

LAKE LURE TOWN COUNCIL WORK SESSION MEETING PACKET

Wednesday, January 25, 2023
8:30 a.m.



**Mayor Carol C. Pritchett
Mayor Pro Tem David DiOrio
Commissioner Patrick Bryant
Commissioner Scott Doster
Commissioner Jim Proctor**

TOWN OF LAKE LURE

Town Council Work Session Meeting

Wednesday, January 25, 2023 - 8:30 AM

Lake Lure Municipal Center



Agenda

- I. Call to Order**
- II. Agenda Adoption**
- III. Lake Lure Flowering Bridge Lease Review and Request for Funding Assistance for Parking – Page 1**
- IV. Discuss Request for Sewer Arrangement at 219 Marina Drive – Page 9**
- V. Rutherford County Tourism Development Authority Lease Review – Page 11**
- VI. Lake Lure Tours Concession Agreement Review – Page 25**
- VII. Review Chimney Rock Village Proposed Agreement to Operate Water System – Page 45**
- VIII. Boat Permit Mailing Fee Discussion – Page 68**
- IX. Discussion Regarding Draft Budget Amendment #346 for Deep Water Access – Page 69**
- X. Discussion Regarding Draft Budget Amendment #347 for Fire Department Specialized Air Compressor – Page 71**
- XI. Adjournment**

LAKE LURE TOWN COUNCIL
AGENDA ITEM REQUEST FORM
Meeting Date: January 25, 2023

SUBJECT: Lake Lure Flowering Bridge Lease Review and Request for Funding Assistance for Parking

AGENDA INFORMATION:

Item Number: III
Department: Administration
Contact: Hank Perkins, Town Manager
Presenter: Hank Perkins, Town Manager

BRIEF SUMMARY:

Town Attorney William Morgan has drafted a proposed ground lease agreement between the Town of Lake Lure and the Lake Lure Flowering Bridge for the lease of Lake Lure Bridge No. 7 and a .36 acre lot (PIN #23163). The purpose of the proposed lease is to detail the responsibilities and liabilities of both the Town and the Flowering Bridge. The proposed draft is to be reviewed and discussed by Council, and is subject to change prior to being approved.

The Lake Lure Flowering Bridge has also requested the Town's assistance with funding for parking. Town Manager Hank Perkins will provide details regarding the request at the time of the meeting.

ATTACHMENTS:

Draft Ground Lease between the Town of Lake Lure and Lake Lure Flowering Bridge

NORTH CAROLINA

RUTHERFORD COUNTY

GROUND LEASE AGREEMENT BETWEEN THE TOWN OF LAKE LURE AND LAKE
LURE FLOWERING BRIDGE, INC. FOR THE LEASE OF LAKE LURE BRIDGE NO. 7
AND A .36 ACRE LOT (PIN #23163)

This Land Lease Agreement (“Lease” or “Agreement”) is made and entered into this the ____ day of _____, 2023, by and between the Town of Lake Lure, a North Carolina municipal corporation and Lake Lure Flowering Bridge, Inc., a nonprofit corporation organized and existing pursuant to the laws of the State of North Carolina (hereinafter referred to as LLFB).

WITNESSETH:

WHEREAS, the Town of Lake Lure acquired ownership of the historic Lake Lure Bridge No. 7 across the Rocky Broad River near the intersection of Boy’s Camp Road and US 64/74 in Lake Lure on August 10, 2010, for the rehabilitation, repair, and maintenance of Bridge No. 7 under the stipulations of a historic bridge preservation program; and,

WHEREAS, the Town of Lake Lure informally assigned the above responsibilities to Lake Lure Flowering Bridge, Inc. (hereinafter LLFB), a community-based nonprofit corporation, approximately ten years ago; and,

WHEREAS, LLFB was created to:

- To preserve the historic 1925 Bridge No.7 over the Rocky Broad River as it enters historic Lake Lure, NC.
- To develop and maintain this bridge as a vital link in the trail/walkway system being created by the towns of Chimney Rock and Lake Lure and Chimney Rock State Park.
- To cover the bridge and surround this scenic walkway with over 500’ of flowering four-season pedestrian gardens that will be known as Lake Lure Flowering Bridge, the first of its kind in the State of North Carolina and only the second in the United States.
- To place within this vast garden indigenous North Carolina plants that will reflect the botanical diversity of the Hickory Nut Gorge, one of the most botanically diverse areas in the United States.
- To make these gardens and the Lake Lure Flowering Bridge available in all seasons free of charge for purposes of education, exploration and inspiration.

- To design, develop and maintain these gardens through a citizen-based volunteer organization called Friends of the Lake Lure Flowering Bridge.
- To create this “bridge to somewhere beautiful” as a flowering gateway to Lake Lure, Chimney Rock, the Hickory Nut Gorge, and Chimney Rock State Park.

WHEREAS, LLFB now desires to erect a structure to house an education center, create new volunteer and visitor parking and to make other improvements to an area owned by the Town adjacent to the Bridge; and,

WHEREAS, the Town supports the LLFB’s plans and has determined that it is in the best interests of both parties to formalize their relationship for the long term preservation and operation of the Flowering Bridge, which attracts thousands of visitors to Lake Lure, Chimney Rock Village and Chimney Rock State Park each year;

NOW, THEREFORE, in consideration of all covenants contained in this lease agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1: Lease of Premises. Owner agrees to lease to (“Tenant”), and (“Tenant”) agrees to lease from Owner, the Site for the purposes described herein, TO HAVE AND TO HOLD the Site, together with all rights, privileges, and appurtenances thereunto belonging and attaching, unto (“Tenant”). This Lease sets forth the covenants and agreements that the parties agree to comply with during the Term (as such term is defined in Section 2).

Section 2: Term. The term of this Lease (the “Term”) shall be ten (10) years, commencing on the Effective Date and expiring on tenth anniversary of the Effective Date, unless otherwise terminated at an earlier date in accordance with the terms of this Lease, or extended by mutual agreement.

Section 3: Lease Payments. For purposes of this agreement, the lease payments made to Owner by (“Tenant”) for the use of the Site and Easements shall be \$1.00 annually, payable upon the Effective Date and on the anniversary thereof each year during the term of this lease.

Section 4: The Premises (“the Site”). The Site consists of Lake Lure Bridge No. 7, the right-of-way and that .36 acre site adjacent thereto, more particularly described in Deed Book 1067, Page 393 (PIN #231863) all of which is more particularly shown in that survey dated November 19, 2022, prepared by Jason D. Spencer, PLS, a copy of which is attached hereto as Exhibit A.

Section 5: Use. LLFB shall at all times continue the Bridge’s use as a walking trail containing flowering four-season pedestrian gardens that will be known as Lake Lure Flowering Bridge, to be open year-round to visitors free of charge and for educational purposes including classes in gardening and related subjects.

Section 6: Responsibilities of LLFB. In addition to continuously maintaining the Bridge and the site’s use as set forth in Section 5 above, it shall be the duty and responsibility of LLFB to fulfill all of the requirements placed on the Town by the State of North Carolina’s Department of

Transportation upon the conveyance of Bridge No. 7 including those outlined in the “Historic Lake Lure Bridge #7 Preservation and Enhancement Plan” dated December 5, 2011, attached hereto as Exhibit B and incorporated herein as if fully set forth herein.

Section 7: Indemnification. To the extent permitted by law, LLFB agrees to indemnify, defend, and hold harmless the Town from any and all claims, actions, liabilities, suits, demands, damages, losses, or expenses, including attorneys’ fees, arising out of or relating to (i) LLFB’s use and occupancy of the Site, (ii) any work done by or on behalf of LLFB on the Site, (iii) LLFB’s negligence or willful misconduct, and/or (iv) LLFB’s breach or default of any of the terms of this Agreement, provided however, LLFB’s obligations under this section shall not extend to any claims, actions, liabilities, suits, demands, damages, losses, or expenses arising from the sole negligence or willful misconduct of the Town.

Section 8: Hazardous Substances. LLFB will not keep or store on the Site any item of a dangerous, flammable, or explosive character that might unreasonably increase the danger of fire or explosion on the Site or that might be considered hazardous or extra hazardous by any responsible insurance company.

Section 9: Compliance with Laws. LLFB covenants and agrees to comply with all federal, state and local laws, regulations and ordinances affecting the Site and use of the Site, including applicable environmental laws. In addition, Tenant will comply with all requirements necessary to keep in force fire and liability insurance covering the Site and shall seek to name the Town as an additional named insured on such policies.

Section 10: No Mechanics Liens. LLFB will not permit any mechanics or other liens to be filed against Town’s interest in the Site as a result of any work performed for or obligations incurred by LLFB. LLFB will indemnify the Town for any liability, cost, or expense, including attorney’s fees, in the event any such lien is filed.

Section 11: Subordination of Ground Lease. LLFB shall not subordinate the **Ground Lease** or any interest thereunder to the lien of any mortgage, deed to secure debt or other security agreement encumbering the Town’s interest in the Property or any portion thereof (each, a “Fee Mortgage”) without the prior written consent of the Town.

Section 12: Anti-subrogation. Landlord and Tenant each waive any and all claims or rights to recovery against the other Party for any loss or damage to the extent such loss or damage is covered by insurance or would be covered by insurance as required under this Agreement. Landlord and Tenant will cause each insurance policy carried by Landlord or Tenant relating to the Site to include or allow a full waiver of any subrogation claims.

Section 13: Improvements and Alterations. Major improvements and alterations must be approved by the Town. LLFB agrees that any construction will be performed in a good and workmanlike manner and will comply with all applicable laws. All improvements, alterations, additions, or other changes to the Site shall become the property of the Town upon the termination of this Agreement.

Section 14: Condition of Site. LLFB has examined the Site and accepts the Site in its current condition “as is” and “with all faults.” Except as expressly set forth herein, the Town makes no representation or warranty, express or implied, or arising by operation of law, including but not limited to, any warranty of fitness for a particular purpose, merchantability, habitability, suitability, or condition. LLFB acknowledges that LLFB has not relied on any representations or warranties by the Town in entering this Agreement.

Section 15: Default. The following shall each constitute an “Event of Default” by LLFB:

- a. LLFB fails to make any required payment due under this Agreement.
- b. LLFB fails to perform any obligation or condition or to comply with any term or provision of this Agreement.
- c. LLFB files a petition for bankruptcy, reorganization or similar relief, or makes an assignment for the benefit of creditors.

Section 16: Termination. Upon the occurrence of an Event of Default by Tenant which continues for a period of 28 days after receiving written notice of the default from Landlord, Landlord has the right to terminate this Agreement and take possession of the Site. Landlord’s rights hereunder shall be in addition to any other right or remedy now or hereafter existing at law or equity.

Section 17: Surrender of the Site. LLFB shall return the Site to the Town upon termination or expiration of this Agreement in good condition and repair, ordinary wear and tear excepted. Within 28 days following the termination or expiration of this Agreement, LLFB will remove all equipment, materials, fixtures and other personal property belonging to LLFB from the Site. Any property left on the Site after 28 days following the termination of this Agreement will be deemed to have been abandoned by LLFB and may be retained by the Town.

Section 18: Condemnation. In the event that all or a material portion of the Site necessary for LLFB’s Use of the Site is taken for any public or quasi-public use under any governmental law, ordinance or regulation or by the right of eminent domain, this Agreement shall terminate on the date of such taking. In the event such taking is less than a material portion of the Site, this Agreement shall remain in full force and effect.

Section 19: Assignment and Subletting. LLFB will not assign this Agreement as to all of or any portion or the Site or make or permit any total or partial sublease or other transfer of all of or any portion of the Site without the Town’s written consent.

Section 20: Notices. All notices given under this Agreement must be in writing. A notice is effective upon receipt and shall be delivered in person, sent by overnight courier service or sent via certified or registered mail, addressed to the Town or LLFB at the then current address or to another address that either Party may designate upon reasonable notice to the other Party.

Section 21: No Waiver. No Party shall be deemed to have waived any provision of this Agreement or the exercise of any rights held under this Agreement unless such waiver is made expressly in writing.

Section 22: Severability. If any provision of the Agreement is held to be invalid, illegal, or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal, and enforceable as though the invalid or unenforceable parts had not been included in this Agreement.

Section 23: Governing Law and Disputes. The terms of this Agreement shall be governed exclusively by the laws of the State of North Carolina, without regards to its conflicts of laws rules. Any dispute arising from this Agreement shall be resolved in the courts of Rutherford County.

Section 24: Attorney's Fees. If either Party brings legal action to enforce its rights under this Agreement, the prevailing party will be entitled to recover from the other Party its expenses (including reasonable attorneys' fees) incurred in connection with the action and any appeal.

Section 25: Amendment. This Agreement may not be modified except in writing signed and acknowledged by both Parties.

Section 26: Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together, shall constitute one and the same document.

Section 27: Headings. The section heading herein are for reference purposes only and shall not otherwise affect the meaning, construction, or interpretation of any provision in this Agreement.

Section 28: Entire Agreement. This Agreement constitutes the entire understanding between the Parties and supersedes and cancels all prior agreements of the Parties, whether oral or written, with respect to the Site.

IN WITNESS WHEREOF the Parties have duly affixed their signatures under hand and seal on the date hereinabove written.

(SIGNATURES ON NEXT PAGE)

THE TOWN OF LAKE LURE

Carol Pritchett, Mayor

ATTEST:

Olivia Stewman, Clerk

NORTH CAROLINA
RUTHERFORD COUNTY

I, _____, a Notary Public in and for said County and State, do hereby certify that Shannon Baldwin, Town Manager of the Town of Lake Lure, and Michelle Jolley, Town Clerk for the Town of Lake Lure, personally came before me this day and being duly sworn says each for himself that he/she knows the corporate seal of the Town of Lake Lure and that the seal affixed to the foregoing instrument is the corporate seal of the Town of Lake Lure, that Shannon Baldwin, Town Manager and Michelle Jolley, Town Clerk subscribed their names thereto; that the corporate seal for the Town of Lake Lure was affixed thereto, all by virtue of a resolution or other official action of the Board of Commissioners, and that said instrument is the act and deed of the Town of lake Lure.

IN WITNESS WHEREOF, I have set my hand and notarial seal this the ____ day of _____ 2023.

_____(SEAL)
Notary Public

Print Name of Notary

My Commission Expires: _____

LAKE LURE FLOWERING BRIDGE, INC.

