

## **AGENDA**

Catawba County Board of Commissioners Meeting  
Monday, February 6, 2017, 8:00 a.m.  
2<sup>nd</sup> Floor Meeting Room  
Catawba County Government Center  
25 Government Drive, Newton

### **PLEASE NOTE THE CHANGE OF TIME AND LOCATION OF THE BOARD'S REGULAR MEETING**

### **A STRATEGIC PLANNING WORK SESSION WILL PRECEDE THE BOARD'S REGULAR AGENDA.**

1. Call to Order.
2. Pledge of Allegiance to the Flag.
3. Invocation.
4. [Approval of the Minutes from the Board's Regular Meeting and Closed Session of January 17, 2017.](#)
5. Recognition of Special Guests.
6. Public Comments.
7. Presentations
  - a. Sister Cities Presentation. *Presented by Klingspor Abrasives Corporate Strategy Manager Hani Nassar.*
  - b. [2017 National Burn Awareness Week Proclamation. Presented to President of the Greater Hickory Jaycees Colleen Anderson.](#)
  - c. [Government Finance Officers Association \(GFOA\) 2016 Distinguished Budget Presentation Award. Presented to Budget and Management Director Jennifer Mace and Budget and Management Analysts Barron Monroe and Paarth Mehta.](#)
8. Appointments.
9. Consent Agenda:
  - a. [Juvenile Crime Prevention Council \(JCPC\) Budget Revision Request for FY2017.](#)
  - b. [CVCC Drainage Gully.](#)
  - c. [Proposed Changes to the Catawba County Personnel Code.](#)
  - d. [Replacement of Commercial Weighing Scales and Addition of Standby Power Generator.](#)
  - e. [2015 Urgent Repair Program Budget Ordinance for Interest Earned.](#)
  - f. [Tax Refund Request.](#)
10. Other Items of Business.
11. Manager's Report.

12. Attorneys' Report.

13. Adjournment.

**PERSONS WITH DISABILITIES:** Individuals needing assistance should contact the County Clerk at 828-465-8990 within a reasonable time prior to the meeting. Access to the 1924 Courthouse for individuals with disabilities is at the south side ("A" Street). The elevator is located at the north end of the building. Participation in public meetings is without regard to race, creed, religion, national origin, sex, age, color, or disability.

**CALENDAR:** The next Board of Commissioners Meeting will take place on Monday, Monday, February 20, 2017, at 7:00 p.m. in the Robert E. Hibbitts Meeting Room, 1924 Courthouse, 30 North College Avenue, Newton.

# Government of Catawba County, North Carolina

*"Keeping the Spirit Alive Since 1842!"*

## PROCLAMATION

**NATIONAL BURN AWARENESS WEEK  
FEBRUARY 5-11, 2017**

**WHEREAS**, burn injuries continue to be one of the leading causes of accidental death and injury in our Nation. Tragically, children, the elderly and the disabled are especially vulnerable to burn injuries; and

**WHEREAS**, children under five are 2.4 times as likely as the general population to suffer burn injuries that require emergency medical treatment. The primary causes of injury include fire-flame, scalds, electrical and chemicals. Most of the injuries occur in the home. Today, 96.8% of those who suffer burns will survive. Unfortunately, many of those survivors will sustain serious scarring, life-long physical disabilities and adjustment difficulties; and

**WHEREAS**, the best approach to burns is prevention. A great number of burn injuries are preventable. There is an ongoing need for national and local attention to all aspects of burn injury prevention, including an awareness of the Mechanisms of Burns (MOB) such as with scald and contact burns; and

**WHEREAS**, many people devote their lives and careers to treating, caring for, supporting and rehabilitating burn injury survivors, including those performing vital work in burn research and development. There are dedicated firefighters who risk their own lives every day to protect others, as well as burn foundations and other life safety professionals who promote injury awareness and prevention; and

**WHEREAS**, National Burn Awareness Week, an initiative of the American Burn Association, is a coming together of burn, fire and life safety educators to make the public aware of the frequency, devastation and causes of burn injury as well as consistent and authoritative measure to prevent these injuries and how to best care for those who are injured.

**THEREFORE, THE CATAWBA COUNTY BOARD OF COMMISSIONERS**, does hereby proclaim February 5 – 11, 2017, as National Burn Week and urges all the citizens of Catawba County, as well as fire and life safety and health care organizations, to observe this week with appropriate activities.

This the 6th day of February, 2017.

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Randy Isenhower, Chair  
Catawba County Board of Commissioners



P.O. Box 389  
25 Government Drive  
Newton, North Carolina 28658-0389  
Telephone: 828-465-8200  
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**For Release:** February 6, 2017

## **CATAWBA COUNTY BUDGET OFFICE WINS 28<sup>TH</sup> STRAIGHT BUDGET AWARD**

NEWTON, NC – For the twenty-eighth straight year, the Catawba County Budget & Management Office has won the 2016 Distinguished Budget Presentation Award from the Government Finance Officers Association (GFOA).

Received for the County's Fiscal Year 2016-2017 budget, the award recognizes government entities for producing a budget document which is easy to read and understand. According to the GFOA, this recognition "reflects the commitment of the governing body and staff to meeting the highest principles of governmental budgeting."

Receipt of the award was formally recognized at the February 6, 2017 meeting of the Catawba County Board of Commissioners.

To earn GFOA recognition, Catawba County's Budget & Management Office had to satisfy nationally recognized guidelines for effective budget presentation. These guidelines are designed to assess how well a government's budget serves as a policy document, a financial plan, an operations guide, and a communications device. Budget documents must be rated "proficient" in all four of these categories to receive the award.

"Earning this award over so many years truly demonstrates how serious we are about producing a public-friendly budget document," said Jennifer Mace, the County's Budget & Management Director. "A budget document can be extremely complicated, and we are always seeking ways to produce ours as simply and effectively as possible. Participating in the GFOA's process helps us keep up with best practices and enables us to incorporate valuable feedback from the GFOA award committee on an annual basis."

Catawba County's budget is created through a year-long planning process involving department heads, Budget & Management staff, the County Manager, and the Board of Commissioners. Budget & Management staff members recognized for this budget included Mace and County budget & management analysts Barron Monroe and Paarth Mehta.

The Government Finance Officers Association is a non-profit professional association serving nearly 19,000 government finance professionals throughout North America.

# # #

### **Media Contacts:**

Jennifer Mace, Budget Director, (828) 465-8207, [jmace@catawbacountync.gov](mailto:jmace@catawbacountync.gov)  
Amy McCauley, Communications & Marketing Director, (828) 465-8464,  
[amccauley@catwabacountync.gov](mailto:amccauley@catwabacountync.gov)

## **Memorandum**

**TO** Catawba County Board of Commissioners

**FROM** Finance and Personnel Subcommittee

**RE** JCPC Budget Revision for FY 2017

**DATE** February 6, 2017

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**Request:** The Finance and Personnel Subcommittee recommends the Board of Commissioners approve an amendment to the FY 2017 funding plan for the Catawba County Juvenile Crime Prevention Council (JCPC). The request is recommended by the Catawba JCPC.

**Background:** The JCPC exists to identify risks, prevent crime among at risk youth, review court data and identify needed programs to provide intervention and prevention in Catawba County. In FY 2017, \$332,366 was allocated by the State and distributed to the county.

The JCPC follows a process every year that begins with prioritizing risks and needs, with the final step being approval of a funding plan. After delivering funding recommendations to the Board of Commissioners, the funding plan for this fiscal year was approved June 6, 2016.

The original funding plan included \$104,990 for Cognitive Connection to provide psychological assessments, and substance abuse assessments—replacing services previously provided by Family NET after its decision to focus on Social Services involved youth. Unfortunately, Cognitive Connections is not able to bill Medicaid and because of this, their target population had to be restricted to non-Medicaid eligible youth, which required them reduce their program agreement by \$37,821. These funds were released back to the JCPC for allocation to other programs or reversion back to the State.

The State allows JCPC Boards to approve budget revisions between funded programs that enhance priorities within the County's current annual plan without re-advertising the funds. Accordingly, at its September 20, 2016 meeting, the JCPC Board voted to reallocate \$24,876 to existing funded agencies to address needs within their programs, leaving \$12,945 in remaining funds to be allocated.

The Aspire-Kids at Work program contacted the JCPC to express interest in applying for funding. An RFP was published to advertise the remaining funds in December that included all of the funding priorities from the original FY 2017 plan. Aspire-Kids at Work applied for \$12,945 to provide an interpersonal skill development program that teaches culinary skills to court involved or at-risk youth between the ages of 12 and 17. This was the only application received. The JCPC Board unanimously approved the request on January 17, 2017.

All JCPC funding is pass-through money from the State and does not require any Catawba County funding.

**Recommendation:** The Finance and Personnel Subcommittee recommends the Board of Commissioners approve an amendment to the FY 2017 Annual Plan to fund the Aspire-Kids at Work interpersonal skills program \$12,945.

# #3 Rev-Catawba County NC DPS - Community Programs - County Funding Plan

Available Funds: \$ 332,366 Local Match: \$ 105,042 Rate: 30%

DPS JCPC funds must be committed with a Program Agreement submitted in NC Allies and electronically signed by authorized officials.

#	Program Provider	DPS-JCPC Funding	LOCAL FUNDING			OTHER	OTHER	Total	% Non DPS-JCPC Program Revenues
			County Cash Match	Local Cash Match	Local In- Kind	State/ Federal	Funds		
1	JCPC Administration	\$15,500						\$15,500	
2	Conflict Resolution Center - Mediation, Interpersonal Skills	\$55,897		\$643	\$16,126			\$72,666	23%
3	Cognitive Connection - SA, MH, Evals	\$70,725		\$28,786				\$99,511	29%
4	Family Centered Treatment - Home Based Counseling	\$33,264		\$9,699	\$312			\$43,275	23%
5	Family Guidance Center -Parent Education	\$34,396			\$10,319			\$44,715	23%
6	Project Challenge - Restitution/Community Service	\$75,775		\$2,550	\$20,183			\$98,508	23%
7	Repay - SAIS	\$33,864		\$300	\$12,240	\$16,916		\$63,320	47%
8	Aspire-Kids At Work - Interpersonal Skills	\$12,945			\$3,884			\$16,829	23%
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	<b>TOTALS:</b>	<b>\$332,366</b>		<b>\$41,978</b>	<b>\$63,064</b>	<b>\$16,916</b>		<b>\$454,324</b>	<b>27%</b>

The above plan was derived through a planning process by the #3 Rev-Catawba County  
Juvenile Crime Prevention Council and represents the County's Plan for use of these funds in FY 2016-2017.

Amount of Unallocated Funds \_\_\_\_\_

Amount of funds reverted back to DPS \_\_\_\_\_

Discretionary Funds added \_\_\_\_\_

check type ☐ initial plan ☐ update ☐ final

-----DPS Use Only-----	
Reviewed by _____	Date _____
Area Consultant	
Reviewed by _____	Date _____
Program Assistant	
Verified by _____	Date _____
Designated State Office Staff	

\_\_\_\_\_  
Chairperson, Juvenile Crime Prevention Council (Date)

\_\_\_\_\_  
Chairperson, Board of County Commissioners (Date)  
or County Finance Officer

## MEMORANDUM

**TO:** Catawba County Board of Commissioners

**FROM:** Finance and Personnel Subcommittee

**DATE:** February 6, 2017

**SUBJECT:** CVCC Drainage Gully

**Requested:**

The Finance and Personnel Subcommittee recommends \$300,000 in capital funds that CVCC would normally have received in Fiscal Year 2017/18 be advanced this year to address a drainage gully.

**Background:**

After the sinkhole, CVCC contracted an engineer to do an inspection of all underground piping on the campus. The engineer's report found that there were multiple sections of piping across the campus that was severely deteriorated and recommended replacement within one year to 18 months. The College had an existing renovations project with \$1.5 million to address paving needs and many of the areas to be paved were also the areas that needed piping replacement. The Fiscal Year 2015/16 budget included an additional \$890,000 to replace roughly 1.5 miles of underground piping across CVCC's campus. This project is still underway, but in the process of completing the work, a large drainage gully has been discovered next to East Campus that is absorbing major run-off from Highway 70. It is creating an erosion problem that could jeopardize the property and utility lines along the easement of the property.

Annually, CVCC receives roughly \$600,000 in capital funding to address renovation and equipment needs. Additionally, the current 4-year school construction plan also includes \$3.5 million for CVCC for campus renovations and equipment that will be debt financed in the coming year. CVCC requests to receive \$300,000 additional capital funding this fiscal year to address the drainage gully. In exchange, it will reduce its capital request by \$300,000 next year and use a greater portion of the planned \$3.5 million project towards equipment instead of renovations.

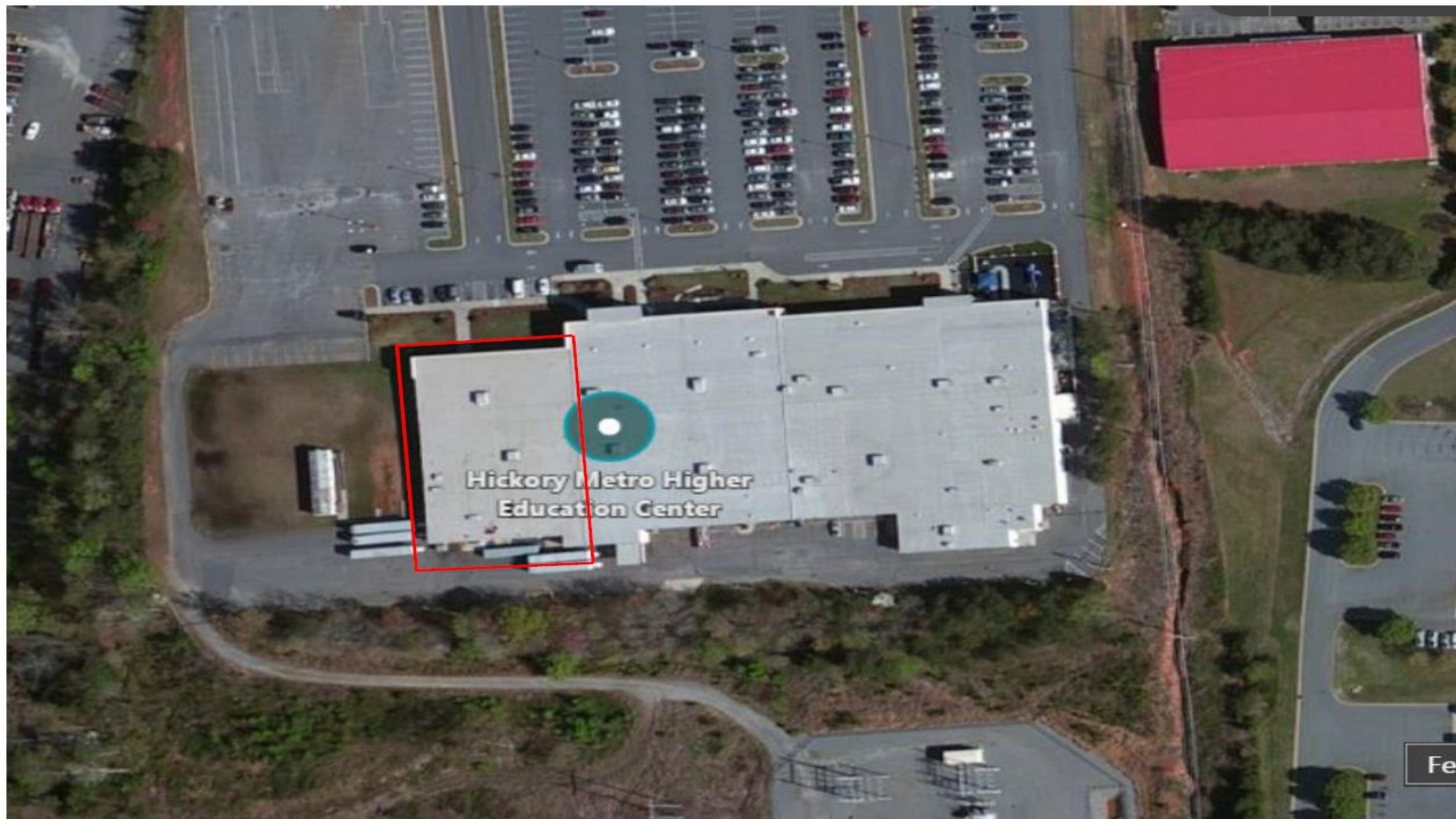
**Recommendation:**

The Finance and Personnel Subcommittee recommends the Board of Commissioners approve a \$300,000 advance this fiscal year to CVCC from planned capital funding in Fiscal Year 2017/18.

Supplemental Appropriation:

110-190050-690100	Fund Balance Applied	\$300,000
110-190900-995423	To Schools Construction	\$300,000
423-740050-695110	From Schools Capital	\$300,000
423-740100-862200-34100-2-06	CVCC East Campus Renovations	\$300,000





Hickory Metro Higher  
Education Center



































CVCC EAST CAMPUS RAVINE REPAIR  
Order of Magnitude Budget  
January 9 2017

Item	Cost
Probable Clearing and Demolition Budget	\$9,150.00
Probable Grading and Erosion Control Budget	\$84,735.00
Storm Sewer / Water Quality Facility* (see note)	\$108,660.00
Temp Facilities and Misc.	\$9,000.00
<b>Sub-Total Probable Construction Budget</b>	<b>\$211,545.00</b>
<b>Contractor Overhead, Profit, and G. Conditions (10%)</b>	<b>\$21,154.50</b>
<b>Probable Total Construction Cost (Without Contingency)</b>	<b>\$232,699.50</b>
Indirect Cost	\$41,500.00
<b>Contingency (10%)</b>	<b>\$23,269.95</b>
<b>Total Project Cost</b>	<b>\$297,469.45</b>

\* NOTE - Plan review anticipated by City of Hickory Storm Water, Duke Power, NCDEHNR (Erosion Control Mooresville)



# MEMORANDUM

**TO:** Catawba County Board of Commissioners

**FROM:** Finance and Personnel Subcommittee

**DATE:** February 6, 2017

**RE:** Proposed changes to the Catawba County Personnel Code

## REQUEST

The Finance and Personnel Subcommittee recommends to the Board of Commissioners the approval of revisions to the Catawba County Personnel Code, effective February 13, 2017. The majority of these revisions are minor revisions and fall into the following categories:

- Changing the use of a particular term (for example, Office of State Personnel v. Office of State Human Resources),
- Updating descriptions of current procedures (paper performance evaluations v. electronic performance evaluations),
- Clarifying definitions or procedures where we routinely encounter questions, or
- Corrections to spelling and grammar.

The more substantial revisions include:

- Clarification of the disciplinary procedure for those employees who fall under the State Human Resources Act,
- Enhancements to vacation and sick leave usage designed to enhance recruitment and maintain our position as an employer of choice, and
- Updates to the travel policy for County employees to incorporate per diem reimbursements based on uniform GSA.gov rates.

## BACKGROUND

The County's Personnel Code was originally codified in 1995; the most recent codification was in 2003, when the Personnel Code was reduced from 50 chapters to 44 chapters, with the last comprehensive review of the Personnel Code completed in 2012. Due to recent changes in grievance procedures for employees' subject to the State Human Resources Act that necessitated amendments to the Personnel Code, we decided it was appropriate to review the Personnel Code in its entirety.

Human Resources Director Cynthia Eades has summarized the highlights of the proposed changes to the Personnel Code below. To assist your review, she has noted the minor changes in red and the more substantial revisions in yellow. Additionally, the attached Personnel Code is marked in the same manner.

### Article I. In General

- Removed redundant definitions, clarified definitions and made definitions uniform.
- Clarified applicability of Personnel Code to departments.

### Article II. Equal Employment Opportunity Policy



- Revisions made to reflect current practices and allow flexibility related to equal opportunity policies and reports.

#### **Article V. Employment Compensation and Employee Performance**

- Clarification made to overtime provisions for non-exempt and exempt employees.
- Grievance procedure updated to reflect Office of State Human Requirements for employees of Social Services and Public Health.

#### **Article VI. Employee Benefits and Services**

The changes recommended below are designed to keep us competitive with other jurisdictions and maintain our position as an employer of choice. The benefits listed below are common practices for those employers with whom we compete and are areas that come up frequently as we negotiate with potential employees.

- For purposes of vacation accrual, allows new employees to receive credit for prior service if they are coming from a previous employer who was a member in a division of the state retirement system as long as the break in service was less than one year.
- Allows an employee to use sick leave for the entire period of Family and Medical Leave associated with the birth, adoption or placement of a foster child.
- Allows an employee to transfer sick leave from a previous employer who was a member in a division of the state retirement system as long as the break in service was less than one year.

#### **Article IX. Records and Reports**

- Adds language regarding the privacy of personnel records related to sworn law enforcement personnel.

#### **Article XI. Travel Policy for County Employees or Officials**

- Adds the option of per diem reimbursement for travel based on uniform gsa.gov rates to streamline expense reporting for the traveler, departments and the Finance Department. Additionally, this revision provides more oversight of expenses by requiring travelers to submit their conference/seminar agenda, more easily identifying meals already covered by the cost of the conference/seminar registration, as well as centralizing control of the policy to County Manager or their designee and away from individual departments.

#### **RECOMMENDATION**

The Finance and Personnel Subcommittee recommends to the Board of Commissioners the approval of revisions to the Catawba County Personnel Code, effective February 13, 2017. While the majority of these revisions involve changing the use of a particular term, updating descriptions of current procedures, clarifying definitions or procedures where we routinely encounter questions, or corrections to spelling and grammar, there are substantial revisions that provide clarification on the disciplinary procedure for those employee who fall under the State Human Resources Act as well as changes designed to enhance recruitment and maintain our position as an employer of choice.

The revised Catawba County Personnel Code is attached.

Attachment

## ARTICLE I. - IN GENERAL\*

**Editor's note**—Ord. No. 2003-19, adopted Oct. 6, 2003, amended art. I in its entirety and enacted similar provisions as set out herein. The former art. I derived from Code 1995, §§ 270.001—270.007; and Ord. No. 2002-05, § 270.001, adopted July 8, 2002.

[Sec. 28-1. - Definitions.](#)

[Sec. 28-2. - Merit principle.](#)

[Sec. 28-3. - Responsibility of Board of Commissioners.](#)

[Sec. 28-4. - Responsibility of County Manager.](#)

[Sec. 28-5. - Responsibility of the Human Resources Director.](#)

[Sec. 28-6. - Applicability.](#)

[Secs. 28-7—28-35. - Reserved.](#)

### **Sec. 28-1.- Definitions.**

The following words, terms and phrases, when used in articles I through XII of this chapter shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Adverse action* means an involuntary demotion, reduction in pay, a suspension without pay, reduction in force, or a dismissal.

*Allocation* means the approval of a position by the appropriate authority based upon the needs of the County.

*Anniversary date* means an employee's original date of uninterrupted employment with the County in a permanent position.

*Annual increment* means a salary increase as determined by the applicable salary plan and the County's annual budget.

*Applicant* means one who applies for a vacant position by completing and submitting an application for employment regardless of current employment status, (e.g., a current employee becomes an applicant when an application for another position is submitted).

*Appointing authority* means any board or official with the legal authority to make hiring decisions.

*Board of Commissioners* means the local government unit charged with the legislative affairs of the County.

*Class* means a position or group of positions having similar duties and responsibilities requiring similar qualifications, which can be properly designated by one job title indicative of the work performed and which have the same salary range and grade.

*Classification plan* means a systematic plan of ranking groups of classes based on internal comparisons and market surveys of relative duties and responsibilities.

*Close relationship* means a mutually acceptable relationship, including dating, living together as man and wife, cohabitation, or other personal relationship between employees.

*County Manager* means the County Manager, which is the highest level of supervision and highest administrative official of County government and who is appointed by the Board of Commissioners.

~~Compensatory time means time earned by an employee for hours worked in excess of a specified threshold within an established work period.~~

*Demotion, involuntary* means the reassignment of an employee to a position or a classification having a lower salary grade than the position or the classification from which the reassignment is made due to performance or conduct problems.

*Demotion, voluntary* means when an employee requests a move to a position assigned a lower grade, and the move is mutually agreed upon between the employee and the County.

*Director or Department Head* means the highest level of supervision or top administrative official of a department of County government.

*Downgrade* means a classification change that results in a lower grade being assigned to a position based on duties, responsibilities, reorganization, or market surveys.

*Exempt compensatory time* means hour-for-hour time earned by an exempt employee for hours worked in excess of a specified threshold within an established work period.

*Flexible promotion* means a temporary assignment made to a current employee which is a promotion or a lead worker assignment. The assignment is made with the understanding (that) up to six months from the date of assignment, if the change is not in the best interest of the employee or the County, then the employee may return to the former classification.

*FLSA (Fair Labor Standards Act)* means the federal Fair Labor Standards Act, which addresses the exempt and nonexempt status of employees and rules of compensatory time and/or overtime for hours worked in excess of a specified threshold by nonexempt employees.

*FLSA overtime* means compensatory time earned by a non-exempt employee at a time-and-a-half rate for each overtime hour worked in excess of the standard 7 day 40-hour work week.

*FLSA straight time* means compensatory time earned by a non-exempt employee at an hour-for-hour rate for each hour worked over the regular schedule up to 40 hours.

*Full-time employee* means an employee hired into a benefited budgeted position and who is regularly scheduled to work on a year-round basis at least 40 hours per week.

*Full-time equivalent (FTE)* means the number of hours worked per annum in relationship to a full-time position.

~~Grade means the numerical value assigned to a pay range.~~

*Grievance procedure* means the procedure whereby disputes or employee concerns regarding disciplinary actions, performance evaluations and reductions in force may be fairly and consistently addressed.

*Harassment* means any unwelcome comment or treatment made because of **age, disability, genetic information, national origin, pregnancy, race/color, religion, or sex** that creates a hostile work environment or circumstance. This term includes sexual harassment.

*Hiring rate* means the amount of compensation paid to an employee when hired.

*Hostile work environment* means an environment which a reasonable person would find hostile, intimidating or abusive and 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 several circumstances, including the frequency of the alleged harassing conduct, its severity, whether it is physically threatening or humiliating, and how it interferes with an employee's work performance or working conditions.

*Hourly employee* means an employee who is hired to work on an hourly basis and who serves at the will of the Department Head. An hourly employee has only the benefits conferred by federal and state law, except where the County has exclusive jurisdiction.

*Immediate family* means wife, husband, mother, father, brother, sister, son, daughter, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandmother, grandfather, grandson, granddaughter, stepmother, stepfather, stepbrother, stepsister, or persons living together in a close personal relationship or as otherwise approved by the Department Head.

*Merit principle* means a systematic and uniform method of personnel administration based on equal employment opportunity principles.

*Part-time employee* means an employee who is hired into a benefited budgeted position and who is regularly scheduled to work between 20 and less than 40 hours per week.

