

LAKE LURE TOWN COUNCIL REGULAR MEETING PACKET

Wednesday, February 22, 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, February 22, 2023 - 8:30 AM

Lake Lure Municipal Center



Agenda

- I. Call to Order**
- II. Agenda Adoption**
- III. Fireworks Discussion**
- IV. Advisory and Statutory Board Handbook Discussion**
- V. Rumbling Bald Concession Agreement**
- VI. Facility Leases**
- VII. Discussion Regarding Permitting Issues with Rumbling Bald Facilities for Collegiate Rowing Competition**
- VIII. Contract for ABC Law Enforcement**
- IX. Financial, Budget, and Audit Updates**
- X. Adjournment**

LAKE LURE TOWN COUNCIL
AGENDA ITEM REQUEST FORM
Meeting Date: February 22, 2023

SUBJECT: Fireworks Discussion

AGENDA INFORMATION:

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

BRIEF SUMMARY:

Town Council previously determined that the Town would not be holding a 4th of July fireworks event. Following the determination, Council briefly discussed possible alternatives such as a Christmas fireworks event.

The Events Team (Police Chief Sean Humphries, Communications Director Laura Krejci, Fire Chief/Emergency Management Coordinator Dustin Waycaster, and Community Development Director Mike Williams) met with Town Manager Hank Perkins on 1/27/23 to discuss this matter.

The group recommended taking the money that has been spent on a one-time Fireworks event and use this money for an investment in holiday lights over the next several years. The lights could be up from Thanksgiving to mid-January and would be a greater draw for more visitors over a longer period of time, as opposed to one night of fireworks.

If Town Council would prefer fireworks, the following dates were identified as possibilities in conjunction with having several mobile food trucks for patrons:

- Veterans Day (November 11) A Saturday in 2023
- December (in coordination with Lighting up Lake Lure for the Holidays)

The group met with Chamber of Hickory Nut Gorge Vice President Laura Doster to discuss these ideas on and there was concurrence.

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

Meeting Date: February 22, 2023

SUBJECT: Advisory and Statutory Board Handbook Discussion

AGENDA INFORMATION:

Item Number: IV
Department: Administration
Contact: Olivia Stewman, Town Clerk
Presenter: Olivia Stewman, Town Clerk

BRIEF SUMMARY:

Town staff is recommending that Council review the existing Advisory and Statutory Board Handbook and identify any possible additions or amendments.

ATTACHMENTS:

Advisory and Statutory Board Handbook

STAFF'S COMMENTS AND RECOMMENDATIONS:

Town Clerk Olivia Stewman is recommending that a set deadline for application submittals to be incorporated into the Handbook. She is also recommending that there be discussion regarding an expiration for active applications.

Lake Lure Advisory and Statutory Board Handbook

Thank you for your interest in public service and your dedication to your community. This handbook may assist you in understanding the purpose of statutory and advisory boards and provide you guidance to take full advantage of the opportunity that your service offers. The Town leadership appreciates your contributions of experience and judgment and is ready to help you advise the decision-making process. You represent the citizens of Lake Lure and it is important to be the voice of the community in your deliberations. Your experience is essential and your personal views are important, but researching and presenting general consensus is a vital part of helping Town Council formulate policy for the greater good of all residents.

The Lake Lure Town Council has chartered several statutory and advisory boards in accordance with North Carolina General statutes G.S. 160A-146. North Carolina law stipulates that “The council may create, change, abolish, and consolidate offices, positions, departments, boards, commissions, and agencies of the city government and generally organize and reorganize the city government in order to promote orderly and efficient administration of city affairs ... and may not abolish any board required by law.” Statutory Boards required by law include the ABC Board, Zoning and Planning Board, and Board of Appeals/Lake Structure Appeals Boards. All other boards are considered “Advisory Boards” chartered by the Town Council to address Lake Lure specific issues and serve at the discretion of Town Council.

