RESOLUTION NO. 21-_____

RESOLUTION AUTHORIZING THE EXECUTION OF AMENDMENTS TO THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF ASHEVILLE AND THE COUNTY OF BUNCOMBE FOR THE REGIONAL AIR QUALITY AGENCY

WHEREAS, the Parties are authorized to execute and enter into this Interlocal Agreement pursuant to N.C. Gen. Stat. § 160A-461; and

WHEREAS, the WNC Regional Air Quality Agency ("Agency") was initially formed effective July 1, 1970 and was comprised of the Counties of Buncombe and Haywood and the City and Asheville; and

WHEREAS, Haywood County withdrew from the arrangement in early 2000 and the program carries on under an Interlocal Agreement between Buncombe County and the City of Asheville; and

WHEREAS, a five member board ("Air Quality Board") is appointed by the member entities to oversee the administration and enforcement of the local air pollution control program pursuant to GS §143-215.112; and

WHEREAS, three members of the Air Quality Board are appointed by the County and two by the City; and

WHEREAS, the Air Quality Board is requesting certain limited amendments to the current Interlocal Agreement due to changes in membership, office location, and obligations; and

WHEREAS, the proposed amendments would change the name of the Agency to "Asheville-Buncombe Air Quality Agency," deletes paragraphs that are no longer applicable, updates the mission statement, and corrects minor typographical errors; and

WHEREAS, the City Council of the City of Asheville feels that it is in the best interest of the citizens and residents of the City of Asheville to enter into this Interlocal Agreement with the Buncombe County;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

1. The Mayor and City Manager, or either of them, are hereby authorized to execute the attached Interlocal Agreement.

2. The Mayor and City Manager, or either of them, are hereby authorized, empowered and directed to do any and all other acts and to execute any and all other documents, which they, in their discretion, deem necessary and appropriate in order to consummate the transactions contemplated by this Resolution, except that none of the above shall be authorized or empowered to do anything or execute any document which is in contravention, in any way, of the specific provisions of this Resolution.

3. All acts and doings of officers, employees and agents of the City of Asheville , whether taken prior to, on, or after the date of this Resolution, that are in conformity with and in the furtherance of the purposes and intents of this Resolution as described above shall be, and the same hereby are, in all respects ratified, approved and confirmed.

4. That this Resolution shall be upon its adoption.

Read, approved and adopted this 9th day of November, 2021.

_____ _____

City Clerk Mayor

Approved as to form:

_____

City Attorney

CHAPTER 1 - INTERLOCAL AGREEMENT, ORGANIZATION, ADMINISTRATION

.0101 INTERLOCAL AGREEMENT BETWEEN THE COUNTY OF BUNCOMBE AND THE CITY OF ASHEVILLE TO CREATE A REGIONAL AIR QUALITY PROGRAM. This section, signed June 6, 2000, replaces all previous resolutions regarding the establishment of a regional air agency in Buncombe County and the City of Asheville.

WHEREAS, the County of Buncombe and the City of Asheville have determined that it is in their mutual best interest to establish a regional air quality program pursuant to the provisions of North Carolina General Statutes Section 143-215.112; and

WHEREAS, these parties do hereby enter into an interlocal agreement pursuant to the provisions of North Carolina General Statute Sections 160A-461, 160A-464, and 143-215.112 (c) (3) to create the I Asheville Buncombe Air Quality Agency for the purpose of developing and administering an air quality program in their respective jurisdictions.

