Abberger and Mr. Snyder:

The Buncombe County Commission requests technical advice and assistance from The Trust for Public Land and The Nature Conservancy in connection with our efforts to develop and sustain reliable, ongoing sources of funding for parks, trails, land and water conservation, and related priorities.

As part of your advice and assistance, I understand you will conduct research with affected groups to develop recommendations for the County on strategies for supporting dedicated, ongoing sources of public funds for land conservation.

We are interested not only in the factual information that you can provide, but also your opinions and recommendations on public funding measures available to us and strategies to enact such measures. That would include understanding the public's priorities and attitudes concerning natural and agricultural land preservation, water quality and natural areas—including parks, trails, and fish and wildlife habitat—and how the public would respond to different methods of presenting those issues.

Information provided to the County will be public record as a matter of law. This request does not in any way commit public funds to the efforts of The Trust for Public Land and The Nature Conservancy related to this request, nor does it require public disclosure of any confidential information of either organization.

This request will continue in effect for any advice you offer or presentations you submit for the use of this body related to such matters. In addition, we would like to take this opportunity to request that you continue to be available to provide technical advice and assistance in this area and on related matters in the future.

Thank you.

Sincerely,

Brownie Newman, Chair



Resolution # 21-11-10

RESOLUTION AMENDING THE NUMBER OF MEMBERS TO THE AD HOC REAPPRAISAL
COMMITTEE

WHEREAS, North Carolina General Statutes § 153A-76 authorizes a board of commissioners to create, change, abolish, and consolidate offices, positions, departments, boards, commissions, and agencies of the county government in order to promote orderly and efficient administration of county affairs;

WHEREAS, on September 7, 2021, the Board of Commissioners created the Ad Hoc Reappraisal Committee consisting of seven (7) members as follows:

- Two (2) Members from the Board of Equalization and Review
- Three (3) At-large members
- One (1) Real Estate professional (residential preferred)
- One (1) Equity representative; and

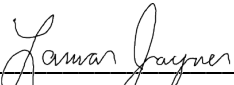
WHEREAS, the Board of Commissioners desire to add another At-large member to the Ad Hoc Reappraisal Committee.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County of Buncombe as follows:

1. That the Board of Commissioners hereby amend the number of members of the Ad Hoc Reappraisal Committee from seven (7) to eight (8).
2. That the Board of Commissioners hereby amend the number of At-large members on the Ad Hoc Reappraisal Committee from three (3) to four (4).
3. That this resolution is effective upon adoption.

This the 2nd day of November 2021.

ATTEST



Lamar Joyner, Clerk

BOARD OF COMMISSIONERS FOR THE COUNTY OF
BUNCOMBE

By: 

Brownie Newman, Chairman

APPROVED AS TO FORM



County Attorney