*Performance evaluation system* means the system utilized to review an employee's performance.

*Permanent employee* means an employee, except those employed by the Sheriff and the Register of Deeds, who has satisfactorily completed a probationary period and has been approved for permanent status by his or her Department Head. If the employee hired is designated a trainee or is assigned to a "work against" position, the employee shall also satisfy the minimum education and work experience requirements of the position before attaining permanent status. Permanent status is waived when an employee who has reached permanent status is transferred, promoted or demoted to a position for which he must be a trainee.

*Permanent position* means a benefited position that has been approved by the Board of County Commissioners and which has recurring duties and responsibilities of continuing duration. All rights and privileges of employment as set forth in this chapter attach to such position unless the section specifies otherwise. A permanent position may be established on a full-time or part-time basis.

*Position* means a group of duties and responsibilities assigned to a department based upon the needs of the County which may be performed by one or more employees normally not to exceed the full-time equivalent (FTE) of the position.

*Position classification plan* means a plan approved by the Board of Commissioners that assigns classes or positions to the appropriate pay grade.

*Prior service credit* means a system for determination for benefits based on equivalent prior service to the County, or for employment based on service to other organizations.

*Probationary employee* means an individual appointed to a permanent position who has served less than nine months in the position, or who has otherwise not completed specified prerequisites for attaining permanent status. This may be based on initial hire, promotion, or transfer into another position.

*Promotion* means the reassignment of an employee to a position or classification in the County having a higher salary grade than the position from which the reassignment is made.

*Quid pro quo harassment* consists of unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when:

- 1) Submission to such conduct is made either 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.

*Reassignment* means an intradepartmental change of duty assignment within the same grade and based upon needs of the department at the discretion of the Department Head.

*Reclassification* means a change in a position from one class to another based on changes in the complexity, responsibility, and skill required to perform the essential functions of the position.

*Reduction in force* means the abolishment of a position based on the needs of the organization, workload, or availability of funding.

*Reorganization* means, due to changes in the organizational needs of a department, the duties, responsibilities or requirements of a position may be reclassified or reassigned, and/or a position may be abolished in full or in part, or created according to County policy.

*Retaliation* means any form of adverse treatment that occurs because of reaction to a lawful and protected action by an employee.

*Salary grade* means all positions that are sufficiently comparable to warrant one range of pay rates.

*Salary plan* means the classification plan coupled with the assigned salary ranges for each classification.

*Salary plan revision* means the uniform raising or lowering of salary ranges within the salary plan.

*Salary range* means the salary assigned to each grade of the salary plan, including trainee, minimum, and maximum annual salaries.

*Salary schedule* means a listing by grade of all the approved salary ranges authorized by the Board of Commissioners for various positions of the County.

~~*Service credit* means time reflected for certain benefits that include current hire date plus credit for previous service to County government.~~



*Sexual harassment* means unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when such conduct is made a term or condition of an individual's employment or a rejection of such conduct by an employee is used as a basis for future employment decisions affecting such individual or when such conduct interferes with an individual's work performance or creates an intimidating, hostile or offensive working environment for an employee or group of employees.

*Temporary employee* means an individual appointed to serve in a position for a predetermined duration.

*Temporary position* means a position for which the duties and responsibilities are required based upon the needs of the County for a specified period of time.

*Time-limited position* means a position, which may or may not be permanent, approved for a specified period of time, with a defined ending date.

*Trainee* means an employee who does not meet minimum education or experience requirements for a position but can within a specified period meet the minimum requirements.

*Transfer* means the reassignment of an employee from one position in a department to another position in a different department with the same pay grade.

*Unlawful workplace harassment* means unwelcome or unsolicited comments or conduct based upon **age, disability, genetic information, national origin, pregnancy, race/color, religion, or sex** that creates a hostile work environment or circumstances involving quid pro quo. This term includes sexual harassment.

*Upgrade* means a change which results in a higher grade being assigned to a position with the same job responsibility.

*Work against* means when an employee does not meet minimum requirements of the position and there are lower levels in the series of that classification, the employee may be assigned to the level of the series for which the employee is qualified and may "work against" the experience and educational requirements of the higher level position in the series.

(Ord. No. 2003-19, 10-6-2003; Ord. No. 2009-04, 4-6-2009)

**Cross reference**—Definitions generally §1-2.

#### **Sec. 28-2.- Merit principle.**

All appointments and promotions of employees shall be made solely on the basis of merit, fitness, ability, experience, education and other characteristics which best suit an individual to the job to be performed while fostering and maintaining principles of equal employment opportunity. (Ord. No. 2003-19, 10-6-2003)

#### **Sec. 28-3.- Responsibility of Board of Commissioners.**

The Board of Commissioners shall approve changes to the County's Personnel Code and the pay plan, approve all new positions, and shall make and confirm appointments when required by law.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-4.- Responsibility of County Manager.**

The County Manager shall be responsible to the Board of Commissioners for the administration of the Human Resources program and shall have full responsibility for all human resource functions.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-5.- Responsibility of the Human Resources Director.**

The County Manager shall appoint a Human Resources Director who shall assist in the preparation, maintenance and administration of the position classification plan and the salary plan, and perform such other duties as the Manager shall require.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-6.- Applicability.**

Employees of the Sheriff and Register of Deeds serve at the will of those officials. The Sheriff and Register of Deeds shall be subject to the provisions of this chapter, except that they shall have the right to hire and discharge employees in their respective departments under the authority of G.S. 153A-103.

Employees of Social Services and Public Health shall be subject to the provisions of this chapter, except that they shall follow the grievance procedures established by the Office of State Human Resources. under G.S. 126-1 et seq.

Employees of the Cooperative Extension Service whose annual compensation is supplemented by local funds shall be subject to all rules and regulations of the State Cooperative Extension Service.

4) **Employment** by all other employees of County government is governed by this chapter.

(Ord. No. 2003-19, 10-6-2003)

**Secs. 28-7—28-35.- Reserved.**

## **ARTICLE II. - EQUAL EMPLOYMENT OPPORTUNITY POLICY\***

**Editor's note**—Ord. No. 2003-19, adopted Oct. 6, 2003, amended art. II in its entirety and enacted the provisions set out herein. The former art. II, titled classification plan, derived from Code 1995, §§ 270.029—270.033.

[Sec. 28-36. - Policy statement.](#)

[Sec. 28-37. - Responsibilities.](#)

[Sec. 28-38. - Goals and objectives.](#)

[Sec. 28-39. - Policy dissemination.](#)

[Sec. 28-40. - Program evaluation](#)

[Secs. 28-41—28-65. - Reserved.](#)

**Sec. 28-36.- Policy statement.**

1) In establishing and following employment policies, Catawba County strives to attract, select and employ the most qualified and best suited candidates for position vacancies, all the while fostering and promoting equal employment opportunity. These policies apply to all applicants and employees applying for position vacancies.

It is the policy of the County to employ according to merit and fitness. To that end, it shall be the practice of the County to use all available means to attract qualified candidates for employment, and to make such investigations and examinations as are deemed appropriate to fairly assess the aptitude, education and experience, knowledge and skills, abilities, character and other standards required for positions in the service of the County.

The County shall recruit for and select individuals for employment or promotion in compliance with federal, state, and local laws; executive orders; and regulations prohibiting discrimination in employment practices with regard to **age, disability, genetic information, national origin, pregnancy, race/color, religion, political affiliation or sex**. The Human Resources Department shall review hiring qualifications periodically to ensure that requirements conform to the actual job performance requirements and are consistently administered and shall identify and eliminate employment practices which may result in treatment that is disparate or that has a discriminating effect.

2) The County Manager shall have overall responsibility for the administration of this equal employment opportunity policy. The Human Resources Director is charged with the day-to-day implementation, direction, and continuous evaluation. The Human Resources Director shall present periodic reports on the progress of the program to the County Manager. Additionally, all management and supervisory personnel shall be equally responsible for compliance with the equal employment opportunity policy.

3) The equal employment opportunity policy applies to all positions in County government.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-37.- Responsibilities.**

1) The County Manager shall be ultimately responsible for the achievement of equal opportunity employment and for the administration of the equal employment opportunity policy. The County Manager shall formulate and disseminate directives to Department Heads to develop goals and assign responsibility for the day-to-day operation and implementation of the policy. 2)

The Human Resources Director shall be responsible for the following:

- a) The day-to-day operation and implementation of the policy.
- b) The general direction and/or coordination of the program as established under this policy.
- c) The collection, analysis, preparation and dissemination of required reports.
- d) Assistance to supervisory personnel in meeting their responsibilities.
- e) Establishment of contacts in the community which specialize in recruitment of protected classes.
- f) The maintenance of all official personnel records in a manner consistent with applicable employment practices, laws and other requirements of the policy.

- g) The development and maintenance of all personnel directives consistent with the policy and applicable laws.
  - h) Periodic review of the County's classification system, benefits, leave policies, training and career development programs, and other employment practices to ensure that all practices conform to the policy.
- 3) Department Heads shall be responsible for working with the Human Resources Director to implement the equal employment opportunity policy within their particular departments to:
- a) Establish goals and objectives based on labor market data provided by the Human Resources Director and available job openings;
  - b) Provide leadership and support in the area of equal opportunity employment; and
  - c) Endeavor to maintain a positive attitude among employees.
- 4) Supervisory staff shall be responsible for day-to-day compliance with the established policies and procedures and shall endeavor to maintain a positive attitude among employees.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-38.-** Goals and objectives.

- 1) The goal of the equal employment opportunity policy is to:
- a) Prevent discrimination in employment practices with regard to **age, disability, genetic information, national origin, pregnancy, race/color, religion, political affiliation or sex**; and
  - b) Identify and eliminate any employment practice which may result in treatment that is disparate or that has a discriminating effect.
- 2) In order to reach these goals, the following policies are reiterated and/or established:
- a) The Human Resources Department shall maintain records and statistical information in support of the equal employment opportunity policy to monitor the program.
  - b) Disability information shall be used when available. This information, as well as age and race and/or national origin, may not be required of applicants or employees.
- 3) The Human Resources Director shall annually prepare an equal employment opportunity report of employees for the County Manager.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-39.-** Policy dissemination.

- 1) *Notice.* Each employee and citizen shall be informed of the County's equal employment opportunity policy and management's commitment to that policy through the following means:
- a) *Internal.*
    - i) The equal employment opportunity policy statement shall be posted on bulletin boards in all County buildings and in the Human Resources Department.

ii) The equal employment opportunity policy shall be discussed as part of the employee orientation and applicable training programs.

b) *External.*

i) Employment advertisements shall be communicated to the local news media, employment training institutions, community and minority leaders, minority universities or other recruitment sources that the Human Resources Director deems appropriate.

ii) All employment advertisements and correspondence shall contain the statement that the County is an "equal opportunity employer."

~~iii) All subcontractors, vendors, and suppliers shall be notified of the equal employment opportunity policy to solicit appropriate supportive action.~~

2) *Monitoring.* A review of current employment practices is essential to identify barriers to equal employment opportunity. The Human Resources Director shall continually monitor the employment process and adjust procedures to ensure that barriers do not exist. The following aspects of the personnel system shall be specifically addressed:

a) *Recruitment.*

i) Each department shall maintain a coordinated recruitment process with the Human Resources Department.

ii) Pre-employment policies and procedures shall be based on essential functions of the position.

iii) Vacancies which shall be filled from within the County work force shall be posted via e-mail, intranet, or posted in areas known to employees. All vacancies for which outside applicants are considered shall be listed with the local NCWorks Career Center.

iv) Job announcements shall be readable, realistic, and accurate in describing minimum requirements for the job, job title, salary, and application process.

~~v) Efforts shall be directed toward the local news media, employment training institutions, community minority leaders, minority universities, and other recruitment sources which have contact or represent the interest of other protected classes that the Human Resources Director deems appropriate.~~

b) *Selection and placement.*

i) Selection policies and procedures are designed to ensure objectivity and prohibit discrimination. The Human Resources Department shall play a major role in this process. The Human Resources Director shall provide training to those employees involved with the application, interview, and selection phases in techniques to accurately determine the job-related qualifications of each applicant. The Human Resources Director shall monitor the process to identify selection techniques which may be discriminatory.

ii) The following steps shall ensure equality and objectivity in the selection of the best-qualified applicant:

(1) Provision of reasonable accommodation of disabled applicants.

(2) Removal of all non-job-related and discriminatory information from the application form.

(3) Review of screening procedures, such as tests and interviews, to ensure objectivity and job relatedness.

(4) Establishment of a documentation procedure for selections and rejections.

~~iii) The Human Resources Director shall monitor placement policies and work assignments of all new employees. Work assignments shall be meaningful, contribute to the attainment of the organization's goals, and offer opportunities for career advancement to the maximum extent possible.~~

c) *Promotions and upward mobility.*

i) All employees shall receive equal consideration for promotions, reclassification, and salary increases.

ii) All employees shall be encouraged and be permitted to apply for transfers and promotions to enhance their career development and upward mobility. Those employees who apply and are not selected shall be so informed.

iii) The Human Resources Director shall evaluate classification specifications for duties and salary to ensure job relatedness, and as necessary, adjustments shall be made when duties and responsibilities change. The Human Resources Director shall also examine performance-rating measures to identify areas where training may be required or where discrimination may exist.

d) *Personnel actions and benefits.*

i) The Human Resources Director shall maintain a constant review of all personnel procedures to ensure compliance with this policy.

ii) All **affected** employees shall be informed of the grievance procedures in section 28-170. Strict compliance with these procedures shall promote rapid, fair, and reprisal-free mediation of problems or complaints. These procedures and policies are published and maintained separately in Article V of this chapter, reviewed with employees in orientation, and **provided to employees** at the time of personnel actions. The Human Resources Director shall provide consultation to employees and supervisors regarding these procedures.

iii) The Human Resources Director shall update all supervisory and management staff with information on new laws, programs, and policies pertaining to equal employment opportunity. Each supervisor shall inform and explain these programs and policies to all employees.

iv) The Human Resources Director shall periodically review the benefits package to ensure that all categories of employee benefits are available to all employees on an equal basis unless otherwise required by law.

**~~Sec. 28-40.~~** Program evaluation

~~1) A comprehensive evaluation of the County's equal employment opportunity efforts is essential to target areas for improvement. The Human Resources Director shall prepare an~~

~~annual report on the program, recommending changes to the County Manager and management staff. With this report, the Human Resources Director shall submit a review of County and departmental equal employment opportunity goals and a listing of problems, accomplishments, and proposed future actions to ensure compliance with the planned objectives.~~

~~2) The Human Resources Department shall continuously maintain records and statistical information to monitor compliance.~~

~~3) The Human Resources Department shall conduct exit interviews preceding or following all terminations. Periodically, the Human Resources Director shall provide a collective report reflecting comments from the interviews to assist the appropriate staff in the administration of the plan.~~

~~4) The County Manager and Human Resources Director shall hold periodic meetings with employees to obtain feedback and suggestions on how to assist the County in achieving its equal employment opportunity goals.~~

(Ord. No. 2003-19, 10-6-2003)

(Ord. No. 2003-19, 10-6-2003)

**Secs. 28-41—28-65.- Reserved.**

### **ARTICLE III. - CLASSIFICATION PLAN <sup>[44]</sup>**

<sup>(44)</sup> **Editor's note—** Ord. No. 2003-19, adopted Oct. 6, 2003, amended art. III in its entirety and enacted the provisions set out herein. The former art. III, titled wage and salary administration, derived from Code 1995, §§ 270.050—270.055, 270.064—270.068, and 270.072; and Ord. No. 2002-05, § 270.066, adopted July 8, 2002.

[Sec. 28-66. - Coverage.](#)

[Sec. 28-67. - Allocation of positions.](#)

[Sec. 28-68. - Administration of classification plan.](#)

[Sec. 28-69. - Amendments to positions.](#)

[Sec. 28-70. - Classification of new positions.](#)

[Sec. 28-71. - Amendment to classification plan.](#)

[Secs. 28-72—28-105. - Reserved.](#)

#### **Sec. 28-66. - Coverage.**

The position classification plan on file in the Human Resources Department shall be the classification plan of the County. This classification plan shall include all classes of positions.

(Ord. No. 2003-19, 10-6-2003)

#### **Sec. 28-67. - Allocation of positions.**

The County Manager shall allocate each position covered by the classification plan to its

appropriate class in the plan. The Human Resources Director shall recommend for the County Manager's approval allocation of each position covered by the classification plan to its appropriate class.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-68. - Administration of classification plan.**

1) The County Manager shall be responsible for administration and maintenance of the position classification plan adopted in this article. Department Heads shall be responsible for bringing to the attention of the Human Resources Director any material changes in the nature of the duties, responsibilities, working conditions, or other factors affecting the classification of any existing position. Following the receipt of such information, the Human Resources Director shall study the position and report findings and recommendations to the County Manager.

2) New positions shall be established upon recommendation of the County Manager with the approval of the Board of Commissioners. The County Manager may (1) assign the new position to the appropriate class within the existing classification plan or (2) establish a new class to which the new position may be assigned, amending the position classification plan accordingly. If the County Manager finds that a substantial change has occurred in the duties and responsibilities of an existing position, he shall direct that the existing position description be revised, reallocate the position to an appropriate class within an existing classification plan, or establish a new class to which the position shall be assigned.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-69. - Amendments to positions.**

Positions shall be added to and deleted from the position classification plan by the Board of Commissioners after consideration of the recommendation of the County Manager or upon consideration of budgetary factors.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-70. - Classification of new positions.**

The Human Resources Director shall be responsible for studying and making recommendations to the County Manager for the allocations of new positions to the existing classes or to new classes of positions.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-71. - Amendment to classification plan.**

The County Manager is authorized to amend the classification plan by adding, changing, or deleting classes of positions and salary grades based on internal analyses and market surveys within the authorized budget allocation. The Manager shall advise the Board of Commissioners of such amendments.

(Ord. No. 2003-19, 10-6-2003)

**Secs. 28-72—28-105. - Reserved.**



## ARTICLE IV. - WAGE AND SALARY ADMINISTRATION <sup>[45]</sup>

<sup>(45)</sup> **Editor's note**— Ord. No. 2003-19, adopted Oct. 6, 2003, amended art. IV in its entirety and enacted the provisions set out herein. The former art. IV, titled employee compensation and employee performance, derived from Code 1995, §§ 270.088—270.092, 270.096—270.101, 270.104, 270.105, and 270.108—207.112.

[Sec. 28-106. - Maintenance of salary plan.](#)

[Sec. 28-107. - Administration of the salary plan.](#)

[Sec. 28-108. - Hiring or starting salary.](#)

[Sec. 28-109. - Salary of trainee/work against.](#)

[Sec. 28-110. - Salary of part-time employees.](#)

[Sec. 28-111. - Pay periods.](#)

[Sec. 28-112. - Salary adjustments.](#)

[Sec. 28-113. - Salary at separation.](#)

[Sec. 28-114. - Deductions from salary.](#)

[Sec. 28-115. - Overtime policy.](#)

[Sec. 28-116. - Leave without pay.](#)

[Sec. 28-117. - Performance awards.](#)

[Sec. 28-118. - Advance on wages.](#)

[Secs. 28-119—28-145. - Reserved.](#)

### **Sec. 28-106. - Maintenance of salary plan.**

The County Manager shall be responsible for the administration of the salary plan. The salary plan is intended to provide equitable compensation for all positions when considered in relation to each other, to general rates of pay for similar employment in the private and public sectors, to changes in the cost of living, to financial conditions of the County and other relevant factors.

- 1) Each year, prior to the annual budget process, the Manager shall review the status of the salary plan and consider any amendments necessary to maintain a ~~current~~ **competitive** salary structure.
- 2) ~~The County Manager shall make cost-of-living recommendations to the Board of Commissioners based upon an annual study of local economic conditions and the financial state of County government.~~
- 2) Each year the Human Resources Director shall conduct a pay study to review pay and classification of select County positions. A recommendation shall be made to the County Manager **for approval by the Board of Commissioners through the annual budget process** and changes shall be implemented subject to available funds.

(Ord. No. 2003-19, 10-6-2003)

### **Sec. 28-107. - Administration of the salary plan.**

The following ~~six~~ five principles shall govern the transition to a new salary plan:

- 1) No employee shall receive a salary reduction as a result of the transition to a new salary plan.
- 2) All employees being paid at a rate lower than the minimum rate established for their respective classes shall have their salaries raised to the new minimum for their classes, unless the employee is a trainee or work against where the conditions established shall prevail. These conditions may include any established by the Office of State Human

Resources.

- 3) All employees being paid at a rate below the maximum rate, but above the minimum rate established for their respective classes, shall be paid at a rate within the salary range.
- 4) All employees being paid at a rate above the maximum rate established for their respective classes shall remain at their present salary as long as the maximum rate is equal to or below the employees' present salary.
- 5) The classification and salary plan shall meet the requirements of the state competitive system for the employees' subject to that system.
- ~~6) All employees covered by the salary plan shall be paid at a listed rate within the salary range established for their respective job classifications, except employees in a "trainee" or "work against" status, or employees whose present salary is above the established maximum rate.~~

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-108. - Hiring or starting salary.**

Each employee, except those employees with trainee/work against status, shall be paid at least the minimum salary of the range which has been established for the classification of the position.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-109. - Salary of trainee/work against.**

If an applicant, **in an absence of qualified applicants from which to make a selection** for County employment, does not meet the minimum requirements for the position, but is deemed to be the most suitable applicant, the Department Head may appoint the applicant as a "trainee" or "work against" as determined by the Human Resources Director and consistent with the provisions of the salary plan. The employee shall retain such status until the Human Resources Department determines that the requisite qualifications of the position are met. A trainee shall not attain permanent status until he has met the minimum job qualifications and education requirements and as such is not eligible for annual increments until permanent status is attained.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-110. - Salary of part-time employees.**

The hourly rate paid to employees who are not permanent full-time employees is calculated by converting the annual salary of the comparable permanent position to an hourly rate by dividing the annual salary by 2,080 work hours.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-111. - Pay periods.**

- 1) All County employees shall be paid bi-weekly (every two weeks) with two weeks in arrears.

2) The scheduled payroll is every other Friday; if the scheduled payday is a holiday, employees shall be paid the last working day prior to the holiday.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-112. - Salary adjustments.**

The Human Resources Director shall be responsible for implementing all salary adjustments for County employees. Employees shall be advised of all salary changes. Salary adjustments may occur as a result of the following:

1) *Cost-of-living increase.* The Board of Commissioners has the authority to grant all employees a cost-of-living increase each fiscal year.

2) *Annual increment.* An annual increment may be funded in the annual budget and, if awarded, will be based on the annual performance review. Annual increments are effective on the first day of the month following the anniversary date. All documentation must be received before the payroll deadline date of the month in which the annual increment is due. When an employee's annual salary is at or near the maximum of the pay grade, the employee shall receive the portion of the annual increment that exceeds the maximum pay of the pay grade as a one-time lump sum payment.

3) ~~Below—standard~~ **Unacceptable performance rating.** An employee whose overall performance is rated below needs improvement shall receive a five percent decrease in salary until such time as the performance is rated expected or above.

4) *Demotion.* An employee shall receive a decrease in salary due to a demotion, either voluntary or involuntary, unless the Department Head and Human Resources Director agree such a reduction would not be in the best interest of the organization.

5) *Promotion.* The salary of an employee promoted to a vacant position shall be adjusted within the range, provided the employee meets minimum requirements of the position.

6) *Negotiated increases.* Other salary increases may be granted from time to time with the approval of the County Manager. The County Manager may increase the annual salary of an employee when the employee's position is known to be one that is hard to fill or the market rate exceeds the current rate of pay. The salary increase may not exceed the maximum of the salary range.

7) *Reclassification.* When a position is reclassified to a higher grade, the County Manager has the discretion to adjust the salary of the employee in that position upward, provided that the adjusted salary does not exceed the maximum of the new salary range, or to leave the salary unchanged except when the salary is below the minimum in which case the salary shall be brought up to the minimum of the new classification. When a position is reclassified to a lower grade, the County Manager has the discretion to reduce the salary of the employee in that position to any salary within the range for the new grade or leave the salary unchanged.

8) *Trainee/work against to full class.* When a trainee/work against meets the minimum requirements for the position (full class), the salary shall be adjusted upward to the minimum of the position's salary range unless otherwise negotiated at the time of hire.

9) *Transfer.* The salary of an employee transferred to a vacant position may be adjusted

within the range as negotiated between employer and employee.

10) *Effective date.* Salary adjustments shall generally be effective on the date of the actual change. Annual increment increases shall be effective the first day of the month after the anniversary month.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-113. - Salary at separation.**

The final scheduled payroll check for a County employee shall be paid two weeks in arrears. The final payment received by the employee shall include annual leave as allowed under the provisions of the personnel code, floating holiday time, and overtime amounts due, less any pay previously advanced, and shall be paid in the payroll which occurs two weeks following the final regular payroll. An employee who separates employment with the County shall receive a reduction in final pay if there is a negative balance in sick leave, floating holiday time or annual leave.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-114. - Deductions from salary.**

Deductions which are required by law shall be deducted from employees' pay and shall include the following:

- 1) Federal income tax.
- 2) State income tax.
- 3) Social Security.
- 4) Local Government Employees' Retirement System, or Law Enforcement Officers' Benefit and Retirement Fund.

Other deductions which may be taken include United Way contributions, pay advance repayment, optional retirement plan contributions, insurance benefit payments and other voluntary deductions approved by the County.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-115. - Overtime policy.**

The County abides by all applicable sections of the Fair Labor Standards Act, as amended. Further details are provided in sections 28-156 through 28-161 of this chapter and through the Human Resources Department.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-116. - Leave without pay.**

1) *Qualifications.* The decision to grant leave without pay is solely in the discretion of the Department Head. Factors to be considered are necessity, duration of leave, workload, and other factors in the best interest of the County. Leave without pay may be granted to employees who have exhausted all other forms of leave **or in cases where requested leave has not been approved**

by the Department Head.

2) *Leave without pay procedures.*

- a) The request for leave without pay must be made in writing in a timely fashion prior to the anticipated date.
- b) Accumulated annual leave must be exhausted before leave without pay may be granted.
- c) Accumulated sick leave must be exhausted before leave without pay may be granted in cases of illness where disability is not a factor.
- d) No floating holidays, annual or sick leave shall be earned during a period of leave without pay.
- e) An employee on leave without pay status shall be eligible for any continuation of allowable benefits by continuing to pay the employee's share of the cost and the employer's share, if applicable, and by making all employee and employer costs for such benefits as they become due. Any reimbursements due the County because of leave without pay may be deducted from the employee's pay upon the employee's return to work.
- f) When circumstances arise or when conditions exist which cause a need to fill a position left vacant due to leave without pay, the employee in leave without pay status shall be notified of the need to fill the position and given an opportunity to return to the position. If the employee on leave without pay status does not return to the position, the position shall become vacant. Failure on the part of the employee to report promptly, except for reasons submitted in advance to and approved by the Department Head, shall be considered a voluntary resignation.
- g) In cases where requested leave has been denied by a Department Head, leave without pay shall be required even if the employee has other forms of accumulated leave.

