



## **Town of Blowing Rock**

### **Board of Commissioners Meeting**

Date: **Tuesday, August 13, 2024, 6:00 p.m.**

Location: **1036 Main Street, Blowing Rock, NC 28605**

### **Agenda**

<i>Item</i>		<i>Presenter and Participants</i>
I.	<b>CALL TO ORDER – ROLL CALL FOR ATTENDANCE</b>	Mayor Charles Sellers
II.	<b>PLEDGE OF ALLEGIANCE</b>	Mayor Charles Sellers
III.	<b>APPROVAL OF MINUTES – By Roll Call</b> 1. July 9, 2024 – Regular and Closed Session Meeting Minutes 2. July 23, 2024 – Special Meeting Minutes  <b>REGULAR AGENDA ADOPTION</b>	Mayor & Council  Mayor & Council
IV.	<b>CONSENT AGENDA:</b> 1. USDA Reimbursement Resolution 2. Caldwell County Animal Control 3. Daughters of the American Revolution Proclamation – For Constitution Week 4. Annie Cannon – Grant Resolution	Mayor & Council
V.	<b>PUBLIC COMMENTS</b> <i>Comments shall be limited to three (3) minutes</i>	
VI.	<b>PRESENTATIONS:</b> 1. End Overdose in Watauga Day 2. Foothills Conservancy – Johns River Headwaters	Mary McKinney Andrew Kota
VII.	<b>REGULAR AGENDA:</b> 1. Capital Debt Financing Resolution	Manager Shane Fox

VIII.	<p><b>OFFICIALS REPORTS &amp; COMMENTS:</b></p> <ol style="list-style-type: none"> <li>1. Mayor</li> <li>2. Council Members</li> <li>3. Town Attorney</li> <li>4. Town Manager</li> </ol>	
IX.	<p><b>CLOSED SESSION -- NCGS 143-318.11. (a)(3) –</b>  <i>Attorney/Client privilege</i></p> <p><b>NCGS 143-318.11. (a)(5) Discussion of potential property acquisition.</b></p>	
X.	<p><b>ADJOURNMENT/RECESS...Mayor Charles Sellers entertains a motion and second to adjourn or recess the meeting.</b></p>	

**Draft**  
**MINUTES**  
**Town of Blowing Rock**  
**Town Council Meeting**  
**July 9, 2024**

The Town of Blowing Rock Town Council met for their regular monthly meeting on Tuesday, July 9, 2024, at 6:00 p.m. The meeting took place at Town Hall located at 1036 Main Street Blowing Rock, NC. Present were Mayor Charlie Sellers, Mayor Pro-Tem Doug Matheson, Council Members Cat Perry, David Harwood, Melissa Pickett and Pete Gherini. Others in attendance were Town Manager Shane Fox, Town Attorney Tucker Deal, Planning Director Kevin Rothrock, Parks and Recreation Director Jennifer Brown, IT Director Thomas Steele, Finance Director Tasha Brown, Emergency Services Director Kent Graham, Interim Police Chief Nathan Kirk and Town Clerk Hilari Hubner, who recorded the minutes.

**CALL TO ORDER**

Mayor Sellers called the meeting to order at 6:00 p.m. and welcomed everyone. Mayor Sellers verified attendance via roll call.

**THE PLEDGE OF ALLEGIANCE**

**MINUTE APPROVAL**

Mayor Pro-Tem Matheson made the motion to approve the minutes from the June 11, 2024, regular and closed session meetings, seconded by Council Member Gherini. Unanimously approved.

Council Member Gherini made a motion to approve the minutes from the June 25, 2024, Mid-Year Retreat meeting, seconded by Council Member Harwood. Unanimously approved.

**REGULAR AGENDA ADOPTION**

Council Member Pickett made a motion to approve the regular meeting agenda as presented, seconded by Council Member Harwood. Unanimously approved.

**CONSENT AGENDA**

1. Annual Tax Report and Order of Collection
2. Fireworks Permit – Blowing Rock Chamber

Council Member Perry made a motion to approve the consent agenda as presented, seconded by Council Member Harwood. Unanimously approved.