NOW THEREFORE, pursuant to North Carolina General Statutes Section 143-215.112 and 160A-464 the parties hereto do hereby covenant and agree as follows:

a) **PURPOSE OF AGREEMENT:** The purpose of this Agreement is to establish, administer, and enforce a local air quality program for the County of Buncombe and City of Asheville in accordance with the provisions of North Carolina General Statutes Section 143-215.112. To that end and not inconsistent with the applicable law, the County and City approve the Mission Statement attached hereto as Exhibit A.

b) **DURATION OF AGREEMENT:** This Agreement shall become effective upon the later of July 1, 2000 or the date of certification by appropriate State agencies. It shall be automatically renewed for successive one year terms on July 1st of each calendar year unless terminated by either party given written notice of its intention to terminate to the other party no later than the first day of March of the year in which said termination is to become effective.

c) **JOINT AGENCY ESTABLISHED:** Therefore is hereby established a joint agency to be known as the Asheville Buncombe Air Quality Agency. The composition, organization, nature, and powers conferred on the Board of this Agency are set forth as follows:

(1) The Board shall consist of five members, three of whom shall be appointed by the Buncombe County Board of Commissioners and two of whom shall be appointed by the

Asheville City Council. Members shall be appointed for six-year staggered terms. Initially, one County appointee and one City appointee shall be appointed for two-year terms. One County appointee and one City appointee shall be appointed for four-year terms, and one County appointee shall be appointed for a six-year term. At the expiration of said terms, all members thereafter shall be appointed for six-year terms. Initial appointments shall be made within thirty days of ratification of this Agreement by both parties.

(2) The Board shall be responsible for its own internal organization such as the selection of a Chair, Vice Chair, and Secretary. The Board shall have authority to appoint a hearing officer who shall hear appeals on violations not settled during the "just cause" process with Agency staff. He or she shall make a recommendation to the full Board (or majority) to settle the violation. The entity issued the citation will have the opportunity to appear before the full Agency Board and present the entity's information and case on the violation in question.

(3) The Board shall have the following duties and responsibilities:

A) To select the Director according to the Buncombe County personnel policies.

B) To advise the Buncombe County Board of Commissioners and Asheville City Council in developing policies and plans to improve air quality programs.

C) To consult with the Director about problems relating to management of the Agency and to approve the budgets for the Agency.

D) To perform the functions and responsibilities enumerated in N.C.G.S. 143-215.112(c)(1).

E) To have such other duties and responsibilities as these parties may assign to it.

d) **PERSONNEL:**

(1) Staff: The parties hereto agree that since the Agency will not have a personnel office nor a personnel plan, that all Agency staff shall follow Buncombe County personnel policies and procedures and be employees of Buncombe County. To that end, the parties further agree:

A) That the Agency Board will adopt by reference the rules, regulations and procedures applicable to Buncombe County employees for the purpose of personnel administration.

B) Buncombe County's personnel department will administer the position classification plan, leave policies, compensation and benefits and personnel records and reporting requirements of the Agency at the direction of the Agency Director.

C) The Director of the Agency shall have the authority to employ and discharge staff in keeping with the rules, regulations and procedures referenced in subparagraph (1) above.

(2) Director: The Director shall be hired by the Board. The entire Board must be present and vote to hire or fire the Director. The Director of the Agency shall be subject to the Buncombe County personnel plan in all respects except for the fact that he or she shall be hired by the Board and shall serve at the pleasure of the Board, and the Board shall establish his or her terms of employment.

e) **COUNTY SUPPORT SERVICES:** Buncombe County will provide all bookkeeping, financial, payroll, and other services as necessary for the Agency. The Agency will reimburse the County in accordance with the County's indirect cost allocation plan that is approved for use for grant funds. The Agency's annual budget shall reflect and maintain a fund balance at least equal to 8% of the Agency's total annual operating budget. The parties hereto anticipate that the Agency will generate sufficient revenues from inspection fees, permits, and federal grants to be self-supporting: but in the event that it is not self-supporting, the Board shall provide the parties hereto at least ninety days notice of any expected shortfall. Each party shall determine if funding is to be made to the Agency from their respective budgets in proportional to their representation on the Board. If either party declines to provide such funding this failure to contribute shall be considered withdrawal of that party to this Agreement subject to the notice requirements in Paragraphs (2) and (10).

f) **OWNERSHIP OF PROPERTY:** The parties hereto agree that the Agency shall not become the owner of any real property and in the event of termination of this Agreement the personal property owned by the Agency will become the property of these parties on a per capita basis.

g) **AMENDMENTS:** This Agreement may be amended by consent of both parties.

h) **TERMINATION:** This Agreement may be terminated as heretofore provided in Paragraph b).

i) **ADDITIONAL REGULATIONS SHALL BE SUBMITTED TO BOTH GOVERNING BODIES:** If the Board should determine that additional regulations not mandated by United States or North Carolina law are necessary for the effective control of air quality, the Board shall summit its recommendation concerning such proposed regulations to the Buncombe County Board of Commissioners and Asheville City Council for their review at least 30 days prior to the Board holding a public hearing to consider adopting said regulations.