Roles and Responsibilities:

Town Council or Marine Commission:

- Charter and Appoint Members to Statutory and Advisory Boards. Town Council has the broad authority to determine how vacancies are filled (with some exceptions set by law). Appointment and removal decisions of board members must occur during open meetings.
- Adopt Rules of Procedure as stipulated in your specific board charter. However, the default position is that boards exercise procedural rules consistent with state law and general parliamentary principles such as Robert’s Rules of Order. Boards are “public bodies” and must conform to laws on public notice, public access and minutes under the state open meetings law.
- Delegate Authorities as Appropriate. The most prominent *delegated authorities* for Lake Lure Statutory Boards include:
 1. The authority for the ABC Board to buy, sell, and transport, possess, and administer alcoholic beverages.
 2. The authority for the Board of Adjustment to conduct quasi-judicial proceedings to enforce zoning regulations and decide appeals to zoning and regulation determinations made by Town staff, and issue Special Use Permits.
 3. The authority of the Zoning and Planning Board to conduct public hearings on proposed changes to the Lake Lure Zoning Ordinances.

- **Note:** Advisory Boards are strictly advisory and do not normally exercise decision-making or possess approval authority unless specifically directed by Town Council or the Marine Commission.
- Task and Direct Boards to make recommendations on issues of concern.
- Review and Approve/Deny Board recommendations for changes or additions to Town ordinances, regulations, appropriations, policy and plans.
- Conduct Periodic Reviews of Board Charters and By-Laws to ensure compliance with State Statutes and maintain relevance to current Lake Lure issues.
- Designate a Town Council liaison to each board.

Town Council Liaison:

- Appointed by Town Council to serve as the primary communication conduit between the board and Town leadership.
- Provides the Chairman of the board the tasks directed by the Town Council or Marine Commission and works with the Chairman to develop annual goals and objectives.
- Briefs Town Council on board deliberations and solicits Town Council approval to explore additional issues or tasks not included in the annual goals and objectives statement.
- Forwards Board recommendations to Town Council via the Mayor for review and possible inclusion in the Town Council monthly agenda.
- Collaborates with the Board Chairman on suggested approaches or courses of action to resolve issues of concern.
- Monitors Board Meetings and may participate to clarify Town Council guidance or provide information as requested by Board members.

Board Chairman or Vice Chairman in their absence:

- Nominated and Elected by the Board Members.
- Determines Board Agenda and Presides at meetings and decides all points of order consistent with North Carolina Statutes, the Board charter, and Robert's Rules of Order.
- Serves as the Board Team Leader for deliberations and formulation of recommendations.
- Collaborate with Town Council Liaison to provide strategic focus and develop goals and objectives relative to the interests of the Town of Lake Lure.
- Advocates for the interests of the Board with Town Staff and Town Council.
- Presents the Board Annual Report that includes specific goals and objectives for the upcoming year to the Town Council or Marine Commission.

Board Member:

- Appointed by the Town Council normally for a three-year term.
- Actively participates in monthly Board deliberations. Members may be subject to dismissal if attendance requirements as stipulated in By-Laws are not met.
- Understands the purpose of their board and their role in providing community expertise or viewpoints.

- Presents research, community viewpoints, or other relevant data for Board consideration.
- Votes for recommendations. Majority consensus recommendations will be forwarded to the Town Council or Marine Commission.

Notes:

1. Boards are encouraged to rotate members and positions to build a depth of experience and promote new ideas in keeping with the evolving concerns of the community.
2. Members are not employees, and thus do not have protection under personnel privacy exemptions from public records laws, however, a range of information collected about members (e.g., Social Security numbers, driver's license numbers) may not be released (G.S. 132-1.10(b)(5) & 14-113.20(b)). The following may be made public: Name, Address, Telephone/Cellphone number, E-mail address, Internet ID names.

Town Staff:

- Applicable Town Department Head will be assigned to each Board by the Town Manager.
- Town Staff member will present Town issues for consideration or general information as stipulated in the Board Charters/By-Laws or as directed by the Town Manager.
- Boards do not have directive authority over Town Staff but may request specific Staff assistance from the Town Manager.
- Support each Board with a recording secretary to develop and maintain Board minutes for public record.