_____ (seal) Title: _____.

Attest: _____
Secretary

=====

(NOTARY ON NEXT PAGE)

State of North Carolina
County of Rutherford

I, _____, a Notary Public of Rutherford County, North Carolina, do hereby certify that _____ (name of corporate officer) personally came before me this day and acknowledged that he/she is _____ (title of corporate officer) of _____, a corporation, and that he/she, as _____ (title of officer), being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal this _____ day of _____, 2023.

Notary Public

(Official Seal)

My commission expires: _____

LAKE LURE TOWN COUNCIL
AGENDA ITEM REQUEST FORM
Meeting Date: January 25, 2023

SUBJECT: Discuss Request for Sewer Arrangement at 219 Marine Drive

AGENDA INFORMATION:

Item Number: IV
Department: Public Services
Contact: Hank Perkins, Town Manager
Presenter: Dean Lindsey, Public Services Director

BRIEF SUMMARY:

Property owners of 219 Marine Drive have requested that the Town install a new sewer line that will serve their neighborhood of approximately 50 deeded properties. The property owners further detailed in their request that they wish for the town to install and pay for the line as a top priority, while the owners pay to connect to it. Public Services Director Dean Lindsey has obtained an estimate for the costs of completion, which he will have available at the time of the meeting. Additionally, Director Lindsey has noted that the property owners would be required to execute necessary easement agreements if the Town wishes to proceed with the request. Additional details will be provided by Director Lindsey and Town Manager Hank Perkins at the time of the meeting.

ATTACHMENTS:

Email Request from Property Owners

Sent: Thursday, December 29, 2022 1:34 PM
To: Andrea Ogle <aogle@townoflakelure.com>
Cc: Dean Lindsey <dlindsey@townoflakelure.com>
Subject: RE: Info

Good Afternoon, Andrea,

What we are asking is for the town to install a new sewer line that will serve our entire neighborhood. This is the only neighborhood on the lake that does not have access to city sewer. There are approximately 50 deeded properties in our neighborhood that would be able to connect to the new sewer line when installed. We have attempted to get easements from our neighbor but due to approved development plans of their properties we were unable to be given access. Our septic system is at a critical point of failure, and we are told that we do not enough land to be able to install a new 4 or 5 bedroom septic system which our house requires. At this point, we are unable to wait the 10-15 years it will take to possibly have access to city sewer as part of the new sewer project, which from what we have been told our neighborhood may not even be a part of again. If this proposed new sewer line does not get approved a new septic system, which won't even be large enough to support our family, will need to be installed on our land closer to memorial hwy. This will require us to remove ALL the trees in that area that face the beach and marina and I know the city does not want us to have to do that. I have talked with many of the neighbors, and I have received nothing but positive feedback for this extension of the existing sewer system. We are asking that the town put this section of Lake Lure as a top priority and agree to install and pay for the line so that we can pay to connect to it. It will increase the towns revenue as well after multiple homeowners do the same. Thank you for your time and consideration for this project.

LAKE LURE TOWN COUNCIL
AGENDA ITEM REQUEST FORM
Meeting Date: January 25, 2023

SUBJECT: Rutherford County Tourism Development Authority Lease Review

AGENDA INFORMATION:

Item Number: V
Department: Administration
Contact: Hank Perkins, Town Manager
Presenter: Hank Perkins, Town Manager

BRIEF SUMMARY:

The Rutherford County Tourism Development Authority rents the Community Center (2932 Memorial Highway) from the Town of Lake Lure. The prior lease agreement has expired. Town Attorney William Morgan has reviewed a drafted a proposed updated lease agreement. The proposed draft is to be reviewed and discussed by Council, and is subject to change prior to being approved.

ATTACHMENTS:

Draft Lease Agreement Between the Town of Lake Lure and the Rutherford County Tourism Development Authority

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

LEASE AND AGREEMENT
With
**The Rutherford County Tourism Development
Authority**

THIS LEASE AGREEMENT (the "Lease"), made and entered into as of the ____ day of _____, 2023 by and between the TOWN OF LAKE LURE, a municipal corporation, party of the first part, "Landlord", (hereinafter also referred to as the "Town"); and the RUTHERFORD COUNTY TOURISM DEVELOPMENT AUTHORITY, party of the second party, "Tenant" (hereinafter also referred to as the "TDA").

WITNESSETH

Whereas, the Town is a municipal corporation established under the laws of the State of North Carolina; and TDA is a political subdivision of the State of North Carolina charged with developing tourism throughout Rutherford County, including in and for the Town of Lake Lure; and

Whereas, TDA, in fulfilling its mission to promote the growth of tourism for and in Rutherford County in accordance with N.C. Session Law 2011-115, desires to operate a facility, located in the Town, for the express purposes of: providing a location for TDA to **fulfill** this mission and for such other related purposes as TDA feels is in the best interest of fulfilling this mission (the "Visitor Center"); and

Whereas, the Town agrees with this goal of developing tourism and desires to lease space to TDA for the purpose of TDA operating such a Visitor Center; and

NOW, THEREFORE, for and in consideration of their mutual covenants, the Town hereby leases to the TDA, and the TDA hereby leases from the Town, the building commonly known as the Community Center, situated at 2932 Memorial Highway, Lake Lure, NC 28746 (hereinafter the "Premises"), for the express purpose of operating a Visitor Center and an office for TDA, upon the terms, conditions and covenants as set forth herein:

1. Term of Lease. This Lease is for a term commencing on _____, 2023, and ending on _____, 2028, unless sooner terminated as hereinafter provided (the "Term"). If at any time the Visitor Center remains closed and unavailable to the public for a period of thirty (30) consecutive days, the same shall be considered a breach of this agreement and the Town shall send written notice to the TDA, as provided hereinbelow, of the breach, upon receipt after which the TDA shall have sixty (60) days to cure the breach by opening the Visitor Center on the Premises (the "Cure Period"). If the TDA fails to open the Visitor Center during the Cure Period, then this Lease shall terminate thirty (30) days after the Cure Period.

2. Rent. Beginning on the first day of the Term and then on the first day of July of each year subsequent, the TDA will be obligated to pay to the Town annual rent in the amount of \$1.00 (one dollar and zero cents). In the event TDA fails to pay the rent as provided herein, the Town shall send Notice of the breach to TDA as provided hereinbelow, and TDA shall have thirty (30) days to pay said rent. Should TDA continue to be in breach of this provision after the thirty (30) days have expired, then this Lease shall be considered terminated, and the Town may send notice to vacate the Premises to TDA at any time in its sole and complete discretion.

3. Option to Renew. The Tenant and Town shall have the option to renew this lease agreement for one (1) additional term of five (5) years (the "Option"), for a total potential term of this Lease of ten (10) years. The Option will be deemed exercised automatically unless either party delivers written notice as provided hereinbelow to the other party of its decision not to exercise or agree to the Option. This decision not to agree to the Option shall be sent to the other party no later than

ninety (90) days prior to the termination of the original Term. If either party is in breach of this Lease at this time, then that party may not object to the other party's decision to exercise the Option. Either party, so long as that party is not in breach of this Lease, has the right to elect to not exercise the Option as provided herein, with or without cause.

4. Operation of the Visitor Center

(a) TDA agrees to operate the Visitor Center in accordance with the Visitor Center Mission and Vision Statements, which are as follows:

Mission & Purpose

The mission of the Hickory Nut Gorge Visitor Center is to accommodate the needs of our visitors in cooperation with surrounding communities by:

- *promoting the area*
- *showcasing our history and heritage*
- *highlighting our family-oriented destinations*
- *sharing our welcoming spirit*

Vision Statement

The Hickory Nut Gorge Visitor Center is an attractive and engaging destination that provides information regarding attractions, accommodations, restaurants and other things to see and do. This fosters overnight stays, encourages return visits and invites potential residents. As a result, social, cultural and economic vitality is enhanced not only in the Hickory Nut Gorge, but also throughout Rutherford County and the region.

(b) Information provided in the Visitor Center on tourist amenities like attractions, lodging and dining, will not be limited solely to Rutherford County businesses.

(c) TDA will utilize their established branding and signage, which is subject to modification by the TDA. Currently, this includes "*Lake Lure & The Blue Ridge Foothills*" and the "*Front Porch of the Blue Ridge*" campaign. In signs and references to the Visitor Center, the TDA will include the reference "*Serving the Hickory Nut Gorge.*"

(d) TDA shall maintain a regular forum for area tourism businesses to provide feedback and recommendations on Visitor Center services through the TDA's Visitor Information Network (VIN) subcommittee. TDA shall appoint two

(2) members of the Hickory Nut Gorge Chamber of Commerce to the VIN subcommittee.

5. Utilities

(a) TDA shall pay all of the monthly charges for electricity attributable to the premises.

(b) The Town shall provide water and sewer utility service at no charge to TDA.

(c) The Town shall make available a fiber optic broadband internet connection for use at no cost by TDA. TDA shall be responsible for the purchase of any equipment necessary for this connection.

(d) The Town shall make available voice-over-IP telephone services for use at no cost by TDA. TDA shall be responsible for the purchase of phones and any necessary networking equipment.

(e) The Town shall, from time to time, upon request from TDA, join in the granting of such utility easements as may be reasonably necessary to service TDA's requirements on the Premises.

6. Repairs, Maintenance and Cleaning.

(a) TDA shall be responsible for the maintenance of the interior of the building on the Premises and shall keep said interior in good condition and ordinary repair as when received, ordinary wear and tear excepted. Said interior maintenance shall include regular custodial servicing and cleaning and pest control.

(b) TDA shall be responsible for all repairs to permanent leasehold improvements, including, but not limited to, structural, mechanical, HVAC, exterior including doors, foundation repairs and repairs to the roof, as well as repairs as required because of water entering the Premises from the roof of other parts of the building or from other causes not under the control of the Town.

(c) TDA shall each make all necessary repairs and replacements of the portions of the Premises which they are required to maintain and repair as aforesaid, and all repairs and replacements shall be diligently commenced and completed.

(d) The Town shall be responsible for snow removal and parking lot maintenance.

7. Insurance.

(a) TDA shall carry throughout the Term, at its own expense, an Owners, Landlords, and Tenants General Public Liability Policy covering both the Town and the TDA with minimum limits of \$1,000,000 for injury to or death of any number of persons in one occurrence, and property damage liability insurance in the amount of \$1,000,000. Certificate evidencing such as insurance shall be furnished to the Town, and TDA will deliver to the Town certificates of renewal of such policy not less than ten (10) days in advance of the expirations thereof; such policy shall not be subject to cancellation without at least ten (10) days prior written notice to the Town.

The TDA shall cooperate and carry throughout the Term, a Policy for flood insurance covering both the Town and the TDA with minimum limits sufficient to cover the cost of replacing the Visitor Center in the event of a flood. TDA will obtain the policy on behalf of the Town and TDA. Certificate evidencing such insurance shall be furnished to the Town, and TDA will deliver to the Town certificates of renewal of such policy not less than ten (10) days in advance of the expirations thereof, at which time Town shall reimburse TDA for one-half (1/2) of the cost of the said policy; such policy shall not be subject to cancellation without at least ten (10) days prior written notice to the Town.

(b) TDA shall maintain and keep in force all employers' compensation insurance required under the laws of the State of North Carolina, and such other insurance as may be necessary to protect the Town against any other liability to person or property arising hereunder by operation of law, whether such law be now in force or adopted subsequent to the execution thereof.

(c) Should the TDA fail to keep in effect and pay for such insurance as it is in this section required to do, the Town may do so, in which event the Town may send receipt of the insurance premiums paid by the Town to TDA at the address shown under

the Notice section herein, and such premiums paid shall become immediately due and payable by TDA to the Town. Failure of TDA to reimburse such insurance premiums within thirty (30) days shall constitute a breach of this Lease.

(d) TDA shall secure appropriate fire, theft and casualty insurance coverage on any and all of its contents situated upon said Premises and any and all improvements it makes to said Premises.

(e) The Town shall maintain and carry, throughout the Term at its own expense, hazard insurance on the Premises insuring against loss or damage by fire, earthquake, vandalism, and other perils in the amount of the replacement value of the Premises and any leasehold improvements thereto. The TDA shall be named as an additional insured as to any leasehold improvements made by the TDA, if any, pursuant to the terms of this Lease Agreement.

8. Fixtures

TDA shall have the right to remove Town-authorized improvements that it makes and fixtures that it adds to the Premises at such time as the Lease, or any renewal or extension thereof, concludes or is terminated; provided, however, that:

(a) The Premises are left in as good a state as when received, reasonable wear and tear and damage by fire or other casualty excepted;

(b) No portion of the Community Center shall be demolished or removed by TDA without the prior, express written consent of the Town; and

(c) Such removal shall be performed in a satisfactory manner and not weaken or impair the structural strength of the Community Center or any portion of the Premises.

Failure to remove such improvements or fixtures on or before the final day TDA holds possession of the Premises shall not be deemed a holding over under the terms of this Lease but shall be deemed an abandonment of the improvements or fixtures, and TDA shall not then incur any costs for the removal thereof. Nothing in this paragraph 8 shall permit TDA to seek or compel reimbursement from the Town for the Project but is intended by the parties hereto to permit TDA to remove and

take its equipment and personal property whether or not attached to the Visitor Center.

9. Assignment. TDA shall not assign or in any manner transfer this Lease or any estate, interest or benefit therein or sublet the Premises or any part thereof or permit the use of the same or any part thereof not anyone without the prior written consent of the Town.

10. Damage to Premises

(a) If the improvements on the Premises shall be damaged or destroyed by fire or by any other hazard insured by hazard insurance, then the party responsible for such damage through insurance coverage as set forth in paragraph 7 above shall work with such insurance company to effect such repairs or restore said improvements to substantially the same condition which existed before such damage or destruction.

(b) Since the annual rent is \$1.00, in the event that any damage from the causes aforesaid shall render the Premises totally or partially unusable for TDA's purposes under this Lease shall not be abated in proportion to the loss of effective use of the Premises.

(c) If the destruction or damage amounts to more than seventy-five percent (75%) of the insurable value of the Premises, then either party may terminate this Lease by written notice to the other party within thirty (30) days after the date of such occurrence. Provided, however, that this Lease shall not thereby terminate if the damage shall have resulted from a hazard included in standard fire and extended coverage insurance and if TDA shall, within said thirty (30) day period, or within ten (10) days after notice of termination by the Town, send the Town written notice of its election to continue this Lease commencing four (4) weeks after the date that restoration by the Town shall be completed and available to the TDA for the conduct of its business. In the event of any termination under this paragraph (c), this Lease shall terminate as of the date of the occurrence, and the rent and all other payments owing or already paid by the TDA shall be adjusted as of said date.