**SPEAKERS FROM THE FLOOR**

None

## **PUBLIC HEARING**

### **1. TDA Ordinance Amendment**

Town Manager Shane Fox stated at their June 4, 2024 meeting, the TDA Board voted to request Town Council consider holding a Public Hearing to discuss a text amendment change to Section 2, Appoint of Membership within the TDA establishment ordinance. The request was specific to Group One, Lodging. The TDA Board voted to request of the Town Council to consider adding language to the current TDA Ordinance to allow for lodging owners to appoint a designee to represent their business and serve the TDA Board, i.e. a General Manager of the hotel, motel, lodge etc.

Manager Fox further stated the current ordinance reads as follows:

Section 2. Appointment of Membership.

The Blowing Rock Tourism Development Authority shall consist of five (5) members who shall be appointed and approved by the Town Council, shall also be voting residents and/or taxpayers of the Town, and shall be selected as follows:

Group One (Lodging) – 2 appointees.

Two members shall be individuals who are affiliated with the businesses that collect occupancy tax.

The TDA Board would ask the Town Council to consider adding the language “or their appointed designee. If a designee is appointed, they must be approved by the Town Council prior to assuming the seat” to end of the above section 2, Lodging.

TDA Executive Director Tracy Brown explained the reason this was brought up to the Board at their last meeting was because TDA staff is seeing a change since this ordinance was written. The majority of hotels, motels and lodges are no longer owned by individuals that live and work here, but instead by absentee owners who have a general manager operating the day to day business. He further explained the request of the TDA is for Council consider re-writing the language in the ordinance to reflect lodging representatives: “*two members shall be individuals who are affiliated with the businesses that collect occupancy tax*”.

Mayor Sellers opened the Public Hearing. With no questions or comments Council Member Gherini made a motion to close the Public Hearing, seconded by Council Member Perry. Unanimously approved.

Council Member Gherini made a motion to approve the ordinance amendment as presented, seconded by Mayor Pro-Tem Matheson. Unanimously approved.

## **OFFICIAL REPORTS & COMMENTS**

- Mayor Sellers – Thanked the citizens for attending the 4<sup>th</sup> of July festivities,

thanked staff for all their hard work making sure everything went smoothly for the 4<sup>th</sup> of July, thanked the public works department for their hard work replacing a broken water line at Chetola on Sunday, July 7<sup>th</sup>, Planning Board will meet July 11<sup>th</sup> at 5:30 pm and Council will have a special meeting on July 23<sup>rd</sup> at 6:00 pm.

- Council Member Perry – Thanked public works and all staff for their hard work.
- Council Member Harwood – Thanked staff for their hard work to make the parade so successful. He expressed he felt it was the biggest parades with ninety (90) entries.
- Council Member Pickett – Echoed the rest of Council's comments. She mentioned the Town has the best staff and the Town couldn't do without them.
- Mayor Pro-Tem Matheson – Thanked staff for their hard work for the successful parade and hard work keeping Town clean during the busy 4<sup>th</sup> of July week. From the NC League, look for insurance to go up significantly in the next couple of years.
- Council Member Gherini – Echoed what everyone said about the parade and staff. It was a wonderful event.
- Town Attorney Tucker Deal – None
- Town Manager Shane Fox – Thanked staff for their hard work for the 4<sup>th</sup> of July parade, thanked staff for their hard work on the water leak at Chetola on July 7<sup>th</sup>, thanked Al and Velda Shackelford for providing lunch for Town staff. Gave an update on the Main Street project and the Summer Council Retreat. With the current drought conditions and the reservoir being five (5) feet below a Stage 1 Voluntary Water Conservation will be issued on Wednesday, July 10<sup>th</sup>.

### **EXECUTIVE SESSION**

At 6:25 PM Council Member Perry made a motion to go into closed session, **NCGS 143-318.11.(A)(3) – Attorney/Client privilege**, seconded by Council Member Harwood. Unanimously approved.

### **ADJOURNMENT**

At 6:55 p.m. the Council returned to open session and with no further business, Council Member Harwood made a motion to adjourn, seconded by Council Member Perry. Unanimously approved.