3) *Exception to leave without pay qualifications and pay procedures.* To afford the County Manager flexibility in addressing personnel costs, the Manager may declare furlough days with all employees' subject to the furlough, regardless of their leave balance. These furloughs may be declared by the Manager as:

- a) A rolling furlough, in which departments schedule employees for a furlough day within a given timeframe. Because the departments would be creating their own furlough schedules, the impact on staffing levels would be minimized.
- b) Declaring a furlough day on one of the paid holidays which are listed as a benefit to employees in section 28-205 of the personnel code. Employees would not be paid for the holiday.
- c) Declaring an additional unpaid holiday not listed in section 28-205

(Ord. No. 2003-19, 10-6-2003; Ord. No. 2009-04, 4-6-2009)

**Sec. 28-117. - Performance awards.**

1) Performance award funds shall be designated by the Board of Commissioners and shall be distributed in a manner described by the County Manager. Only employees in permanent, budgeted positions working a minimum of 20 hours per week are eligible to receive performance

awards.

2) Performance awards shall be initiated at the departmental level upon recommendation of the Department Head and review of the Human Resources Director. Such recommendations shall be accompanied by an explicit written justification setting forth the specific meritorious performance rewarded.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-118. - Advance on wages.**

There shall be no advance on wages.

(Ord. No. 2003-19, 10-6-2003)

**Secs. 28-119—28-145. - Reserved.**

**ARTICLE V. - EMPLOYMENT COMPENSATION AND EMPLOYEE  
PERFORMANCE <sup>[46]</sup>**

<sup>(46)</sup> **Editor's note—** Ord. No. 2003-19, adopted Oct. 6, 2003, amended art. V in its entirety and enacted the provisions set out herein. The former art. V, titled employee benefits and services, derived from Code 1995, §§ 270.123—270.125.1 and 270.135—270.145 and Ord. No. 2003-15, adopted Aug. 4, 2004.

[Sec. 28-146. - Applicability.](#)

[Sec. 28-147. - Statement of equal employment opportunity.](#)

[Sec. 28-148. - Recruitment requirements.](#)

[Sec. 28-149. - Eligibility for employment.](#)

[Sec. 28-150. - Appointment of department directors and heads.](#)

[Sec. 28-151. - Transfers.](#)

[Sec. 28-152. - Flexible promotions.](#)

[Sec. 28-153. - Conditional offer of employment.](#)

[Sec. 28-154. - Employment categories.](#)

[Sec. 28-155. - Resignation.](#)

[Sec. 28-156. - Fair labor standards.](#)

[Sec. 28-157. - Compensatory time for FLSA exempt employees.](#)

[Sec. 28-158. - Workweek.](#)

[Sec. 28-159. - Work schedule.](#)

[Sec. 28-160. - Work schedule recordkeeping.](#)

[Sec. 28-161. - Overtime.](#)

[Sec. 28-162. - Disciplinary action.](#)

[Sec. 28-163. - Performance evaluation.](#)

[Sec. 28-164. - Delay of performance evaluation, including probation.](#)

[Sec. 28-165. - Probationary period.](#)

[Sec. 28-166. - Permanent status.](#)

[Sec. 28-167. - Reduction in force.](#)

[Sec. 28-168. - Demotion.](#)

[Sec. 28-169. - Secondary or outside employment.](#)

[Sec. 28-170. - Grievance procedure.](#)

[Secs. 28-171—28-195. - Reserved.](#)

**Sec. 28-146. - Applicability.**

This article shall be applicable to all employees, except the requirements for the employees specifically exempted in section 28-6.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-147. - Statement 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. This policy is achieved by announcing all position vacancies, and by evaluating all applicants using the same criteria. Personnel decisions are made without regard to **age, disability, genetic information, national origin, pregnancy, race/color, religion, political affiliation or sex.** (Ord. No. 2003-19, 10-6-2003)

**Sec. 28-148. - Recruitment requirements.**

1) *Human Resources Director's responsibilities.* The Human Resources Director shall be responsible for publicizing opportunities and recruiting qualified personnel for all vacant positions authorized by the operating budget of the departments in the County government. The Human Resources Director may also recruit qualified personnel as requested by and for the offices of Sheriff and Register of Deeds. Human Resources Department shall be responsible for maintenance of records of all position vacancy announcements, including posting and closing dates, all optional referral sources used in the recruitment process, and the pool of applicants considered for each vacancy. The data for each applicant interviewed shall include equal employment opportunity data and interview information. Records shall be maintained in accordance with **the** County Management Records Retention and Disposition Schedule.

2) *Department Head's responsibilities.* Each Department Head shall be responsible for advising the Human Resources Director of anticipated or current vacancies in authorized budgeted positions for the department.

3) *External advertisement.* Vacant positions to be filled shall be publicized by Human Resources through ~~the local Employment Security Commission and through other methods~~ as determined appropriate for the position in order to permit an open opportunity for all interested employees and applicants to apply.

4) *Internal advertisement.* The Department Head may determine that a specific vacancy has qualified internal candidates, and the vacancy shall be advertised by Human Resources internally for a period of at least five business days and shall be posted throughout the County government organization. If a suitable candidate is not found within the organization, then the position shall be advertised externally.

5) *Qualifications to be considered.* Applicants shall be considered on the basis of their qualifications and suitability for the position, including, but not limited to, fitness for duty; relative ability, knowledge and skills; educational background; and any special licenses or certifications which may be required. All applicants considered for employment or promotion shall meet the qualification standards established by the position description to which appointment is being considered. All applications must be made through the Human Resources Department. All



candidates for employment must hold at least a high school diploma or GED.

6) *Selection process.* Departments shall develop, use, and document, on a consistent basis, a selection process approved by the Human Resources Director that best suits the County's needs in filling positions within each agency or department, and which explains the reason for selection decisions. All selection methods developed and utilized by the Department Head shall be based on job requirements. The selection of applicants shall be based upon a relative consideration of their qualifications for the position to be filled. Advantage shall be given to applicants determined to be best qualified. All hiring decisions must be reasonably documented to verify the basis of the selection.

7) *"Trainee" appointments.* Consideration shall be given to "trainee" appointments when there is an absence of qualified applicants from which to make a selection. In this instance, if the deficiencies may be eliminated through orientation and on-the-job training, the employee is designated as a trainee.

When qualified applicants are unavailable and there is no trainee provision for the vacant classification, an appointment may be made below the level of the regular classification in a "work-against" appointment, allowing the appointee an opportunity to gain the qualifications needed for full class through on-the-job experience. The appointee must meet the minimum education and experience standard of the class to which the appointee was initially appointed. A work-against appointment may not be made when applicants are available who meet the education, experience and other conditions of employment requirements for the full class of the position in question.

8) *Notification.* The applicant deemed most qualified shall be notified of the selection and a conditional offer of employment as established in section 28-153 shall be initiated by the Department Head. The documentation of offer and acceptance shall be forwarded to the Human Resources Department where it shall be placed in the official personnel file.

(Ord. No. 2003-19, 10-6-2003)

#### **Sec. 28-149. - Eligibility for employment.**

1) *Constitutional guarantees.* No County employee shall be required to belong to any particular political party as a condition of employment; nor shall **age, disability, genetic information, national origin, pregnancy, race/color, religion, or sex** be used as a qualifying standard for employment.

2) *Citizenship and alien registration.* All County employees shall be citizens of the United States or legally eligible for employment in the United States.

3) *Employment of relatives or persons involved in close personal relationships.* The employment of relatives within the same department or unit/section of a department at the same time is to be avoided unless significant recruitment difficulties exist. If it is necessary for relatives to be considered for employment the following shall apply:

a) Two members of an immediate family or two persons living together in a close relationship shall not be employed within the same department or unit/section of a department if such employment shall result in one supervising the other, or where one member occupies a position which has influence over the other's employment, promotion, salary administration or other related management or personnel considerations. Exceptions shall be made where the nature of the position requires a marital couple.

b) It is not the intent or purpose of subsection 3) of this section to limit the opportunities of



any employee who is closely related to another, but to prevent persons with close personal relationships from having a supervisory relationship, influence over the employment considerations, or authority over the other.

c) If two individuals are already employed and then marry, the following shall apply:

i) Where a transfer, promotion, demotion, or other personnel transactions create a conflicting situation, it is incumbent upon the Department Head, in consultation with the Human Resources Director, to rectify such a situation within 30 days, preferably through transfer. This 30-day limitation may be waived by the County Manager, provided the Department Head demonstrates good cause in the request for such a waiver.

ii) Termination of an employee under these conditions should be avoided if at all possible. Exceptions shall be made where the nature of the position requires a marital couple.

4) *Sheriff and Register of Deeds.* As referenced in G.S. 153A-103, the Board of Commissioners must approve the appointment of a relative of the Sheriff or Register of Deeds who is related by blood or marriage of nearer kinship than first cousin or of a person who has been convicted of moral turpitude. Approval of the Board of Commissioners is not required for the reappointment or continued appointment of a near relative of a Sheriff or Register of Deeds who was not related to the appointing officer at the time of initial appointment.

5) *Minimum age.* The minimum employment age is 18 years of age. Law enforcement officers must be at least 21 years of age.

6) *Residency.* Department Heads are required to reside within the County limits. An applicant for a Department Head position or an employee promoted to a Department Head position shall be required to move into the county limits within a reasonable period of time. The County Manager is authorized to waive this requirement for hard-to-fill positions or for employees promoted to Department Head positions where the ability to deliver needed service is not compromised.

(Ord. No. 2003-19, 10-6-2003; Ord. No. 2008-20, 11-17-2008)

#### **Sec. 28-150. – Appointment of department directors and heads.**

The County Manager shall make all appointments of department directors or heads under his direction, except those elected or appointed by the Board of Commissioners or other boards.

(Ord. No. 2003-19, 10-6-2003)

#### **Sec. 28-151. – Transfers and Reassignments.**

If a vacancy occurs and an employee wishes to be considered for transfer to the vacant position, the employee shall submit an application to the Human Resources Department during the recruitment period for the position. All normal conditions of recruitment shall apply. **However, if the employee seeking the transfer is subject to a reduction-in-force, at the discretion of the Department Head, an application may not be required.** Employees shall be required by the Department Head to serve a six-month probationary period when transferring to a new position. This probationary period may be extended for an additional three months at the discretion of the Department Head. If the employee is on probation from the initial hire date, and transferring from one department to another, the probationary period may be extended.

Department Heads have the authority to effect lateral reassignments within their department in lieu of recruiting for the vacant position.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-152. - Flexible promotions.**

The County wants to create every opportunity to make promotional opportunities available to current employees. However, the County recognizes there may be situations where the employee or the County may decide the promotion was not in the best interest of the employee and/or the organization.

Flexible promotions shall adhere to all established recruitment policies and shall allow the following:

- 1) Flexible promotions/lead worker assignments shall include a six-month evaluation time, with an additional three-month extension available at the discretion of the Department Head, to allow both the employee and the supervisor to determine if the assignment is in the best interest of the employee and/or the organization.
- 2) Departments must be able to accommodate these changes within their department when flexible promotions/lead worker assignments are determined not to work in the best interest of the employee and/or the organization.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-153. - Conditional offer of employment.**

In order to protect citizens of the County and their properties, the procedures in this subsection are established on applicants for all positions in County government.

- 1) The Human Resources Director shall conduct a criminal background investigation of any final candidate for a County government position, and it shall be a precondition of employment that an applicant for a position shall provide all necessary personal identification, including Social Security number and driver's license, if available, so that a thorough search may be made of local, state and/or national criminal records to determine if the applicant has a history of criminal convictions.
- 2) An evaluation of any crime for purposes of employment shall take into account the nature and the circumstances of the offense and the timeframe of the offense as they relate to the essential job functions for the position.
- 3) Employment with the County may require that additional tests or investigations be conducted, after making a conditional offer of employment. Such additional tests or investigations are determined by the position being filled, and may include, but are not limited to the following: drivers' license record checks, credit checks, educational degree verification and finger printing.
- 4) All final candidates for County employment shall be required to undergo and pass a drug screening. All final candidates for positions subject to **Department of Transportation requirements** shall undergo and pass a blood alcohol and drug screening.
- 5) Once an applicant is extended a conditional offer of employment, the applicant may be required to undergo an examination for fitness for duty. The appropriate test shall be based

on bona fide occupational qualifications. Unsatisfactory results from such testing shall result in the conditional offer of employment being withdrawn.

6) The County reserves the right to consider all results and withdraw any offer of conditional employment based on the results obtained.

(Ord. No. 2003-19, 10-6-2003)

#### **Sec. 28-154. - Employment categories.**

All County employees are hired in one of the following categories:

1) *Full-time employees.* An employee hired into a benefited budgeted position and who is regularly scheduled to work on a year-round basis at least 40 hours per week. Such employees are entitled to all rights and benefits as set out in this chapter.

2) *Part-time employee.* An employee hired into a benefited, budgeted position and who is regularly scheduled to work between 20 and less than 40 hours per week. Such employees are entitled to all rights and benefits as set out in this chapter.

3) *Hourly employee.* An employee hired to work on an hourly basis and who serves at the will of the Department Head. An hourly employee has only the benefits conferred by federal and state law, except where the County has exclusive jurisdiction.

The County Manager has the authority to increase or decrease scheduled work hours within a given position to meet the needs of the organization, **as long as the total budgeted full-time equivalent employees (FTEs) for the department does not increase.** Associated employee benefits contribution would be in accordance with the employee's scheduled hours.

(Ord. No. 2003-19, 10-6-2003; Ord. No. 2009-04, 4-6-2009)

#### **Sec. 28-155. - Resignation.**

An employee who terminates employment with the County should submit written notification to the immediate supervisor at least three weeks prior to the intended date of separation. If, in the judgment of the Department Head, less than three weeks' notice shall not adversely affect the department, then **the three week notice requirement may be waived and** less notice may be approved. Department Heads and division and program managers are required to provide four weeks' notice. The day the notice is submitted is not considered part of the notice period. Additionally, to meet the four weeks' notice requirement, the Department Head or County Manager may require the employee to be present and working on-site throughout the notice period. If unapproved absences occur during the notice period, the notice may be considered inadequate. If proper notice is not given, the employee waives payment for accrued annual leave.

An employee who is absent from work for three consecutive workdays without reporting to the supervisor the reasons for the absence shall be considered to have separated employment without notice and to have waived payment for accrued leave. Such failure shall be deemed a voluntary resignation from employment. Separation shall not occur until the Department Head has undertaken reasonable efforts to contact the employee.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-156. - Fair labor standards.**

- 1) *Fair Labor Standards Act.* It is the policy of the County to comply with all the requirements of the Fair Labor Standards Act (FLSA), 29 U.S.C. section 201 et seq. For the purposes of this section, the Fair Labor Standards Act applies to nonexempt employees.
- 2) *Compliance required.* As an integral part of job duties and responsibilities, every Department Head, supervisor or individual in a management position is required to ensure compliance with the applicable standards, regulations and guidelines of this law.
- 3) *Covered practices.* All employees are encouraged to discuss with their supervisor any employment practices which may be governed by the Fair Labor Standards Act. All prohibitions against retaliation and discrimination described in 29 U.S.C. 215 shall be strictly adhered to by all agents of the County, including Department Heads, supervisors and individuals in management. There shall be no retaliation by the County against any employee who asserts a right or claim under the Fair Labor Standards Act.
- 4) *Nonexempt employees.*

**FLSA overtime and FLSA straight time** hours remaining on a nonexempt employee's leave record shall be compensated at the employee's current rate of pay upon separation.

a) *Time records.* All employees shall maintain true, complete and legible time records. All time worked shall be recorded to the nearest one-quarter hour and shall be submitted to the supervisor in a timely fashion. All overtime work shall be preapproved by the supervisor except in emergency situations where prior approval cannot reasonably be obtained. In such event, approval shall be obtained as soon as practicable after the overtime work has begun.

b) *Management of FLSA overtime and FLSA straight time.* Supervisors have the right and obligation to manage the accumulation of FLSA overtime and straight time. Therefore, supervisors are required to monitor time and have the right to require the employee to take time off to reduce accrued hours.

**c) FLSA overtime and FLSA straight time.** FLSA overtime shall accumulate at a time-and-one-half hour rate for each overtime hour worked in excess of the standard seven-day 40-hour work week. FLSA straight time shall accumulate at an hour-for-hour rate for each hour worked over the regular schedule up to 40 hours. FLSA straight time also accrues when a non-exempt employee works over their regular schedule in a week in which there is a holiday.

d) *Maximum accrual.* Nonexempt employees may accrue up to a combined maximum of 240 hours of FLSA straight time and FLSA overtime during the calendar year. All hours earned in excess of 240 during the calendar year shall be paid out to the employee. The maximum allowable amount of combined FLSA straight time and FLSA overtime that can be carried forward from one calendar year to the next is 60 hours. All hours earned over 60 at the end of the calendar year shall be paid out to the employee. **The Human Resources Director may approve exceptions to the maximum number of FLSA straight time and FLSA overtime hours that may be carried over at the end of the calendar year.**

e) *Law enforcement personnel, including detention officers.* The work period for sworn law enforcement and detention officers is a 14-day work period with the FLSA Section 7k 86-hour overtime threshold. The work schedule for these employees is 80 hours per two-week period. All hours worked between 80 and 86 shall be paid at the employee's regular hourly

rate of pay. Hours worked over 86 shall be compensated with FLSA overtime accumulated at time-and-one-half for each overtime hour worked. Law enforcement personnel may accrue up to a combined maximum of 480 hours of FLSA straight time and FLSA overtime during the calendar year. All hours earned in excess of 480 hours during the calendar year shall be paid out to the employee. The maximum amount of combined FLSA straight time and FLSA overtime that can be carried forward from one calendar year to the next is 60 hours. All hours earned over 60 at the end of the calendar year shall be paid out to the employee.

f) *Emergency medical personnel.* Emergency medical personnel working a 12-hour shift shall not accumulate ~~FLSA overtime or FLSA straight time compensatory time~~ but shall be paid overtime at a rate of time-and-one-half for all hours worked in excess of 40 in a seven-day workweek.

g) An employee must exhaust all accrued FLSA straight time and FLSA overtime prior to using annual leave, sick leave, ~~floating holiday leave~~, or leave without pay, ~~unless leave has been denied by the Department Head, as referenced in Section 28-116.~~

~~h) The County Manager, upon recommendation of the Human Resources Director, may authorize another arrangement of overtime payment for non-exempt employees, if it is in the best interest of the County to do so.~~

5) *Hours worked.* Hours worked is the time for which an employee is entitled to compensation under the FLSA. Compensation is required for the time an employee is required to be on duty, on the employer's premises, or at a prescribed workplace, and for the time the employee is suffered or permitted to work, whether or not requested to do so.

a) Vacation, sick, educational leave hours, holiday leave, ~~floating holidays~~ and any other leave time shall not be considered hours worked for FLSA purposes.

b) When a nonexempt employee is required to work on a County-designated holiday, the hours worked shall be compensated at straight time, except in situations when the employee works over 40 hours. In this case, all hours worked over 40 shall be compensated at the time-and-one-half rate.

c) Training-related time, either to increase efficiency or as required by the employer, is counted as hours worked for purposes of calculating overtime. Time relating to training and educational seminars that are required by the state as a condition of practice of the profession are not considered work time and are not counted as hours worked for the purpose of calculating overtime.

d) Time spent by an employee during the regular workday preparing a grievance under the County grievance policy is considered hours worked for purposes of calculating overtime.

e) All travel time which is required by the County other than the normal commuting time between home and job is considered hours worked for the purposes of calculating overtime.

6) *Overtime payments.* Authorization for payment of overtime when the maximum compensatory time ceiling has not been reached shall be made in writing by the County Manager or the Manager's designee.

*Standing authorizations.* Employees or classes of employees may be granted standing authorization for overtime payments by written authorization of the County Manager or the

Manager's designee.

*On-call duty.* Each department shall establish its own method of compensation for on-call time. The policy must be in writing, approved by the Human Resources Department and the County Manager, within the department's budget, and communicated to employees.

*Nonexempt employees* shall not volunteer to work overtime without receiving compensation.

(Ord. No. 2003-19, 10-6-2003; Ord. No. 2005-04, 3-21-2005)

**Sec. 28-157. - Compensatory time for FLSA exempt employees.**

Employees exempt from FLSA provisions shall be compensated for compensatory time earned as specified below:

- 1) **Exempt** compensatory time shall be accrued on an hour-for-hour basis.
- 2) **Exempt** compensatory time shall be taken by an employee at the convenience of the department, in the sole discretion of the supervisor, at a time which shall least obstruct the operation of the department. Emergency requests for use of time under this section shall be made by the employee within 30 minutes of the beginning of the workday or shift.
- 3) **Exempt** compensatory time may not be transferred to any other type of leave.
- 4) An employee may substitute **exempt** compensatory time on a time-for-time basis for sick, annual leave or floating holidays.
- 5) **Exempt** compensatory time is lost when an employee is separated from County service. The employee's separation date may not be moved forward in order to pay for **exempt** compensatory time.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-158. - Workweek.**

The standard workweek shall be from 12:01 a.m. on Saturday through 12:00 midnight on Friday, unless an alternate schedule has been so designated by the Human Resources Director.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-159. - Work schedule.**

Employees are expected to work during all assigned periods exclusive of mealtimes.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-160. - Work schedule recordkeeping.**

All employees are required to report a true and accurate record of hours worked.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-161. - Overtime.**

Except in cases of emergency, employees are not to perform work at any time they are not



scheduled to work, unless they receive prior approval from their immediate supervisor. An emergency exists if a condition arises that could reasonably result in damage or harm to persons or property, 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 work.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-162. - Disciplinary action.**

1) *Generally.* Department Heads and supervisors are responsible for maintaining the proper conduct and discipline of employees under their supervision. When an employee's performance or conduct is determined by a supervisor or Department Head to be unacceptable, disciplinary action may be taken in a number of ways, depending on the nature of the offense. All written warnings and formal notice to employees of performance or conduct that is unacceptable must be included in the employee's personnel file as maintained by the Human Resources Department.

2) *Just cause.* Just cause for disciplinary action shall be in accordance with the following:

a) Any employee, regardless of occupation, position or profession, may be warned, demoted, suspended and/or dismissed by the appropriate authority, in accordance with this section. Such actions may be taken against employees with permanent status, as defined by section 28-1, only for just cause. The degree and type of action taken shall be based upon the sound and considered judgment of appropriate authority. When just cause exists, the only disciplinary actions provided for under this section are as follows:

- i) Written warning;
- ii) Disciplinary suspension without pay;
- iii) Demotion; and
- iv) Dismissal.

b) **There are two bases for the just cause discipline or dismissal of employees: unsatisfactory job performance, including grossly inefficient job performance; and unacceptable personal conduct.** ~~There are two bases for the discipline or dismissal of employees under the statutory standard of "just cause" as set out in G.S. 126-35. The two bases are discipline imposed on the basis of unsatisfactory job performance, including grossly inefficient job performance; and discipline imposed on the basis of unacceptable personal conduct.~~

i) Unsatisfactory job performance is work-related performance that fails to satisfactorily meet job requirements as specified in the relevant job description, work plan or as directed by the management of the work unit or department.

ii) Grossly inefficient job performance occurs when the employee fails to satisfactorily perform job requirements as specified in the job description, work plan, or as directed by the management of the work unit or department and that failure results in the following:

- (1) The creation of the potential for death or injury or damage to a client, an employee, members of the public or to a person over whom the employee has responsibility; or



(2) The loss of or damage to department property or funds that could result in a serious impact on the department and/or work unit.

iii) Unacceptable personal conduct includes:

(1) Conduct for which no reasonable person should expect to receive prior warning;

(2) Job-related conduct which constitutes a violation of state or federal law;

(3) Conviction of a felony or an offense involving moral turpitude that is detrimental to or impacts the employee's service to the department or the County;

(4) The willful violation of known or written work rules;

(5) Conduct unbecoming an employee that is detrimental to the department's service;

(6) The abuse of client, patient, student or a person 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 department; or

(7) Falsification of an employment application or other employment documentation;

(8) 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

(9) Absence from work after all authorized leave credits and benefits have been exhausted.

iv) Either unsatisfactory or grossly inefficient job performance or unacceptable personal conduct constitutes just cause for discipline or dismissal. The categories are not mutually exclusive, as certain actions by employees may fall into both categories, depending upon the facts of each case. No disciplinary action shall be invalid solely because the disciplinary action is labeled incorrectly.

v) The imposition of any disciplinary action shall comply with the procedural requirements contained in subsection 9) of this section.

3) *Dismissal for unsatisfactory performance of duties.* Procedures for dismissal for unsatisfactory performance of duties are as follows:

a) Successive disciplinary actions need not all concern the same type of unsatisfactory performance. Disciplinary actions related to personal conduct may be included in the successive system for performance-related dismissal, provided that the employee receives at least the minimum number of disciplinary actions, regardless of the basis of the disciplinary actions, required for dismissal on the basis of inadequate performance.

b) In order to be dismissed for a current incident of unsatisfactory job performance, a permanent employee must first receive at least two prior disciplinary actions which notify the employee that failure to make the required performance improvements may result in further

disciplinary action, up to and including dismissal.

c) Prior to the decision to dismiss an employee, the Department Head or designee must conduct a pre-disciplinary conference with the employee in accordance with the procedural requirements of subsection 9) of this section.

d) An employee who is dismissed must receive written notice of the specific reasons for the dismissal as well as notice of any applicable appeal rights.

e) Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

4) *Dismissal for grossly inefficient job performance.* Procedures for dismissal for grossly inefficient job performance are as follows:

a) Dismissal on the basis of grossly inefficient job performance is administered in the same manner as for unacceptable personal conduct. Permanent employees may be dismissed on the basis of a current incident of grossly inefficient job performance without any prior disciplinary action.

b) Prior to dismissal of an employee with permanent status on the basis of grossly inefficient job performance, there shall be a pre-disciplinary conference between the employee and the Department Head or designee. This conference shall be held in accordance with the provisions of subsection 9) of this section pertaining to procedural requirements.

c) Dismissals for grossly inefficient job performance require written notification to the employee. Such notification must include specific reasons for the dismissal and notice of the employee's right of appeal.

d) Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

5) *Dismissal for personal conduct.* Procedures for dismissal for personal conduct are as follows:

a) Permanent employees may be dismissed without prior discipline for a current incident of unacceptable personal conduct.

b) Prior to dismissal of an employee with permanent status on the basis of unacceptable personal conduct, there shall be a pre-disciplinary conference between the employee and the Department Head or designee. This conference shall be held in accordance with subsection 9) of this section.

c) Dismissals for unacceptable personal conduct require written notification to the employee. Such notification must include specific reasons for the dismissal and notice of the employee's right of appeal.

d) Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

6) *Written warning.* Written warnings shall be given in accordance with the following:

a) The supervisor shall monitor and promote the satisfactory performance of work assignments and acceptable standards of personal conduct. All types of performance-

related job inadequacies may constitute unsatisfactory job performance under this section. Unacceptable personal conduct may be work-related or non-work-related conduct and may be intentional or unintentional. When the supervisor determines that disciplinary action is appropriate for unsatisfactory job performance, a written warning is the first type of disciplinary action that an employee receives. The supervisor may elect to issue a written warning for grossly inefficient job performance or unacceptable personal conduct. The written warning must:

- i) Inform the employee that this is a written warning, and not some other non-disciplinary process such as counseling.
- ii) Inform the employee of the specific issues that are the basis for the warning;
- iii) Tell the employee what specific improvements, if applicable, must be made to address these specific issues;
- iv) Inform the employee the time frame allowed for making the required improvements/corrections. Absent a specified time frame, 60 days is the time frame allowed for correcting unsatisfactory job performance. Immediate correction is required for grossly inefficient job performance or unacceptable personal conduct.
- v) Tell the employee the consequences of failing to timely make the required improvements/corrections.

b) A written warning must be issued in accordance with the procedural requirements contained in subsection 9) of this section.