11. Indemnification of Town.

TDA during the term hereof shall indemnify the Town against all claims and demands, whether for injuries to persons, loss of life, or damage to property occurring with the Premises and arising out of the use and occupancy of the Premises by TDA, excepting, however, such claims and demands caused by acts or omissions of the Town. Nothing contained in this section

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shall, however, detract from TDA's rights to protection under the liability insurance policy to be paid for by TDA as specified in paragraph 7 hereof.

12. Default.

If at any time during the term or extensions of this Lease there shall be a default within the provisions of this Agreement, except as stated in paragraph 1 and if TDA fails to cure such default within the Cure Period, then the Town may remedy or attempt to remedy any such default or other noncompliance and expend any sums necessary therefore at the cost and expense of TDA, and the sums so expected shall be payable to the Town on demand with lawful interest thereon and may be added by the Town to any rents or other sums due or to become due hereunder. On termination, the Town may recover from TDA all damages proximately resulting from the breach, including the worth of the balance of the Lease over the reasonable rental value for the Premises for the remainder of the Lease term, which such shall be immediately due the Town from TDA.

13. Notice.

It is agreed that all notices regarding this Lease shall be sent by certified or registered mail to:

If to Town:

The Town of Lake

Lure

If to TDA:

Rutherford County Tourism Dev. Auth.

Either party may designate by written notice to the other party a change in address to which notices may be directed to said party.

14. Other Matters.

(a) The failure by the Town to insist upon the strict performance of any agreement, term, or condition of this Lease or to exercise any right or remedy consequent upon an unremedied breach thereof, and the acceptance of full or partial rent during the continuance of any unremedied breach, shall not constitute a waiver of any such unremedied breach or the performance of such agreement, term, or condition of this Lease to be performed or complied with by TDA, and no unremedied breach thereof shall be deemed waived, altered, or modified except by written instrument executed by the Town. The waiver of any breach shall not affect or alter this Lease, but each and every agreement, term or condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

(b) Each right and remedy of the Town provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity, by statute or otherwise and the exercise or beginning of the exercise by the Town of any one or more of the rights or remedies provided for in this Lease as now or hereafter existing at law or in equity, by statute or otherwise, shall be precluded the simultaneous or later exercise by the Town of any or all other rights or remedies for any then existing breach which has not then been remedied or in the course of being remedied provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

(c) In the event of default, the Town shall use its best efforts to mitigate damages.

(d) All parties hereto agree that in no event shall either the Town or the TDA be

liable or responsible to each other, or to other persons, due to any stoppage or delay in operation of the Visitor Center or in any work contemplated by the Project, where such stoppages or delays result from acts of God, fire, war, legal, or equitable proceeding, pandemic, or any other cause which is outside the control of either party hereto.

(e) It is agreed by the parties hereto that visitors and TDA volunteers and employees to the Visitor Center shall have the right to park in parking lots owned by the Town. The Town will be solely responsible for maintenance of any said parking lots.

14. No Waiver of Immunity. No portion of this Lease shall be deemed to constitute a waiver of any immunities which the Town or the TDA or their officers or employees may possess, nor shall any portion of this Lease be deemed to have created a duty of care on the part of either party to any persons not a party to this Lease.

15. Non-Appropriation.

No portion of this Agreement shall be deemed to create an obligation on the part of TDA or Town to expend funds not otherwise appropriated in each succeeding year.

16. Entire Agreement.

This Lease sets forth all the promises, agreements, conditions, and undertakings between the Town and TDA relative to the Premises, and there are not promises, agreements, conditions, undertakings, warranties or representations, oral or written expressed or implied, between them varying the terms of this Lease.

17. Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this Agreement is for any reason held or decided to be invalid or unconstitutional, such a decision shall not affect the validity of the remaining portions. The parties hereto declare that they would have entered into this Agreement and each and every section, subsection, paragraph, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses, or

phrases might be declared to be unconstitutional or invalid.

18. Amendments and Termination.

This Lease shall be modified, altered, amended, or changed, only by written instrument executed by all the parties hereto. The parties hereto may agree to terminate this Lease at any time by written instrument executed by all the parties hereto.

19. Obligations and Successors.

The Town and TDA agree that all the provisions hereof are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate paragraph hereof, and that all of the provisions hereof shall bind and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors, and assigns.

20. Expiration of Lease.

Upon termination or expiration of this Lease or the Option period, as appropriate, or any extension or renewal thereof, TDA shall deliver to the Town physical possession of the Premises in as good condition as the Premises are at the commencement of the Term, ordinary wear and tear and damage by fire or other casualty excepted. The Town acknowledges it is contemplated by the Lease that alterations may be made to the Premises as set forth herein.

21. Governing Law.

This contract is made under and shall be governed by and construed in accordance with the laws of the State of North Carolina. TDA shall comply with all applicable federal, State, and local laws, statutes, ordinances and regulations including, but not limited to, the Omnibus Transportation Act of 1991 and its implementing regulations.

SIGNATURE PAGE FOLLOWS:

IN WITNESS WHEREOF, said parties have hereunto executed this Agreement and Lease, in duplicate, the day and year first above written.

TOWN OF LAKE LURE

By: _____
Carol Pritchett, Mayor

ATTEST:

Olivia Stewman
Town Clerk

APPROVED AS TO FORM:

William C. Morgan, Jr.
Town Attorney

RUTHERFORD COUNTY TOURISM
DEVELOPMENT AUTHORITY

By: _____

By: _____

**LAKE LURE TOWN COUNCIL
AGENDA ITEM REQUEST FORM**

Meeting Date: January 25, 2023

SUBJECT: Lake Lure Tours Concession Agreement Review

AGENDA INFORMATION:

Item Number: VI
Department: Parks, Recreation, and Lake
Contact: Hank Perkins, Town Manager
Presenter: Hank Perkins, Town Manager

BRIEF SUMMARY:

A renewal is due for a Concession Agreement with Lake Lure Tours. Town staff has held discussion with Mr. George Wittmer in regard to Agreement details and a draft Agreement has been prepared. Following the most recent meeting between Town staff and Mr. Wittmer, Mr. Wittmer has proposed amendments to the Agreement in regarding to the opening and closing of the beach. Town Manager Hank Perkins will lead discussion in regard to the draft Agreement and any recommended changes.

ATTACHMENTS:

Draft Lake Lure Tours Concession Agreement; Meeting Follow-up Email from Mr. Wittmer

**CONCESSION AGREEMENT
FOR THE OPERATION OF
THE
TOWN OF LAKE LURE
BEACH, MARINA AND TOUR BOATS**

THIS CONCESSION AGREEMENT, made this the 15th day of February, 2023 by and between the Parties: THE TOWN OF LAKE LURE, Lake Lure, North Carolina, a Municipal Corporation, hereinafter called "Town"; and Lake Lure Tours, Inc., a North Carolina Corporation, P.O. Box 10043, Fleming Island, FL, hereinafter called "LLT;"

WITNESSETH:

WHEREAS, the Town of Lake Lure owns a municipal marina facility and public beach on Lake Lure; and,

WHEREAS, the Town seeks to contract with a Firm to manage, operate and grow the beach, marina and tour boat operations and whose combination of experience and expertise will provide quality driven professional service to the Town of Lake Lure and its guests; and,

WHEREAS, the Town has determined that Lake Lure Tours, Inc. has the dedicated staff, strong financial assets and proven level of expertise needed to fulfill this operation; and,

WHEREAS, it is the general intent and purpose of this Concession Agreement (the "Agreement") to secure the safe, efficient and beneficial operation of beach, marina and tour boats, and to provide for such future repairs, improvements and modifications as shall be deemed acceptable to and in the best interests of the Town, its residents and their Concessionaire.

NOW THEREFORE, the parties in consideration of the mutual covenants herein contained, agree as follows:

1. Use

LLT agrees to manage, maintain and operate the beach, marina and tour boat operations for the term set forth herein. LLT shall use the Facilities allocated to it in the Agreement, as set forth below, for no other purpose than the operation of the beach, marina and tour boat operation services in strict conformance with the terms and conditions of this Agreement.

LLT agrees to manage the operation of the beach and marina during both seasonal and non-seasonal periods so as to make it available for recreational opportunities for all age groups and abilities in such a manner so as to promote wholesome tourism and to optimize the facilities' economic performance.

2. Facilities

LLT shall operate the Marina and Tour Boat operations from the Marina located at 2930

Memorial Highway and the Beach operations from all the facilities located at 2724 Memorial Highway.

3. Hours of Operation

LLT shall, with the approval of the Town, establish its hours of operation.

The Marina shall be open and staffed during all times that the boat tours are operating, with the exception of “after hours” special tour boat events such as Dinner, Sunset, and Special Event cruises.

The established hours of public admission use of the beach shall be from 10 a.m. through 6 p.m. daily, Memorial Day through Labor Day. The Beach will be opened daily from 9 a.m. to 5 p.m., from one week after Labor Day until two weeks prior to Memorial Day without admission fee.

Unless otherwise approved in advance by the Town, all Facilities will be closed from 11 p.m. to 6 a.m.

Following the closing of the beach during normal business and off-season hours, the pavilion and a portion of the beach will be available for rent by individuals, groups and organizations. Scheduling and arrangements for rental of the pavilion and a portion of the beach will be reserved and coordinated through LLT.

4. Personnel

LLT agrees to have a sufficient number of trained, qualified staff members on duty for the proper operation of the facilities. Said personnel will be employees of LLT. LLT agrees to maintain an efficient staff, which at all times shall be courteous to the public, well groomed, neatly dressed, and reflect favorably upon the Town. LLT shall require its employees to observe a strict impartiality as to rates and service. Lifeguards shall be in easily identifiable uniforms and maintain on file current Red Cross, or equivalent, lifeguard, CPR, and first aid certifications.

5. Qualifications

LLT warrants that it has substantial financial capacity and resources sufficient to provide the operation and maintenance of the Facilities in compliance with the terms and conditions of this Agreement and has extensive experience in the operation and management of the facilities of this operation.

6. Maintenance, Repair, and Care of Premises and Grounds

LLT agrees that it shall keep any room, space, or area under its control or used in connection with its service, in a clean and sanitary condition.

LLT shall be responsible for the maintenance, repair, or replacement of the Facilities’ fixed equipment and furnishings, owned by LLT. The Town shall be responsible for the

maintenance, repair, or replacement of all other equipment included within the Facilities agreed to herein. All such structures and equipment shall be operated and maintained in strict accordance with all applicable federal, North Carolina, Rutherford County and Town codes, regulations and requirements. The Town shall have the right to enter upon and inspect the premises at any time during the term of this Agreement. If, as a result of such inspection, the Town determines that any deficiencies exist in the condition of those areas within the LLT's area of responsibility, the Town shall provide notice to LLT in writing. LLT shall commence appropriate corrective work within five (5) business days of the date of such notice. If LLT fails to complete the appropriate corrective work within a reasonable time of such notice, as determined by the Town, the Town shall have the right to correct such deficiencies itself and to bill LLT for the cost of such work. LLT shall pay the bill for such work immediately upon presentation.

Upon termination of this Agreement, the premises, including the Facilities owned by the Town, shall be returned to the Town in as good an order, condition, and repair as they were in on the effective date, reasonable wear and tear excepted.

The Town shall be responsible for structural repair to the building(s), including the roof(s), and any repair needed to sea walls or banks that may be subject to erosion. The Town shall maintain and repair the plumbing systems at the beach and marina as well as winterize these Facilities; although LLT shall provide and maintain the restroom fixtures and supplies. LLT shall maintain its lake water handling system(s) at the beach.

The Town will at no cost to LLT, provide for outdoor maintenance of the lawns, parking lots, fence, and boardwalk. LLT shall make recommendations for any marina or beach improvements in keeping with this Agreement.

7. Utilities

LLT shall be responsible for all utility costs of the Facilities and their employees. LLT agrees to be billed directly for these charges by the utility provider and to make appropriate arrangements for said direct billing of services within thirty (30) days of the Effective Date. In the event that LLT fails to pay any utility bill resulting in a utility provider terminating any service and/or pursuing collection from the Town, the Town shall have the right to terminate the Agreement and to require LLT to immediately vacate the premises.

8. Pricing

LLT agrees that prices charged for its merchandise, food, and services shall be comparable to those charged by the local market and that it will honor the history and traditions of Lake Lure, but also deliver a high-quality product in several consumer price points. Merchandise, accessories, clothing, foods, and drinks normally associated with the operation of a beach and marina shall be permitted. The sale of other merchandise must be approved by the Town, which such approval shall not be unreasonably withheld. All vending machines will be provided by LLT.

For the 2023 season, the following admission fee and ticket pricing shall apply:

Beach

Adult: \$10.00

Child: \$8.00

Senior: \$9.00

Tour Boats

Adult: \$20.00

Child: \$10.00

Senior: \$18.00

Bus Tour (10 Ticket Minimum): \$17.00

The rental rate for the beach outside of the established business hours and during “off-season” periods will be at a rate of \$50.00 per hour. Organizations qualified with a 501(c)3 designation, will, depending upon availability, have use of the beach on a “first-come; first-serve” manner, at no fee.

Residents of the Town of Lake Lure and the Village of Chimney Rock and their immediate family members will not pay an admission fee to the Beach. Proof of residency is required.

LLT shall provide annually to the Town, no later than November 15 of each fiscal year, a proposed fee structure for the coming fiscal year. LLT shall provide the Town with sufficient information to evaluate the fees and programs for its operations. Such information shall include a full report of prior years’ activity in all categories and shall, if reasonably available to LLT, include an analysis of the type of users of the facilities in the prior year and revenues associated with major categories. If proposed by LLT, and unless the proposal is deemed to be excessive by the Town, the Town shall agree, which agreement shall not be unreasonably withheld, on any changes in the fee schedule at the December meeting of the Town Council, applicable to the next concession year.

9. Licenses and Permits Provide copies

LLT shall procure, at its own cost and expense, all licenses or permits necessary for the lawful operation of the Facilities and its business. The Town shall provide reasonable cooperation to LLT to obtain such license or permits.

If activities related to the performance of this agreement require specific licenses, certifications, or related credentials, LLT represents that it and/or its employees, agents and subcontractors engaged in such activities possess such licenses, certifications, or credentials and that such licenses, certifications, or credentials are current, active, and not in a state of suspension or revocation.

10. Health Department Requirement

LLT warrants and agrees that all food and beverage items that are offered for sale under this Agreement shall be handled, served, and/or sold in a clean and sanitary manner and in accordance with the requirements of the Rutherford County Health Department and any and all other applicable rules and regulations.