WNCRAQA History Note *Effective date: from and after September 15, 2000.*
Amended Eff. November 8, 2021; January 1, 2007.

INTRAOFFICE MEMORANDUM

TO: AIR QUALITY BOARD

FROM: ASHLEY FEATHERSTONE

SUBJECT: REVIEW OF INTERLOCAL AGREEMENT

DATE: SEPTEMBER 17, 2021

During the July board meeting, a change in the name of the agency was discussed. It was noted that in order to proceed with name change, the Interlocal Agreement between Buncombe County and the City of Asheville would need to be amended. Legal counsel recommended and the board requested that staff review the agreement to identify any sections that would benefit from updates if the agreement was to be reopened.

Joel Storrow and Ashley Featherstone met with Buncombe County Manager Avril Pinder, Assistant County Manager Sybil Tate, Attorney Michael Frue, Asheville City Manager Debra Campbell and Sustainability Coordinator Amber Weaver on August 23, 2021 to present possible revisions to the Agreement. The updates were perceived as appropriate with both managers agreeing that the proposed revisions would need to be ratified by their respective governing boards. Assuming the WNCRAQA Board accepts and supports the revisions at the upcoming September 27 meeting, it was proposed that the Buncombe County Board of Commissioners consider the changes at their October 19 and Asheville City Council at their October 26 meeting.

The Interlocal agreement is found in Chapter 1. 0101 of the WNCRAQA Code. This agreement was entered into in 2000 and last amended in 2007. Below is a list of updates for the board's consideration.

1. Chapter 1. 0101, third paragraph and second statement that begins with 'whereas' lists the name of the agency. Western North Carolina Regional Air Quality Agency could be amended with new name, Asheville Buncombe Air Quality Agency.

2. Chapter 1 .0101(a) refers to Exhibit A that includes the mission statement for the agency from 2000. The mission statement has been revised by the Air Quality Board. The most recent revision took place in 2000. Attach updated exhibit with current mission statement.

3. Chapter 1 .0101(c)(3)(D) cites the NC General Statues 'N.C.G.S>' where the '>' is a typographical error and should be a '.' (N.C.G.S.)

4. Chapter 1 .0101(d) addresses facilities and states: "From and after July 1, 2000, the Western North Carolina Regional Air Quality Agency shall continue to operate from its current location at 49 Mount Carmel Road in Buncombe County, and shall continue to use the offices and facilities thereon until such time as the facilities are no longer appropriate for Agency staffing needs." The Agency vacated this space in 2014. Suggest that the paragraph be deleted in its entirety.

5. Chapter 1 .0101(e)(1) addresses staff and states that since the Agency will not have a personnel office or a personnel plan, all agency staff shall follow Buncombe County personnel policies and 'become' employees of Buncombe County. Suggest update tense to 'be' employees of Buncombe County since agency staff have been Buncombe County employees since the original agreement was signed.

6. Chapter 1 .0101(f), Finances, states that Buncombe County will provide all bookkeeping, financial, and payroll services "which shall be administered through the Buncombe County Finance Office and the Buncombe County Personnel Office. The Agency will reimburse the County for personnel and financial services in accordance with the County's cost allocation plan." At the present time, Buncombe County is providing additional support services that the agency has agreed to reimburse the county for in accordance with the county's indirect cost allocation plan that is approved for use for grant funds. Suggest change title from "Finances" to "County Support Services," add "and other services as necessary," delete the references to the Finance Office and Personnel Office and make the statement regarding reimbursement more broad to reference the indirect cost allocation plan rather than just personnel and financial services.