General Schedule:

January Board Meeting	Selection of Chairman/Vice Chairman
January Town Council Meeting	Appointment of Town Council Liaisons as necessary
February Town Council Meeting	Recognition of departing Board members and Appointment of New/Renewed Members
March Special Board Meeting	New Member Orientation
December Town Council Meeting	Chairman (Advisory Boards) Presentation of Annual Report and Proposed Goals and Objectives

Reports:

- Annual Report from the Board to Town Council. Report should include:
 - a. Short list of the most important topics addressed or decisions made
 - b. Ongoing topics for formulating advice (goals and objectives for the upcoming year).
 - c. Membership status and connection to the community (including diversity of members/representativeness to the overall community).

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

Meeting Date: February 22, 2023

SUBJECT: Rumbling Bald Concession Agreement

AGENDA INFORMATION:

Item Number: V
Department: Parks, Recreation, and Lake
Contact: Hank Perkins, Town Manager
Presenter: Dean Givens, Parks, Recreation, and Lake Director

BRIEF SUMMARY:

The existing Rumbling Bald Resort Concession Agreement for the operation of tour boats and non-motorized boats is set to expire in March 2023. Town staff and representatives from Rumbling Bald have been coordinating to draft a new five year agreement between the two entities. One major change between the original agreement and proposed agreement is that Rumbling Bald has become an agent for the Town because boat permits are now being sold through their organization. The proposed agreement identifies that the Town shall receive 95% of all non-commercial boat permits sold by Rumbling Bald. Additional details will be noted by staff at the time of the meeting.

ATTACHMENTS:

Draft Rumbling Bald Concession Agreement

**CONCESSION AGREEMENT FOR
RUMBLING BALD RESORT
TOUR BOAT OPERATIONS**

THIS CONCESSION AGREEMENT, made this the 29th day of March, 2023 by and between: THE TOWN OF LAKE LURE, Lake Lure, North Carolina, a Municipal Corporation, hereinafter called "Town"; and Rumbling Bald Resort a North Carolina Corporation, 112 Mountains Boulevard, Lake Lure, NC, hereinafter called "RBR;"

WITNESSETH:

WHEREAS, all land covered by the waters of Lake Lure at full pond is owned by the Town of Lake Lure. Said lake is held in trust by the Town of Lake Lure for the benefit of the citizens of the Town; and,

WHEREAS, the Lake Lure Town Council created the Lake Lure Marine Commission as authorized by special act of the General Assembly of the State of North Carolina for the purposes of regulating all activities on Lake Lure; and

WHEREAS, the Lake Use Regulations were first adopted by Resolution on March 9, 2004 to govern use of the Lake for the purpose of enhancing the health, safety, and general welfare of the citizens; and

WHEREAS, through the Lake Use Regulations, the Town allows Firms wishing to rent and operate tour boats and non-motorized boats on Lake Lure do so, through a Concession agreement (the "Agreement"); and

WHEREAS, , it is the general intent and purpose of this Concession Agreement to secure the safe, efficient and beneficial operation of tour boats and non-motorized boats in the best interests of the Town and its residents and guests; and

WHEREAS, RBR has the right to use the waters of Lake Lure for the purpose of operating a scenic passenger boat ride service; and

WHEREAS, RBR has become a boat permit agent for the Town, allowing RBR to sell boat permits to their residents and visitors.

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

1. Use

RBR agrees to manage, maintain and operate their tour boat operations for the term set forth herein. RBR shall use the tour boats for no other purpose than the operation of guided tours of Lake Lure, and tour boat operation services in strict conformance with the terms and conditions of this Agreement.

RBR agrees to manage the operation of the Tour Boat 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 optimize the facilities economic performance.

2. Facilities

RBR shall operate the tour and non-motorized boat operations from the Marina and Beach area located at 112 Mountains Boulevard, Lake Lure, NC.

3. Hours of Operation

RBR shall, with the approval of the Town, establish its hours of operation and adhere to any regulations regarding operations and wake as set forth in the Lake Use Regulations.