11. Assumption of Risk

LLT assumes all risk in the operation of the Facilities and agrees to comply with all federal, state, and local regulations and all rules, regulations, and Ordinances of the Town. The Town agrees to comply with any rule, regulation, or Ordinance under which it has sole

responsibility as the owner of the Facility.

12. Advertising and Branding

LLT shall design, print and distribute informational flyers and promotional materials at their own expense. The Branding Guide for Lake Lure & Chimney Rock Village states that in order to ensure consistent use of the Lake Lure brand, the brand shall be used in signage, advertising products and services, direct mail, events and activities, logos, merchandising, website development, social media and other promotional materials. LLT shall apply, where appropriate, Lake Lure's branding themes to the beach, marina, and tour boat operations. The Town must approve in advance any newly-designed branded advertising and promotional material, which such approval shall not be unreasonably withheld.

13. Equipment

LLT has the right to use any fixed equipment belonging to the Town on the premises as of the Effective Date and any fixed equipment installed by the Town thereafter. LLT may, with prior approval of the Town, purchase additional fixed equipment required and necessary for the operation of the Facilities. LLT agrees to be responsible to the Town for any damage or loss to Town equipment that occurs by reason of LLT's negligence or other fault, or that of its patrons, employees, or suppliers. Title to all non-fixed equipment and fixed assets provided by LLT shall remain with LLT, and such equipment and fixed assets shall be removed by LLT after the expiration or termination of this Agreement. If any property remains on the premises after the expiration or termination of this Agreement, the Town shall notify LLT, and if LLT fails to remove such property within ten (10) days from the date of such notification, the Town may deal with such property as though it had been abandoned and charge all costs and expenses incurred in the removal thereof to LLT.

The Town shall be responsible for maintenance, repair, and replacement of major capital equipment owned by the Town including, but not limited to the fuel dispenser, gas storage tank and piping, and docks.

14. Supplies

LLT agrees to provide, at its own cost and expense, all furnishings, equipment, materials, and supplies ordinarily incident to the operation of the service.

15. Tour Boat Operations

LLT has the right to use the waters of Lake Lure for the purpose of operating a scenic passenger boat ride service. Fees for this right are outlined in Section 33 of this Agreement. The monthly payment shall include an activity report and a copy of the daily trip log.

LLT shall, at its own cost and expense, comply with all the rules, regulations, ordinances and requirements of the United States, the State of North Carolina, Rutherford County and the Town of Lake Lure applicable to operation of a scenic passenger boat ride business.

LLT may operate up to four tour and four rental boats and will be allowed to use Town dock space to moor said boats at an area designated by the Town. Boats shall have a large, clear numeral identification method to facilitate identification for comments. LLT shall be responsible for the cleaning and maintenance of their dockage area. LLT will also be allowed to use the Town property near the Town dock. Any changes in location of the waiting area must be approved by the Town. Any repairs to the boat slips must be pre-approved by the Town.

LLT will establish and publish a telephone number where comments about the tour boats, rental boats, or marina operation can be reported. LLT shall respond to any comments within five (5) business days. If a comment is not resolved, then it may be reported to the Town Manager or their designee. LLT shall maintain a log on all comments and the action/response taken to resolve the comment. In addition, LLT shall have an answering machine/voice mail with a pre-recorded message relating the information and process for reporting comments.

Regular tours shall operate during daylight hours up to seven days a week. Dinner Cruises shall operate from approximately 45 minutes before dusk, until after dinner and return. Sunset Cruises will operate from approximately 45 minutes before dusk until approximately 30 minutes after sundown. LLT shall follow the allowances and prohibitions regarding safe operation and wake issues detailed in the "Lake Lure Tours Operation" document. Areas of no-wake operation are identified in this document and on a map, which may be amended from time to time. At no time will the maximum capacity permitted by law be exceeded in any boat.

16. Events and Activities

The Town and LLT shall work cooperatively on expanding and enhancing the products and service options of the Facilities by offering new and appropriate activities. The Town supports LLT's addition of special events, festivals, activities, tours, and educational programs, and the Town will work with LLT and other Town and LLT partners in facilitating these events.

LLT and the Town shall solicit cooperatively "new business" and "new users" for the beach, with the intent to drive additional patronage of the beach in enhancement of local tourism.

17. Supervision

LLT shall at all times have a manager, assistant manager, or other designated person in charge on duty during established business hours. Proper supervision shall be provided for all events, activities, and daily operations of the Facilities. LLT shall be responsible for the selection, training, certification, licensing, and daily supervision of all staff.

18. Safety

The health and safety of residents, visitors and employees is of the utmost importance to the Town and LLT. LLT shall provide the Town with a copy of their Safety Operations

Policy that outlines a comprehensive approach to safety including awareness and training.

Serious problems, incidents or accidents shall be reported immediately to the Town Manager. "Serious" shall be defined as those events which involve bodily injury or property damage. All claims to LLT's insurance carrier shall be reported in writing to the Town within one (1) business day. LLT shall follow the Town's policies and procedures for Media Contact regarding such incidents.

LLT shall report to the Town Manager within two (2) business days, in writing, any problem with building structure or deficiencies, major equipment, electrical or plumbing systems.

19. Access

LLT shall grant access to the premises at all reasonable times to the Town.

20. Possession

It is expressly understood and agreed that no building space, equipment or area is leased to LLT, but that during the term of this Agreement, LLT shall have unrestricted use and possession of the designated premises, except as provided in this Agreement. LLT has the right to occupy the spaces assigned to it, operate under the Agreement hereby granted to it, and continue in possession of the premises subject to the terms of this Agreement only so long as LLT strictly and properly complies with every provision contained in this Agreement. No interest in real property is conveyed by or under this Agreement.

21. Alterations

Any proposed modifications, alterations, or repairs made by LLT, except those required on an emergency basis, must be approved in advanced by the Town. The Town may, with mutual agreement from LLT whose approval may not be unreasonably withheld, make any alterations, additions, or improvements to the premises at the Town's expense. Nothing herein shall be deemed to obligate or require the Town to make any such alterations, additions or improvements.

22. Records and Accounts

LLT shall keep books and records of account in accordance with Generally Accepted Accounting Procedures, and shall maintain any other records pertinent to this Agreement in a manner so as to clearly document LLT's performance. LLT shall permit the Town or its duly authorized representative to inspect and audit appropriate books and records at any reasonable time during normal business hours after giving LLT twenty-four (24) hours' notice of the time and day of such inspection and audit. The Town has the right, at its option and expense, to perform an audit each year of this Agreement. LLT shall retain and keep accessible all the fiscal and other records for a minimum of five (5) years following final payment and termination of this Agreement, or until the conclusion of any audit or controversy related to this Agreement, whichever is later.

23. Insurance and Workers' Compensation

LLT agrees to keep and maintain insurance for the duration of this Agreement, including commercial general liability, auto liability, workers' compensation, employer's liability, and umbrella coverage with at least the minimum limits shown below:

Commercial General Liability:	\$1,000,000 per occurrence
Excess (Umbrella) Liability:	\$5,000,000
Commercial Auto Liability:	\$1,000,000 combined single limit
Workers' Compensation:	Statutory
Employer's Liability:	\$1,000,000

LLT shall furnish the Town with certificates of insurance for each type of insurance described herein, with the Town listed as Certificate Holder and as an additional insured on LLT's general liability policy and provide a waiver of subrogation on LLT's general liability and workers' compensation policies. In the event of bodily injury or property damage loss caused by LLT's acts or omissions in connection with LLT's services performed under this Agreement, LLT's Liability insurance shall be primary with respect to any other insurance which may be available to the Town, regardless of how the "Other Insurance" provisions may read. In the event of cancellation, substantial changes or nonrenewal, LLT and LLT's insurance carrier shall give the Town at least thirty (30) days prior written notice. No work, service or operation shall be performed until LLT has furnished to the Town the above reference certificates of insurance and associated endorsements, in a form suitable to the Town.

24. Termination of Agreement

The Town has the right to terminate this Agreement for cause during this five (5) year renewal term.

A. Termination for Default

The Town may terminate the Agreement upon LLT's default of any material duty or obligation of LLT under the Agreement and LLT's failure to cure such default within fifteen (15) calendar days of the Town's written notice to LLT of such default. If the default is not capable of cure within said fifteen (15) calendar days, LLT shall provide written notice to the Town together with a schedule of cure within ten (10) calendar days of the Town's notice of default, shall begin action to cure the default within said fifteen (15) calendar days, and shall diligently proceed to cure the default. The Town may accept LLT's schedule of cure, may make a written demand that LLT cure the default within a time period set by the Town, or may terminate the Agreement at the end of the fifteen-day default period in its sole discretion.

By giving written notice to LLT, the Town may also terminate the Agreement upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any other events of default):

- LLT makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with the Agreement, LLT's proposal, or any covenant, agreement, obligation, term, or condition contained in the Agreement; or
- LLT takes or fails to take any action which constitutes grounds for immediate termination under this Agreement; or
- LLT fails to fulfill or maintain in a timely and proper manner any obligations, duties, or provisions of or under this Agreement; or
- LLT fails to fulfill its material obligations with sufficient diligence to ensure proper services within the term of this Agreement, including any authorized extension; or
- LLT fails to comply with all laws, ordinances, rules, or provisions governing this Agreement; or
- LLT engages in any illegal conduct or otherwise violates any law, rule, regulation, or judicial order applicable to LLT, this Agreement, or LLT's operation of the services; or
- LLT fails to meet the reporting or financial requirements of this Agreement.

Any notice of default shall identify the applicable section of the Agreement, cite the section(s) LLT is not in compliance with, and state the Town's intent to terminate the Agreement if the default is not cured within the specified period, if a cure period shall be applicable.

B. Obligations Upon Expiration or Termination

Upon expiration or termination of the Contract, LLT shall (i) provide a written statement describing in detail all services and expenses invested in performance of its services in respect to deliverables which are in process as of the date of termination; and (ii) the Town shall have the right to purchase any or all fixtures, equipment, furnishings and inventory from LLT; and (iii) promptly return the premises to the Town free and clear of all fixtures, equipment, furnishing and inventory that has been provided by LLT/or will not be purchased by the Town, leaving the premises in the same or better condition as upon the date of initial occupancy, normal wear and tear only excepted; and (iv) promptly return all keys to the premises to the Town.

C. Transition Services Upon Termination or Expiration

Upon notice of termination or expiration of the Agreement, LLT shall cooperate with the Town to assist with the orderly transfer of the services, functions and operations provided by LLT hereunder to the Town. Prior to termination or expiration of the Agreement, the Town may require LLT to perform and, if so required, LLT shall perform certain transition services necessary to migrate the work of LLT to the Town as described below (the "Transition Services"). Transition Services shall include but not be limited to the following:

Pre-migration Services

- i. Working with the Town to jointly develop a mutually agreed upon transition services plan
- ii. Notifying all affected contractors and subcontractors of LLT

Migration Services

- i. Performing activities as required by the transition services plan throughout process and post-migration
- ii. Answering questions from Town to LLT regarding the work on an as-needed basis
- iii. Providing such other reasonable services needed to effectuate an orderly transition to the Town

Other Transition Services

- i. LLT shall provide the Town reasonable access to the licensed premises.
- ii. LLT shall provide the Town with copies of all leases, permits, licenses, and other relevant documents.
- iii. LLT shall provide the Town with all maintenance records associated with the licensed premises.

Termination or expiration of the term and extensions of the Agreement shall not relieve LLT of the obligation to pay any fees, taxes, or other charges then due to the Town; to file any daily, monthly, quarterly, or annual reports; or relieve LLT from any claim for damages previously accrued or then accruing against LLT at the time of the termination or expiration.

The remedies set forth in this Section shall be deemed cumulative and not exclusive, and may be exercised successively or concurrently, in addition to any other remedies available under this Agreement or at law or in equity.

25. Modification

This Agreement may not be modified except by written amendment executed by both parties hereto.

26. Severability

Should any provision or provisions contained in this Agreement be declared by a court of competent jurisdiction to be void, unenforceable, or illegal, such provision or provisions shall be severable and the remaining provisions of this Agreement shall remain in full force and effect.

27. Governing Law

This Agreement is entered into in North Carolina and shall be construed under the Statutes and laws of North Carolina. Venue shall be the County of Rutherford.

28. Transfer or Assignment

LLT will agree not to subcontract, or assign, transfer, convey, sublet, or otherwise dispose of the Agreement, LLT's obligations under the Agreement, or any or all of its right, title, or interest, without the Town's prior written consent, which shall be given or denied in the Town's sole discretion. This Agreement is not assignable by either party without the prior written consent of the other party. In the event that the Town consents to the assignment or transfer of this Agreement or the change in control in LLT's ownership, the assignee, transferee, or new owner shall operate the services in a fashion substantially similar to LLT's operation and in strict conformance with the terms, conditions and requirements of this Agreement.

LLT shall not, except as otherwise provided for in this Agreement, subcontract the performance of any work under this Agreement without prior written permission of the Town. No permission for subcontracting shall create, between the Town and the subcontractor, any contract or any other relationship.

29. Financing

Any collateralization or mortgage of this Agreement in full or in part, or any of LLT's revenues, financial interests, or rights hereunder, or any other financing agreement in connection with LLT's performance hereunder shall be limited solely to financing in connection with the operation and improvements of the Facilities, and shall be submitted to the Town Attorney for review and subject to the prior approval of the Town Council, which shall not be unreasonably withheld. Under no circumstances shall the Town be liable or responsible for any indebtedness incurred by LLT to any other party in connection with any financing obtained by LLT for the operation and improvements of the Facilities.

30. Independent Contractor Status

The relationship between LLT and the Town is a contractual relationship. It is not intended in any way to create a legal agency or employment relationship. LLT shall, at all times, maintain its status as an independent contractor and both parties acknowledge that neither is an agent, partner, or employee of the other for any purpose. LLT shall be responsible for providing all required insurance, workers' compensation (regardless of number of employees) and unemployment insurance for all of its employees. LLT also agrees that it shall not, in any manner whatsoever, by its actions or deeds, commit the Town to any financial obligation irrespective of the nature thereof.

31. Responsibilities of LLT

LLT shall be properly licensed in North Carolina and skilled in their respective trade. LLT shall perform its services in accordance with generally accepted standards and practices of this type of service customarily utilized by competent Firms in the locale in which the Agreement is being performed, in effect at the time LLT's services are performed.