7) *Disciplinary suspension without pay.* An employee may be suspended without pay for disciplinary purposes for unsatisfactory job performance after the receipt of at least one prior disciplinary action or for causes relating to any instance of unacceptable personal conduct or grossly inefficient job performance. The length of a disciplinary suspension without pay for an employee must be for at least one full workweek, but not more than two full workweeks. Prior to placing any employee on disciplinary suspension without pay, the Department Head or designee shall conduct a pre-disciplinary conference with the employee in accordance with the procedural requirements contained in subsection 9) of this section. An employee who has been suspended without pay must be furnished a statement in writing setting forth the specific acts or omissions that are the reasons for the suspension and the employee's appeal rights.

8) *Demotion, involuntary.* The Department Head has the discretion to retain an employee in a lesser capacity when the employee's performance or conduct is sufficient to satisfy grounds for dismissal, but the employee shows promise of acceptable performance or conduct in a lesser position.

a) Any employee may be demoted as a disciplinary measure. Demotion may be made on the basis of either unsatisfactory or grossly inefficient job performance or unacceptable personal conduct as follows:

- i) *Unsatisfactory job performance.* An employee may be demoted for unsatisfactory job performance after the employee has received at least one prior disciplinary action.
- ii) *Grossly inefficient job performance.* An employee may be demoted for grossly inefficient job performance without any prior disciplinary action.

iii) *Unacceptable personal conduct.* An employee may be demoted for unacceptable personal conduct without any prior disciplinary action.

b) An employee who is demoted must receive written notice of the specific reasons for the demotion, as well as notice of any applicable appeal rights.

c) An employee shall receive a decrease in salary due to a demotion to a lower salary grade as determined by the Department Head, subject to review and approval by the Human Resources Director. In no event shall an employee's salary rate be reduced to less than the minimum salary rate for the applicable pay grade.

d) Prior to the decision to demote an employee for disciplinary reasons, the Department Head or designee must conduct a pre-disciplinary conference with the employee in accordance with the procedural requirements contained in subsection 9) of this section.

9) *Procedural requirements.* Department Heads and/or supervisors shall consult with the Human Resources Director regarding matters where suspension without pay, demotion or dismissal, are considered. The following procedural requirements must be followed when taking disciplinary action under this section:

a) *Written warning.* To issue a written warning to an employee, a supervisor must issue the employee a written notice clearly stating it is a written warning detailing the specific issues, the expectations going forward, establishing time frames if applicable, and other matters referenced in subsection 6) of this section including ~~any applicable appeal rights right-of appeal and a copy of the grievance procedure.~~

b) Prior to suspending an employee without pay, involuntarily demoting an employee or dismissing an employee, the following steps shall be followed:

i) The Department Head has the discretion to appoint a designee to act in his or her stead during this procedural process. The person conducting the pre-disciplinary conference must have the authority to decide what, if any, disciplinary action shall be imposed on the employee.

ii) A departmental supervisor shall schedule a pre-disciplinary conference with the employee. Advance written notice of the pre-disciplinary conference must be given to the employee and shall include the time, location and the issues for which discipline has been recommended. The amount of advance notice shall be as much as is practical under the circumstances.

iii) Attendance at the conference shall include the employee, the Department Head or designee, and a representative from Human Resources as an unbiased consultant. In addition, a second representative from the department may be present at the Department Head's discretion. The purpose of the pre-disciplinary conference is to review the recommendation for discipline with the affected employee and to listen to and consider any information presented by the employee in order to ensure that a decision is sound and not based on misinformation or mistake. Security personnel may be present when, in the discretion of the person conducting the conference, a need for security exists. No attorneys representing either side may attend the conference.

iv) During the conference, the Department shall review written notice of the recommendation for disciplinary action, including specific reasons for the proposed discipline and a summary of the information supporting that recommendation. The

employee shall have an opportunity to respond to the proposed action and to offer information or arguments in support of the employee's position. Every effort shall be made to ensure that the employee has a full opportunity during the conference to set forth any available information in opposition to the recommendation for discipline prior to the end of the conference. This opportunity does not include the option to present witnesses.

v) Following the conference, the Department Head shall review and consider the response of the employee and reach a decision on the proposed recommendation.

vi) To minimize the risk of disciplinary action upon erroneous information, and to allow time following the conference for the Department Head to review all necessary information, the decision to discipline should not be communicated to the employee prior to the beginning of the next business day following the conclusion of the pre-disciplinary conference or after the end of the second business day following the completion of the pre-disciplinary conference. This time frame may be extended with the written consent of the employee.

vii) If the Department Head's decision is to demote or suspend the employee without pay, written notification of the decision containing the specific reasons for the action 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. ~~An employee with permanent status who has been demoted or suspended without pay shall have the right to file an appeal according to the County grievance procedure contained in section 28-170.~~

viii) If the Department Head'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. A department shall furnish to an employee, as an attachment to the written documentation, a copy of **applicable appeal rights**. ~~An employee with permanent status who has been dismissed shall have the right to file an appeal according to the County grievance procedure contained in section 28-170.~~

ix) The effective date of a dismissal shall be determined by the Department Head. The effective date of the dismissal shall not be earlier than the date of the dismissal letter nor more than 14 calendar days after the notice of dismissal.

10) *Time limits for active warnings/disciplinary actions for progressive discipline.* Any disciplinary action is deemed inactive for the purpose of this section if:

a) The supervisor notes in the employee's personnel file that the reason for the disciplinary action has been resolved or corrected; or

b) Eighteen months have passed since the warning or disciplinary action, the employee does not have another active warning or disciplinary action which occurred within the last 18 months and the department has not, prior to the expiration of the 18-month period, issued to the employee written notice, including reasons, of the extension of the period.

11) *Investigative suspension with pay.* Investigation status is used to temporarily remove an employee from work status. Placement on investigative suspension with pay does not constitute a disciplinary action as defined in this section and is not appealable.

a) Employees subject to the **State Human Resources Act**. The department must notify an employee in writing of the reasons for investigative suspension no later than the second scheduled workday after the beginning of the suspension. An investigative suspension with pay may last no longer than 30 calendar days. If no action has been taken by a department by the end of the 30-day period and no further extension has been imposed, the department must either take appropriate disciplinary action on the basis of the findings upon investigation or return the employee to active work status. Under no circumstances is it permissible to use investigative suspension 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. It is permissible to place an employee on investigative suspension with pay only to:

- i) Investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action;
- ii) Provide time within which to schedule and conduct a pre-disciplinary conference; or
- iii) Avoid disruption of the work place or to protect the safety of persons or property.

b) Employees not subject to **State Human Resources Act**. Investigative suspension may be necessary in cases relating to performance of duties or personal conduct. Investigative suspension is intended for use in providing time to investigate, establish facts and to reach a decision concerning an employee's actions in those cases where it is determined the employee should not continue work pending a decision.

~~During the investigation, hearing or trial of an employee on any criminal charge, or during the course of certain civil actions or other situations involving an employee or when suspension would be in the best interest of the employee or the County, the Department Head may, with the County Manager's approval, suspend the employee with pay for an indefinite period.~~

The department must notify an employee in writing of the reasons for investigative suspension no later than the second scheduled workday after the beginning of the suspension. An investigative suspension with pay may last no longer than 30 calendar days without written notice of extension by the Department Head. When an extension beyond the 30-day period is required, the Department Head must advise the employee in writing of the extension, the length of the extension, and the specific reasons for the extension. If no action has been taken by a department by the end of the 30-day period and no further extension has been imposed, the department must either take appropriate disciplinary action on the basis of the findings upon investigation or return the employee to active work status. Under no circumstances is it permissible to use placement on investigation status for the purpose of delaying an administrative decision. It is permissible to place an employee on investigation status with pay only to:

- i) Investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action;
- ii) Provide time within which to schedule and conduct a pre-disciplinary conference; or
- iii) Avoid disruption of the workplace or to protect the safety of persons or property.

Failure of the employee to report back to work when requested or at the expiration date of the **investigative** suspension shall result in termination of employment effective the date the

employee fails to return.

12) *Credentials.* By statute and rule, some duties assigned to positions may be performed only by persons who are duly licensed, registered or certified as required by relevant authority. All such requirements and restrictions are specified in the statement of essential qualifications or recruitment standards for classifications established by the Human Resources Department or in the position description for the position.

a) Employees in such classifications are responsible for obtaining and maintaining current, valid credentials as required by law or applicable rule. Failure to obtain or maintain the legally required credentials constitutes a basis for immediate dismissal without prior warning, consistent with dismissal for unacceptable personal conduct.

b) Falsification of employment credentials or other documentation in connection with securing employment constitutes just cause for disciplinary action. When credential or work history falsification is discovered after employment, disciplinary action shall be administered as follows:

i) If an employee was determined to be qualified and was selected for a position based upon falsified work experience, education, registration, licensure, or certification information that was a requirement for the position, the employee must be dismissed in accordance with subsection 9) of this section.

ii) In all other cases of post-hiring discovery of false or misleading information, disciplinary action shall be taken, but the severity of the disciplinary action shall be at the discretion of the department.

iii) When credential or work history falsification is discovered before employment with a department, the applicant shall be disqualified from consideration for the position in question.

(Ord. No. 2003-19, 10-6-2003)

#### **Sec. 28-163. - Performance evaluation.**

The supervisor to whom the employee reports for work assignments, schedule or other matters shall annually review the performance of each employee. This annual review should be conducted during the anniversary month of employment. The requirement of annual performance evaluation may be waived by the supervisor if the employee's anniversary date falls within three months of the date of probationary evaluation. Department Heads are required to approve any such waiver and provide written verification to the Human Resources Department.

The written evaluation of the employee must be received in the Human Resources Department prior to the payroll deadline date of the pay period in which an annual increment would be due. **The Human Resources department shall maintain copies of each employee's performance evaluations.** Any salary adjustment based on the performance evaluation (also known as annual increment), shall be effective on the first day of the month following the anniversary month.

**Performance of employees who have been transferred, promoted or demoted to a different position during the evaluation year shall be evaluated in collaboration with the previous supervisor to ensure the employee's entire work history is reflected in the annual evaluation.** If the position has had job description changes which change duties but not classification, the supervisor shall direct the employee to update his/her job description.



(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-164. - Delay of performance evaluation, including probation.**

Any employee's absence from work due to approved sick leave, leave without pay, workers' compensation, or other authorized leave may result in an extension of the employee's performance evaluation review, so as to allow adequate time for evaluation of performance.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-165. - Probationary period.**

1) *New hires with the County.* A probationary period of nine months from the date of hire shall be served by all employees in permanent positions in the service of the County except for employees hired as trainees or employees of the Sheriff and Register of Deeds. If a new hire is not meeting expectations, the supervisor is required to hold a performance conference to inform the employee of any unsatisfactory performance. The supervisor shall be responsible for evaluating the performance of the employee during the probationary period and shall complete a performance evaluation prior to the expiration date of the probationary period. The probationary period may be extended for the amount of time the employee is on approved leave with or without pay. The requirement of annual performance evaluation may be waived by the supervisor, **with approval of the Department Head**, if the employee's anniversary date falls within three months of the date of probationary evaluation.

2) *Transfers.* When a permanent employee is transferred, promoted, or demoted from one department of the County to another, a probationary period of six months, which may be extended an additional three months at the discretion of the Department Head, shall be imposed. In cases where a new probationary period is imposed, this must be communicated in the hire letter.

3) *Trainees.* Trainees are considered to be on probation until they satisfy the requirements established in their appointment letter.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-166. - Permanent status.**

Permanent status shall be granted to all fully qualified and work against employees in officially budgeted permanent positions after satisfactory completion of the nine-month probationary period except for employees of the Sheriff and Register of Deeds who serve at the pleasure of the respective Elected Official. Trainee employees shall be granted permanent status at the end of nine months' probation or the trainee period, whichever is longer. Should an employee with permanent status be promoted, transferred or demoted to a position for which he would be a trainee, permanent status is waived until such time as the employee meets the required minimum education and skills required for the new position satisfying the trainee requirement.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-167. - Reduction in force.**

1) If a reduction in force becomes necessary for the County, either for lack of funds, revenues or lack of available work, the following procedures shall be followed:

a) Consideration of organizational needs of the County and the affected department.

- b) A determination shall be made about which position the department can best do without.
- c) If there is more than one position in a department that could be abolished, the value of an individual's performance to the department shall be considered.
- d) All other considerations set forth herein being equal, length of service shall be considered, but shall not be the controlling consideration.
- e) No permanent employee shall be separated while there are hourly, temporary or probationary employees serving in the same class within the same department, unless the permanent employee is not willing to transfer or accept reassignment, or unless the permanent employee does not have the knowledge or skills required to perform the work of the alternate position within the same class within a reasonable period of orientation or training such that would be given to a new employee.
- f) Employees shall be given at least three weeks' written notice of a reduction in force.
- g) A permanent employee who is separated due to a reduction in force shall have the right to appeal in accordance with the grievance procedure, to ensure that reduction-in-force procedures were followed. **Permanent employees under the Department of Social Services and Public Health shall follow the grievance procedures set forth by the Office of State Human Resources.**

2) Reduction in force criteria must be approved by the County Manager before implementing the reduction in force.

(Ord. No. 2003-19, 10-6-2003; Ord. No. 2009-04, 4-6-2009)

#### **Sec. 28-168. - Demotion.**

The County recognizes two types of demotion—voluntary and involuntary.

A demotion is a change in job responsibility to a position in a lower salary grade. A Department Head may demote an employee under the following conditions:

- 1) *Voluntary*. When the employee and the employer agree that an employee is better suited to a lesser position, an assignment to such a position may be made without an application process; and
- 2) *Involuntary*. When an employee's performance or conduct is sufficient to satisfy grounds for dismissal, a Department Head may consider demotion in lieu of dismissal.

(Ord. No. 2003-19, 10-6-2003; Ord. No. 2009-04, 4-6-2009)

#### **Sec. 28-169. - Secondary or outside employment.**

Employment with the County takes priority over other employment interests of employees. All outside employment for salaries, wages or commissions, and all self-employment, must be reported to and approved by the employee's Department Head before such work is to begin. The Department Head 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 County shall be deemed improper conduct and subject the employee to disciplinary action.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-170. - Grievance procedure**

The grievance procedure exists to provide prompt and orderly resolution of a dispute or employee concern regarding a disciplinary action, reduction in force, and where applicable, a performance evaluation. Grievances which are not received within the time allowed as prescribed in this section or which are not filed with the designated authorities shall be dismissed. This grievance procedure does not apply to the offices of the Sheriff or Register of Deeds.

- 1) This grievance procedure does not apply to the following issues:
  - a) Complaints of workplace harassment covered by the Workplace Harassment Policy. Procedures for filing a workplace harassment complaint are outlined in the County's Workplace Harassment Policy.
  - b) Personnel Actions which do not result in any harm to the employee, such as an assignment to another position or location where the employee does not suffer any loss of pay.
- 2) Permanent employees in the departments of Social Services and Public Health have grievance rights as follows:
  - a) Suspensions without pay, involuntary demotions, and dismissals may be grieved to the Office of Administrative Hearings. An appeal of a final agency decision must be filed in accordance with NCGS 150B-23(a) within 30 calendar days of receipt of the final agency decision.
  - b) Grievances alleging workplace harassment may proceed through the County's Workplace Harassment Policy or may be filed directly with the State for a hearing by the Office of Administrative Hearings. Such appeals must be filed with the Office of Administrative Hearings within 30 calendar days of the alleged discriminatory act.
  - c) Employees should consult with the Office of State Human Resources regarding the State appeals procedures.
- 3) All remaining permanent employees shall have grievance rights as follows:
  - a) Performance evaluations and written warnings may be grieved to the Department Head.
  - b) Suspensions without pay, involuntary demotions, and dismissals may be grieved up to the County Manager.
  - c) Reductions in force may be grieved to the County Manager.
- 4) The following grievance procedure is applicable to all permanent employees working in departments other than Social Services and Public Health. This procedure is to be used internally only and does not confer upon any party any remedy other than those expressly contained herein. All parties involved in a proceeding within the purview of this policy shall be protected from reprisals for such involvement. Parties engaging in any form of retaliation will be subject to disciplinary action, up to and including dismissal. When an employee has a grievance, the following successive steps are to be taken. The number of days indicated at each level should be considered as the maximum number of days unless provided otherwise, and every effort should be made by those involved to expedite the process. However, when mutually agreed upon in writing, time limits given below may be extended. If the grieving employee does not follow the timelines for successive steps, it may be considered as a withdrawal of the grievance, and the grievance may be dismissed accordingly.
  - a) An employee must file a grievance, in writing, with the Human Resources Director and the immediate supervisor within fifteen calendar days of the date of the action being grieved.

The written notice of filing shall include the date of the disputed action, the reasons for the grievance, and the remedy being sought. A conference will be scheduled to consider the employee's grievance.

b) Employees shall be allowed one hour from regular duties to work on their grievance or prepare for the grievance conference.

c) An employee shall have the right to legal counsel, and the expense of legal counsel shall be borne by the employee. However, no attorneys representing either side may attend the grievance conference.

d) The County Manager or Department Head has the discretion to appoint a designee to act in his stead for this process. The official conducting the hearing shall within seven calendar days of receiving the grievance contact the employee to set the date, place and time for oral presentation of the grievance.

e) The County official shall make every possible effort to achieve an equitable solution to the problem at this meeting but may take the necessary time to investigate the problem.

f) In no event shall the County official delay rendering a written decision more than seven calendar days from the grievance conference without the written consent of the employee. The written decision shall also contain notice of appeal rights, if applicable, and shall designate the County or other official who should hear a continuation of the grievance.

g) The County Manager's decision is final.

*Exceptions.* An initial probationary employee as set forth in section 28-165 may be released at any time during the probationary period for causes relating to the performance of duty or personal conduct without right of grievance or appeal process.

~~The grievance procedure exists to provide prompt and orderly resolution of a dispute or employee concern regarding a disciplinary action, performance evaluation, or reduction in force. Grievances which are not received within the time allowed as prescribed in this section or which are not filed with the designated authorities as prescribed in this section shall be dismissed.~~

~~This grievance procedure applies to all departments and employees of the County, except in those instances when North Carolina statutes apply to certain activities of the Sheriff or Register of Deeds. Employees in Social Services and Public Health have additional rights under the State Personnel Act.~~

~~1) All permanent employees shall have the right to grieve the following:~~

~~a) Performance evaluations may be grieved to the Department Head.~~

~~b) Written warnings, suspensions without pay, involuntary demotions, and dismissals may be grieved up to the County Manager.~~

~~\_\_\_\_\_ c) Reductions in force may be grieved to the County Manager.~~

~~2) The grievance procedure does not apply to the following issues:~~

~~a) Complaints of workplace harassment covered by the Workplace Harassment Policy. Procedures for filing a workplace harassment complaint are outlined in the County's Workplace Harassment Policy.~~

~~b) Personnel Actions which do not result in any harm to the employee, such as an assignment to another position or location where the employee does not suffer any loss of pay.~~

~~3) The grievance procedure is to be used internally only and does not confer upon any party any remedy other than those expressly contained herein. All parties involved in a proceeding within the purview of this policy shall be protected from reprisals for such involvement. Parties engaging in any form of retaliation will be subject to disciplinary action, up to and including dismissal. When an employee has a grievance, the following successive steps are to be taken. The number of days indicated at each level should be considered as the maximum number of days unless provided otherwise, and every effort should be made by those involved to expedite the process. However, when mutually agreed upon in writing, time limits given below may be extended. If the grieving employee does not follow the timelines for successive steps, it may be considered as a withdrawal of the grievance and the grievance may be dismissed accordingly.~~

~~a) An employee must file a grievance, in writing, with the Human Resources Director and the immediate supervisor within fifteen calendar days of the date of the action being grieved. The written notice of filing shall include the date of the disputed action, the reasons for the grievance, and the remedy being sought. A conference will be scheduled to consider the employee's grievance.~~

~~b) Employees shall be allowed one hour from regular duties to work on their grievance or prepare for the grievance conference.~~

~~c) An employee shall have the right to legal counsel, and the expense of legal counsel shall be borne by the employee. However, no attorneys representing either side may attend the grievance conference.~~

~~d) The County Manager or Department Head has the discretion to appoint a designee to act in his stead for this process. The official conducting the hearing shall within seven calendar days of receiving the grievance contact the employee to set the date, place and time for oral presentation of the grievance.~~

~~e) The County official shall make every possible effort to achieve an equitable solution to the problem at this meeting but may take the necessary time to investigate the problem.~~

~~f) In no event shall the County official delay rendering a written decision more than seven calendar days from the grievance conference without the written consent of the employee. The written decision shall also contain notice of appeal rights, if applicable, and shall designate the County or other official who should hear a continuation of the grievance.~~

~~g) If the conclusions are satisfactory, the procedure is ended and the documents are filed in the Human Resources Department. If the conclusions are unsatisfactory, the employee may proceed up the chain of command, dependent upon where the grievance began and whether the employee is entitled to appeal. The employee shall have fifteen calendar days from the receipt of the decision to file a written notice with the Human Resources Director for continuation of the appeal. The employee shall attach all additional information and supporting documents to the written notice. The notice of appeal shall be received by the Human Resources Director by 5:00 p.m. on the fifteenth day.~~

~~h) The decision of the County Manager is administratively final, except that permanent employees of Social Services and Public Health who are subject to the State Human Resources Act shall have 30 calendar days to appeal a decision of the County Manager to~~

~~the Office of Administrative Hearings in accordance with NCGS150B-23(a). Employees should consult with the Office of State Human Resources regarding the State appeals procedures.~~

~~i) Employees of Social Services or Public Health filing a grievance which alleges discrimination may proceed through the County's internal grievance procedure or proceed directly to the State for a hearing by the Office of Administrative Hearings. Such appeals must be filed with the Office of Administrative Hearings within 30 calendar days of the alleged discriminatory act. Employees should consult with the Office of State Human Resources regarding the State appeals procedures.~~

~~*Exceptions.* An initial probationary employee as set forth in section 28-119 may be released at any time during the probationary period for causes relating to the performance of duty or personal conduct without right of grievance or appeal process.~~

~~(Ord. No. 2003-19, 10-6-2003, 7-21-2014)~~

**Secs. 28-171—28-195. - Reserved.**

## **ARTICLE VI. - EMPLOYEE BENEFITS AND SERVICES <sup>[47]</sup>**

<sup>(47)</sup> **Editor's note—** Ord. No. 2003-19, adopted Oct. 6, 2003, amended art. VI in its entirety and enacted the provisions set out herein. The former art. VI, titled personnel records and reports, derived from Code 1995, §§ 270.159—270.161 and 270.163—170.165.

[Sec. 28-196. - Eligibility.](#)

[Sec. 28-197. - Annual leave.](#)

[Sec. 28-198. - Purchase of annual leave.](#)

[Sec. 28-199. - Sick leave.](#)

[Sec. 28-200. - Reinstatement and transfer of sick leave.](#)

[Sec. 28-201. - Family and Medical Leave Act.](#)

[Sec. 28-202. - Civil leave.](#)

[Sec. 28-203. - Military leave.](#)

[Sec. 28-204. - Leave during inclement weather; emergency closing](#)

[Sec. 28-205. - Holidays.](#)

[Sec. 28-206. - Retirement.](#)

[Sec. 28-207. - Law enforcement officers' additional benefits.](#)

[Sec. 28-208. - Longevity award.](#)

[Sec. 28-209. - Employee education.](#)

[Sec. 28-210. - Benefits for difficult-to-recruit positions.](#)

[Sec. 28-211. - Other benefit programs.](#)

[Sec. 28-212. - County defense of employees.](#)

[Sec. 28-213. - Safe-workplace policy.](#)

[Sec. 28-214. - Workplace violence.](#)

[Sec. 28-215. - Safety, including Occupational Safety and Health Act.](#)

[Sec. 28-216. - Accidents involving County equipment.](#)

[Sec. 28-217. - Reporting accidents and injuries.](#)

[Secs. 28-218—28-243. - Reserved.](#)

**Sec. 28-196. - Eligibility.**

The benefits provided by this article shall be applicable to full-time and part-time employees who are employed in officially budgeted positions. Excluded from this article are hourly positions.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-197. - Annual leave.**

Annual leave is a benefit. Department Heads have the right to deny time off when the needs of the County so require. *Leave year.* For the purpose of earning and accruing annual leave, the 12-calendar-month period between January 1 and December 31 is established as the leave year for the County. *Annual leave earned.* Each full-time permanent, probationary, or trainee employee occupying an officially budgeted position shall earn annual leave on a monthly basis in accordance with the following schedule of total service:

Years of Service	Hours per Month	Annual Total Hours
Less than 2 years	6.666	80
2 but less than 5	8	96
5 but less than 10	10	120
10 but less than 15	12	144
15 or more	14	168

Annual leave is provided to part-time employees on a pro rata basis when the workweek is less than 40 hours.