4. Personnel

RBR agrees to have a sufficient number of trained, qualified staff members and operators on duty for the proper operation of the services. Tour boat operators with a current boater safety card issued by North Carolina or a state agency and complies with NASBLA and/or U.S Coast Guard requirements. All commercial operators shall complete successfully an annual Marine Commission approved boating safety class.

5. Qualifications

RBR warrants that it has the final capacity and resources sufficient to provide the operation and maintenance of the operations in compliance with the terms and conditions of this Agreement.

6. Maintenance and Repair

RBR agrees to keep all tour boats in good and safe working order and stocked with all necessary safety equipment for staff and passengers. All such Boat operations and equipment shall be operated and maintained in strict accordance with all applicable federal, North Carolina, and Town codes, regulations and requirements. The Town shall have the right to enter upon and inspect the Boats at any time during the term of this Agreement. If, as a result of such inspection, the Town determines that any deficiencies exist, the Town shall provide notice to RBR in writing. RBR shall commence appropriate corrective work within five (5) business days of the date of such notice. If RBR 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 terminate this agreement and revoke operating permits with no compensation due.

7. Licenses and Permits

RBR shall procure, at its own cost and expense, all licenses or permits necessary for the lawful operation of the tour boats and its business.

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

8. Assumption of Risk

RBR assumes all risk in the operations 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 lake.

9. Equipment

All boats must be in safe working condition, and provide all necessary safety equipment for vessel and occupants as described in the NC Wildlife Resources Commission Vessel Operators Guide.

10. Supplies

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

11. Tour Boat Operations

RBR 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 is outlined in Section 24 of this Agreement. The monthly payment shall include an activity report and a copy of the daily trip log.

RBR 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.

RBR may operate up to two (2) tour boats and forty (40) non-motorized boats.

Tour boats shall have a large, clear identification method to facilitate the handling of comments. RBR will establish and publish a telephone number where complaints about the tour boats operation can be reported. RBR shall respond to any complaints within five (5) business days. If a comment is not resolved, then it may be reported to the Parks, Rec and Lake Director or their designee. RBR shall maintain a log on all comments and the action/response taken to resolve the comment. In addition, RBR shall have an answering machine 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. Twilight cruises will operate from approximately 45 minutes before dusk until approximately 30 minutes after sundown. RBR shall follow the allowances and prohibitions regarding safe operation and wake 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.

12. Supervision

RBR 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. RBR shall be responsible for the selection, training, certification, licensing and daily supervision of all staff.

13. Safety

The health and safety of residents, visitors and employees is of the utmost importance to the Town and RBR. RBR 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 on Town Property shall be reported immediately to the Town Manager and Parks, Rec, and Lake Director. "Serious" shall be defined as those events which involve bodily injury or property damage. All claims to RBR's insurance carrier shall be reported in writing to the Town within one (1) business day. RBR shall follow the Town's policies and procedures for Media Contact regarding such incidents.

14. Records and Accounts

RBR shall keep records and shall maintain records pertinent to this Agreement in a manner so as to clearly document RBR's performance. RBR shall permit the Town or its duly authorized representative to inspect the books and records at any reasonable time during normal business hours after giving RBR twenty-four (24) hours' notice of the time and day of such inspection. RBR shall retain and keep accessible all 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.

15. Insurance and Workers' Compensation

RBR agrees to keep and maintain insurance for the duration of this Agreement, including commercial general 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
Workers' Compensation:	Statutory
Employer's Liability:	\$1,000,000

RBR 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 RBR's general liability policy and provide a waiver of subrogation on RBR's general liability and workers' compensation policies. In the event of bodily injury or property damage loss caused by RBR's acts or omissions in connection with RBR's services performed under this Agreement, RBR'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, RBR and RBR's insurance carrier shall give the Town at least thirty (30) days prior written notice. No work shall be performed until RBR has furnished to the Town the above reference certificates of insurance and associated endorsements, in a form suitable to the Town.