LLT and its subcontractors shall comply with all state, federal or local laws, or ordinances, codes, rules or regulations governing performance of this Agreement, including but not limited to, equal opportunity employment laws, O.S.H.A., minimum wage and hour

regulation, use of alcohol, noise, and North Carolina State Building Code regulations.

32. Terms

Renewal Agreement to Operate Marina and Tour Boats: The Term of this Renewal Agreement shall be for a five (5) year term beginning February 15, 2023 through February 14, 2028. Any extension, modification or termination of this Agreement will be at the sole discretion of the Town.

Successful completion of this five-year renewal term shall be defined as meeting the goals of the Town of Lake Lure's Request for Proposal:

- Providing safe and attractive amenities.
- Revenue growth for the operation.
- Enhancement of the public facilities.
- Providing activities that appeal to residents and guests.
- New advertising, marketing, and sales initiatives.
- Other responsibilities and requirements as contained in this Agreement.

Agreement to Operate Beach: The Term of this Renewal Agreement shall be for a five (5) year term beginning February 15, 2023 through February 14, 2028. Any extension, modification or termination of this Agreement will be at the sole discretion of the Town.

33. Concession Fees

LLT shall pay the Town fifteen percent (15%) of monthly gross receipts of Marina, Beach and Tour Boat Operations. Excepting, that (1) the Town shall receive 95% of all non-commercial boat permits sold to third parties at the Marina, and (2) the Town shall receive the full \$50.00 hourly rate for the rental fee charged at the beach. The Town shall receive no discount on fuel purchased by the Town at the Marina.

As part of this Agreement, LLT shall be allowed the use of ten (10) slips at the Marina at no additional cost for use in meeting the requirements of this Agreement.

Gross receipts as used in this Agreement shall mean the total amount received by or accruing to LLT by reason of the privileges granted under this Agreement, including but not limited to from any sales or rentals, the provisions of any food or beverage services, and the provision of any other services authorized by this Agreement. The following shall be excluded or deducted from the gross receipts: (i) Excise, sales or other taxes imposed upon the sale or rental of goods or services, (ii) tips, gratuities, or other charges for services where payment is made to employees or others, provided that any portions of such charges retained by LLT shall be included in the gross receipts, and (iii) fees paid to credit card companies or to outside parties engaged to assist in the collection of accounts receivable.

Payments to the Town shall be made monthly on or before the 15th of the following month and shall include a monthly report of concession of gross receipts in a form to be agreed to

annually by LLT and the Town. In the event the payment is not received on or before the 15th of the month, a penalty of one percent (1%) of the balance due shall be assessed for each day the balance is not paid.

Immediately upon the sale of goods or services subject to concession fees, those fees shall immediately vest in and become owed to the Town, for which LLT shall be responsible until delivered to the Town as provided in this Agreement.

34. Future Capital Improvements

LLT may make additional capital improvements to the Facilities, at its own cost and expense, with no setoff from the Concession Fees paid to the Town, provided that all such capital improvements must be approved by the Town. Design, construction and occupancy of any capital improvements shall be subject to the requirements for review and approval of new construction by the State of North Carolina and the Town, and shall meet all applicable codes, law, regulation, or ordinance. The Town, upon approval, shall waive all Town application and permit fees for said review and approval. LLT agrees that the Town shall have no liability either to LLT or LLT's contractors, subcontractors or suppliers for any expenses in excess of originally estimated costs of the project proposed by LLT and approved by the Town. LLT agrees to obtain, prior to the commencement of any construction projected to cost in excess of \$100,000 a performance bond and a payment bond in the full amount of the cost of construction for any and all capital improvements. Title to all improvements shall vest in the Town brick-by-brick during and following the performance of any work.

In no way, shall this Section limit the ability of the Town and LLT (and its partners) to partner, cooperate, or participate jointly in facility upgrades, improvements or future capital projects. The Town and LLT acknowledge their individual roles in these efforts that enhance the guest experience and that this is an essential tenet to the overall success of the operations. In such a partnership, the Town and LLT shall develop a separate Improvements Agreement that will outline each entity's roles and responsibilities.

LLT and the Town will jointly develop a capital improvements/reinvestment/facility improvement plan to be used as a guide for the development of future capital improvement projects. This plan will be developed alongside and made part of the Capital Improvements Plan for the Town. LLT agrees to invest financially in public-private Town enhancement projects during the term of this Agreement and for projects mutually agreed upon by LLT and the Town. Any such investment by LLT in public-private projects shall be in addition to all fees paid to the Town as required by Section 33 of this Agreement.

35. Disputes

All claims, disputes, and other matters in question between LLT and Town arising out of, or relating to, the Agreement or breach thereof, shall be decided by a civil action or civil actions, which shall be commenced and tried only in Rutherford County, North Carolina. Each party hereby waives any right or claim for a change of venue from Rutherford County, North Carolina.

This section shall be effective notwithstanding any other provisions to the contrary in the Agreement or supplements thereto. Nothing herein shall prevent LLT and Town from mutual agreement to submit claims, disputes, or other matters in question to arbitration, either binding or non-binding, or to mediation.

36. Bailment

LLT agrees to be responsible for loss of or damage to personal property turned over to it by any patron of the Facilities. LLT may limit its liability for any such loss or damage as provided under applicable law.

37. Indemnification

LLT shall indemnify, defend, and hold harmless the Town and its subsidiaries, divisions, officers, elected officials, and employees from all liability, loss, costs, claims, damages, expenses, attorney fees, judgments and awards arising or claimed to have arisen, from any injury caused by, or allegedly caused by, either in whole or in part, any act or omission of LLT or any employee, agent, subcontractor or assign of LLT. This provision is not applicable to any claim arising out of or related to any active or primary negligence of or by Town, its officers or employees.

To the extent permitted by applicable law, the Town shall indemnify, defend, and hold harmless LLT and its subsidiaries, divisions, officers, and employees from all liability, loss, costs, claims, damages, expenses, attorney fees, judgments and awards arising or claimed to have arisen, from any injury caused by, or allegedly caused by, either in whole or in part, any act or omission of the Town or any employee, agent, subcontractor or assign of the Town. This provision is not applicable to any claim arising out of or related to any active or primary negligence of or by LLT, its officers or employees.

The Town understands and agrees that LLT shall provide no personnel or supervision during off season hours, except for routine beach maintenance, and to the extent permitted by applicable law, explicitly relieves LLT from all liability arising from the public use of the beach during this time.

38. Waiver of Claims

LLT waives any and all claims for compensation from the Town for any and all loss or damage sustained by reason of any defect, deficiency, or impairment of the structures, equipment, utilities, furnished for the premises, or by reason of any loss of any utility service, which may occur from time to time from any cause, or for any loss or damage resulting from fire, water, tornado, wind, or storm of any kind, civil commotion, or riot, and LLT releases and discharges the Town and its agents from any and all demands, claims, actions, and causes of action arising from any of the causes aforesaid, unless caused by the negligence of the Town, its agents, or employees or by virtue of the Town's failure to comply with the terms and conditions set forth in this Agreement.

39. Americans with Disability Act

LLT shall comply with the provisions of the Americans with Disabilities Act (ADA) and all rules and regulations promulgated thereunder. LLT hereby agrees to indemnify the Town from and against all claims, suits, damages, costs, losses and expenses in any manner arising out of or connected with the failure of LLT, its agents, successors, assigns, officers or employees to comply with the provisions of the ADA or the rules and regulations promulgated thereunder.

40. Notices

Any notices hereunder shall be in writing and shall be given upon delivery by 1) hand delivery or 2) by the United States Postal Service, in each instance, addressed to each party at the following addresses:

For LLT: Julie Belcher, Comptroller
Lake Lure Tours, Inc.
P.O. Box 10043
Fleming Island, FL 32006

For Town: Town Manager
Town of Lake Lure
P.O. Box 255
Lake Lure, NC 28746

Any such notice, request or other communications shall be considered given or delivered, as the case may be, on the date of delivery or the date that delivery is refused as evidenced by the records of the delivery service. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, request, or other communication. Either party may from time to time change its mailing address hereunder.

41. Miscellaneous

Wherever herein the singular number is used, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.

The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the respective parties and their successors and permitted assigns.

The section and marginal headings herein are intended for convenience in finding the subject matters, and are not to be used in determining the intent of the parties to this Agreement.

42. Entire Agreement

This Agreement contains the entire understanding and agreement by and between the parties, and all prior and contemporaneous understandings, agreements and negotiations are herein merged. This Agreement shall not be modified, terminated (except for in

accordance with the express provisions of this Agreement), nor any provision waived, except in writing and signed by LLT and the Town.

IN WITNESS WHEREOF, Lake Lure Tours, Inc. and the Town of Lake Lure have respectively executed and delivered this Agreement as of the date first above written.

(Town Seal)

**Town of Lake Lure
A Municipal Corporation**

By: Carol Pritchett, Mayor

ATTEST:

Olivia Stewman, Town Clerk

Corporation
(Corporate Seal)

**Lake Lure Tours, LLC
A North Carolina**

By: George Wittmer, President

ATTEST:

Witness

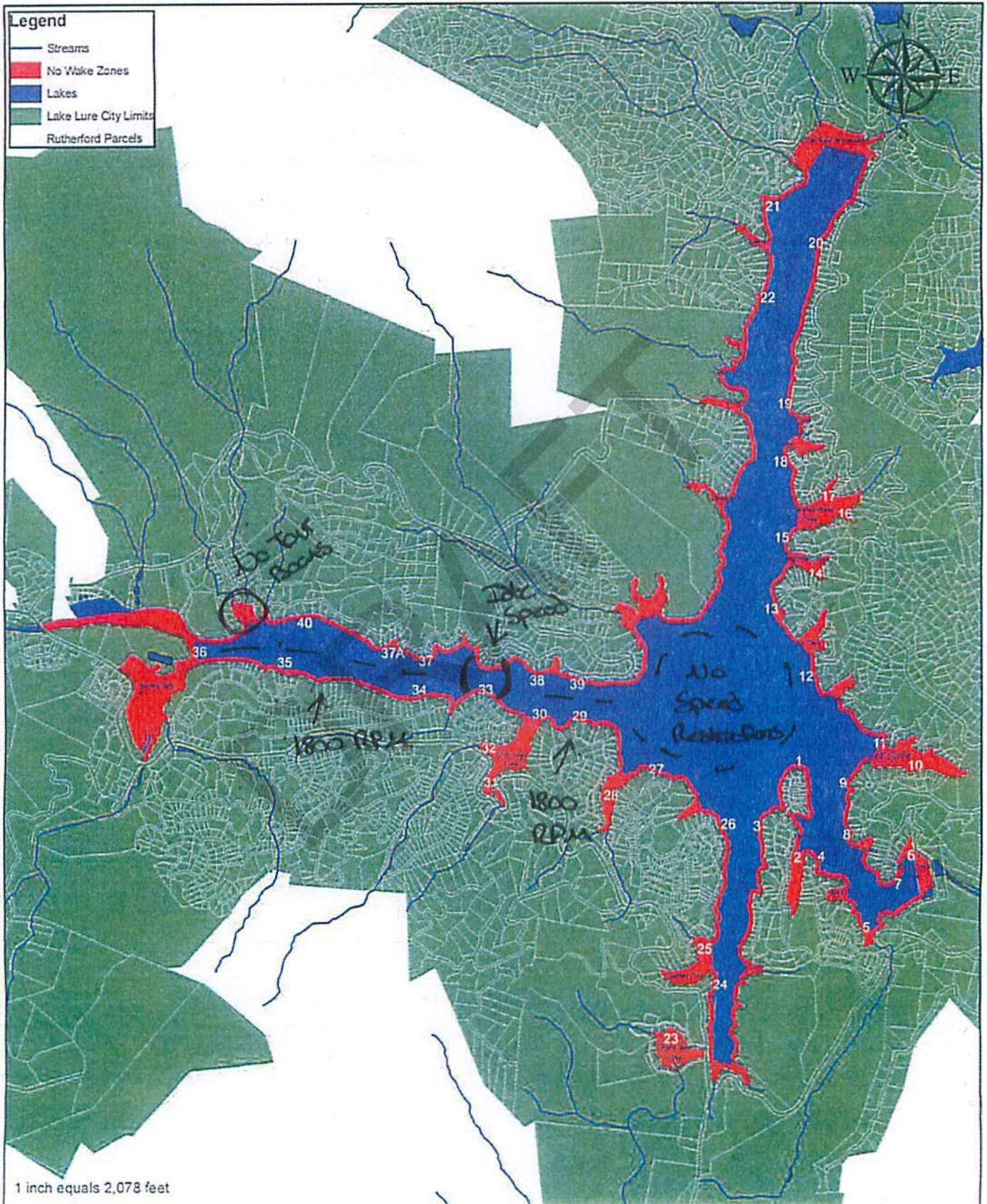
SOP for Lake Lure Tours, Tour Boat Operations

To help reduce the wake issues that are occurring within the main channel of Lake Lure, Lake Lure

Tours proposes the following for operation:

- Stage tour boat departure times at least five minutes apart.
 - a. For example: Tour boat one departing at 10:55am, tour boat two departing at 11am, and tour boat three departing at 11:05am on busy days.
- For the safety of residents swimming in Firefly Cove, Lake Lure Tours will no longer proceed into the cove.
- Lake Lure Tours proposes to operate tour boats at 1800 RPM (existing policy) through the main channel, except at the portion of the channel which is referred to as the "Bottle Neck" located within Lake View Road and Cutaway Road area. All tour boats will drop to idle speed thirty yards before and thirty yards after the "Bottle Neck."
- All tour boats should stay to the center of the main channel unless one of the following occurs:
 - a. The skipper is pointing out features along the lake and then returns to the center of the main channel.
 - b. An unsafe event occurs (Skiing, swimming, or yielding right-of-way to another boat).
- In the event that the tour boat is stopped, the driver will turn the boat ninety degrees before powering the boat back up to 1800 RPM to disperse wake away from shorelines.

In addition to the above changes for LLT boat operations, all boat drivers will complete a new training program this spring. Management will be riding with each skipper at least twice a month to ensure that all new directions, operational protocols and boat operations are being followed.