- 1) Procedures. Annual leave procedures are as follows:
  - a) Annual leave earned by an employee shall be taken only upon prior approval of the employee's supervisor. However, an annual leave request of an emergency nature must be made by the employee and approved by the supervisor within 30 minutes of the beginning of the workday or shift, **unless a different timeframe is established by the department.**
  - b) Annual leave may be taken in units of quarter hours.
  - c) Excess annual leave.
    - i) Annual leave accruals in excess of 240 hours for all employees shall transfer automatically to sick leave on December 31 of each year.
    - ii) When an employee retires from the County, any hours over 240 shall transfer automatically to sick leave on the last day of the month prior to retirement.
  - d) When annual leave has been exhausted, the granting of leave without pay is at the discretion of the Department Head. See section 28-116 pertaining to leave without pay.
  - e) Annual leave shall not be advanced to any employee.
  - f) A maximum of 240 hours accrued annual leave for all employees shall be paid upon separation from County service when the employee gives appropriate notice of separation as specified in section 28-155. Leave shall be compensated by separate payment in the



pay period following the employee's final regular pay period.

g) An employee who is involuntarily separated without fault shall be paid for all accrued annual leave not to exceed a maximum of 240 hours. Leave shall be compensated by separate payment in the pay period following the employee's final regular pay period.

h) An employee who is terminated for cause shall not be compensated for accrued annual leave.

i) An employee who does not submit the required notice of separation, or does not receive approval from the Department Head for less than the required notice, shall not be compensated for accrued annual leave.

j) An employee may take annual leave with approval of the supervisor up to and including the date of separation.

k) An employee retains active employment status during a period of annual leave up to and including the date of separation.

l) Upon the death of a permanent employee, compensation for accumulated leave shall be paid to the employee's estate or designated beneficiary **not to exceed a maximum of 240 hours.**

m) Holidays or regularly scheduled days off which occur during a period of annual leave shall not be charged as annual leave.

n) It shall be the responsibility of the Human Resources Director to maintain a record of annual leave on each employee, which shall be the responsibility of each supervisor to provide in a timely fashion.

o) An employee who has resigned or been subject to a reduction in force may request annual leave be transferred to a new employer, if that employer allows the transfer of accrued annual leave. This request shall be made in writing prior to the last date of employment with the County.

**p) Employees shall be given prior service credit for the purposes of vacation accruals under the following conditions:**

**i) The former employer was a member of one of the divisions of the state retirement system; and**

**ii) The employee does not have more than a 1-year period of unemployment between the former employer and the County.**

(Ord. No. 2003-19, 10-6-2003; Ord. No. 2005-04, 3-21-2005; Ord. No. 2008-13, 10-6-2008)

**Editor's note—** Employees earning annual leave at a rate of 16 hours per month as of July 1, 1989, were given the option to make a one-time-only election to reduce annual leave accrual to 14 hours per month and to increase their sick leave accrual to ten hours per month. A salaried employee working less than 40 hours per week (four-fifths, one-half, or other) and occupying an officially budgeted position with benefits shall earn annual leave on a pro rata basis based upon the category of the employee (four-fifths, one-half, or other). Example: A half-time employee with two years of service would earn fifty percent of the leave which would be earned by a full-time employee with two years of service.

**Sec. 28-198. - Purchase of annual leave.**

An employee hired into an officially budgeted position with benefits may be allowed to purchase annual leave which was accrued, not taken, and paid by the immediately previous employer. The employee must request to purchase the leave within 30 days of commencing employment with the County. The amount to be purchased may not exceed 80 hours, and it must be purchased at the employee's rate of pay with the County.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-199. - Sick leave.**

1) Sick leave for employees is a benefit provided by the County. Abuse of sick leave policies and practices shall be considered a disciplinary offense. Sick leave earned by an employee shall be taken only upon prior approval of the employee's supervisor. However, sick leave of an emergency nature must be requested by the employee and approved within 30 minutes of the beginning of the workday or shift, **unless a different timeframe is established by the department.**

The County provides eight hours of sick leave each month to each full-time permanent, probationary, or trainee employee occupying an officially budgeted position. Sick leave is provided on a pro rata basis to part-time employees when the workweek is less than 40 hours.

**Editor's note—** Employees earning annual leave at a rate of sixteen (16) hours per month as of July 1, 1989, were given the option to make a one-time-only election to reduce annual leave accrual to 14 hours per month and to increase their sick leave accrual to ten hours per month.

2) As used in this subsection, immediate family for all purposes, shall be wife, husband, mother, father, brother, sister, son, daughter, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandmother, grandfather, grandson, granddaughter, stepmother, stepfather, stepbrother, stepsister, or as otherwise approved by the Department Head. Department Heads may also approve leave for persons with whom the employee is living in a close, personal relationship. An employee may be granted sick leave if the absence is due to:

a) Sickness or injury which prevents the performance of usual duties.

b) Disability as defined by the County short-term disability plan.

c) **The birth of a child, adoption or foster placement, which coincides with the period of Family and Medical Leave.** ~~Paternity to coincide with wife's period of disability when a physician certifies the employee is needed to care for his wife; otherwise annual leave or other paid leave may be used for the birth of a child, adoption or foster placement.~~

d) Exposure to a contagious disease when continuing work, in the judgment of a physician, might jeopardize the health of others.

e) Medical and dental appointments of employee or immediate family.

f) Quarantine due to a contagious disease in the employee's immediate family.

g) Illness in the employee's immediate family which requires the care from the employee.

h) Death of a member of the employee's immediate family. An absence in excess of three

days must be approved by the Department Head.

i) A supervisor may require a physician's statement when an employee requires sick leave in excess of three consecutive days, when the reason for sick leave is unclear or when sick leave patterns are suspicious. The employee shall have 5 days to provide a physician's statement and if the employee fails to provide the physician's statement, the absence shall be considered unexcused and subject to disciplinary action. The Human Resources Director may require a second opinion in certain circumstances. No sick leave shall be charged for a mandatory examination. The cost of second opinion examinations shall be borne by the County.

3) Sick leave procedures are as follows:

a) Sick leave is cumulative indefinitely.

b) Sick leave may be taken in units of quarter-hours.

c) On December 31 of each year, sick leave balances are increased by automatic transfers of all annual leave hours in excess of 240 hours for all full-time and part-time employees.

d) All unused floating holiday hours shall automatically transfer to sick leave at the end of the fiscal year.

e) Sick leave shall not be advanced to any employee.

f) All benefits to which an employee is entitled continue to accrue while an employee is out of work on sick leave or when sick leave is used to supplement short-term disability or workers' compensation benefits.

g) An employee may use sick leave to supplement workers' compensation benefits up to 100 percent of gross salary.

h) All unused sick leave is lost upon separation of employment, except when separation is due to retirement.

i) Holidays or regularly scheduled days off which occur during a period of sick leave shall not be charged as sick leave.

j) It shall be the responsibility of the Human Resources Director to maintain a record of sick leave on each employee.

~~4) Sick leave use. Supervisors may require an employee to use compensatory time in lieu of sick leave.~~

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-200. - Reinstatement and transfer of sick leave.**

1) *Re-instatement within five years.* A former employee who is re-employed by the County within five years from the date of separation shall be credited with the balance of sick leave at the time of separation, except when the employee retired under the local governmental employees' retirement system or when the employee transferred the balance of sick leave to another employer.

2) *Transfer of sick leave from another employer.* Employees shall be allowed to transfer the balance of sick leave from a former employer under the following conditions:

- a) The former employer was a member of one of the divisions of the state retirement system;
- b) The employee does not have more than a 45-day1-year period of unemployment between the former employer and the County;
- c) The employee did not retire from any unit under the state retirement system, including the County.

~~A written request for transfer of sick leave must be made to the Human Resources Director within 90 days of employment by the County. Proper documentation, as determined by the Human Resources Director, verifying accumulated sick leave hours must be received with the request. The transfer of sick leave shall take place after the employee has successfully completed their initial probationary period, or after 9 months, whichever is less. Documentation verifying the sick leave hours to be transferred must be provided from the employee's previous employer by the end of the initial probationary period or 9 months, whichever is less.~~

3) *Former employees who retire.* Any former employee who retired from the County or any unit of the State retirement system and reported sick leave to the retirement system shall not be allowed to transfer that sick leave to the County.

(Ord. No. 2003-19, 10-6-2003; Ord. No. 2003-20, 10-20-2003)

#### **Sec. 28-201. - Family and Medical Leave Act.**

1) Catawba County is sensitive to the needs of employees in balancing the demands of work, personal and family health and the needs of service men and women. As such, it is the policy of the County to comply with the relevant and applicable provisions of the Family and Medical Leave Act (FMLA), as amended.

2) Requests for FMLA leave should be submitted to the Human Resources Department. For policy guidelines, refer to the County's Intranet or contact the Human Resources Department.

(Ord. No. 2003-19, 10-6-2003; Ord. No. 2009-11, 11-2-2009; Ord. No. 2011-01, 2-21-2011)

#### **Sec. 28-202. - Civil leave.**

All employees are expected to fulfill a citizen's duty to serve on juries when summoned. When a full-time or part-time employee is called for jury duty such that his or her employment shall be affected, a copy of the official letter summoning the employee shall be submitted to the supervisor.

1) *Compensation.* When an employee serves on jury duty, an election must be made to either take annual leave for those days served and retain jury payment or treat those days served as days worked and remit jury payment to the County.

2) *Required attendance in court.* When an employee attends court in connection with official duties or is subpoenaed to appear as a witness, no leave is required.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-203. - Military leave.**

The County complies with all federal rules regarding military leave, including accrual of benefits.

- 1) *Annual training.* Any employee who is a member of any of the United States armed forces and is required to engage in field training shall be granted a military leave of absence for the period of such training. This leave of absence, if taken instead of annual leave, shall be supplemented at a rate which is the difference between an employee's daily rate of pay and what that employee receives during field training. This supplement shall continue up to a maximum period of 17 calendar days.
- 2) *Active duty.* An employee who has been called to active duty in the United States military shall automatically be granted an indefinite leave of absence, without pay, for the duration of such active service.
- 3) *Other benefits.* The Board of Commissioners from time to time may approve pay and benefits for employees who are called to active duty during national emergencies. Each employee must be reinstated without loss of privileges or seniority, provided the employee reports for duty with the County within 90 days following discharge from service, and provided the employee has reported an intent to report for duty 30 days prior to discharge from service.
- 4) *Temporary hires.* Any person filling a position vacated by this subsection shall be given notice that the position being filled is temporary and shall expire should the military employee return for employment.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-204. - Leave during inclement weather; emergency closing**

If County department operating hours are modified due to inclement weather or other emergencies, employees who are absent from work shall be required to take leave only for those hours the department is officially open during their work schedule. Leave shall be taken according to the provisions set forth in this article.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-205. - Holidays.**

The County provides 11 paid holidays as a benefit to its employees.

- 1) *Paid holidays observed.* The following paid holidays and such others as the Board of Commissioners may designate shall be observed by County offices:
  - a) New Year's Day.
  - b) Martin Luther King, Jr.'s birthday.
  - c) Good Friday.
  - d) Memorial Day.
  - e) Independence Day.

- f) Labor Day.
- g) Thanksgiving Day and Thanksgiving Friday.
- h) Christmas Day, according to the following schedule:

When Christmas Falls On:	County Employee's Observe:	These Days:
Sunday	December 22, 23 and 26	Thursday, Friday, Monday
Monday	December 25, 26 and 27	Monday, Tuesday, Wednesday
Tuesday	December 24, 25 and 26	Monday, Tuesday, Wednesday
Wednesday	December 24, 25 and 26	Tuesday, Wednesday, Thursday
Thursday	December 24, 25 and 26	Wednesday, Thursday, Friday
Friday	December 24, 25 and 28	Thursday, Friday, Monday
Saturday	December 23, 24 and 27	Thursday, Friday, Monday

All full-time **and part-time** employees occupying officially budgeted positions with benefits shall receive these holidays with pay providing the employee is on active pay status the scheduled working day before and the scheduled working day after the holiday period. If an employee is retiring, and the day after is the first day of retirement, the retiring employee shall be paid the holiday.

Employees working on an observed holiday shall be paid hours worked, plus eight hours' holiday pay, unless the employee is receiving floating holiday time.

Part-time employees working less than 40 hours per week receive pay for holidays on a pro-rata basis.

2) *Unpaid holiday exception.* The County Manager has the authority to declare an unpaid holiday as part of a budget-required furlough.

3) *Observance of weekend holidays.* If a holiday falls on Saturday, the holiday shall be observed on Friday. If the holiday falls on Sunday, the following Monday shall be observed as the holiday. If, in the discretion of the County Manager, the County's best interest shall be served by observing the holiday otherwise, an announcement shall be made at the beginning of the calendar year.

4) *Other faith-based holidays.* Employees may wish to be away from work on certain days for faith-based observances. Department Heads should attempt to arrange the work schedule so that an employee may be granted annual leave when it is requested because the day is a faith-based observance for that employee. Annual leave should be denied only when granting such leave would adversely affect **County** services.

5) *Floating holidays.* Floating holidays may be granted as follows:

a) Employees who have work schedules that prevent them from taking regularly scheduled holidays are provided 11 holidays on an hour-for-hour basis annually at the beginning of the fiscal year. Holiday time shall be prorated for employees whose employment begins after the first of the fiscal year or who separate before the end of the fiscal year. If an unpaid holiday is declared, an employee shall be compensated for all hours worked on the holiday but would not receive a floating holiday.

b) Department Heads shall designate those employees to whom floating holidays shall apply. The Department Head is responsible for notifying the Human Resources Department which employees shall receive floating holidays.

c) Requests to take floating holidays shall be preapproved in the sole discretion of the Department Head.

d) Law enforcement employees and communication center employees are provided 88 holiday hours annually, which are designated at the beginning of the fiscal year. Holiday time shall be prorated for employees whose employment begins after the first of the fiscal year or who separate before the end of the fiscal year. If an unpaid holiday is declared as part of a budget-required furlough, law enforcement and communication center employees shall not receive compensation for that holiday.

e) Employees with floating holidays who separate from employment with the County will be paid for any unused portion of prorated holiday time. If an employee has used more holiday time than the prorated amount, then the employee's final paycheck shall be reduced proportionately.

f) All unused floating holiday hours shall automatically transfer to sick leave at the end of the fiscal year.

6) *Emergency Medical Services (EMS) holidays.* Employees who are required to work 12-hour shifts shall receive compensation for 88 hours of holiday time at straight time irrespective of whether the employee actually worked the holiday. Compensation will be paid in the pay period in which the holiday time occurs. Holiday time will not be paid in advance and is subject to all deductions from salary and wages. If an unpaid holiday is declared as part of a budget-required furlough, employees who work in EMS shall not receive compensation for that holiday.

(Ord. No. 2003-19, 10-6-2003; Ord. No. 2005-04, 3-21-2005; Ord. No. 2009-04, 4-6-2009)

#### **Sec. 28-206. - Retirement.**

Eligible employees are required to join the North Carolina Local Governmental Employees' Retirement System as a condition of employment. All eligible employees shall participate in social security coverage as provided by Title II of the Federal Social Security Act as amended. There shall be no mandatory retirement age imposed on employees except in positions where a bona fide occupational qualification exists in compliance with the Age Discrimination in Employment Act Amendment, 29 USC 621-634.

(Ord. No. 2003-19, 10-6-2003)

#### **Sec. 28-207. - Law enforcement officers' additional benefits.**

~~As mandated by G.S. 128-21 (11b) and 143-166.42, the County participates by special contribution in the Law Enforcement Officers Supplemental Retirement Income Plan 401(k) and provides for a special separation allowance for law enforcement officers. In the event the requirements of either statute change, the County reserves the right to change the benefit accordingly.~~ Pursuant to Chapter 143 of the North Carolina General Statutes, the County participates in the Law Enforcement Officers Supplemental Retirement Income Plan and provides for a special separation allowance for law enforcement officers. In the event the requirements of the statutes change, the County reserves the right to change the benefit accordingly.



(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-208. - Longevity award.**

- 1) *Eligibility.* The County longevity pay plan is intended to reward eligible employees under this article for faithful service on an annual basis.
- 2) *Exceptions.* An employee shall not be eligible to receive a longevity award when:
  - a) The employee separates from the County prior to the anniversary date.
  - b) An anniversary date occurs during a period of disability. A longevity award shall not be made until the employee returns to work with the County.
  - c) An anniversary date occurs during a period of leave without pay. A longevity award shall not be made unless the employee returns to work with the County after the leave without pay.
- 3) *Distributions.* Longevity pay distributions shall be made in accordance with the following:
  - a) Longevity pay shall be made in lump sum and is income for purposes of taxation. Longevity pay is not considered a part of annual base pay for classification and other pay purposes.
  - b) Longevity pay is awarded upon an employee's fifth anniversary and every year thereafter. Eligible prior service to the County counts towards meeting the five-year requirement for those employees falling under schedule A if hired on or before January 31, 2005. Employees hired on or after February 1, 2005, shall be given eligible prior service to the County; however, they shall fall under schedule B.
  - c) Longevity pay shall be distributed in accordance with the following schedules on the last **pay date of the month in which** the anniversary occurs. ~~Longevity pay shall be distributed in accordance with the following schedules on the last business day of the month the anniversary occurs.~~
  - d) Any FLSA rules shall apply in accordance with the Act in effect at the time the check is written.

Schedule A

*For employees hired on or before January 31, 2005*

Years of Service	Longevity Pay Rate (% of annual salary)	Years of Service	Longevity Pay Rate (% of annual salary)
5	2.5	18	3.8
6	2.6	19	3.9
7	2.7	20	4.0
8	2.8	21	4.1
9	2.9	22	4.2

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10	3.0	23	4.3
11	3.1	24	4.4
12	3.2	25	4.5
13	3.3	26	4.6
14	3.4	27	4.7
15	3.5	28	4.8
16	3.6	29	4.9
17	3.7	30 and over	5.0

Schedule B

*For employees hired on or after February 1, 2005*

Years of Service	Longevity Lump Sum Payment
5—9.99	\$500.00
10—14.99	\$650.00
15—19.99	\$800.00
20—24.99	\$1,000.00
25—29.99	\$1,500.00
30 years +	\$2,000.00

(Ord. No. 2003-19, 10-6-2003; Ord. No. 2005-02, 1-18-2005)

**Sec. 28-209. - Employee education.**

1) *Intent.* The County educational reimbursement and leave policy is intended to assist its employees in their continuing educational efforts. Employees are encouraged to enhance their knowledge through educational and training experiences so that the public is served at an ever-increasing level of excellence. All documentation of completed courses of study shall be forwarded to the Human Resources Department to be included in the employee's personnel file upon receipt of degree or other certification. All educational leave must be approved by the Department Head prior to enrollment in a course.

2) *Definitions.* The following words, terms and phrases shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning.

*Educational leave* means leave taken to enable an employee to enroll in a course of study required to maintain current employment status (e.g. licensure or certification requirement) or which addresses training/instruction to upgrade knowledge and skills directly relating to current responsibilities.

*Educational reimbursement* means reimbursement for educational expenses incurred in a course of study in a field which is required to maintain current status (e.g., licensure or certification requirements) or which addresses training or instruction to upgrade knowledge and skills directly

relating to current responsibilities. If the County assists with funding a course or degree, the employee shall be required to enter into a contractual agreement ensuring continued employment with the County. Any reimbursement by the County is intended to supplement and not take the place of other financial support.

3) *Approval of educational leave by County Manager.* When an employee pursues a course of study which requires the employee's continued absence from the workplace (e.g., a full semester or quarter), approval for such leave shall be made by the County Manager with a recommendation from the Department Head and Human Resources Director.

4) *Educational leave with pay.* Educational leave with pay may be granted as follows:

a) All educational leave must be approved by the Department Head prior to enrollment in the course.

b) Leave with pay may not exceed actual time for classroom instruction in one course (the term "one course" is defined as a course with a maximum credit of five semester hours or the equivalent) during the semester or quarter of instruction and a reasonable amount of time for travel to and from the institution and the place of employment. The Department Head shall determine what is a "reasonable" amount of travel time, and whether the institution is located within a distance that could be reached in a reasonable amount of time off.

c) An employee on such leave shall continue to earn benefits to which permanent employees are entitled.

d) Reasonable efforts must be made by the student/employee to schedule required courses outside the normal workday.

e) No compensatory time or overtime pay shall be given for course work undertaken after the normal workday.

5) *Educational reimbursement.* Procedures for educational reimbursement are as follows:

a) The Department Head has the authority to approve all courses requested for reimbursement based upon appropriate documentation.

b) Upon the successful completion of a County-approved course as outlined in subsection 4), the County may pay the costs of tuition, additional course fees, books or other course materials incurred by the employee **as defined by the signed contract.**

~~c) If the employee fails to maintain a "B" average in the course, he or she shall be required to bear all costs, and to reimburse County for any money paid. The County will not provide any reimbursement for audited classes.~~

c) Any request for reimbursement of costs must be approved by the Department Head in advance.

(Ord. No. 2003-19, 10-6-2003; Ord. No. 2005-02, 1-18-2005; Ord. No. 2005-02, 1-18-2005)

#### **Sec. 28-210. - Benefits for difficult-to-recruit positions.**

When recruitment or retention difficulties exist, the County Manager is authorized to negotiate, within federal and state law, special provisions for benefits.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-211. - Other benefit programs.**

- 1) The County offers a number of benefits designed to allow employees to meet their own health and welfare needs as well as those of their families. A number of approved payroll-deduction plans are available which provide the employee with additional insurance, health and wellness benefits, and an enhanced ability to save toward retirement. Each employee is encouraged to make responsible decisions regarding present needs and future retirement stability.
- 2) It is in the discretion of the County to determine whether to allow the addition of a benefit or service and to provide for payroll deduction. In determining whether to allow a payroll deduction, the following factors may be considered individually or in combination:
  - a) The past performance, financial responsibility and reputation of the organization requesting or receiving such deduction.
  - b) Whether or not administration of the program would prove to be unduly burdensome to the County.
  - c) Whether a sufficient number of employees are interested.
- 3) The Human Resources Department shall maintain current plan descriptions of all benefits provided to employees under this article. Plan descriptions shall be made available to all employees' subject to this article, and updates shall be made available at the time of benefits enrollment.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-212. - County defense of employees.**

- 1) The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning.

*Officer* and *employee* mean present or past members of the board, officers, or employees and present or past appointed members of County boards, agencies, committees and commissions who might have claims or judgments entered against them.

- 2) It shall be the policy of the County to defend its officers and employees acting in good faith within the scope of employment or duties against civil claims or judgments and to satisfy such either through the purchase of insurance or otherwise. However, the County shall not defend a claim or lawsuit or pay a claim or judgment when the officer or employee willfully:

a) ~~The officer or employee acted~~ Acts or fails ~~failed~~ to act because of fraud, corruption or actual malice.

b) ~~The act or omission was not within the scope and course of the officer or employee's employment as a County employee. Acts or fails to act as a result of or at a time when his self-indulgence substantially impairs his judgment (as, for example, an officer or employee who causes damage or injury while intoxicated or under the influence of drugs while on the job or participating in one's public capacity).~~

- c) **The officer or employee** Acts or fails to act, except in emergencies or the existence of extenuating circumstances, directly contrary to instruction from his supervisor or directly contrary to advice of the County Attorney.
- d) **The officer or employee** Acts or fails to act in such manner as to constitute a criminal act (for example, misappropriation of property or funds).
- e) **Defense of the action or proceeding by the County would create a conflict of interest between the County and the officer or employee.**
- f) **Defense of the action or proceeding would not be in the best interest of the County.**

3) The County Manager shall determine whether a claim or suit filed against an officer or employee meets the requirements specified in this section for providing a defense for such officer or employee. If a claim or lawsuit is filed naming the County Manager in his/her individual capacity or alleges gross negligence, the Board of Commissioners shall determine whether the County Manager shall be provided with defense paid for by the County.

4) The policies specified in this section shall not be applicable unless notice of the claim of suit is given to the Board of Commissioners through the County Manager or County Attorney prior to the time the claim is settled or civil suit is litigated and judgment is entered.

5) This section shall not be interpreted in any way to relieve an insurance company of its obligations under any insurance policy to protect the interests of any insured under the policy or to reduce or eliminate the rights of any officer or employee of the County against any other party. Except as expressly stated, this section is not to be interpreted as a waiver of any right or defenses the County has or may have against any party; nor shall the adoption of this section be construed to waive the defense of governmental immunity.

(Ord. No. 2003-19, 10-6-2003)

#### **Sec. 28-213. - Safe-workplace policy.**

The County is committed to provide a safe working environment for its employees. It is expected that all employees shall adhere to this policy.

(Ord. No. 2003-19, 10-6-2003)

#### **Sec. 28-214. - Workplace violence.**

The County has a zero-tolerance policy relating to the communication of threats, verbal harassment, physical assaults, or other forms of inappropriate behavior. Unreasonably aggressive behavior shall not be condoned. Such behavior is a conduct issue. Employees found in violation shall be subject to appropriate discipline as provided for in articles I through VIII of this chapter. Other persons violating this policy may, at the discretion of the Department Head, be reported to the appropriate law enforcement authorities for criminal prosecution.

(Ord. No. 2003-19, 10-6-2003)

#### **Sec. 28-215. - Safety, including Occupational Safety and Health Act.**

The County is committed to providing a workplace and environment that is safe for employees and the public. Employees are required to comply with all safety rules and regulations at all times. Personal protective and safety equipment shall be used at all times. Employees who do not

comply with these requirements are subject to disciplinary action. Supervisors who fail to enforce safety rules and equipment use shall be subject to disciplinary action.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-216. - Accidents involving County equipment.**

Accidents involving the use of County equipment or occurring on County property, whether or not they result in injury, shall be reported to the employee's immediate supervisor no later than the end of the work shift. If the supervisor is absent, the employee shall call the next supervisor in the chain of command, or the Human Resources Department. The employee and supervisor shall follow County policies and procedures for the reporting of accidents.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-217. - Reporting accidents and injuries.**

An employee who is injured in the performance of assigned duties shall immediately report the accident to his immediate supervisor, who shall forward the report to the Human Resources Department. The supervisor shall be responsible for ensuring an injury report is completed and submitted to the Human Resources Department within one business day of a reported injury.

(Ord. No. 2003-19, 10-6-2003)

**Secs. 28-218—28-243. - Reserved.**

**ARTICLE VII. - CONFLICT OF INTEREST AND POLITICAL ACTIVITIES <sup>[48]</sup>**

<sup>(48)</sup> **Editor's note—** Ord. No. 2003-19, adopted Oct. 6, 2003, amended art. VII in its entirety and enacted similar provisions as set out herein. The former art. VII derived from Code 1995, §§ 270.170—270.176.

[Sec. 28-244. - Applicability.](#)

[Sec. 28-245. - Political activity restricted.](#)

[Sec. 28-246. - Gifts and favors.](#)

[Sec. 28-247. - Duty to disclose.](#)

[Sec. 28-248. - Violations.](#)

[Secs. 28-249—28-274. - Reserved.](#)

**Sec. 28-244. - Applicability.**

This article shall be applicable to all employees' subject to this chapter and, where applicable, to the County's public officials.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-245. - Political activity restricted.**

1) *Purpose.* The purpose of this section is to ensure that employees are not subject to political or partisan coercion while performing their job duties, to ensure that employees are not restricted from political activities while off duty, and to ensure that public funds are not used for political or partisan activities.