16. Termination of Agreement

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

Termination for Default

The Town may terminate the Agreement upon RBR's default of any material duty or obligation of RBR under the Agreement and RBR's failure to cure such default within fifteen (15) calendar days of the Town's written notice to RBR of such default. If the default is not capable of cure within said fifteen (15) calendar days, RBR 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 RBR's schedule of cure, may make a written demand that RBR 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 RBR, 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):

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

Termination of the Contract shall not relieve RBR 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 RBR from any claim for damages previously accrued or then accruing against RBR.

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.

17. Modification

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

18. 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 hereof shall remain in full force and effect.

19. 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.

20. Transfer or Assignment

RBR will agree not to subcontract, or assign, transfer, convey, sublet, or otherwise dispose of the Agreement, RBR's obligations under the Agreement, or any or all of its right, title or interest, without the Town's prior written consent. 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 RBR's ownership, the assignee, transferee, or new owner shall operate the services in a fashion substantially similar to RBR's operation and in strict conformance with the terms, conditions and requirements of this Agreement.

21. Independent Contractor Status

The relationship between RBR and the Town is a contractual relationship. It is not intended in any way to create a legal agency or employment relationship. RBR 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. RBR shall be responsible for providing all required insurance, workers' compensation (regardless of number of employees) and unemployment insurance for all of its employees. RBR also agrees that it shall not, in any manner whatsoever, by its actions or deeds, commit the Town to any obligation irrespective of the nature thereof.

22. Responsibilities of RBR

RBR shall be properly licensed in North Carolina and skilled in their respective trade. RBR 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 RBR's services are performed.

RBR 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.

23. Term

The Term of this Agreement shall be for a five (5) year term beginning March 28, 2023 through March 27, 2028.

24. Concession Fees

RBR shall pay the Town fifteen percent (15%) of monthly gross receipts of all Tour Boat and non-motorized ticket sales. Excepting, that the Town shall receive 95% of all non-commercial boat permits sold to third parties at RBR.

Gross receipts as used in this Agreement shall mean the total amount received by or accruing to RBR by reason of the privileges granted under this Agreement, including but not limited to from any sales or rentals 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 RBR 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 RBR 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 sales or services subject to concession fees, those fees shall immediately vest in and become owed to the Town, for which RBR shall be responsible until delivered to the Town as provided in this Agreement.

25. Disputes

All claims, disputes and other matters in question between RBR 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 RBR and Town from mutual agreement to submit claims, disputes or other matters in question to arbitration, either binding or

non-binding, or to mediation.

26. Indemnification

RBR shall indemnify, defend and hold harmless the Town and its subsidiaries, divisions, officers, directors 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 RBR or any employee, agent, subcontractor or assign of RBR. 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 RBR and its subsidiaries, divisions, and employees from all liability, loss, cost, claims, damages, expenses, attorney fees, judgements and awards arising or claimed to have arisen, form any jury caused by, or allegedly caused by, either in whole or 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 related to any active or primary negligence of or by RBR, its officers or employees.

27. Waiver of Claims

RBR waives any and all claims for compensation from the Town for any and all loss or damage sustained by the Towns operation or maintenance activities at the lake, dam or other structures, or any loss or damage resulting from fire, water, tornado, or storm of any kind, natural disaster, civil commotion, or riot, and RBR 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.

28. Americans with Disability Act

RBR shall comply with the provisions of the Americans with Disabilities Act (ADA) and all rules and regulations promulgated thereunder. RBR 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 RBR, its agents, successors, assigns, officers or employees to comply with the provisions of the ADA or the rules and regulations promulgated thereunder.

29. 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 RBR: Managing Director
Fairfield Mountains POA, LLC,
d/b/a/ Rumbling Bald Resort
112 Mountains Boulevard
Lake Lure, NC 28746

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. Any party may from time to time at any time change its mailing address hereunder.

Any day-to-day service or operational matters, request, concerns or other communications shall be directed to the Parks, Rec and Lake Director.

30. 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.

31. 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 RBR and the Town.

The interpretation and validity of this Agreement shall be governed by the laws of the State of North Carolina.