From : George

Sent: Wednesday, January 18, 2023 8:28 AM

To: Hank Perkins <whperkins@townoflakelure.com>; Dean Givens <loa@townoflakelure.com>

Cc: Sonya Ledford; Julie Belcher

Subject: DRAFT Concession Agreement renewal, 2023

Hank and Dean:

Per our conversation at Town Hall (Dean, Hank, Sonya, and I attending), Lake Lure Tours, Inc. have one request for edits to the February 15, 2023 Concession Agreement draft which we were given to review, and as annotated below (strike through means delete; highlight means add):

3. Hours of Operation (its paragraph three):

*"The established hours of public admission use of the beach shall be from 10 a.m. through 6 p.m. daily, Memorial Day through Labor Day. The Beach will be opened daily from 9 a.m. to 5 p.m. from ~~one~~ **two weeks** after Labor day until ~~two weeks prior to Memorial Day~~ **one week prior to annual lake draw-down, and remain closed onward until Memorial Day** without admission fee. "*

As to **33. Concession Fees** (its first paragraph), *"Excepting that (1) the Town shall receive 95% of all non-commercial boat permits sold to third parties at the marina, . . . "* Lake Lure Tours is of the opinion that with the addition of other vendor(s) providing non-commercial permit sales / services; the Lake Operations offices at the Green Space providing permit sales during weekdays; and the addition of improved internet permit application aids to permit seekers, that no change in the in the 95% of permit fees collected to Town / 5% of permit sales collected to LLT is appropriate to continue during at least the 2023 season, in order that the efficiency and effect of these additional vendor(s) and the Town-implemented technology may be assessed, and a determination be made as to whether a labor-savings to LLT obtains, due to these changes.

So, if **3. Hours of Operation** may be amended as requested above, LLT is agreeable to proceeding with the latest draft of our Concession Agreement renewal.

Thanks,
George

**LAKE LURE TOWN COUNCIL
AGENDA ITEM REQUEST FORM**

Meeting Date: January 25, 2023

SUBJECT: Review Chimney Rock Village Proposed Agreement to Operate Water System

AGENDA INFORMATION:

Item Number: VII
Department: Water
Contact: Hank Perkins, Town Manager
Presenter: Hank Perkins, Town Manager

BRIEF SUMMARY:

The existing Agreement to Operate Water System between the Town of Lake Lure and Chimney Rock Village will be expiring in April 2023. Lake Lure and Chimney Rock had previously issued notifications of intent to renew an agreement. Chimney Rock provided the Town of Lake Lure with a proposed agreement earlier in the month for the review of Town staff and Council.

ATTACHMENTS:

Proposed Agreement to Operate Water System; Document with Marked Changes between the Original and Proposed Agreements

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

AGREEMENT TO OPERATE WATER SYSTEM

THIS CONTRACT is made and entered into this ____ day of _____, 2023, by and between the Town of Lake Lure, a North Carolina Municipal Corporation hereinafter referred to as "Lake Lure" and the Chimney Rock Village, a North Carolina Corporation hereinafter referred to as "Chimney Rock".

WITNESSETH

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

WHEREAS, Lake Lure currently owns and operates a water treatment and distribution system, and is engaged in the enterprise of managing, operating, maintaining said system and selling potable water to the public within its service area; and

WHEREAS, Chimney Rock owns and operates a water treatment and distribution system, and is also engaged in the enterprise of managing, operating, maintaining the system and selling potable water to the public within its service area; and

WHEREAS, Lake Lure and Chimney Rock previously entered into an Agreement to Operate Water System ("prior agreement") on or about April 15, 2003; and

WHEREAS, Chimney Rock has tended written notice as required by the prior agreement to Lake Lure of its intent to renew the prior agreement subject to the modifications contained herein; and

WHEREAS, Lake Lure has notified Chimney Rock in writing as required by the prior agreement of its decision to renew the prior agreement subject to the modifications contained herein; and

WHEREAS, Lake Lure and Chimney Rock each have facilities and services that are mutually beneficial and have agreed that continued cooperation in the management

and operation of both water systems would serve the best interest of both municipalities; and

WHEREAS, Lake Lure and Chimney Rock have a mutual interest in maintaining a level of cooperation between their water services delivery programs.

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

1. Lake Lure and Chimney Rock mutually agree that this agreement shall become effective on April 15, 2023 and it shall continue in effect for a period of 10 years from its effective date (April 15, 2033), or extended by the mutual, written consent of both parties, or until superseded by an alternative agreement.
2. Lake Lure agrees to assume the responsibility for managing and operating Chimney Rock's water system and program throughout the term of this agreement and that such responsibilities shall, at a minimum, include:
 - a. Overseeing and managing the operation of the water system; and
 - b. Providing the supervisory and operational personnel necessary to adequately manage, operate and maintain said water system; and
 - c. Reading the meters for all metered customers on the water system; and
 - d. Billing all customers for water services rendered and providing other relevant customer services, on a bi-monthly schedule (every other month), or may follow the Town's regular billing cycle if more frequent, utilizing Chimney Rock's adopted water rates and charges; and
 - e. Providing the accounting services necessary to account for all funds that pass through Chimney Rock's water program, in accordance with applicable state laws and regulations; and
 - f. Insuring compliance with applicable state environmental laws and regulations, so long as such compliance is within the control of Lake Lure; and
 - g. Monitoring the water system facilities to insure their proper operation and protection; and

- h. Repairing and maintaining the water system and related facilities, as such repairs and maintenance are warranted, subject to the exclusion listed in paragraph 4 below.
3. Lake Lure further agrees to manage, operate and maintain the Chimney Rock water system and program to the same standard that the Town manages, operates and maintains its own water system and program.
4. Lake Lure's responsibilities under this agreement does not extend to paying the costs associated with capital improvements or major repairs to the system. The Town of Lake Lure's assigned management (Town Manager or assigned/appointed contact or Department Head) will notify the Village's Mayor and or Administration of Chimney Rock Village for approvals of any repairs that are equal to or exceed \$1,000 or the purchase of any equipment which cost is equal to or exceed \$500. The Village will within a reasonable time, per issue and/or situation, notify the Town of approvals or any plans of action to address repairs or equipment purchases, thus allowing the Village time to consult with the Village's engineer of record. "Major repairs" shall be defined as those repairs which cannot be made with hand tools or equipment normally operated by the Town of Lake Lure's maintenance staff or which require the hiring of outside assistance.
5. Lake Lure agrees that the responsibility for managing, operating and maintaining the Chimney Rock water system and program shall rest with its Town Manager and the Manager shall be accountable to Chimney Rock for timely and accurate communication, information and reporting for all important policy, operational, and financial matters relating to Chimney Rock's water system and program.
6. Lake Lure shall immediately notify Chimney Rock upon becoming aware of any activity, problem or circumstance that might present a danger to the health, safety and welfare of Chimney Rock water users. Further, Lake Lure shall take appropriate action to remedy such activity, problem or circumstance and to avoid or minimize disruptions in service. Chimney Rock shall immediately take those steps necessary to alleviate such activity, problem or circumstance where such measures are beyond the control of Lake Lure.
7. Lake Lure and Chimney Rock agree to maintain compliance with all laws and regulations, which apply to the ownership, operation and maintenance of both water systems, including adherence to the terms and conditions of all state permits, which establish appropriate water quality standards for the systems.

8. Lake Lure further agrees that upon the effective date of this agreement it will maintain the sewer rates charged to Chimney Rock sewer customers equal to the rate that is charged to Lake Lure customers that are inside of Lake Lure's corporate limits.
9. Chimney Rock hereby agrees to compensate Lake Lure for reducing the sewer rates charged to Chimney Rock customers, as provided for in paragraph 8. Said compensation shall be made in two parts:
 - a. Water Storage Capacity. Chimney Rock agrees to convey to Lake Lure the permanent use of 100,000 gallons of capacity in Chimney Rock's 250,000 gallon water storage reservoir located at Terrance Drive. Said use shall be perpetual and shall carry with it Chimney Rock's obligation to adequately operate and maintain said reservoir and insure that the facility will remain in service throughout its normal life expectancy, which is defined at 50 years. The value of this conveyance shall be established at \$12,000 per year for the 10- year term of this agreement, said value to be offset by services rendered by Lake Lure and the reduction in sewer rates pursuant to this agreement.
 - b. Potable Water Supply. Chimney Rock agrees to convey to Lake Lure a continuing and uninterrupted quantity of potable water from its water system, at meeting points that are mutually acceptable to the parties of this agreement. Said quantity of water shall not exceed 4.62 million gallons during each year, except that the flow of water cannot exceed 12,670 gallons for any 24-hour period, unless specifically approved by Chimney Rock Village. Conveyances of water shall be recorded and accounted for quarterly by Chimney Rock Village. Each quarterly period will be accounted for separately and deficits or surpluses in total quarterly conveyance will not be carried forward. Quantities in excess of the quarterly maximum established herein will be purchased by the Town of Lake Lure, at a cost per 1,000 gallons. The rate per 1,000 gallons will be the same rate as charged per 1,000 gallons for Chimney Rock Village base residential customers.
 - c. Monetary Compensation. Chimney Rock shall pay \$15,000 annually, beginning with the effective date of this contract, to Lake Lure for managing, operating and maintaining the Village's water system and program, plus parts, supplies, costs for laboratory tests and similar expenses. Said compensation shall be paid in equal monthly payments, which shall be deducted by Lake Lure from the proceeds it collects from the sale of water in Chimney Rock. During any annual fiscal cycle during which the proceeds from the sale of water from Chimney Rock's water system is insufficient to compensate Lake Lure in accordance with the terms provided for herein, Lake Lure shall submit a written notification to Chimney Rock accounting for

the actual proceeds collected and requesting that Chimney Rock remit the balance owed to Lake Lure within 30 days of the date of the notification.

10. The compensation component provided for in paragraph 9(c) shall be reviewed at the 5 year anniversary date of this agreement to maintain equity between the value of Lake Lure's annual cost for managing, operating and maintaining Chimney Rock Village's water system, except that Lake Lure and Chimney Rock each reserves the right to call for an interim review of this compensation formula in the event that its cost of managing, operating and maintaining the water system has changed substantially for any reason.
11. Chimney Rock agrees that it will notify Lake Lure at least 12 months in advance of its determination that it will not be able to provide the quantity of water that is provided for in paragraph 9(b). In such event, Chimney Rock agrees to pay Lake Lure for the deficit of water conveyance at a rate that equals Lake Lure's cost for producing potable water from its own system. Said compensation shall be made to Lake Lure monthly, based on Lake Lure's estimate of the water that it would have normally used minus the quantity of water that is actually delivered by Chimney Rock, within the maximum quantities that are established in paragraph 9(b).
12. Chimney Rock agrees to create policies that shall provide Lake Lure with guidance concerning Lake Lure's fulfillment of its duties to manage, operate, and maintain as required under this agreement. If Lake Lure has questions concerning its duties under this agreement that is not answered in the policies, then Chimney Rock will provide Lake Lure with timely guidance. The policies provided by Chimney Rock to Lake Lure shall be strictly followed and any breach of the policies shall be construed as a material breach of the contract. The policies may be called "Procedures and Guidelines" or another term that the parties reasonably understand to be the policies created by Chimney Rock for Lake Lure. Such policy guidance and timely decisions shall include water rates and charges that are adequate to generate sufficient revenues to offset all of the management, operation, and maintenance expenses for the water system and program.
13. Chimney Rock agrees to correct demonstrated deficiencies in the water system and make improvements that are necessary for such regulatory compliance.
14. Chimney Rock agrees that the Village and its water customers shall abide by all of the user policies and procedures adopted by Lake Lure for its water system, unless Chimney Rock specifically amends such policies and procedures for its users and provided that such amendments do not hinder Lake Lure's ability to comply with the provisions of this agreement.
15. Chimney Rock Village and the Town of Lake Lure agree that both municipalities and their respective water customers shall abide by and adhere to all policies, restrictions and other ordinances that may be adopted by both governing bodies

which impose water restrictions, water conservation requirements, moratoriums, and other such limitations on the use of water during times of emergency or drought conditions or during other emergency or critical situations, which for public health or financial reasons justify said policies, restrictions, and ordinances.

16. Chimney Rock agrees to tender at least a six month written notice to Lake Lure prior to the expiration of this agreement or subsequent renewals of this agreement if it desires to renew said agreement or any subsequent renewal to this agreement.
17. The Town of Lake Lure agrees to notify Chimney Rock Village in writing of its decision to renew or not to renew this agreement or an subsequent renewal to this agreement on or before 90 days after having received notification of the Chimney Rock's desire to renew this agreement or any subsequent renewal of this agreement.
18. Lake Lure and Chimney Rock shall maintain backflow protection at all points of connections between the two water systems to prevent the backflow of water into each water system. Chimney Rock's policies and ordinances pertaining to backflow protection shall be consistent with those policies and ordinances adopted for Lake Lure's water system.
19. Lake Lure and Chimney Rock both represent that no litigation is pending or threatened against either party which would impair their ability to perform their respective duties and obligations under the terms, covenants and provisions of this agreement.
20. The Parties agree that should any disputes arise under this agreement, including but not limited to disputes pertaining to services, rates, or invoices, said disputes shall be resolved, if at all possible, through good faith negotiations between the parties. It is the intent of Lake Lure and Chimney Rock that pursuit of legal action shall be a remedy of last resort and that a negotiated resolution, including the use of outside experts or arbitrators, shall be the preferred means of resolving disputes hereunder. It is further agreed that in the event such disputes cannot be resolved within 90 days from the date they first arise, either party may seek such other remedies as may be available to it.
21. Default and Termination. This agreement may be terminated for cause, as set forth below, prior to its stated expiration date by Lake Lure or Chimney Rock in accordance with terms and conditions set forth herein. The rights of Lake Lure and Chimney Rock to terminate this agreement shall be strictly construed in accordance with the provisions contained herein. Upon the happening of any of the following events of default by either party, the aggrieved party shall have the right to terminate this agreement:

- a. The failure of either party to perform or observe any of its material covenants, agreements, obligations and/or duties created by this agreement.
 - b. The determination that any representation, warranty or covenant made by either party is false and/or misleading in any material respect.
 - c. The commencement of any bankruptcy, insolvency, liquidation and/or similar proceeding against either party, which materially and adversely affects its ability to perform its duties or obligations under this agreement.
 - d. The failure of The Town or Village to make any payments required to be made by it pursuant to the terms of this agreement within 90 days of receipt of notice or invoice from the other party.
 - e. Any action by Chimney Rock to divest itself of its water system or its related facilities so that it no longer controls the supply of potable water which is conveyed or sold to Lake Lure under the terms, covenants and conditions of this agreement.
 - f. Any action by Lake Lure to divest itself of its water system or its related facilities so that it no longer possesses the capacity to manage, operate and maintain Chimney Rock's water system, in accordance with the terms and conditions of this agreement.
 - g. Any order of a court of competent jurisdiction, of any federal or state law or regulation which would make this contract illegal, subject to the further provisions of paragraph 36 below if applicable.
22. Upon the happening of any event described in the preceding section, the aggrieved party shall provide written notice to the party committing the alleged violation setting forth in detail the alleged failure and/or deficiency. Thereafter, within 10 days of receipt of notice of the alleged default, the parties to this agreement shall meet to discuss the circumstances and attempt to reach a resolution. If either party fails to fully perform or comply with all of the conditions, provisions and covenants of this agreement, and if the nonperformance or failure shall continue for more than 30 days after written

notice thereof by the other party, or if the nonperformance or failure cannot be reasonably remedied within the same 30 day period and the party which is in violation of the agreement has not proceeded with or commenced the remedy in good faith, within 15 days of the receipt of such notification, that party will be considered to be in default of this agreement. If the alleged default continues or the parties disagree as to whether the matter has been resolved, the aggrieved party may send written notice to the party committing the alleged default declaring an impasse and proceed to enforce all rights and remedies available to it either in equity or at law.