It is not the purpose of this section to allow infringement upon the rights of employees to engage in free speech and free association. Every employee has a civic responsibility to support good government by every available means and in every appropriate manner. Employees shall not be restricted from affiliating with civic organizations of a partisan or political nature, nor shall employees, while off duty, be restricted from attending political meetings, or advocating and supporting the principles or policies of civic or political organizations, or supporting partisan or nonpartisan candidates of their choice in accordance with the Constitution and laws of the State and the Constitution and laws of the United States of America.

2) *Policy.* The following is the policy of the County:

- a) Political activity by an employee during working hours, while in service to the County, or within the scope of County employment, is strictly prohibited.
- b) The use of County supplies, equipment, communications equipment, including Internet and e-mail **to engage in or support political activity**, is strictly prohibited.
- c) County employees are protected from political interference in performing the duties of their job.
- d) No employee while on duty or in the workplace may:
  - i) Use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for political office; or
  - ii) Coerce, solicit, or compel contributions for political or partisan purposes by another employee; or
  - iii) Be required as a duty or condition of employment, promotion, or tenure of office to contribute funds for political or partisan purposes.

3) *Employees as candidates for office.* To become a candidate means that an employee has taken some formal or public action that may lead to being elected or appointed to a political office. It means the employee is seeking political office and for purposes of this article, an employee shall be recognized as becoming a candidate when:

- a) The employee forms any kind of fundraising committee or campaign committee, or
- b) The employee announces through the media or mail that the employee intends to become a candidate, or
- c) The employee files an official document, such as a notice of candidacy, with any board of elections, or
- d) Anyone else does any of the acts described above on the employee's behalf or starts a write-in campaign for the employee and the employee refuses to disavow such act or otherwise make the employee's intentions clearly known through an appropriate public announcement. Employees are required to notify their Department Head prior to such events taking place.

Being a member of the Board of Commissioners is inherently in conflict with being an employee with the County. It is divisive and may destroy the public trust between the existing commissioners and County management. Therefore, on the day an employee becomes a candidate for County commissioner, said employee shall take a leave of absence.



(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-246. - Gifts and favors.**

- 1) Receiving or giving of gifts or favors is not in the best interest of the County. Therefore, no employee shall:
  - a) Accept any gift, favor or thing of value that may tend to influence them in the discharge of their duties.
  - b) Grant, in the discharge of their duty, any improper favor, service or thing of value.
- 2) The following gifts are considered acceptable under GS 132-32 and are the only exceptions:
  - a) Honorariums for participating in meetings.
  - b) Advertising items or souvenirs of nominal value.
  - c) Meals furnished at banquets.
  - d) Contractor donations to professional organizations to which local government officials and employees may belong, including participation in scheduled functions of such an organization.
  - e) Customary gifts from friends and family members, as long as the family or friendship relationship, not the desire to do business with the local government, are the motivating factor for the gift.
- 3) Legitimate political contributions to candidates for elected office shall not be considered gifts. Gifts to a department or the County are acceptable if shared within the organization and if deemed appropriate by the County Manager. Such gifts are considered the property of the County. A nominal gift to an employee from a non-vendor in recognition for a service well done is acceptable if deemed appropriate by the County Manager.
- 4) No employee shall grant any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-247. - Duty to disclose.**

Any employee having knowledge of or a reason to know of a potential personal interest or upon the discovery of a potential personal interest has an affirmative duty to disclose such personal interest to the Department Head. Any attempts by any person, firm or corporation to influence the decision of an employee with regard to County business must be reported to the County Manager.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-248. - Violations.**

Any violation of this article shall subject an employee to disciplinary action.

(Ord. No. 2003-19, 10-6-2003)

**Secs. 28-249—28-274. - Reserved.**

**ARTICLE VIII. - STATE AND FEDERAL COMPLIANCE. [49]**

<sup>(49)</sup> **Editor's note—** Ord. No. 2003-19, adopted Oct. 6, 2003, amended art. VIII in its entirety and enacted similar provisions as set out herein. The former art. VIII derived from Code 1995, §§ 270.180—270.186 and 270.194—270.196.

[Sec. 28-275. – Compliance with State and Federal Laws](#)  
[Secs. 28-276—28-302. - Reserved.](#)

**Sec. 28-275. - Compliance with State and Federal Laws**

It is the policy of the County to comply with the relevant and applicable provisions of all Federal and State laws including, but not limited to, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Americans with Disabilities Act of 1990 as amended.

The County has a zero-tolerance policy against any form of unlawful workplace harassment including harassment defined **as age, disability, genetic information, national origin, pregnancy, race/color, religion, or sex**. Complaints of workplace harassment should be filed with the Human Resources Director in accordance with the County's Workplace Harassment Policy. For policy guidelines, refer to the County's Intranet or contact the Human Resources Director.

(Ord. No. 2003-19, 10-6-2003; Ord. No. 2008-05, 4-21-2008)

**Secs. 28-276—28-302. - Reserved.**

**ARTICLE IX. - RECORDS AND REPORTS [50]**

<sup>(50)</sup> **Editor's note—** Ord. No. 2003-19, adopted Oct. 6, 2003, amended art. IX in its entirety and enacted provisions as set out herein. The former art. IX pertained to equal employment opportunity policy and derived from Code 1995, §§ 271.01—271.04.

[Sec. 28-303. - Confidential information.](#)  
[Sec. 28-304. - Personnel records; access to public information; privacy act.](#)  
[Sec. 28-305. - Public and confidential information defined.](#)  
[Sec. 28-306. - Request and review procedure.](#)  
[Sec. 28-307. - Remedies and objections.](#)  
[Sec. 28-308. - Destruction of County records.](#)  
[Sec. 28-309. - Privacy policy.](#)  
[Secs. 28-310—28-330. - Reserved.](#)

**Sec. 28-303. - Confidential information.**

1) No employee or official shall use or disclose information gained in the course of employment or by reason of position for purposes of advancing a financial or personal interest, a business entity in which there is an ownership interest, a financial or personal interest of a household

member or a family member as defined in subsection 28-199 2), or any other private or political interest.

2) No employee or official shall disclose confidential or privileged information concerning personnel matters, property, contract negotiations, litigation-related matters, or other affairs of the County which are afforded protection under state law.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-304. - Personnel records; access to public information; privacy act.**

1) Personnel records are necessary for the proper administration of the County personnel system and shall be maintained by the Human Resources Director. The employee's personnel file is maintained by the Human Resources Department. The personnel records custodian shall be the Human Resources Director, whose responsibility it is to maintain a file for each employee.

2) The Human Resources Director may designate an individual or individuals within the Human Resources Department to act as records custodian. The records custodian is responsible for the proper maintenance and documentation of personnel records in accordance with state and local law.

3) The County shall maintain in each employee's personnel record only information that is necessary and relevant to accomplishing legitimate personnel administration needs. It is the responsibility of the Human Resources Director to assure the sanctity and authenticity of every employee's personnel file.

4) As required by G.S. 153A-98 any person may have access to public information as defined by this article for the purpose of inspection, examination, and copying during regular business hours, subject only to such rules and regulations for the safekeeping of public record as the County may adopt. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure.

5) Departments shall forward all documents that are a part of a personnel file to the Human Resources Director.

6) For purposes of this article, an employee's personnel file consists of any information gathered by the County with respect to that employee. This would include but would not be limited to information relating to an employee's application for employment, selection for a vacant position, performance, promotions, demotion, transfers, suspension, and other disciplinary actions, evaluation forms, salary, any applicable information relating to employment, or termination of employment.

(Ord. No. 2003-19, 10-6-2003; Ord. No. 2010-06, 9-7-2010)

**Sec. 28-305. - Public and confidential information defined.**

1) As required by GS 153A-98, the following information regarding each employee is public information:

a) Name.

b) Age.

c) Date of original employment or appointment to County services.

- d) The terms of any contract by which the employee is employed whether written or oral, past or current, to the extent the County has the written contract or a record of the oral contract in its possession;
- e) Current position/title.
- f) Current salary.
- g) Date and amount of each increase or decrease in salary.
- h) Date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification.
- i) Date and general description of the reasons for each promotion.
- j) Date and type of each disciplinary dismissal, suspension or demotion. If the disciplinary action was a dismissal, a copy of the written notice of final decision setting forth the specific acts or omissions that are the basis of the dismissal.
- k) Office to which the employee is currently assigned.

For the purposes of this subsection, the term "employee" includes former employees of the County; the term "salary" includes pay, benefits, incentives, bonuses, deferred compensation and all other forms of paid compensation.

2) All information contained in an employee's personnel file, other than the information listed in subsection 1), shall be maintained as confidential in accordance with the requirements of G.S. 153A-98 and shall be open to public inspection only in the following instances:

- a) The employee or a duly authorized agent may examine all portions of the employee's personnel file, except:
  - i) Letters of reference solicited prior to employment; and
  - ii) Information concerning a medical disability, mental or physical, that a prudent physician would not divulge to a patient.
- b) A licensed physician designated in writing by an employee may examine the employee's medical record.
- c) An employee having supervisory authority over the employee may examine all material in the employee's personnel file.
- d) By order of a court of competent jurisdiction, any person may examine all material in the employee's personnel file.
- e) An official of any agency of the state or federal government or any political subdivision of the state may inspect any portion of a personnel file when such information is deemed by the person having custody of the file to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution of the employee or for the purpose of assisting in an investigation of the employee's tax liability.
- f) An employee may sign a written statement authorizing release of other specified



information to prospective employers, educational institutions, or other specified persons.

g) The County Manager, with the concurrence of the Board of Commissioners, may inform any persons of the employment or non-employment, promotion, demotion, suspension, or other disciplinary action, reinstatement, transfer, or termination of an employee and the reasons for that personnel action. Before releasing the information, the Manager shall determine in writing that the release is essential to maintaining public confidence in the administration of County services or to maintaining the level of quality County services.

h) Even if considered part of an employee's file, the following information may be withheld from an employee:

i) Testing or examination material used solely to determine qualification when disclosure would compromise testing.

ii) Investigative reports concerning possible criminal actions against the employee until the investigation is completed.

iii) Information which might identify undercover officers or informers.

iv) Notes, preliminary drafts, and internal communications unless used for official personnel decisions.

i) Even if considered part of an employee's personnel file, the following information regarding any sworn law enforcement officer shall not be disclosed to an employee or any other person, unless disclosed in accordance with G.S. 132-1.4, or in accordance with G.S. 132-1.10, or for the personal safety of that sworn law enforcement officer or any other person residing in the same residence:

(i) Information that might identify the residence of a sworn law enforcement officer.

(ii) Emergency contact information.

(iii) Any identifying information as defined in G.S. 14-113.20.

(Ord. No. 2003-19, 10-6-2003; Ord. No. 2010-06, 9-7-2010)

**State law reference—** Penalty for permitting illegal access to confidential file G.S. 153A-98

#### **Sec. 28-306. - Request and review procedure.**

1) The records custodian shall consult with a staff attorney when a request to review, or copy personnel file materials of an unusual nature are received. All requests for personnel records information must be made in writing to the records custodian. An employee may sign a written letter of consent authorizing release of confidential information to prospective employers, educational institutions or other specified persons.

2) If a request is determined by the records custodian to be for public information, the custodian shall, within a reasonable time period, provide such public information.

3) Only individuals contemplated by G.S. 153A-98 shall have standing to receive confidential personnel information. Such requests shall be made in writing. The requesting party shall not disclose such confidential information. The custodian shall within a reasonable time period provide access to such information. As required by G.S. 153A-98 any person may have access to public information as defined by this subchapter for the purpose of inspection, examination,

and copying during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the County 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.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-307. - Remedies and objections.**

An employee who objects to material in a personnel file may forward to the Human Resources Director a request to place in the file a statement relating to the material the employee considers to be inaccurate or misleading. The employee may seek the removal of such material in accordance with the following procedure:

- 1) A written request containing the employee's name and identification of the objectionable material, with supporting documentation, shall be submitted to the records custodian.
- 2) The records custodian shall notify the County Manager and the appropriate supervisory personnel of the nature of the complaint and shall within five working days make a recommendation regarding the disposition of the complaint to the County Manager.
  - a) If the complaint is found to be valid the material shall either be corrected and returned to the file or removed from the file and destroyed.
  - b) If the complaint is found to be invalid the material shall remain in the personnel file and a copy of the employee's written objection shall be placed in the personnel file.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-308. - Destruction of County records.**

No public official may destroy, sell, loan or otherwise dispose of any public record, except in accordance with G.S. 121-5(B), without the consent of the State Department of Cultural Resources. Whoever unlawfully violates this general statute shall face penalties as provided in G.S. 132-3.

(Ord. No. 2003-19, 10-6-2003)

**Sec. 28-309. - Privacy policy.**

As required by G.S. 153A-98, any person may have access to public information as defined by this article for the purpose of inspection, examination, and copying during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the County may adopt. Any person denied access to any record shall have a right to compel compliance with this article by application to a court for writ of mandamus or other appropriate relief.

Access to, or inspection and copying of employee personnel files, files of clients, and other information created and maintained by County in the ordinary course of business, are controlled by federal, state and local laws, ordinances and regulations. Any violation is subject to discipline.

(Ord. No. 2003-19, 10-6-2003)

**Secs. 28-310—28-330. - Reserved.**

**ARTICLE X. - OPERATIONS STANDARDS FOR DRIVERS OF VEHICLES  
USED FOR COUNTY BUSINESS <sup>[51]</sup>**

<sup>(51)</sup> **Editor's note—** Ord. No. 2006-10, adopted Aug. 21, 2006, amended art. X in its entirety and enacted similar provisions as set out herein. The former art. X derived from Code 1995, §§ 275.01—275.06.

[Sec. 28-331. - Definitions.](#)

[Sec. 28-332. - Responsibilities of Risk Manager.](#)

[Sec. 28-333. - Authorization.](#)

[Sec. 28-334. - Maintenance.](#)

[Sec. 28-335. - Accident prevention.](#)

[Sec. 28-336. - Accident reporting and review.](#)

[Secs. 28-337—28-365. - Reserved.](#)

**Sec. 28-331. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*County drug testing policy.* The policy of the County is to maintain a workplace free of substance abuse and to work toward a drug-free community. The County shall comply with the requirements of the Federal Drug-Free Workplace Act of 1988, and any amendments or subsequent legislation affecting operations of vehicles, since sufficient evidence has concluded that the use of controlled substances and other forms of drug abuse shall seriously impair an employee's physical and mental health and, thus, job performance. This policy shall not conflict with the existing law enforcement policy as it applies to employees of the Sheriff's Department.

*Defensive driving course* means a course approved by the Risk Manager to teach drivers, as defined in this article, defensive driving skills.

*Driver* means as follows:

- 1) *Designated driver/employee* means an employee that has received the express approval of the Department Head or designee to carry out official business of the County in a County-owned or privately owned vehicle used for conducting County business. See section 28-332
- 2) *Designated volunteer* means a volunteer who has received the express approval of the Department Head to carry out official business of the County in a County vehicle or a privately owned vehicle.

*Risk Manager* means the employee responsible for identifying and analyzing risks that would cause major financial loss to the County and/or any potential injury to an employee or citizen, and implementing and monitoring policies and procedures to reduce these risks.

(Ord. No. 2006-10, 8-21-2006)

**Cross reference—** Definitions generally, § 1-2.

**Sec. 28-332. - Responsibilities of Risk Manager.**

- 1) The frequency of accidents and the damage to County and private property call for careful attention to developing defensive-driving measures. The Risk Manager shall implement and carry out the measures in subsection 2) to address satisfactory driving standards and determine the preventability of all accidents that occur in the operation of vehicles, as defined in this article.
- 2) The Risk Manager shall:
  - a) Carry out the official actions of this article.
  - b) Increase the awareness level of appropriate vehicular safety by:
    - i) Developing appropriate defensive-driving courses for drivers, volunteers or other designated personnel;
    - ii) Developing guidelines for authorized use of privately owned vehicles authorized for County business and functions;
    - iii) Providing periodic reports, articles, and programs for enhanced vehicular safety; and
    - iv) Enhancing awareness of proper vehicular maintenance and ensuring the establishment of a regularly scheduled maintenance program.
  - c) Determine accident trends in terms of number, type, and frequency, patterns of recurrence and vulnerability and implement appropriate corrective action.
  - d) Review vehicle accidents incurred by drivers where property damage, personal injury, or death occurs; determine the preventability and severity of the infraction; and recommend the necessary corrective action.

**Sec. 28-333. - Authorization.**

- 1) This article applies to all County vehicles, heavy equipment/machinery and private vehicles used for and in the scope of County business.
- 2) Only employees may operate County-owned vehicles with the exception of ~~approved contract maintenance personnel~~ reserve deputy sheriffs and designated volunteers.
- 3) Drivers shall not operate a County-owned vehicle except upon the express direction and authorization of the Department Head, or designee, who supervises regular work activities.
- 4) A County vehicle may only be used for official County business. Reports of private use of a County vehicle shall be received and investigated by the Department Head, or designee, and appropriate action shall be taken.
- 5) The Risk Manager shall annually review driving records of current employees to ensure the employee meets County guidelines for drivers as stated in the County's Motor Vehicle Record Policy.
- 6) Finalists for all positions which require driving shall agree to a Department of Motor Vehicles (DMV) driving record master check as a condition of employment. Such driving checks shall be the responsibility of the Human Resources Director. The Human Resources Director shall be responsible for determining the relevance of the information obtained to the position for which the



applicant has applied. Finalists for positions which require driving as described in this article shall not be recommended for hire by the Human Resources Director if a driving record from the Department of Motor Vehicles indicates the applicant has received more than four points within the last three years and/or the **finalist's** overall driving record is deemed unsatisfactory.

7) In the employee orientation session conducted by the Human Resources Department, employees subject to this article shall be informed by the Risk Manager of this article and of their obligation to function according to its provisions. Designated volunteers shall be made aware of their responsibilities under this article by the respective Department Head or designee.

8) It shall be the policy of the County to assign vehicles to a particular department for the general conduct of its business. This is not meant to restrict the use solely to that department. Vehicles, other than emergency-response vehicles, at any time may be subject to use outside of the regular department functions.

(Ord. No. 2006-10, 8-21-2006)

**Sec. 28-334. - Maintenance.**

1) Maintenance standards applying to a driver operating a County-owned vehicle are as follows:

a) Preventive maintenance and service of County-owned vehicles shall be the function of the County garage. Scheduling required maintenance is the responsibility of each department, or when a vehicle is assigned to an employee, the employee is responsible.

b) A notice of regularly scheduled preventive maintenance shall be provided to the Department Head or designee for each County vehicle in the form of a vehicle sticker. **Each County-owned vehicle will have a North Carolina emissions inspection/safety inspection by the County garage.** ~~Each operator of a County-owned vehicle is also responsible for the North Carolina emissions inspection/safety inspection. Any fine incurred for failing to maintain the appropriate state inspections shall be the responsibility of the department.~~

c) The Facilities/Fleet Manager shall possess the authority to confiscate any vehicle that has not received the regularly scheduled maintenance check or if he deems the vehicle not roadworthy. The Facilities/Fleet Manager shall coordinate and maintain temporary alternate vehicles.

d) Upon request, the Facilities/Fleet Manager shall provide to the Department Head or designee and/or the Risk Manager an analysis of vehicle-operation costs.

e) Each driver shall be responsible for ensuring that his vehicle is in good working condition at all times. A driver is responsible for reporting through a maintenance request form, immediately, all defects **to** appropriate maintenance personnel.

2) Drivers operating privately owned vehicles under this article shall be responsible for the proper maintenance and safety of their vehicles, and maintaining insurance as required by state law and County policy.

(Ord. No. 2006-10, 8-21-2006)

**Sec. 28-335. - Accident prevention.**

1) It shall be the responsibility of all employees, volunteers and any other person driving in the

scope of employment or on behalf of the County to drive defensively to prevent accidents in spite of the incorrect actions of others and regardless of adverse conditions, and to comply with all driving rules and regulations. The Risk Manager shall develop measures to improve driving safety, which includes the defensive-driving course. Such courses, designed both for regular driving and for those driving emergency-response vehicles, shall be scheduled on a regular basis by the Risk Manager, and drivers shall be required to take the course as set forth in this article.

2) An employee assigned a County-owned vehicle as a regular function of the employee's position with the County shall be required to complete the applicable defensive-driving course within six months of being assigned to a designated driving position. Employees of the Sheriff's Department shall be allowed to substitute basic law enforcement training (BLET) and/or the State's 40-hour driving school for the County's defensive-driving course. However, if an employee of the Sheriff's Department is involved in an avoidable accident, the employee must complete the County's next available defensive-driving course or a special training application, which addresses specific driving needs as set forth by the Risk Manager.

3) Designated volunteers responsible for driving a County-owned vehicle or driving a privately owned vehicle for County business must:

- a) Possess a valid driver's license issued by this state;
- b) Agree to a driving record master check from the Department of Motor Vehicles; and
- c) Complete the next available applicable defensive-driving course.

4) Other employees are subject to the following:

- a) Employees subject to this article who have the responsibility of transporting clients in their privately owned vehicles shall be required to complete the defensive driving course within six months of hire or reassignment.
- b) Any employee who may have occasion to operate a County vehicle must take the defensive driving course.

5) The Department Head, or designee, in consultation with the Human Resources Director, may require pre-employment and/or periodic physical or vision examinations to determine an employee's fitness to perform the essential functions of the job. The Department Head, in consultation with the Risk Manager, may also require these examinations for designated volunteers.

6) All drivers shall be instructed on precautionary procedures to take should an accident occur and should obtain, where possible, the following:

- a) The name of other drivers, passengers and/or pedestrians involved;
- b) The insurance carrier, agent, and policy number of any other driver;
- c) The names of witnesses; and
- d) The investigating officer's report.

7) Employees subject to Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) regulations are required to attend training, as addressed in the County drug testing policy.

8) Basic safety equipment and supplies for vehicles shall be established by the Risk Manager (e.g., fire extinguisher, flares, signs, blood borne pathogens kits, and the like). It shall be the employee's responsibility to ensure vehicles are appropriately supplied.

9) Designated drivers shall have their driving record checked by the Risk Manager on an annual basis or as needed according to County policy. Designated drivers are required to attend the County defensive driving course every three years from the original date of training, or employment/assignment to a driving position. If a designated driver has not been involved in a preventable accident or has not incurred any points on his/her driving record, the driver shall be exempt from taking the defensive-driving course for another three years. No designated driver shall exceed more than six years without taking the defensive-driving course.

10) Department Heads or their designee requiring additional driving instruction of departmental drivers outside the scope of this article must have the instruction approved by the Risk Manager.

(Ord. No. 2006-10, 8-21-2006)

**Sec. 28-336. - Accident reporting and review.**

1) *Reporting.* When any driver, as defined in this article, is involved in an accident, he shall:

- a) Immediately notify proper law enforcement officials;
- b) Immediately notify the Department Head or designee;
- c) Immediately notify the Facilities/Fleet Manager;
- d) Notify the Risk Manager within one working day of the accident.

Safety-sensitive employees, as defined by the Federal Transit Administration, and commercial driver's license (CDL) drivers subject to the Federal Highway Administration are required to follow the County drug testing policy requirements for post-accident testing.

2) *Accident review.* Accidents shall be reviewed as follows:

- a) The Risk Manager shall review each accident where property damage, personal injury, or death occurs and determine the preventability and severity of the infraction and determine the necessary corrective action. The Risk Manager shall provide a written report within 30 days to the Department Head or designee.
- b) The review and consideration of a case by the Risk Manager may include, but is not limited to:
  - i) The past driving record of the driver.
  - ii) The report of the investigating officer.
  - iii) The driver's report pursuant to County policy.
  - iv) Oral presentation by the driver, if needed or requested.
  - v) Supporting materials or the testimony of witnesses, if warranted.
  - vi) The Department Head's or the designated representative's report of the accident pursuant to County policy.

- 3) *Supporting material or witnesses.* A driver may present supporting material or witnesses to the Risk Manager to assist in the interpretation of the accident.
- 4) *Suspension of driving duties.* Drivers subject to this article may be suspended by the Department Head or designee or Risk Manager from driving duties, pending an investigation of each incident/accident.
- 5) *Penalty.* Upon finding that a driver who is an employee is involved in a preventable accident, the Risk Manager shall discuss the findings with the Human Resources Director. The Human Resources Director shall recommend to the Department Head or designee the appropriate disciplinary action based on section 28-162. If a designated volunteer is involved in a preventable accident, the Risk Manager shall make recommendations for appropriate action to the Department Head or designee.
- 6) *Drug testing.* Certain County drivers are subject to the requirements of the County drug testing policy. Nothing in this policy shall alter any employee's responsibilities under the County drug testing policy.

(Ord. No. 2006-10, 8-21-2006)

**Secs. 28-337—28-365. - Reserved.**

## **ARTICLE XI. - TRAVEL POLICY FOR COUNTY EMPLOYEES OR OFFICIALS**

### **Sec. 28-366. - Purpose.**

- 1) The intent of this article is to make uniform provision for payment or reimbursement of necessary expenses of County employees or officials of the County who are required to travel within or without the County boundaries in the performance of their duties and in the interest of County affairs.
- 2) It is the County's intent to allow adequate, comfortable accommodations for employees or officials who are required to travel on County business. It is expected that employees or board members shall use discretion and good judgment in spending County funds. Use of first class sections of airplanes is prohibited unless prior approval by the County Manager **or designee** is obtained. Resort hotels, luxury restaurants, and items of like nature are usually considered to be in excess of normal business needs and are not acceptable under this article. Employees and board members shall be responsible for unauthorized costs and any additional expenses incurred for personal preference or convenience. Each employee is expected to be familiar with and abide by County policy, and willful violations may result in disciplinary action, including possible dismissal.

(Code 1995, § 276.01)

### **Sec. 28-367. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Authorizing party* means the individual authorized by the County Manager or the Department Head to approve or disapprove travel requests, cash advance requests, and travel reimbursement



requests.

*Mileage reimbursement* means the amount to be reimbursed to an employee for use of a privately owned vehicle, which is based on actual miles driven. The amount reimbursed shall reflect the same per-mile amount as authorized by the Internal Revenue Service.

*Necessary expense* means all reasonable charges incurred by an employee or official caused by travel in the interest of the County, including transportation, lodging, meals, and related incidental expenses. It does not include fines, illegal expenses, laundry charges, or similar personal expense.

*Non-County employees* means non-County employees traveling on official business whose expenses are paid by the County who are subject to this article, including subsistence allowances, to the same extent as County employees. Travel expenses for members of a nonemployee's family are not eligible to be paid by the County. Travel advances shall be made to non-County employees (board members) via the Department Heads. The Department Heads are ultimately responsible for the advances and for communicating County policies to the individuals involved.

*P card* means the County Procurement card that some employees have and may use for travel related expenses.

*Requesting party* means the employee or official who shall be reimbursed for travel costs incurred while conducting County business.