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

Insert Signature Lines Here

DRAFT

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

Meeting Date: February 22, 2023

SUBJECT: Continued Discussion Regarding Facility Leases

AGENDA INFORMATION:

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

BRIEF SUMMARY:

Town Council will hold discussion regarding the proposed Lake Lure Flowering Bridge Grounds Lease Agreement and the Rutherford County Tourism Development Authority Lease Agreement. At the February 14th regular Council meeting, it was determined that the Town will approve an 11 month agreement with the Lake Lure Flowering Bridge in order to enter a formal agreement in a timely manner while avoiding legally required 30-day notice deadline for lease agreements over one year, which would not allow the agreement to be approved until the April regular meeting.

ATTACHMENTS:

Draft Flowering Bridge Lease Agreement; Draft TDA Lease Agreement

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 15th day of February, 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 and Town.

- (a) 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.
- (b) The Town shall continue to provide water and electric service to the Lake Lure Flowering Bridge.

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 Carol Pritchett, Mayor of the Town of Lake Lure, and Olivia Stewman, 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 Carol Pritchett, Mayor and Olivia Stewman, 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)

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: _____

=====

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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

Lease Agreement

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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

Lease Agreement

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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

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(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

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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

Lease Agreement

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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

Lease Agreement

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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 no 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

Lease Agreement

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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: February 22, 2023

SUBJECT: Discussion Regarding Permitting Issues with Rumbling Bald Facilities for Collegiate Rowing Competition

AGENDA INFORMATION:

Item Number: VII
Department: Community Development
Contact: Michael Williams, Community Development Director
Presenter: Michael Williams, Community Development Director

BRIEF SUMMARY:

Rumbling Bald built a bridge in the lake bed 50 feet from shore. This structure required permitting from multiple entities and issues arose. The structure has since been removed and issues have been resolved with the help of Rutherford County Buildings Inspections and Jeff Geisler with Rumbling Bald. A plan for alternate means of compliance has been created. However, permitting issues remain unresolved in regard to existing piers. Community Development is working towards resolving permitting issues related to moving existing piers from the Rumbling Bald marina to use for rowing sculls for a collegiate rowing competition. Community Development will be available at the time of the meeting to address any additional details or questions.

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

Meeting Date: February 22, 2023

SUBJECT: Contract for ABC Law Enforcement

AGENDA INFORMATION:

Item Number: VIII
Department: Administration
Contact: Olivia Stewman, Town Clerk
Presenter: Olivia Stewman, Town Clerk

BRIEF SUMMARY:

The North Carolina ABC Commission has recently recommended that the Lake Lure ABC Board enter a new contract with the Town of Lake Lure Police Department for ABC Law Enforcement. The existing contract was entered into in 2011. The ABC Board will be discussing the contract at their February 20th regular meeting.

ATTACHMENTS:

2011 Contract for ABC Law Enforcement; Lake Lure ABC Law Enforcement Contract Template

Contract For ABC Law Enforcement

State of North Carolina

ABC Board TOWN OF LAKE LURE

THIS CONTRACT is entered into on this the 19th day of January, 2011, by and between the TOWN OF LAKE LURE ABC Board (hereinafter "ABC Board") and LAKE LURE POLICE DEPARTMENT (hereinafter "Agency") for the purposes set forth below:

WHEREAS, North Carolina General Statute Chapter 18B requires that the ABC Board either hire an ABC law enforcement officer or contract for ABC law enforcement with a local law enforcement agency; and

WHEREAS, the ABC Board is required by law to expend at least 5% of profits for ABC law enforcement; and

WHEREAS, the ABC Board is of the opinion that contracting with the Agency for ABC law enforcement would constitute the most efficient use of its ABC law enforcement funds; and

WHEREAS, the Agency agrees to provide ABC law enforcement in LAKE LURE / RUTHERFORD (town / county) in return for the agreed funding;

NOW, THEREFORE, IT IS AGREED that:

1. The Agency shall provide ABC law enforcement in LAKE LURE / RUTHERFORD (town / county) in return for the sum of \$ 5% annually, to be paid in quarterly installments. This amount shall be adjusted as needed to equal the amount required by North Carolina General Statute 18B-805 (c) (2) to be expended on ABC law enforcement.