23. Each of the parties to this agreement shall be entitled to pursue a claim against the other for any non-monetary remedies available and any additional actual damages suffered as a result of any default by the other party, in addition to attorney's fees. Notwithstanding anything in the agreement to the contrary, neither party shall be responsible to the other for any indirect, third-party or consequential damages arising from a breach of this agreement.
24. To the extent allowed by, Lake Lure shall indemnify, defend and hold harmless Chimney Rock, its elected and appointed officers, and its duly authorized agents, servants and employees from any and all costs, expenses or liabilities (including costs, expenses or liabilities to third parties and attorney's fees) which are caused by or arise from Lake Lure's breach of this agreement or the negligent or willful acts of omission of Lake Lure or its agents, servants, employees, or subcontractors provided such cost, expenses or liabilities do not arise as a result of the negligent or willful acts or omissions of Chimney Rock.
25. To the extent allowed by law, Chimney Rock shall indemnify, defend and hold harmless Lake Lure, its elected and appointed officers, and its duly authorized agents, servants and employees from any and all costs, expenses or liabilities (including costs, expenses or liabilities to third parties and attorney's fees) which are caused by or arise from Chimney Rock's breach of this agreement or the negligent or willful acts of omissions of Chimney Rock or its agents, servants, employees or subcontractors provided such cost, expenses or liabilities do not arise as a result of the negligent or willful acts or omissions of Lake Lure.
26. NOTICES: For the purposes of this agreement, all notices required shall be deemed to have been properly served and shall be only served when posted by Certified United States Mail, Postage Prepaid, Return Receipt Requested, addressed to the Party to whom directed at the address herein set forth or at such other address as may from time to time be designated in writing by either party:

To Lake Lure:
Town of Lake Lure

To Chimney Rock Village:
Chimney Rock Village

Post Office Box 255
Lake Lure, NC 28746-0255
Facsimile Number: (828) 625-8371
Attention: Town Manager

Post Office Box 300
Chimney Rock, NC 28720-0300
Facsimile Number: (828) 625-4456
Attention: Mayor and/or Village Clerk

27. This agreement embodies the entire agreement between the parties in connection with this transaction, and there are no oral or parole agreements, representations or inducements existing between the parties relating to this transaction, which are not expressly set forth herein. This agreement may not be modified except by a written agreement signed by all parties to this agreement. Neither party shall be entitled to sell, convey or otherwise alienate the rights and obligations created herein without the prior written permission of the other party to this agreement.
28. Nothing contained herein shall be construed to place the parties in the relationship of partners or joint venturers, and neither party shall have the power to obligate or bind the other party to third parties in any manner whatsoever.
29. No written waiver by any party to this agreement at any time of breach of any other provision of this agreement shall be deemed a waiver of a breach of any provision herein or a consent to any subsequent breach of the same or any other provision.
30. The captions and article numbers appearing in this agreement are inserted only as a matter of convenience and do not define, limit, construe or describe the scope of such paragraphs or articles of this agreement or in any way affect this agreement.
31. This agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina.
32. Time shall be of the essence in this agreement and each and every term and condition thereof.
33. Words of any gender used in this agreement shall be held to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires.
34. If any provision under this agreement or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision of this agreement or its application that can be given effect without the invalid provision or application.

35. In the event of litigation between Lake Lure and Chimney Rock as to the terms, performance, or any other aspect of this agreement, this agreement shall remain in force and effect during such litigation.

36. This agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this agreement to produce or account for more than one such fully executed counterpart.

37. Except as provided herein, the rights and remedies provided for in this agreement are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written, after being approved in open meeting by the respective governing board of each municipality.

DRAFT

TOWN OF LAKE LURE, NORTH CAROLINA

By: _____
Mayor

(SEAL)
Attest

By: _____
Town Clerk

CHIMNEY ROCK VILLAGE, NORTH CAROLINA

By: _____
Mayor

(SEAL)
Attest

By: _____
Village Clerk

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

By: _____
Steve Ford, Finance Officer
Officer Town of Lake Lure

By: _____
Stephen G. Duncan, Finance
Chimney Rock Village

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

AGREEMENT TO OPERATE WATER SYSTEM

THIS CONTRACT is made and entered into this ____ day of _____, 2023, by and between the Town of Lake Lure, a North Carolina Municipal Corporation hereinafter referred to as "Lake Lure" and the Chimney Rock Village, a North Carolina Corporation hereinafter referred to as "Chimney Rock".

WITNESSETH

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

WHEREAS, Lake Lure currently owns and operates a water treatment and distribution system, and is engaged in the enterprise of managing, operating, maintaining said system and selling potable water to the public within its service area; and

WHEREAS, Chimney Rock owns and operates a water treatment and distribution system, and is also engaged in the enterprise of managing, operating, maintaining the system and selling potable water to the public within its service area; and

WHEREAS, Lake Lure and Chimney Rock previously entered into an Agreement to Operate Water System ("prior agreement") on or about April 15, 2003; and

WHEREAS, Chimney Rock has tended written notice as required by the prior agreement to Lake Lure of its intent to renew the prior agreement subject to the modifications contained herein; and

WHEREAS, Lake Lure has notified Chimney Rock in writing as required by the prior agreement of its decision to renew the prior agreement subject to the modifications contained herein; and

WHEREAS, Lake Lure and Chimney Rock each have facilities and services that are mutually beneficial and have agreed that ~~closer~~ continued cooperation in the management

and operation of both water systems would serve the best interest of both municipalities; and

WHEREAS, Lake Lure and Chimney Rock ~~are exploring approaches for consolidating the water systems and~~ have a mutual interest in ~~establishing some fundamental~~ maintaining a level of cooperation between their water services delivery programs.

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

1. Lake Lure and Chimney Rock mutually agree that this agreement shall become effective on April 15, 2023 and it shall continue in effect for a period of ~~20~~ 10 years from its effective date (April 15, 2033), or extended by the mutual, written consent of both parties, or until superseded by an alternative agreement.
2. Lake Lure agrees to assume the responsibility for managing and operating Chimney Rock's water system and program throughout the term of this agreement and that such responsibilities shall, at a minimum, include:
 - a. Overseeing and managing the operation of the water system; and
 - b. Providing the supervisory and operational personnel necessary to adequately manage, operate and maintain said water system; and
 - c. Reading the meters for all metered customers on the water system; and
 - d. Billing all customers for water services rendered and providing other relevant customer services, on a bi-monthly schedule (every other month), or may follow the Town's regular billing cycle if more frequent, utilizing Chimney Rock's adopted water rates and charges; and
 - e. Providing the accounting services necessary to account for all funds that pass through Chimney Rock's water program, in accordance with applicable state laws and regulations; and
 - f. Insuring compliance with applicable state environmental laws and regulations, so long as such compliance is within the control of Lake Lure; and
 - g. Monitoring the water system facilities to insure their proper operation and protection; and

- h. Repairing and maintaining the water system and related facilities, as such repairs and maintenance are warranted, subject to the exclusion listed in paragraph 4 below.
 - ~~i. Submitting timely reports to Chimney Rock to communicate progress, status and financial information to the Village Council and notifying Chimney Rock when its water rates appear to be inadequate to generate revenues that are insufficient to sustain the operation and maintenance of the water system;~~
 - ~~j. Submitting annual operation budgets for the water system to Chimney Rock, not later than May 1, 2003, and April 1 each year thereafter, that contain projections of revenues and expenditures, including operating expenses, capital outlays, and debt service.~~
- 3. Lake Lure further agrees to manage, operate and maintain the Chimney Rock water system and program to the same standard that the Town manages, operates and maintains its own water system and program.
 - 4. Lake Lure's responsibilities under this agreement does not extend to paying the costs associated with capital improvements or major repairs to the system. The Town of Lake Lure's assigned management (Town Manager or assigned/appointed contact or Department Head) will notify the Village's Mayor and or Administration of Chimney Rock Village for approvals of any repairs that are equal to or exceed \$1,000 or the purchase of any equipment which cost is equal to or exceed \$500. The Village will within a reasonable time, per issue and/or situation, notify the Town of approvals or any plans of action to address repairs or equipment purchases, thus allowing the Village time to consult with the Village's engineer of record. Major repairs are "Major repairs" shall be defined as those repairs which cannot be made with hand tools or equipment normally operated by the Town of Lake Lure's maintenance staff or which require the hiring of outside assistance.
 - 5. Lake Lure agrees that the responsibility for managing, operating and maintaining the Chimney Rock water system and program shall rest with its Town Manager and the Manager shall be accountable to Chimney Rock for timely and accurate communication, information and reporting for all important policy, operational, and financial matters relating to Chimney Rock's water system and program.
 - 6. Lake Lure shall immediately notify Chimney Rock upon becoming aware of any activity, problem or circumstance that might present a danger to the health, safety and welfare of Chimney Rock water users. Further, Lake Lure shall take appropriate action to remedy such activity, problem or circumstance and to avoid or minimize disruptions in service. Chimney Rock shall immediately take those steps necessary to alleviate such activity, problem or circumstance where

such measures are beyond the control of Lake Lure.

7. Lake Lure and Chimney Rock agree to maintain compliance with all laws and regulations, which apply to the ownership, operation and maintenance of both water systems, including adherence to the terms and conditions of all state permits, which establish appropriate water quality standards for the systems.
8. Lake Lure further agrees that upon the effective date of this agreement it will ~~reduce~~ maintain the sewer rates charged to Chimney Rock sewer customers equal to the rate that is charged to Lake Lure customers that are inside of Lake Lure's corporate limits.
9. Chimney Rock hereby agrees to compensate Lake Lure for reducing the sewer rates charged to Chimney Rock customers, as provided for in paragraph 8. Said compensation shall be made in two parts:
 - a. Water Storage Capacity. Chimney Rock agrees to convey to Lake Lure the permanent use of 100,000 gallons of capacity in Chimney Rock's 250,000 gallon water storage reservoir located at Terrance Drive. Said use shall be perpetual and shall carry with it Chimney Rock's obligation to adequately operate and maintain said reservoir and insure that the facility will remain in service throughout its normal life expectancy, which is defined at 50 years. The value of this conveyance shall be established at ~~\$8,000~~ \$12,000 per year for the ~~20~~ 10- year term of this agreement, said value to be offset by services rendered by Lake Lure and the reduction in sewer rates pursuant to this agreement.
 - b. Potable Water Supply. Chimney Rock agrees to convey to Lake Lure a continuing and uninterrupted quantity of potable water from its water system, at meeting points that are mutually acceptable to the parties of this agreement. Said quantity of water shall not exceed 4.62 million gallons during each year, except that the flow of water cannot exceed 12,670 gallons for any 24-hour period, unless specifically approved by Chimney Rock Village. Conveyances of water shall be recorded and accounted for ~~monthly~~ quarterly by ~~Lake Lure~~ Chimney Rock Village. Each ~~annual~~ quarterly period will be accounted for separately and deficits or surpluses in total ~~annual~~ quarterly conveyance will not be carried forward. Quantities in excess of the ~~annual~~ quarterly maximum established herein will be purchased by the Town of Lake Lure, at a cost per 1,000 gallons. ~~equal to the cost for producing water, not including capital improvements, for its own system. Lake Lure's current cost is \$3.00 per 1000 gallons, however this rate may be reviewed annually. At such time as Chimney Rock establishes its own schedule of rates and charges, said rate shall apply. The rate per 1,000 gallons will be the same rate as charged per 1,000 gallons for Chimney Rock Village base residential customers.~~

- c. Monetary Compensation. Chimney Rock shall pay \$15,000 annually, beginning with the effective date of this contract, to Lake Lure for managing, operating and maintaining the Village's water system and program, plus parts, supplies, costs for laboratory tests and similar expenses. Said compensation shall be paid in equal monthly payments, which shall be deducted by Lake Lure from the proceeds it collects from the sale of water in Chimney Rock. During any annual fiscal cycle during which the proceeds from the sale of water from Chimney Rock's water system is insufficient to compensate Lake Lure in accordance with the terms provided for herein, Lake Lure shall submit a written notification to Chimney Rock accounting for the actual proceeds collected and requesting that Chimney Rock remit the balance owed to Lake Lure within 30 days of the date of the notification.
10. The compensation component provided for in paragraph 9(c) shall be reviewed at the ~~end of the first year and every five years thereafter~~ 5 year anniversary date of this agreement to maintain equity between the value of Lake Lure's annual cost for managing, operating and maintaining Chimney Rock Village's water system, except that Lake Lure and Chimney Rock each reserves the right to call for an interim review of this compensation formula in the event that its cost of managing, operating and maintaining the water system has changed substantially for any reason.
- ~~11. In the event that this agreement is terminated for cause, Lake Lure will be obligated to pay \$8,000 per year to Chimney Rock for the purchase of water storage capacity throughout the remainder of the 20-year term provided for herein.~~
12. Chimney Rock agrees that it will notify Lake Lure at least 12 months in advance of its determination that it will not be able to provide the quantity of water that is provided for in paragraph 9(b). In such event, Chimney Rock agrees to pay Lake Lure for the deficit of water conveyance at a rate that equals Lake Lure's cost for producing potable water from its own system. Said compensation shall be made to Lake Lure monthly, based on Lake Lure's estimate of the water that it would have normally used minus the quantity of water that is actually delivered by Chimney Rock, within the maximum quantities that are established in paragraph 9(b).
13. Chimney Rock agrees to ~~provide the policy guidance and timely decisions that are necessary for Lake Lure to fulfill its management, operational and maintenance responsibilities provided for in this agreement.~~ create policies that shall provide Lake Lure with guidance concerning Lake Lure's fulfillment of its duties to manage, operate, and maintain as required under this agreement. If Lake Lure has questions concerning its duties under this agreement that is not answered in the policies, then Chimney Rock will provide Lake Lure with timely guidance. The policies provided by Chimney Rock to Lake Lure shall be strictly followed and any breach of the policies shall be construed as a material breach of the contract. The policies may be called "Procedures and Guidelines" or another term that the parties reasonably understand to be the policies created by Chimney Rock for Lake Lure. Such policy guidance and timely decisions shall

include water rates and charges that are adequate to generate sufficient revenues to offset all of the management, operation, and maintenance expenses for the water system and program.