7. Chapter 1 .0101(g), Clean Air Community Trust, is no longer applicable since that organization is no longer active and associated with the Agency. A former board member reported that the Trust's board voted to sun down the agency between 2009 and 2011 and they have not met since that time. A search of the Secretary of State's website does show them as an active non-profit corporation. The registered agent is deceased. Propose to delete this section of the agreement.

8. Chapter 1 .0101(h), Termination, references Paragraphs (2) and (6). The correct reference is (b).

CHAPTER 1 - INTERLOCAL AGREEMENT, ORGANIZATION, ADMINISTRATION

.0101 INTERLOCAL AGREEMENT BETWEEN THE COUNTY OF BUNCOMBE AND THE CITY OF ASHEVILLE TO CREATE A REGIONAL AIR QUALITY PROGRAM. This section, signed June 6, 2000, replaces all previous resolutions regarding the establishment of a regional air agency in Buncombe County and the City of Asheville.

WHEREAS, the County of Buncombe and the City of Asheville have determined that it is in their mutual best interest to establish a regional air quality program pursuant to the provisions of North Carolina General Statutes Section 143-215.112; and

WHEREAS, these parties do hereby enter into an interlocal agreement pursuant to the provisions of North Carolina General Statute Sections 160A-461, 160A-464, and 143-215.112 (c) (3) to create the ~~Western North Carolina Regiona~~l Asheville Buncombe Air Quality Agency for the purpose of developing and administering an air quality program in their respective jurisdictions.

NOW THEREFORE, pursuant to North Carolina General Statutes Section 143-215.112 and 160A-464 the parties hereto do hereby covenant and agree as follows:

a) **PURPOSE OF AGREEMENT:** The purpose of this Agreement is to establish, administer, and enforce a local air quality program for the County of Buncombe and City of Asheville in accordance with the provisions of North Carolina General Statutes Section 143-215.112. To that end and not inconsistent with the applicable law, the County and City approve the Mission Statement attached hereto as Exhibit A.

b) **DURATION OF AGREEMENT:** This Agreement shall become effective upon the later of July 1, 2000 or the date of certification by appropriate State agencies. It shall be automatically renewed for successive one year terms on July 1st of each calendar year unless terminated by either party given written notice of its intention to terminate to the other party no later than the first day of March of the year in which said termination is to become effective.

c) **JOINT AGENCY ESTABLISHED:** Therefore is hereby established a joint agency to be known as the ~~Western North Carolina Regional~~Asheville Buncombe Air Quality Agency. The composition, organization, nature, and powers conferred on the Board of this Agency are set forth as follows:

(1) The Board shall consist of five members, three of whom shall be appointed by the Buncombe County Board of Commissioners and two of whom shall be appointed by the Asheville City Council. Members shall be appointed for six-year staggered terms. Initially, one County appointee and one City appointee shall be appointed for two-year terms. One County appointee and one City appointee shall be appointed for four-year terms, and one County appointee shall be appointed for a six-year term. At the expiration of said terms, all members thereafter shall be appointed for six-year terms. Initial appointments shall be made within thirty days of ratification of this Agreement by both parties.

(2) The Board shall be responsible for its own internal organization such as the selection of a Chair, Vice Chair, and Secretary. The Board shall have authority to appoint a hearing officer who shall hear appeals on violations not settled during the "just cause" process with Agency staff. He or she shall make a recommendation to the full Board (or majority) to settle the violation. The entity issued the citation will have the opportunity to appear before the full Agency Board and present the entity's information and case on the violation in question.

(3) The Board shall have the following duties and responsibilities:

A) To select the Director according to the Buncombe County personnel policies.

B) To advise the Buncombe County Board of Commissioners and Asheville City Council in developing policies and plans to improve air quality programs.

C) To consult with the Director about problems relating to management of the Agency and to approve the budgets for the Agency.

D) To perform the functions and responsibilities enumerated in N.C.G.S~~>~~. 143-215.112(c)(1).

E) To have such other duties and responsibilities as these parties may assign to it.