*Subsistence* means costs incurred during travel for lodging and meals, including tips.

*Transportation* means costs incurred for travel by automobile, taxi, rental car, bus, train or plane. It includes tolls, parking fees, and tips for the handling of baggage.

*Travel* means going from the normal job location to conduct County business in another location and returning to the workplace.

*Employee expense report, local*, means a form provided for the traveler to fill out for local daily travel. It should list all mileage for which reimbursement is requested. This daily mileage reimbursement request should be turned in within 30 days after the travel period involved. This form shall also be used to report special local travel.

*Employee expense report, overnight travel*, means a form provided for the traveler to fill out upon the completion of a specific trip, within ten days after the travel period ends, for which the reimbursement is being requested. It should list all mileage, private or public transportation, lodging, meals and other expenses which are reimbursable. Receipts for lodging, commercial travel, meals and other expenses are required.

(Code 1995, § 276.02(A))

**Cross reference—** Definitions generally, § 1-2.

## **Sec. 28-368. - Guidelines.**

The following guidelines shall be used for the purposes of this article:

- 1) *Travel authorization and types of travel.* Guidelines for travel authorization and types of travel are as follows:

a) *Responsibility.* The respective Department Head or division manager is responsible for the administration of this article, including determining that a sufficient unexpended travel budget to reimburse all expected costs of travel exists, except for travel or expenses not covered by this policy. The approving authority for this exception is the County Manager **or their designee**.

b) *Authorization.* Authorization of travel requests shall be based upon need and cost/benefit of travel as determined by the authorizing party.

c) *Local travel.* County employees who by the normal nature of their duties are required to travel regularly within the County and are individually authorized by the appropriate Department Head or division manager are eligible for reimbursement for transportation expense.

d) *Special local travel.* County employees who, in the interest of the County and with Department Head or division manager approval, travel to conferences and meetings within the County may be reimbursed for the following:

i) Transportation cost.

ii) **Meals as part of the event registration. The County will not provide a meal per diem for events within the County.** ~~Meals, subject to suggested maximum reimbursement rates that are a part of the meetings.~~

iii) Necessary incidental expenses.

e) *Travel outside County.* Approved travel expenses outside the County for County purposes in the best interest of the County, for training, conferences, professional meetings, work assignments, and the like, may be reimbursed, to the limits of the policy, for the following:

i) Transportation cost.

ii) Meals, subject to suggested maximum reimbursement rates.

iii) Lodging.

iv) Necessary incidental expenses.

f) *Extraordinary travel or cost.* For travel not covered by this article where the travel is in the best interest of the County, ~~the Department Head or the County Manager~~ **or their designee** may approve the reimbursement of actual cost. These cases should be rare.

g) *Travel advance.* Travel advances shall be settled separately from all other travel.

2) *Procedure, arrangements, accommodations, travel advances, and vehicle allowance.* The procedure, arrangements, accommodations, travel advances, and vehicle allowance shall be in accordance with the following:

a) All arrangements for travel must be approved by the authorizing party. The requesting party is encouraged to reserve transportation and lodging in advance, when possible.

b) The requesting party is encouraged to travel with other employees and officials of

the County and representatives of other government units when possible. The requesting party shall be reimbursed for actual costs incurred only, subject to the suggested guidelines established by section 28-369.

c) If the trip is eligible for a travel advance, the employee should make a written request, sufficiently in advance, to allow the request to be processed and a check issued. The Department Head or division manager shall approve or disapprove the travel advance request and forward the request to the Finance Department for payment. After the travel is completed, an employee expense report shall be completed by the traveler, approved by the Department Head or division manager and forwarded to the Finance Department for settlement, within ten working days after completion of the trip. The settlement should include any money advanced in excess of the actual expenses approved on the employee expense report. Any funds due the employee shall be paid at the next regular payment period by the Finance Department. Any amount advanced and subject to be returned to the County by the employee may be deducted from the pay due the employee if the advance is not settled timely or if the employee expense report is sent in without the excess funds attached.

d) Employees or officials who travel short distances within the County in their personal vehicles each month to conduct County business may be given a travel allowance to cover the cost of such travel. A travel allowance shall not be used to supplement the salary of an employee. A travel allowance shall serve as a reasonable reimbursement for estimated travel costs. Travel allowances shall be reported as compensation on Form W-2 for employees and on Form 1099 for nonemployees. Allowances paid to employees are subject to federal and state withholding requirements, as well as social security withholding and matching requirements, to the extent that the sum of travel allowances and salary does not exceed the social security ceiling. A travel allowance shall be authorized by the County Manager, who shall evaluate the need for the allowance and the estimated costs and benefits of issuing a travel allowance. A travel allowance for the County Manager shall be authorized by the Board of Commissioners. Documented mileage that is outside the County shall be paid at 73 percent of the County-approved reimbursement rate.

(Code 1995, § 276.02(B))

**Sec. 28-369. - Transportation.**

1) *Reimbursement costs.* All necessary transportation used pursuant to this article shall be obtained at the most economical rate available. Reimbursements shall be made for actual costs that are incurred and receipt supported. The cost of travel from the point of departure (normal job location or the personal residence) to the trip's end (normal job location or the personal residence) is a reimbursable cost. This includes the cost of taxi service and parking fees.

2) *Vehicles.* Use of vehicles shall be in accordance with the following:

a) *Personal automobile.* A requesting party may use his personal automobile for travel and be reimbursed at the approved rate, with Department Head approval.

b) *County vehicles.* County automobiles may be used for any authorized travel. The requesting party must obey all laws of the jurisdiction in which the automobile shall be used for the purpose of conducting County business only. A minimal amount of personal use is allowed, such as driving the automobile to and from lunch or dinner. Non-County employees

may accompany County employees if they have a business interest in the travel.

c) *Rental vehicles.* A rental vehicle shall be used when it is determined that no other mode of transportation is as economical or practical. A rental automobile should be used for business purposes only. A minimal amount of personal use, such as driving to and from dinner, shall be permitted. Use of a rental automobile must be approved in advance.

3) *Local transportation.* Local transportation costs incurred while on out-of-town business shall be reimbursed. The most economical and reasonable form of transportation shall be used. Receipts shall be obtained, when possible, and submitted with travel reimbursement requests.

(Code 1995, § 276.03)

#### **Sec. 28-370. - Subsistence.**

1) *Lodging.* ~~Travelers should look for government/Conference rates or the lowest available single-room rate when an employee is traveling with his spouse and children. Subject to the restrictions noted in subsection 3) of this section, lodging costs for employees under this article shall be reimbursed at the actual amount incurred. Receipts for lodging costs must be submitted with the employee expense report. The lodging rate is limited to the lowest available single-room rate when an employee is traveling with his spouse and children.~~

2) Room folio is required – Room rate, taxes and parking are the only allowable room charges. No other expenses including room service should be charged to the traveler's room folio.

3) The P card should not be used for personal hotel incidentals (phone calls, minibar, room service, hotel restaurant or bar, spa/gym, salon, movies, etc.). If using a P card for your room folio, a separate form of payment is required for personal expenses.

2) *Meals per diem.* ~~Meals shall be reimbursed as follows:~~ Meals are reimbursed (no receipts required) based on the current rates from [gsa.gov](http://gsa.gov) where the conference/seminar is taking place.

a) Breakfast – Travel begins prior to 6 am and continues after 8 am

b) Lunch – Travel begins prior to noon and continues after 2 pm

c) Dinner – Travel begins prior to 6 pm and continues after 8 pm

d) If meals are served as part of a convention or conference, then that meal will not be reimbursed to the employee as part of their per diem. Employees are required to submit the agenda of the conference/seminar in order to receive their reimbursement.

e) If an employee uses their P card for a meal, they do not receive a per diem for that meal; however, they would need to reconcile their P card meal receipt with their monthly P card statement.

f) tips and taxes are considered to be included in the per diem meal rates in this subsection.

~~a) Subject to the restrictions noted in subsection 3) of this section, three meals shall be reimbursed at actual cost.~~

~~b) Meals served as part of a convention or conference shall be reimbursed at actual cost. Documentation of actual cost must be attached to the employee expense report when requesting reimbursement.~~

~~3) *Lodging and meals.* Lodging and meals shall be reimbursed as follows:~~

~~a) Guidelines for reimbursement rates for a 24-hour period for travel within this state are as follows:~~

~~i) Breakfast: \$7.00.~~

~~ii) Lunch: \$10.00.~~

~~iii) Dinner: \$18.00.~~

~~iv) Reserved.~~

~~v) Lodging: conference rates or other reasonable rate.~~

~~b) Tips and taxes are considered to be included in the meal rates in subsection 3) a)~~

~~c) Employees must obtain actual meal receipts in order to be reimbursed. If there is no receipt, no reimbursement shall be paid. The reimbursement rates for travel may be waived by the Department Head or the County Manager, when actual meal costs for the locations involved exceed the suggested maximums.~~

~~d) The lodging shall be reimbursed at the conference rates or other reasonable rate.~~

**5) *Other costs.* Other costs shall be reimbursed as follows:**

a) Long distance personal telephone calls are not reimbursable. Phone calls for official County business are reimbursable expenses.

b) Receipt-supported registration fees for a conference or convention shall be reimbursed.

c) Movies, including pay TV movies, theater tickets, tours, and all other forms of entertainment, are not reimbursable.

d) Alcoholic beverages are not reimbursable.

(Code 1995, § 276.04; Ord. No. 2007-18, 10-1-2007)

**Sec. 28-371. - Reimbursement procedures.**

1) *Submitting employee expense reports.* Employee expense reports for travel conducted pursuant to this article shall be submitted in accordance with the following:

a) A requesting party shall complete an employee expense report and attach receipts for expenses as required and submit it to the authorizing party no later than ten working days after returning from travel. Advances shall be deducted from reimbursable costs.

b) A requesting party submitting a falsified employee expense report shall be subject to disciplinary action. The authorizing party or Finance Director who approves an employee expense report which he knows to be false shall be subject to disciplinary action.

2) *Approval and processing of reimbursement requests.* The procedure for approval and processing of reimbursement requests is as follows:

a) An employee expense report shall be submitted to the authorizing party for approval. After



the approval by the authorizing party, the employee expense report should be forwarded to the Finance Department.

b) The Finance Department shall determine that the employee expense report has been properly approved, that it is mathematically correct, and that requested reimbursements match submitted receipts and are within the limits set by this article. If an error in the reimbursement request is found, the requesting party shall be informed and the error shall be corrected before payment is made.

(Code 1995, § 276.05)

**Secs. 28-372—28-400. - Reserved.**

## **ARTICLE XII. - VETERANS SERVICE OFFICER <sup>[52]</sup>**

<sup>(52)</sup> **Cross reference**— Officers and employees, § 2-86 et seq.

<sup>(52)</sup> **State Law reference**— Veterans generally, G.S. ch. 165.

[Sec. 28-401. - Employment authorized.](#)

[Sec. 28-402. - Definitions.](#)

[Sec. 28-403. - Rules and regulations authorized.](#)

[Sec. 28-404. - Duties.](#)

[Sec. 28-405. - Notarial authority.](#)

### **Sec. 28-401. - Employment authorized.**

1) The Board of Commissioners is authorized and empowered to employ a County Veterans Service Officer and pay the service officer such salary as the Board may consider just and fair and to furnish the service officer the necessary office space, assistants, supplies, and equipment to enable the service officer to perform efficiently the duties of the service officer's employment.

2) In selecting the service officer and other personnel, preference shall be given to applicants who are eligible veterans, as defined by G.S. 128-15(b)(3), in furtherance of the policy of the state that, in appreciation for their service to this state and this country during a period of war and in recognition of the time and advantage lost toward the pursuit of a civilian career, veterans shall be granted preference in public employment.

(Code 1995, § 250.02)

**Editor's note**— In accordance with G.S. 153A-8 by Resolution No. 1979-168, adopted October 1, 1979, the Board of Commissioners authorized the County Manager to appoint, suspend, and remove the County Veterans Service Officer. On December 21, 1982, the Board of Commissioners authorized the County Manager to see that the duties and any other authority promulgated by the Veterans Service Officer are in accordance with this section and article and in accordance with the provisions of this chapter.

### **Sec. 28-402. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings

ascribed to them in this section, except where the context clearly indicates a different meaning:

*A period of war* includes World War I (April 16, 1917 through November 11, 1918); World War II (December 7, 1941, through December 31, 1946); the Korean Conflict (June 27, 1950, through January 31, 1955); the period of time between ~~January 31, 1955~~ **August 5, 1964**, and the end of the hostilities in Vietnam (May 7, 1975); the Persian Gulf War (August 2, 1990, through as set by law or Presidential proclamation); or any other campaign, expedition, or engagement for which a campaign badge or medal is authorized by the United States Department of Defense.

*Eligible veteran* means:

- 1) A veteran who served during a period of war;
- 2) The spouse of a disabled veteran;
- 3) The surviving spouse or dependent of a veteran who dies on active duty during a period of war either directly or indirectly as the result of such service;
- 4) A veteran who suffered a disabling injury for service-related reasons during peacetime;
- 5) The spouse of a veteran described in subsection 4) of this definition; or
- 6) The surviving spouse or dependent of a person who served in the armed forces of the United States on active duty, for reasons other than training, who dies for service-related reasons during peacetime.

*Veteran* means a person who served in the armed forces of the United States on active duty, for reasons other than training, and who has been discharged under other than dishonorable conditions.

(Code 1995, § 250.03)

**Cross reference**— Definitions generally, § 1-2.

#### **Sec. 28-403. - Rules and regulations authorized.**

The Board of Commissioners is authorized and empowered to make and promulgate all rules and regulations governing the duties of the Veterans Service Officer and assistants and the operation of the office provided for in this article as it may deem necessary to cooperate with the state and federal governments in all matters relating to benefits for active and discharged members of the United States armed services and their families.

(Code 1995, § 250.04)

#### **Sec. 28-404. - Duties.**

It shall be the duty of the Veterans Service Officer to:

- 1) Acquaint themselves with the federal, state and local laws enacted for the benefit of members of the armed forces, their families and dependents.
- 2) Collect data and information as to facilities and services available to such persons with regard to education, health and medical care, rehabilitation, housing, employment and all other matters of a similar nature.

3) Assist veterans, their families and dependents in the presentation of proof and establishment of claims for any benefits they may have under federal, state or local laws.

4) Perform such additional duties as the Board of Commissioners may direct.

(Code 1995, § 250.05)

**Sec. 28-405. - Notarial authority.**

The Veterans Service Officer shall have a seal of office and shall be authorized to take acknowledgments, administer oaths and affirmations, execute depositions and affidavits, and perform other notarial acts necessary to carry out this article.

(Code 1995, § 250.06)

## MEMORANDUM

TO: Catawba County Board of Commissioners

FROM: Policy and Public Works Subcommittee

DATE: February 6, 2017

IN RE: Replacement of Commercial Weighing Scales & Addition of Standby Power Generator

### REQUEST

The Policy and Public Works Subcommittee recommends the Board of Commissioners award and approve an agreement, attached, for engineering services for the County's Solid Waste Management Facilities for the design, formal project bidding, and construction administration of replacing three truck weighing scales and providing standby power generator to scale houses at the Blackburn Resource Recovery Facility to CDM Smith of Charlotte, NC in the amount of \$129,802.00.

### BACKGROUND

The County received Statements of Qualifications on July 27, 2016. Respondents were CDM Smith of Charlotte; McGill Associates of Asheville; and Smith Gardner of Raleigh. The Selection Committee was Barry Edwards, Director of Utilities and Engineering, Jack Chandler, Assistant U&E Director, Rodney Hamby, Landfill Superintendent, and Debbie Anderson, Purchasing Manager. After reviewing the Qualifications, the Selection Committee chose CDM Smith of Charlotte. CDM Smith has extensive experience with Weighing Scales Replacement and Installation Design having completed various projects including Buncombe County, Mecklenburg County, and Onslow County, and are currently working with the State of Virginia Interstate System. CDM Smith is currently designing the Subtitle D MSW Landfill Cell Unit 3, Phase 2 and is close to the end of the construction phase of the Landfill Gas to Energy Methane Gas Collection and Conditioning System. CDM Smith assists the County with Solid Waste Management Air Quality Regulations. Therefore, CDM Smith is the best qualified to provide the County the necessary services associated with the Weighing Scales Replacement and Installation Project.

The existing landfill weighing scales were installed in 1997. The 20-year-old scales are showing metal fatigue and stress and are unreliable and frequently requiring repairs to function accurately and to adhere to State Department of Labor regulations (Note: Scales must pass NCDOL quarterly inspections and be certified by the State as providing an accurate weight measure). The average life of commercial weighing scales is 15 - 20 years, but in a landfill, the environment is much harsher than in a typical commercial weighing scales installation causing additional wear and tear shortening the life of the scales. We have pushed the existing scales to last 20 years.

Landfill weighing scales are used constantly six days per week to accurately account for types and tonnages of materials brought to the landfill. The scales services on average 180 customers per workday. The Scale weight data is used in Federal, State, and County reports, formulating State landfill tipping tax, permit issuance and adherence, invoicing customers, and byproduct sales such as mulch, compost, whitegoods, and metals. Weighing Scales Replacement includes the addition of a standby generator to ensure scales are operational during power outages.

**All costs associated with the landfill and solid waste activities are funded from the Solid Waste Enterprise Fund, which is derived from solid waste tipping fees containing no ad valorem tax proceeds.** Funding for this project was established with the current Fiscal Year 16/17 budget, therefore, no appropriation is required.

### **RECOMMENDATION**

The Policy and Public Works Subcommittee recommends the Board of Commissioners award and approve an agreement, attached, for engineering services for the County's Solid Waste Management Facilities for the design, formal project bidding, and construction administration of replacing three truck weighing scales and providing standby power generator to scale houses at the Blackburn Resource Recovery Facility to CDM Smith of Charlotte, NC in the amount of \$129,802.00.

Attachment: Agreement



AGREEMENT  
BETWEEN  
OWNER AND ENGINEER

THIS IS AN AGREEMENT made as of \_\_\_\_\_ between Catawba County ("OWNER") and CDM Smith ("ENGINEER").

OWNER's Project is generally identified as Replacement Commercial Weighing Scales and Addition of Standby Generator (the "Project").

OWNER and ENGINEER, in consideration of their mutual covenants herein, agree in respect of the performance or furnishing of services by ENGINEER to the Project and the payment for those services by OWNER as set forth below. Execution of this Agreement by ENGINEER and OWNER constitutes OWNER's written authorization to ENGINEER to proceed on the date first above written with the Services described in Article 1 below. This Agreement will become effective on the date first above written.

ARTICLE 1 – SCOPE OF SERVICES

- 1.1 ENGINEER agrees to perform, or cause to be performed, for OWNER services as described in Exhibit A (hereinafter referred to as "Services"), attached and incorporated herein in accordance with the requirements outlined in this Agreement.

ARTICLE 2 – TIMES FOR RENDERING SERVICES

- 2.1 Specific time periods and/or specific dates for the performance of ENGINEER's Services are set forth in Exhibit A.
- 2.2 If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- 2.3 If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- 2.4 Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services. If ENGINEER's services are delayed or suspended in whole or in part by OWNER for more than three months through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of the schedule and of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, among other things, reasonable costs incurred by ENGINEER in connection with such delay or suspension and reactivation.

ARTICLE 3 – OWNER'S RESPONSIBILITIES

OWNER shall:

- 3.1 Pay the ENGINEER in accordance with the terms of this Agreement.
- 3.2 Designate in writing a person to act as OWNER's representative with respect to the services to be performed or furnished by ENGINEER under this Agreement. Such person will have complete authority to transmit instructions, receive information, interpret, and define OWNER's policies and decisions with respect to ENGINEER's services for the Project.

- 3.3 Provide all criteria and full information as to OWNER's requirements for the Project, including, as applicable to the Services, design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.
- 3.4 Be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- 3.5 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of ENGINEER's Services or any relevant, material defect or nonconformance in ENGINEER's Services or in the work of any Contractor employed by Owner on the Project.
- 3.6 Bear all costs incident to compliance with the requirements of this Article 3.

#### ARTICLE 4 – PAYMENTS TO ENGINEER FOR SERVICES

##### 4.1 Methods of Payment for Services of ENGINEER.

- 4.1.1 OWNER shall pay ENGINEER for Services performed or furnished under this Agreement or as described in Exhibit A. The amount of any excise, VAT, or gross receipts tax that may be imposed shall be added to the compensation shown in Exhibit A. If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional taxes in addition to the compensation to which Engineer is entitled.
- 4.1.2 Invoices for Services will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER at least monthly. Payments are due within 30 days of receipt of invoice.
- 4.1.3 If OWNER fails to make any payment due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and, in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses and charges. Payments will be credited first to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

OWNER agrees to pay ENGINEER all costs of collection including but not limited to reasonable attorneys' fees, collection fees and court costs incurred by ENGINEER to collect properly due payments.

#### ARTICLE 5 – GENERAL CONDITIONS

##### 5.1 Standard of Care

The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of

ENGINEER's profession practicing under similar conditions at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

5.2 Technical Accuracy

Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

5.3 Opinions of Probable Construction Cost

Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.4 Compliance with Laws and Regulations, and Policies and Procedures

5.4.1 Engineer and Owner shall comply with applicable Laws and Regulations.

5.4.2 This Agreement is based on Laws and Regulations procedures as of the Effective Date. Changes after the Effective Date to Laws and Regulations may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.

5.4.3 Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.

5.4.4 Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

5.4.5 Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.

5.4.6 Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.

5.4.7 Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

5.4.8 Engineer's services do not include providing legal advice or representation.

- 5.4.9 Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- 5.4.10 While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

## 5.5 Termination

The obligation to provide further services under this Agreement may be terminated:

### 5.5.1 For cause,

- a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- b. by Engineer:
  - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
  - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern.
  - 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, this Agreement will not terminate for cause if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

### 5.5.2 For convenience, by Owner effective upon Engineer's receipt of notice from Owner.

### 5.5.3 Effective Date of Termination: The terminating party under Paragraph 5.5.1 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

### 5.5.4 Payments Upon Termination:

- a. In the event of any termination under Paragraph 5.5, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with

This Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 5.6.

5.6 Use of Documents

- 5.6.1 All Documents are instruments of service, and ENGINEER shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.
- 5.6.2 If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- 5.6.3 Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.
- 5.6.4 OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Upon receipt of full payment due and owing for all Services, ENGINEER grants OWNER a license to use the Documents on the Project, extensions of the Project, and related uses of OWNER, subject to the following limitations: (1) OWNER acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by ENGINEER, or for use or reuse by OWNER or others on extensions of the Project or on any other project without written verification or adaptation by ENGINEER; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants; (3) OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by ENGINEER; (4) such limited license to OWNER shall not create any rights in third parties.
- 5.6.5 If ENGINEER at OWNER's request verifies or adapts the Documents for extensions of the Project or for any other project, then OWNER shall compensate ENGINEER at rates or in an amount to be agreed upon by OWNER and ENGINEER.

5.7 Controlling Law

This Agreement is to be governed by the Laws and Regulations of the North Carolina, venue Catawba County.

5.8 Mutual Waiver of Consequential Damages

Notwithstanding any other provision of this Agreement to the contrary, neither party including their officers, agents, servants and employees shall be liable to the other for lost profits or any special,



indirect, incidental, or consequential damages in any way arising out of this Agreement however caused under a claim of any type or nature based on any theory of liability (including, but not limited to: contract, tort, or warranty) even if the possibility of such damages has been communicated.

5.9 Limitation of Liability

In no event shall ENGINEER's total liability to OWNER and/or any of the OWNER's officers, employees, agents, contractors or subcontractors for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to this agreement from cause or causes, including, but not limited to, ENGINEER's wrongful act, omission, negligence, errors, strict liability, breach of contract, breach of warranty, express or implied, exceed the total amount of fee paid to ENGINEER under this agreement or \$50,000, whichever is greater.

5.10 Successors and Assigns

5.10.1 OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 5.10.2 the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

5.10.2 Neither OWNER nor ENGINEER may assign, sublet or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

5.10.3 Unless expressly provided otherwise in this Agreement:

- a. Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by ENGINEER to any Constructor, other person or entity, or to any surety for or employee of any of them, or give any rights in or benefits under this Agreement to anyone other than OWNER and ENGINEER.
- b. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

5.11 Notices

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from time to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile, or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

5.12 Severability

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### 5.13 Changed Conditions

If concealed or unknown conditions that affect the performance of the Services are encountered, which conditions are not ordinarily found to exist or which differ materially from those generally recognized as inherent in the Services of the character provided for under this Agreement or which could not have reasonably been anticipated, notice by the observing party shall be given promptly to the other party and, if possible, before conditions are disturbed. Upon claim by the ENGINEER, the payment and schedule shall be equitably adjusted for such concealed or unknown condition by change order or amendment to reflect additions that result from such concealed, changed, or unknown conditions.

#### 5.14 Environmental Site Conditions

It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to Constituents of Concern, as defined in Article 6. If ENGINEER or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern as defined in Article 6, then ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern, and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of ENGINEER's services under this Agreement, then the ENGINEER shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days' notice.

OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, so defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

#### 5.15 Insurance

ENGINEER shall maintain at all times during the term of this Agreement, at the ENGINEER's sole expense:

##### A. Commercial General Liability Insurance

ENGINEER shall maintain Commercial General Liability insurance, including coverage for products and completed operations liability, contractual liability, liability from independent contractors, property damage liability, bodily injury liability, and personal injury liability with limits of not less than \$2,000,000 per occurrence, and \$2,000,000 annual aggregate. The limits may be satisfied by a combination of primary and excess insurance. The coverage shall be written on an occurrence basis.

##### B. Business Automobile Insurance

At all times while the ENGINEER's representatives are conducting on-site work, the ENGINEER shall maintain Business Auto insurance for any owned, hired, rented, or borrowed vehicle with a limit of not less than \$2,000,000 per occurrence combined single limit for bodily injury and property damage liability. The limit may be satisfied by a combination of primary and excess insurance. The policy will also include the MCS-90 endorsement.

C. Workers Compensation & Employers Liability Insurance

At all times while the ENGINEER's representatives are conducting on-site work, ENGINEER shall maintain statutory Workers Compensation insurance in accordance with the laws of North Carolina. ENGINEER shall also maintain Employers' Liability insurance with limits of not less than \$1,000,000 per accident and \$1,000,000 each employee for injury by disease.

D. Environmental Impairment Liability Insurance

ENGINEER shall maintain Environmental Impairment Liability insurance for the transportation and disposal of pollutants handled by the ENGINEER pursuant to this Agreement. The limits of liability shall meet all State and Federal requirements, but shall not be less than \$2,000,000 each occurrence and \$2,000,000 policy aggregate. This coverage should be maintained for a period of not less than three (3) years after completion of the ENGINEER's work as set forth in this Agreement.