~~14. Chimney Rock Agrees to prepare and adopt annual budgets and make appropriates that are based on information provided by Lake Lure and that are adequate to finance the annual operation of the system, including needed capital improvements and major repairs.~~

15. Chimney Rock agrees to correct demonstrated deficiencies in the water system and make improvements that are necessary for such regulatory compliance.

16. Chimney Rock agrees that the Village and its water customers shall abide by all of the user policies and procedures adopted by Lake Lure for its water system, unless Chimney Rock specifically amends such policies and procedures for its users and provided that such amendments do not hinder Lake Lure's ability to comply with the provisions of this agreement.

17. Chimney Rock Village ~~agrees that the Village and its customers~~ and the Town of Lake Lure agree that both municipalities and their respective water customers shall abide by and adhere to all policies, restrictions and other ordinances ~~adopted by Lake Lure~~ that may be adopted by both governing bodies which impose water ~~use~~ restrictions, water conservation requirements, moratoriums, and other such limitations on the use of water during times of emergency or drought conditions or during other emergency or critical situations, which for public health or financial reasons justify said policies, restrictions, and ordinances.

18. Chimney Rock agrees to tender at least a six month written notice to Lake Lure prior to the expiration of this agreement or subsequent renewals of this agreement if it desires to renew said agreement or any subsequent renewal to this agreement.

19. The Town of Lake Lure agrees to notify Chimney Rock Village in writing of its decision to renew or not to renew this agreement or an subsequent renewal to this agreement on or before ~~sixty~~ 90 days after having received notification of the Chimney Rock's desire to renew this agreement or any subsequent renewal of this agreement.

20. Lake Lure and Chimney Rock shall maintain backflow protection at all points of connections between the two water systems to prevent the backflow of water into each water system. Chimney Rock's policies and ordinances pertaining to backflow protection shall be consistent with those policies and ordinances adopted for Lake Lure's water system.

21. Lake Lure and Chimney Rock both represent that no litigation is pending or threatened against either party which would impair their ability to perform their

respective duties and obligations under the terms, covenants and provisions of this agreement.

22. The Parties agree that should any disputes arise under this agreement, including but not limited to disputes pertaining to services, rates, or invoices, said disputes shall be resolved, if at all possible, through good faith negotiations between the parties. It is the intent of Lake Lure and Chimney Rock that pursuit of legal action shall be a remedy of last resort and that a negotiated resolution, including the use of outside experts or arbitrators, shall be the preferred means of resolving disputes hereunder. It is further agreed that in the event such disputes cannot be resolved within ~~60~~ 90 days from the date they first arise, either party may seek such other remedies as may be available to it.

23. Default and Termination. This agreement may be terminated for cause, as set forth ~~in subparagraph a-g, inclusive, immediately~~ below, prior to its stated expiration date by Lake Lure or Chimney Rock in accordance with terms and conditions set forth herein. The rights of Lake Lure and Chimney Rock to terminate this agreement shall be strictly construed in accordance with the provisions contained herein. Upon the happening of any of the following events of default by either party, the aggrieved party shall have the right to terminate this agreement:

- a. The failure of either party to perform or observe any of its material covenants, agreements, obligations and/or duties created by this agreement.
- b. The determination that any representation, warranty or covenant made by either party is false and/or misleading in any material respect.
- c. The commencement of any bankruptcy, insolvency, liquidation and/or similar proceeding against either party, which materially and adversely affects its ability to perform its duties or obligations under this agreement.
- d. The failure of The Town or Village to make any payments required to be made by it pursuant to the terms of this agreement within ~~60~~ 90 days of receipt of notice ~~from Lake Lure that any such payment is overdue or~~ invoice from the other party.
- e. Any action by Chimney Rock to divest itself of its water system or its related facilities so that it no longer controls the supply of potable water which is conveyed or sold to Lake Lure under the terms, covenants and conditions of this agreement.
- f. Any action by Lake Lure to divest itself of its water system or its related facilities so that it no longer possesses the capacity to manage, operate and maintain Chimney Rock's water system, in accordance with the terms and conditions of this agreement.

- g. Any order of a court of competent jurisdiction, of any federal or state law or regulation which would make this contract illegal, subject to the further provisions of paragraph 36 below if applicable.
24. Upon the happening of any event described in the preceding section, the aggrieved party shall provide written notice to the party committing the alleged violation setting forth in detail the alleged failure and/or deficiency. Thereafter, within 10 days of receipt of notice of the alleged default, the parties to this agreement shall meet to discuss the circumstances and attempt to reach a resolution. If either party fails to fully perform or comply with all of the conditions, provisions and covenants of this agreement, and if the nonperformance or failure shall continue for more than 30 days after written notice thereof by the other party, or if the nonperformance or failure cannot be reasonably remedied within the same 30 day period and the party which is in violation of the agreement has not proceeded with or commenced the remedy in good faith, within 15 days of the receipt of such notification, that party will be considered to be in default of this agreement. If the alleged default continues or the parties disagree as to whether the matter has been resolved, the aggrieved party may send written notice to the party committing the alleged default declaring an impasse and proceed to enforce all rights and remedies available to it either in equity or at law.
25. Each of the parties to this agreement shall be entitled to pursue a claim against the other for any non-monetary remedies available and any additional actual damages suffered as a result of any default by the other party, in addition to attorney's fees. Notwithstanding anything in the agreement to the contrary, neither party shall be responsible to the other for any indirect, third-party or consequential damages arising from a breach of this agreement.
26. To the extent allowed by ~~law~~, Lake Lure shall indemnify, defend and hold harmless Chimney Rock, its elected and appointed officers, and its duly authorized agents, servants and employees from any and all costs, expenses or liabilities (including costs, expenses or liabilities to third parties and attorney's fees) which are caused by or arise from Lake Lure's breach of this agreement or the negligent or willful acts of omission of Lake Lure or its agents, servants, employees, or subcontractors provided such cost, expenses or liabilities do not arise as a result of the negligent or willful acts or omissions of Chimney Rock.
27. To the extent allowed by law, Chimney Rock shall indemnify, defend and hold harmless Lake Lure, its elected and appointed officers, and its duly authorized agents, servants and employees from any and all costs, expenses or liabilities (including costs, expenses or liabilities to third parties and attorney's fees) which are caused by or arise from Chimney Rock's breach of this agreement or the negligent or willful acts of omissions of Chimney Rock or its agents, servants, employees or subcontractors provided such cost, expenses or liabilities do not arise as a result of the negligent or willful acts or omissions of Lake Lure.

deemed to have been properly served and shall be only served when posted by Certified United States Mail, Postage Prepaid, Return Receipt Requested, addressed to the Party to whom directed at the address herein set forth or at such other address as may from time to time be designated in writing by either party:

To Lake Lure:

Town of Lake Lure
Post Office Box 255
Lake Lure, NC 28746-0255
Facsimile Number: (828) 625-8371
Attention: Town Manager

To Chimney Rock Village:

Chimney Rock Village
Post Office Box 300
Chimney Rock, NC 28720-0300
Facsimile Number: (828) 625-4456
Attention: Mayor and/or Village Clerk

29. This agreement embodies the entire agreement between the parties in connection with this transaction, and there are no oral or parole agreements, representations or inducements existing between the parties relating to this transaction, which are not expressly set forth herein. This agreement may not be modified except by a written agreement signed by all parties to this agreement. Neither party shall be entitled to sell, convey or otherwise alienate the rights and obligations created herein without the prior written permission of the other party to this agreement.
30. Nothing contained herein shall be construed to place the parties in the relationship of partners or joint venturers, and neither party shall have the power to obligate or bind the other party to third parties in any manner whatsoever.
31. No written waiver by any party to this agreement at any time of breach of any other provision of this agreement shall be deemed a waiver of a breach of any provision herein or a consent to any subsequent breach of the same or any other provision.
32. The captions and article numbers appearing in this agreement are inserted only as a matter of convenience and do not define, limit, construe or describe the scope of such paragraphs or articles of this agreement or in any way affect this agreement.
33. This agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina.
34. Time shall be of the essence in this agreement and each and every term and condition thereof.
35. Words of any gender used in this agreement shall be held to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires.
36. If any provision under this agreement or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision of this agreement or its application that can be given effect without the invalid provision or application.

37. In the event of litigation between Lake Lure and Chimney Rock as to the terms, performance, or any other aspect of this agreement, this agreement shall remain in force and effect during such litigation.

38. This agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this agreement to produce or account for more than one such fully executed counterpart.

39. Except as provided herein, the rights and remedies provided for in this agreement are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written, after being approved in open meeting by the respective governing board of each municipality.

TOWN OF LAKE LURE, NORTH CAROLINA

By: _____
Mayor

(SEAL)
Attest

By: _____
Town Clerk

CHIMNEY ROCK VILLAGE, NORTH CAROLINA

By: _____
Mayor

(SEAL)
Attest

By: _____
Village Clerk

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

By: _____
Steve Ford, Finance Officer
Officer Town of Lake Lure

By: _____
Stephen G. Duncan, Finance
Chimney Rock Village

**LAKE LURE TOWN COUNCIL
AGENDA ITEM REQUEST FORM**

Meeting Date: January 25, 2023

SUBJECT: Boat Permit Mailing Fee Discussion

AGENDA INFORMATION:

Item Number: VIII
Department: Parks, Recreation, and Lake
Contact: Dana Bradley, Parks, Recreation, and Trails Coordinator
Presenter: Dana Bradley, Parks, Recreation, and Trails Coordinator

BRIEF SUMMARY:

The current fee for mailing boat permits is \$4.25. The boat permits are sent through certified mail and currently, the actual cost to mail them is \$4.84 or more, depending on where the permit is being mailed to. This price can increase at any point, if the Post Office raises their rates. There is also the cost of the envelope and the time it takes our staff to take it to the post office, fill out the certified letter, and keep track of the paperwork, so staff recommends adding a convenience fee into this, as well. Staff recommends an updated fee of \$10.00 for mailing boat permits.

**LAKE LURE TOWN COUNCIL
AGENDA ITEM REQUEST FORM**

Meeting Date: January 25, 2023

SUBJECT: Discussion Regarding Draft Budget Amendment #346 for Deep Water Access

AGENDA INFORMATION:

Item Number: IX
Department: Finance
Contact: Stephen Ford, Finance Director
Presenter: Stephen Ford, Finance Director

BRIEF SUMMARY:

The Deep Water Access Project was originally budgeted under the 'dredging' line item. It has since been determined that it would be more appropriate for the Project to be removed from 'dredging' and placed in a capital project line item specific to the Deep Water Access Project. Budget Amendment #346 removes \$120,000 from 'dredging' and transfers the amount into the capital project line item for Deep Water Access Project.

ATTACHMENTS:

Draft Budget Amendment #346

**TOWN OF LAKE LURE
BUDGET AMENDMENT**

Be it ordained by the Board of Commissioners of the Town of Lake Lure that the following amendment be made to the budget ordinance for the fiscal year ending June 30, 2023:

Department: Capital

Purpose: In order to provide funds for deep water access project related to a number of capital projects.

Section 1. To amend the General Fund, the expenditures are to be changed as follows:

Line Item	Account Number	Amount Decrease	Amount Increase	Amended Budget
590	800000		\$120,000	\$120,000

To provide the additional expenditures for the above, the following revenues will be increased:

Account Name: Dredging and Debris Removal

Account Number: **10-800000-697**

Amount: **\$ 120,000**

Section 2. I certify that the accounting records provide for this budget amendment, and that the revenue source(s) are available:

Finance Officer

Date

Section 3. Copies of this amendment shall be delivered to the Budget/Finance Officer and Town Auditor for their direction.

Adopted this _____ day of _____, 2022.

**LAKE LURE TOWN COUNCIL
AGENDA ITEM REQUEST FORM**

Meeting Date: January 25, 2023

SUBJECT: Discussion Regarding Draft Budget Amendment #347 for Fire Department Specialized Air Compressor

AGENDA INFORMATION:

Item Number: X
Department: Finance
Contact: Stephen Ford, Finance Director
Presenter: Dustin Waycaster, Fire Chief

BRIEF SUMMARY:

Rutherford County is supplementing by equipment donation, including a specialized air compressor for fire services. The compressor was housed at the Spindale Fire Department. The Spindale Department recently obtained a new compressor and the Lake Lure Fire Department expressed interest in their former compressor. There was a county-wide chiefs' vote to allow Lake Lure to have first pick in taking the former compressor. The Lake Lure Fire Department would benefit from the compressor because it will be useful until the Department obtains an improved compressor to fill SCBA and SCUBA tanks. Budget Amendment #347 allows the Town to make the following necessary repairs to the specialized air compressor:

Switching motors (three phase to single phase motor)	
Repair gauges	
Delivery and setup	\$3,800
Rewiring for the 240v connection at station	\$1,000
Total Project Est. Cost	\$4,800

ATTACHMENTS:

Draft Budget Amendment #347

**TOWN OF LAKE LURE
BUDGET AMENDMENT**

Be it ordained by the Board of Commissioners of the Town of Lake Lure that the following amendment be made to the budget ordinance for the fiscal year ending June 30, 2023:

Department: Capital

Purpose: In order to provide funds for specialized air compressor for fire services. Supplemented by equipment donation from Rutherford County. Also includes electrical installation work

Section 1. To amend the General Fund, the expenditures are to be changed as follows:

Line Item	Account Number	Amount Decrease	Amount Increase	Amended Budget
353	434000		\$4,800	\$19,800

To provide the additional expenditures for the above, the following revenues will be increased:

Account Name: General Fund Balance
Account Number: **10-398602**
Amount: **\$ 4,800**

Section 2. I certify that the accounting records provide for this budget amendment, and that the revenue source(s) are available:

Finance Officer

Date

Section 3. Copies of this amendment shall be delivered to the Budget/Finance Officer and Town Auditor for their direction.

Adopted this _____ day of _____, 2022.