2. The Agency shall provide ABC law enforcement within the boundaries of LAKE LURE / RUTHERFORD (town / county), and it shall report at least quarterly to the ABC Board on its ABC law enforcement activities.

3. The Agency shall be solely responsible for hiring, equipping and supervising the officer or officers who are charged with the duty of enforcing the ABC laws, and the Agency agrees to indemnify, and hold harmless, the ABC Board for any liability arising from the activities of said officers.

4. The Agency shall give priority to specific requests from the ABC Board for assistance in such matters as ABC store security, protection of ABC store deposits, and the investigation of internal and external theft [this list of duties should be tailored to the ABC Board's expectations].

5. This contract shall continue in effect until such time as either party desires to cancel the contract and gives notice of cancellation as follows:

6. This contract may be canceled by either party upon 30-days notice to the other party, which notice shall be given in writing.

Effective the 19th day of January, 2011.

Lake Lure ABC Board

By: Chief Eric Hester

Lake Lure Police
(Agency)

Contract for ABC Law Enforcement

State of North Carolina

ABC Board _____ Lake Lure _____

THIS CONTRACT is entered into on this the _____ day of _____,
by and between the _____ Lake Lure _____ ABC Board
(hereinafter “ABC Board”) and _____ Town of Lake Lure Police Department _____
(hereinafter “Agency”) for the purposes set forth below:

WHEREAS North Carolina General Statute Chapter 18B requires that the ABC Board either hire an ABC law enforcement officer or contract for ABC law enforcement with a local law enforcement agency; and

WHEREAS the ABC Board is required by law to expend at least 5% of profits for ABC law enforcement; and

WHEREAS the ABC Board is of the opinion that contracting with the Agency for ABC law enforcement would constitute the most efficient use of its ABC law enforcement funds; and

WHEREAS the Agency agrees to provide ABC law enforcement in
Lake Lure / Rutherford (town / county) in return for the agreed funding:

NOW, THEREFORE, IT IS AGREED that:

1. The Agency shall provide ABC law enforcement within the boundaries of
Lake Lure / Rutherford (town / county) in return for the sum of
\$ _____ annually, to be paid in quarterly installments. *This amount shall be adjusted as needed to equal the amount required by North Carolina General Statute 18B-805(c)(2) to be expended on ABC law enforcement.*

2. The Agency shall be solely responsible for hiring, equipping and supervising the officer or officers who are charged with the duty of enforcing the ABC laws, and the Agency agrees to indemnify, and hold harmless, the ABC Board for any liability arising from the activities of said officers.

3. The Agency shall give priority to specific requests from the ABC Board for assistance in such matters as ABC store security, protection of ABC store deposits, and the investigation of internal and external theft [this list of duties should be tailored to the ABC Board's expectations].

4. The Agency shall report to the ABC Board by the 5th business day of each month on a form developed by the Commission the following:
 - a. The number of arrests made for ABC law, Controlled Substance Act, or other violations, by category, at ABC permitted outlets.
 - b. The number of arrests made for ABC law, Controlled Substance Act, or other violations, by category, at other locations.
 - c. The number of agencies assisted with ABC law or controlled substance related matters.
 - d. The number of alcohol education and responsible server programs presented.

5. This contract shall continue in effect until such time as either party desires to cancel the contract and gives notice of cancellation as follows:

6. This contract may be cancelled by either party upon 30-day notice to the other party, which notice shall be given in writing.

Effective the _____ day of _____, _____

_____ Lake Lure _____ ABC Board

BY: _____

_____ Town of Lake Lure Police Department

 (Agency)

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

Meeting Date: February 22, 2023

SUBJECT: Financial, Budget, and Audit Updates

AGENDA INFORMATION:

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

BRIEF SUMMARY:

Finance Director Stephen Ford will briefly present and lead discussion on updates for financial, audit, and budget items.

X

ADJOURNMENT