E. General Requirements

1. Prior to beginning the work, ENGINEER shall provide written evidence of insurance as requested by the County to confirm that these insurance requirements are satisfied.
2. Catawba County shall be named as an additional insured under ENGINEER's automobile and general liability insurance. In the event of a loss arising out of or related to the ENGINEER's services performed under this Agreement, ENGINEER's Liability insurance shall be primary (pay first) with respect to any other insurance which may be available to the County, regardless of how the "other insurance" provisions may read. Additional insured endorsements must be attached to ENGINEER's evidence of insurance and must include coverage for completed operations.
3. The workers' compensation policy must contain a waiver of subrogation in favor of the County.
4. ENGINEER shall be responsible for insuring all of its own property and equipment.
5. All insurance policies put forth to satisfy the above requirements shall require the insurer to provide a minimum of sixty (60) days' notice to the County of any material change in coverage, cancellation, or non-renewal.
6. All insurance put forth to satisfy the above requirements shall be placed with insurance companies acceptable to the County. Any deductibles or self-insured retentions in the required insurance shall be subject to approval by the County.
7. ENGINEER shall provide certificates of insurance to the County as evidence of the required coverage. ENGINEER agrees to provide complete copies of policies if requested. Failure of Contractor to provide timely evidence of insurance, or to place coverage with insurance, or to place coverage with insurance companies acceptable to the County, shall be viewed as ENGINEER's delaying performance entitling the county to all appropriate remedies under the law including termination of the contract.

5.16 Discovery

ENGINEER shall be entitled to compensation on a time and materials basis when responding to all requests for discovery relating to this Project and to extent that ENGINEER is not a party to the lawsuit.

5.17 Nondiscrimination and Affirmative Action

In connection with its performance under this Agreement, ENGINEER shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, national origin, ancestry, citizenship, physical or mental handicap or because he or she is a disabled veteran or veteran of the Vietnam era. ENGINEER shall take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, national origin, ancestry, citizenship, physical or mental handicap or because he or she is a disabled veteran or veteran of the Vietnam era. Such actions shall include recruiting and hiring, selection for training, promotion, fixing rates or other compensation, benefits, transfers and layoff or termination.

5.18 Force Majeure

Any delays in or failure of performance by ENGINEER shall not constitute a default under this Agreement if such delays or failures of performance are caused by occurrences beyond the reasonable control of ENGINEER including but not limited to: acts of God or the public enemy; expropriation or confiscation; compliance with any order of any governmental authority; changes in law; act of war, rebellion, terrorism or sabotage or damage resulting therefrom; fires, floods, explosions, accidents, riots; strikes or other concerted acts of workmen, whether direct or indirect; delays in permitting; OWNER's failure to provide data in OWNER's possession or provide necessary comments in connection with any required reports prepared by ENGINEER, or any other causes which are beyond the reasonable control of ENGINEER. ENGINEER's scheduled completion date shall be adjusted to account for any force majeure delay and ENGINEER shall be reimbursed by OWNER for all costs incurred in connection with or arising from a force majeure event, including but not limited to those costs incurred in the exercise of reasonable diligence to avoid or mitigate a force majeure event.

5.19 Waiver

Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

5.20 Headings

The headings used in this Agreement are for general reference only and do not have special significance.

5.21 Subcontractors

ENGINEER may utilize such ENGINEER's Subcontractors as ENGINEER deems necessary to assist in the performance of its Services. ENGINEER shall obtain approval by OWNER for utilization of subcontractors and such approval shall not be unreasonably withheld.

5.22 Coordination with Other Documents

It is the intention of the parties that if the ENGINEER's Services include design then the Standard General Conditions will be used as the General Conditions for the Project and that all amendments thereof and supplements thereto will be generally consistent therewith. Except as otherwise defined herein, the terms which have an initial capital letter in this Agreement and are defined in the Standard General Conditions will be used in this Agreement as defined in the Standard General Conditions. The term "*defective*" will be used in this Agreement as defined in the Standard General Conditions.

5.23 Purchase Order

Notwithstanding anything to the contrary contained in any purchase order or in this Agreement, any purchase order issued by OWNER to ENGINEER shall be only for accounting purposes for OWNER and the pre-printed terms and conditions contained on any such purchase order are not incorporated herein, shall not apply to this Agreement, and shall be void for the purposes of the Services performed by ENGINEER under this Agreement.

#### 5.24 Dispute Resolution

In the event of any dispute between the parties arising out of or in connection with the contract or the services or work contemplated herein; the parties agree to first make a good faith effort to resolve the dispute informally. Negotiations shall take place between the designated principals of each party. If the parties are unable to resolve the dispute through negotiation within 45 days, then either party may give written notice within 10 days thereafter that it elects to proceed with non-binding mediation. In the event that mediation is not invoked by the parties or that the mediation is unsuccessful in resolving the dispute, then either party may submit the controversy to a court of competent jurisdiction covering Catawba County, NC. The foregoing is a condition precedent to the filing of any action other than an action for injunctive relief or if a Statute of Limitations may expire.

Each party shall be responsible for its own costs and expenses including attorneys' fees and court costs incurred in the course of any dispute, mediation, or legal proceeding. The fees of the mediator and any filing fees shall be shared equally by the parties.

### ARTICLE 6 – DEFINITIONS

Whenever used in this Agreement the following terms have the meanings indicated which are applicable to both the singular and the plural.

#### 6.1 Agreement

This Agreement between OWNER and ENGINEER for Professional Services including those exhibits listed referenced herein.

#### 6.2 Constituent of Concern

Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to [a] the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); [b] the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; [c] the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); [d] the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; [e] the Clean Water Act, 33 U.S.C. §1251 et seq.; [f] the Clean Air Act, 42 U.S.C. §§7401 et seq.; and [g] any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

#### 6.3 Construction Cost—♦

The total cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include ENGINEER's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to properties, or OWNER's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to OWNER pursuant to Article 3. Construction Cost is one of the items comprising Total Project Costs.

#### 6.4 Constructor

Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.



- 6.5 Contractor -♦  
The person or entity with whom OWNER enters into a written agreement covering construction work to be performed or furnished with respect to the Project.
- 6.6 Documents  
As applicable to the Services, the data, reports, drawings, specifications, record drawings and other deliverables, whether in printed or electronic media format, provided or furnished by ENGINEER to OWNER pursuant to the terms of this Agreement.
- 6.7 ENGINEER's Subcontractor.  
A person or entity having a contract with ENGINEER to perform or furnish Services as ENGINEER's independent professional subcontractor engaged directly on the Project.
- 6.8 Reimbursable Expenses.  
The expenses incurred directly in connection with the performance or furnishing of Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit A.
- 6.9 Resident Project Representative - ♦  
The authorized representative of ENGINEER who will be assigned to assist ENGINEER at the site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are set forth in Exhibit B, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative" ("Exhibit B"), attached and incorporated herein.
- 6.10 Standard General Conditions -♦  
The Standard General Conditions of the Construction Contract (No. C-700) of the Engineers Joint Contract Documents Committee.
- 6.11 Total Project Costs - ♦  
The sum of the Construction Cost, allowances for contingencies, the total costs of design professional and related services provided by ENGINEER and (on the basis of information furnished by OWNER) allowances for such other items as charges of all other professionals and consultants, for the cost of land and rights-of-way, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by others to OWNER under Article 3.
- 6.12 Work - ♦  
The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.

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♦ This provision is applicable for projects where ENGINEER provides Design, Bidding and/or Construction Phase Services.

ARTICLE 7 –SPECIAL PROVISIONS

Address for giving notices:  
Barry B. Edwards, P.E.  
Director  
Catawba County  
PO Box 389, Newton, NC 28658

Address for giving notices:  
CDM Smith  
4600 Park Road, Suite 240  
Charlotte, NC 28209

- 7.1 IRAN DIVESTMENT ACT CERTIFICATION: Service Provider certifies that, as of the date listed above, it is not on the Final Divestment List or the Iran Parent and Subsidiary Guidance List as created by the State Treasurer pursuant to NCGS 147-86.58. In compliance with the requirements of the Iran Divestment Act (Article 6E of Chapter 147 of the North Carolina General Statutes), Service Provider shall not utilize, in the performance of the contract, any subcontractor that is identified on the Final Divestment List or the Iran Parent and Subsidiary Guidance List.
- 7.2 E-VERIFY: Service Provider shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if Service Provider utilizes a subcontractor, Service Provider shall require the subcontractor to comply with the requirements of Article 2 Chapter 64 of the North Carolina General Statutes.

This Agreement (consisting of Pages 1 to 22 inclusive), and the Exhibits identified above constitute the entire agreement between OWNER and ENGINEER and supersede all prior written and oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

OWNER:  
CATAWBA COUNTY

(Seal)

Attest:

\_\_\_\_\_  
By: Randy Isenhower, Chair  
Catawba County Board of Commissioners

ENGINEER:

(Seal)

Attest:

\_\_\_\_\_  
*Mart Sanford*

\_\_\_\_\_  
*David L. Collins*  
By: David L. Collins, P.E., Vice President  
CDM Smith, Inc.

EXHIBIT A TO AGREEMENT  
BETWEEN  
OWNER AND ENGINEER

Replacement Commercial Weighing  
Scales and Addition of Standby  
Generator

1. The Basic Services of ENGINEER as described in Section 1 of said Agreement are amended and supplemented as follows:

The existing scale house area consists of two scale house buildings, two inbound scales, and one outbound scale. The scales were initially installed in 1997, and are reaching the end of their useful life. The County utilizes signal lights to control traffic across the scales while also managing the flow of traffic to the active MSW and C&D landfill disposal areas.

CDM Smith understands that the County is interested in maintaining above-ground installations for the replacement scales, and that a backup power generator with automatic transfer switch needs to be provided to ensure 100% reliability of the scale house and scales. This scale replacement project is intended to provide accurate, reliable scales for the next 15 years until the scale house entrance facility is relocated to the eastern side of the landfill to coordinate with future Subtitle D landfill expansion areas.

CDM Smith will review customer interactions/transactions that occur at the scale house including credit accounts, cash transactions, compost and mulch sales; conduct an evaluation of existing scale foundations and electrical requirements; and review electronic and hydrostatic scale types that will meet the County's current needs. The purpose of these activities is to determine the appropriate replacement scale including optional features and design elements that will provide long-term safety and reliability.

The purpose of this proposal is to provide the County with engineering and construction services associated with the installation of new inbound and outbound scales and emergency back-up power supply.

**Task 1 – Kickoff Meeting and Data Review**

A kickoff meeting will be held between CDM Smith and the County to discuss the options for the new scales and the overall project schedule. The scale replacement discussion will focus on the type of scales, materials of construction, installation options, computer interfaces and other features desired by the County.

CDM Smith will review the customer transaction data and material analysis reports provided by the County for both MSW and C&D customers.

CDM Smith's structural and electrical engineers will conduct a desktop review of site conditions and electrical data to assist in evaluating structural, electrical, and instrumentation needs for the new scales and weigh system.

Our engineers will evaluate scale options based on the compatibility with existing physical infrastructure

including computer hardware and software; functional requirements of the scales; and overall project costs.

### **Task 2 – Civil and Structural Preliminary Design**

Based on input from the kickoff meeting, CDM Smith will identify available types of electronic and hydrostatic scales from various manufacturers that appear to meet the County's needs. CDM Smith understands that the existing scale foundations will be used for the new scales. Recommendations of up to three manufacturers/scale types will be made and presented to the County.

CDM Smith will contact the vendor(s) of the selected scale type to determine the details and instrumentation requirements for the specific scale type.

A CDM Smith structural engineer will visit the landfill to conduct an assessment of the existing foundation conditions. Upon completion of the assessment, we will provide a technical memorandum summarizing the results of our assessment.

CDM Smith will prepare a technical memorandum summarizing the preferred scale type, design elements, electrical requirements, and technical specifications. Upon agreement of the design decisions, CDM Smith will begin working on the construction documents for the selected equipment and options under Tasks 3 and 4.

### **Task 3 – Back-up Power Generator Services**

CDM Smith will provide electrical and structural engineering services for the addition of two generators and automatic transfer switches for emergency back-up power. One generator will be provided for the two scale houses, and one generator for the administration building. Emergency power will be for the critical equipment such as computers, monitors, IP phones, printers, walkie-talkie chargers, server, telecom equipment, and etc. Under this task, CDM Smith will perform load calculations and determine the size of each generator, automatic transfer switch and emergency panelboards. CDM Smith will also work with the County to determine the appropriate generator fuel type (propane or diesel).

CDM Smith assumes that the existing electrical service equipment, i.e., utility transformer, main panelboard, etc. will have adequate capacity to support the existing and new load. If upgrade of the existing electrical service equipment becomes necessary per the load calculation, CDM Smith will meet with the County to discuss the need for additional design fees.

Under this task, CDM Smith will develop electrical and structural bid documents consisting of drawings and specifications. CDM Smith's budget assumes that the back-up power generators will be bid together with the scale replacement work as one complete project.

CDM Smith electrical and structural engineers will also provide technical services during the bidding and construction management activities as described in Tasks 6 and 7. The electrical and structural services during bidding and construction included under this task are related to the two new generators and electrical equipment required for the provision of back-up power.

#### **Task 4 – Construction Bid Package**

CDM Smith assumes that the new scales will be installed on the existing foundations; and that foundation or drainage improvements will not be required for the new scales. Detailed drawings will be prepared for the new scale installation. CDM Smith will develop the front-end and technical specifications. The documents will specify a procurement of a single contractor who will supply, install and commission all new scale and generator equipment, and interfaces with existing systems. Under this task, CDM Smith will develop bid documents consisting of civil and structural drawings and specifications.

The replacement scales will be interfaced to the County's existing scale house computer system by the supplier of that system. System interface points will be supplied from the scale manufacturer. The construction documents will provide one communication drawing to provide information on the existing instrumentation system architecture, truck scale system P&ID, and equipment requirements as developed by a CDM Smith instrumentation engineer.

Two sets of plans and technical specifications will be presented to the County for review at the 60% and 90% completion stages. Three sets of completed documents, as well as one set on a compact disk will be submitted at project completion.

CDM Smith, using our construction branch, CDM Constructors Inc. (CCI), will prepare and submit an opinion of probable construction cost (OPCC) to the County at the 90% level for budgeting purposes.

#### **Task 5 – Technical Review Meetings**

CDM Smith senior technical staff will conduct technical and quality control reviews at each of the deliverable milestones. CDM Smith will also conduct on-site client review meetings at the same milestones. The design documents will be discussed at the meetings and changes will be incorporated into the documents as appropriate.

#### **Task 6 – Bidding Services**

Once the construction bid package is finalized and accepted by the County, CDM Smith will provide services to assist the County in the selection of a qualified bidder for the scale replacement construction. All costs assume one bid opening.

CDM Smith will coordinate the bidding process with selected contractors meeting the construction experience requirements specified in the Contract Documents for the proposed project. Included in the bidding services will be the preparation of the bid advertisement, which will present the work associated with the replacement project.

The scope of services for this Task includes the following:

- Bid documents will be issued by CDM Smith to the County and prospective bidders. CDM Smith will also maintain a current list of all plan holders.
- Prepare such clarifications and addenda to the bid documents as may be required. Clarifications and/or addenda will be provided to the County and all prospective bidders.
- Schedule and conduct one prebid conference with prospective bidders to review the Project requirements. CDM Smith will provide representative(s) from the design team to participate in the



- prebid conference to explain and clarify the bid documents.
- Following the prebid conference, CDM Smith will deliver to all recipients of bid documents an addendum to document any changes(s) to the Construction Documents resulting from the prebid conference, along with prebid conference meeting minutes.
- CDM Smith will support the County in obtaining and evaluating proposals from Contractors in strict compliance with applicable North Carolina General Statutes.
- Attend one bid opening

CDM Smith will review all proposals received and make written recommendations to the County relative to acceptance/rejection of proposals and award of the Contract to the lowest responsible bidder, taking into consideration prior experience on similar projects as required in the specifications, past performance and contractor ability to complete the project in the time specified in the proposals for performance of the Contract.

### **Task 7 – Construction Management Services**

#### **Task 7.1 – General Services**

CDM Smith will coordinate the project construction phase (assume a 4-month schedule) by advising, making change order recommendations, observing, monitoring, and reporting on related activities during construction including the following:

- Conduct pre-construction meeting following the award of the contract.
- Provide consultation and advise the County during active construction.
- Review and approve shop drawings.
- Issue interpretations and clarifications of the contract documents and evaluate, recommend, and prepare change orders as required.
- Review and recommend approval of contractor pay requests.
- Assist County staff with one pre-final inspection, one written “punch list” and issuance of any final change order required for the County to process final payment to the contractor.

Meet as necessary with the County and the Contractor to resolve any issues that may arise during construction.

Given the short duration of actual field construction work (approximately two months), CDM Smith assumes that any progress meetings will occur via conference call. The level of work estimated for general services during the construction project is 96 hours. CDM Smith reserves the right to request additional compensation, should general services time extend beyond the 96 hours.

#### **Task 7.2 – Periodic Inspections and Testing**

CDM Smith will provide periodic observation of the contractor’s installation and testing of the truck scale and emergency back-up power systems. CDM Smith’s representative will be onsite 1 day per week to observe the installation of new scales and generators per manufacturer’s recommendation. CDM Smith assumes that County staff will be onsite daily observing the majority of construction; and, that the County will contract with an independent testing firm to provide any concrete or soil material testing not covered by the contractor. The level of effort for this task is assumed to be 32 hours throughout construction period.

CDM Smith reserves the right to request additional compensation, should inspection time extend beyond the 32 hours.

Task 7.3 – Project Closeout

Upon receipt of written notification from the contractor that the project is substantially complete, CDM Smith will conduct pre-final inspections to determine if the project is substantially complete, or portions thereof operable, and prepare a written “punch list” of all incomplete, defective or deficient items. CDM Smith will also issue any final change order required for the County to process final payment to the contractor, secure warranty and other vendor information and documentation as the contract documents require.

2. The responsibility of OWNER as described in Section 2 of said Agreement are amended and supplemented as follows:
  - Provide available AutoCAD files for the Blackburn Landfill entrance area including scale areas.
  - Review deliverables in a timely manner.
  - Provide requested historical traffic count information.
3. The time period for the performance of ENGINEER's services as set forth in Section 4 of said Agreement are amended as follows:

Engineer will complete Tasks 1-5 within 4 months of notice to proceed. Completion of Tasks 6 and 7 will be dependent on actual timelines for conducting bidding and construction.

4. The method of payment for services rendered by ENGINEER shall be as set forth below:

For the Basic Services, CDM Smith presents a lump sum fee of \$100,450 for the services included in Tasks 1 through 6; and a not-to-exceed fee of \$29,352 for Task 7 under this proposal. Monthly payments shall be made in accordance with the amount of work completed and invoiced on a monthly basis.

A breakdown of costs by task for all events is provided below for information purposes only:

Task No.	Cost
1. Kickoff Meeting and data Review	\$6,460
2. Preliminary Design	\$9,100
3. Back-up Power Generator Services	\$37,637
4. Construction Bid Package	\$30,043
5. Technical Reviews	\$6,910
6. Bidding Services	\$10,300
7. Construction Management	\$29,352
Total	\$129,802

**EXHIBIT B TO AGREEMENT  
BETWEEN  
OWNER AND ENGINEER**

**DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY  
OF THE RESIDENT PROJECT REPRESENTATIVE**

This is an Exhibit attached to, made a part of and incorporated by reference with the Agreement made on \_\_\_\_\_, 2017 between Catawba County (OWNER) and CDM Smith (ENGINEER) for providing professional services.

ENGINEER shall furnish a Resident Project Representative ("RPR"), assistants and other field staff to assist ENGINEER in observing progress and quality of the work of Contractor.

Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work of Contractor. However, ENGINEER shall not, as a result of such observations of Contractor's work, supervise, direct, or have control over any Constructor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures selected by any Constructor, for safety precautions and programs incident to the work of any Constructor, for any failure of any Constructor to comply with laws, rules, regulations, ordinances, codes or orders applicable to performing and furnishing the work, or responsibility of construction for Contractor's failure to finish and perform the Work in accordance with the Construction Contract Documents.

The duties and responsibilities of the RPR are limited to those of ENGINEER in ENGINEER's Agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

**A. General**

RPR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and Contractor, keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

**B. Duties and Responsibilities of RPR**

1. *Schedules:* Review the progress schedule, schedule of Shop Drawing submittals schedule of values, and other schedules prepared by Contractor and consult with ENGINEER concerning their acceptability.
2. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings (but not Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
3. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.

4. *Liaison:*

- a. Serve as ENGINEER's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of the Construction Contract Documents; and assist ENGINEER in serving as OWNER's liaison with Contractor when Contractor's operations affect OWNER's on-site operations.
- b. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.

5. *Shop Drawings and Samples:*

- a. Record date of receipt of Shop Drawings and Samples.
- b. Receive Samples that are furnished at the site by Contractor, and notify ENGINEER of availability of Samples for examination.
- c. Advise ENGINEER and Contractor of the commencement of any Work requiring a Shop Drawing or Sample if the submittal has not been approved by ENGINEER.

6. *Review of Work, Defective Work, Inspections, Tests and Start-ups:*

- a. Report to ENGINEER whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
- b. Inform ENGINEER of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work.
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.
- d. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- e. Verify that tests, equipment and systems start-ups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and start-ups.
- f. Accompany visiting inspectors representing public or other agencies having jurisdiction over the work, record the results of these inspections and report to ENGINEER.

7. *Interpretation of Contract Documents:* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.

8. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.

9. *Records:*

- a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, copies of Construction Contract Documents including all Work Change, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, approved Shop Drawing submittals and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the job site, Subcontractors present at the Site weather conditions, data relative to questions of Work Change Directives, Change Orders or changed conditions, list of job site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.
- c. Record names, addresses, e-mail addresses, websites and telephone numbers of all Contractors, Subcontractors and major suppliers of materials and equipment.

10. *Reports:*

- a. Furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
- c. Draft proposed Change Orders and Work Change Directives, obtaining backup material from Contractor and recommend to ENGINEER Change Orders, Work Change Directives, and Field Orders.
- d. Report immediately to ENGINEER and OWNER the occurrence of any accident.

11. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.

12. *Certificates, Maintenance and Operation Manuals:* During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for the Work.

13. *Completion:*

- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
- b. Observe whether Contractor has had performed inspections required by laws, rules, regulations, ordinances, codes, or orders applicable to the work, including but not limited to those to be performed by public agencies having jurisdiction over the work.
- c. Conduct a final inspection in the company of ENGINEER, OWNER and Contractor and prepare a final list of items to be completed or corrected.



- d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

**C. Limitations of Authority by RPR**

Resident Project Representative:

1. Shall not authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Shall not exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or any Constructor.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
6. Shall not accept Shop Drawing or Sample submittals from anyone other than Contractor.
7. Shall not authorize OWNER to occupy the Project in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

**THIS INSTRUMENT** has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act as amended.

Date: \_\_\_\_\_

\_\_\_\_\_  
Robert Miracle, Chief Financial Officer

**APPROVED AS TO FORM:**

Date: \_\_\_\_\_

\_\_\_\_\_  
Debra N. Bechtel, County Attorney

# Memo

**To:** Catawba County Board of Commissioners  
**From:** Jacky Eubanks, Director of Planning and Parks  
**Date:** February 6, 2017  
**Re:** 2015 Urgent Repair Program Project Budget Ordinance Amendment - Interest Earned

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## Request

Staff requests the Board of Commissioners amend the 2015 Urgent Repair Program Project Budget Ordinance to appropriate the interest earned. A total of \$148 has been earned to date.

## Background

Catawba County received a \$50,000 Urgent Repair Grant in April 2015 to rehabilitate eleven (11) houses at \$7,200 or less a house. The County is allowed to earn interest on the funds that were received from the North Carolina Housing Finance Agency. During the last 21 months, interest has been earned on this project. A total of \$148 has been earned to date and these funds will need to be expended through the rehabilitation line item by February 15, 2017.

Ten (10) homeowners scattered throughout Catawba County have benefited from this grant. The grant is one (1) unit short from the original target of eleven (11) units which is within the 10% rule of houses completed of the original target. Some repairs required higher funds to be expended on the house such as big roofing jobs and installation of heating systems.

## Recommendation

The Planning staff recommends the Board of Commissioners approve this Project Budget Ordinance Amendment to the 2015 Urgent Repair Program Rehabilitation Line Item.

## Revenue:

280-420135-630590	Interest Earned on Revenue	\$148
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## Expenditures:

280-420135-849120	Rehabilitation	\$148
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**ORDINANCE#**\_\_\_\_\_  
AMENDMENT#1  
CATAWBA COUNTY PROJECT BUDGET ORDINANCE  
FOR THE 2015 URGENT REPAIR GRANT

The following revenues are anticipated to be available  
to complete this Project:

Revenues

North Carolina Housing Finance Agency-URP

NCHFA-URP Grants Revenue	\$ 50,000
Interest Earned on Revenue	\$ 148
	<u>\$ 50,148</u>

Section 4. The following Expenditures are appropriated for the  
project:

Expenditures

North Carolina Housing Finance Agency-URP

Rehabilitation-URP	\$ 43,830
Interest	148
WPCOG Administration	\$ 6,170
	<u>\$ 50,148</u>

Adopted this the 6th of February, 2017.

\_\_\_\_\_  
Chair, Catawba County Commissioners

Attest:

\_\_\_\_\_  
County Clerk

## MEMORANDUM

TO: CATAWBA COUNTY BOARD OF COMMISSIONERS

FROM: Lori Mathes, Tax Collector

DATE: February 6, 2017

IN RE: REFUND REQUEST FOR FEBRUARY 6 MEETING

### REQUEST

One refund request totaling \$108.26 has been made to the Tax Office. The records have been checked and this refund verified; therefore, the Tax Collector is asking for approval of the refund request.

### BACKGROUND

According to General Statute 105-381, a Taxpayer who has paid his taxes may request a refund (in writing) for the amount that was paid through error. Below documents the taxpayer's request.

MN Airlines, LLC dba, Sun Country Airlines  
C/O Thomas Bitz  
1300 Mendota Heights Rd.  
Mendota Heights, MN 55120-1128

Abstract # 3019767

	YEAR	VALUE	COUNTY RATE	COUNTY TAX	BRANDY FIRE RATE	BRANDY FIRE TAX	TOTAL TAX
Original Billed Amount	2016	107,602	0.575	618.71	0.082	88.23	\$ 706.94
Corrected Bill Amount	2016	91,123	0.575	523.96	0.082	74.72	\$ 598.68
Refund Amount Due	2016	16,479	0.575	94.75	0.082	13.51	\$ 108.26

MN Airlines is requesting a refund due to a value change by the Department of Revenue of their public service utility valuation. The value changed from 107,602 to 91,123 creating a difference in value of 16,479, which equals a change in the tax amount of \$108.26.

### RECOMMENDATION

The refund request is approved as shown.