~~d) **FACILITIES:** From and after July 1, 2000, the Western North Carolina Regional Air Quality Agency shall continue to operate from its current location at 49 Mount Carmel Road in Buncombe County, and shall continue to use the offices and facilities thereon until such time as the facilities are no longer appropriate for Agency staffing needs.~~

~~e)~~d) **PERSONNEL:**

(1) Staff: The parties hereto agree that since the Agency will not have a personnel office nor a personnel plan, that all Agency staff shall follow Buncombe County personnel policies and procedures and ~~become~~ be employees of Buncombe County. To that end, the parties further agree:

A) That the Agency Board will adopt by reference the rules, regulations and procedures applicable to Buncombe County employees for the purpose of personnel administration.

B) Buncombe County's personnel department will administer the position classification plan, leave policies, compensation and benefits and personnel records and reporting requirements of the Agency at the direction of the Agency Director.

C) The Director of the Agency shall have the authority to employ and discharge staff in keeping with the rules, regulations and procedures referenced in subparagraph (1) above.

(2) Director: The Director shall be hired by the Board. The entire Board must be present and vote to hire or fire the Director. The Director of the Agency shall be subject to the Buncombe County personnel plan in all respects except for the fact that he or she shall be hired by the Board and shall serve at the pleasure of the Board, and the Board shall establish his or her terms of employment.

~~f)~~e) ~~**FINANCES**~~**COUNTY SUPPORT SERVICES:** Buncombe County will provide all bookkeeping, financial, ~~and~~ payroll, and other services as necessary for the Agency.~~, which shall be administered through the Buncombe County Finance Office and the Buncombe County Personnel Office.~~ The Agency will reimburse the County ~~for personnel and financial services~~ in accordance with the County's indirect cost allocation plan that is approved for use for grant funds. The Agency's annual budget shall reflect and maintain a fund balance at least equal to 8% of the Agency's total annual operating budget. The parties hereto anticipate that the Agency will generate sufficient revenues from inspection fees, permits, and federal grants to be self-supporting: but in the event that it is not self-supporting, the Board shall provide the parties hereto at least ninety days notice of any expected shortfall. Each party shall determine if funding is to be made to the Agency from their respective budgets in proportional

to their representation on the Board. If either party declines to provide such funding this failure to contribute shall be considered withdrawal of that party to this Agreement subject to the notice requirements in Paragraphs (2) and (10).

~~g) **CLEAN AIR COMMUNITY TRUST:** The parties acknowledge that the Clean Air Community Trust ("Trust") was established in May of 2001 pursuant to this Agreement as adopted in June of 2000. The Trust may continue to operate, but the parties hereto do hereby relinquish any authority they have with respect to the appointment or approval of members of the Trust Board, or to otherwise control the structure activities, and operations of the Trust; provided, that the Western North Carolina Regional Air Quality Agency Board shall require the Trust to provide an accounting not less frequently than annually for any public money received by the Trust by or through the Agency.~~

~~h)~~f) **OWNERSHIP OF PROPERTY:** The parties hereto agree that the Agency shall not become the owner of any real property and in the event of termination of this Agreement the personal property owned by the Agency will become the property of these parties on a per capita basis.

~~i)~~g) **AMENDMENTS:** This Agreement may be amended by consent of both parties.

~~j)~~h) **TERMINATION:** This Agreement may be terminated as heretofore provided ~~in~~ in Paragraph b). ~~Paragraphs (2) and (6), above~~.

k) **ADDITIONAL REGULATIONS SHALL BE SUBMITTED TO BOTH GOVERNING BODIES:** If the Board should determine that additional regulations not mandated by United States or North Carolina law are necessary for the effective control of air quality, the Board shall summit its recommendation concerning such proposed regulations to the Buncombe County Board of Commissioners and Asheville City Council for their review at least 30 days prior to the Board holding a public hearing to consider adopting said regulations.

WNCRAQA History Note *Effective date: from and after September 15, 2000.*
Amended Eff. November 8, 2021; January 1, 2007.