**MAYOR** \_\_\_\_\_  
**Charlie Sellers, Mayor**

**ATTEST** \_\_\_\_\_  
**Hilari Hubner, Town Clerk**

### **Attachments**

**Annual Tax Report and Order of Collection – Attachment A**

**Draft**  
**MINUTES**  
**Town of Blowing Rock**  
**Town Council Special Meeting**  
**July 23, 2024**

The Town of Blowing Rock Town Council met for a special meeting on Tuesday, July 23, 2024, at 6:00 p.m. The meeting took place at Town Hall located at 1036 Main Street Blowing Rock, NC. Present were Mayor Charlie Sellers, Mayor Pro-Tem Doug Matheson, Council Members Cat Perry, David Harwood, Melissa Pickett and Pete Gherini. Others in attendance were Town Manager Shane Fox, Town Attorney Tucker Deal, Finance Director Tasha Brown, Public Works Director Matt Blackburn, Emergency Services Director Kent Graham, Interim Police Chief Nathan Kirk, Planning Director Kevin Rothrock and Town Clerk Hilari Hubner, who recorded the minutes.

**CALL TO ORDER**

Mayor Sellers called the meeting to order at 6:00 p.m. and welcomed everyone. Mayor Sellers verified attendance via roll call.

**THE PLEDGE OF ALLEGIANCE**

**AGENDA ADOPTION**

Mayor Pro-Tem Matheson made a motion to approve the agenda as presented, seconded by Council Member Gherini. Unanimously approved.

**UPDATE – STAGE 1 WATER CONSERVATION**

Town Manager Shane Fox gave a brief update on the Stage 1 Water Conservation. Currently received two (2) inches of rain at the reservoir and the reservoir is now down three and a half (3 ½) feet. He stated the reservoir had been down as much as six (6) feet due to the dry weather in June. Manager Fox further stated divers will be at the reservoir at the end of the week testing the intake valves and confirming depth and testing water at various levels.

Manager Fox concluded the Stage 1 Water Conservation will remain in place until improvement is made in the lake level.

**PUBLIC HEARING**

Prior to the Public Hearing, Mayor Sellers addressed the crowd and explained while he knew this had been a very contentious topic, he would ask everyone to be respectful of the Council, staff and anyone speaking on the topic.

**1. Conditional Zoning Permit #2024-01 – Green Hill Communications Pole**

Town Manager Shane Fox stated the Town of Blowing Rock is requesting a conditional

rezoning of Town property from R-15, Single-Family to Conditional Zoning – R-15, Single-Family (CZ-R-15) to erect an eighty (80) foot utility pole for Town public communications. The 0.71-acre property is located at the Town water tank on Green Hill Circle.

The Town is seeking conditional rezoning to install an eighty (80) foot utility pole to be used as a mounting structure for the Town's public communications for Blowing Rock Fire Department, Police Department and Public Works Department. The radio antennas for these departments and agencies are currently mounted on two wooden utility poles at the Green Hill Water Tank property. The tallest existing pole with the primary antennas is approximately fifty-seven (57) feet above grade.

Applicant proposed conditions:

1. The new utility pole will be no taller than eighty (80) feet above grade level.
2. Communication antennas may extend above the top of pole, not to exceed ten (10) feet above the pole.
3. No commercial telecommunications provider antennas will be located on the proposed utility pole.
4. No healthy trees will be removed from the property unless said trees could potentially damage the proposed utility pole, existing buildings, or the water tank.
5. Any gaps in the existing vegetated opaque buffer will be supplemented to a height of at least ten (10) feet above grade.

Manager Fox restated for the audience this is only for essential services (Fire, Police, Public Works) there will be no outside agencies, no cellular companies and zero changes to the current VHF system. He explained VHF stands for very high frequency, but that being said isn't actually very high when compared to other devices.

- VHF – 30 to 300 MHz (Blowing Rock is 150-160)
- UHF – 300 MHz to 1 GHz
- VIPER – 800 MHz+
- Cell Phones are 900 MHz+

Manager Fox explained the reasoning for Conditional Zoning vs SUP is to allow for a more public process, to gain more transparency and dialogue with the public. He further explained the SUP process is quasi-judicial and would limit public involvement.

Manager Fox gave a background on the Green Hill site and explained the Town has owned and utilized the site for water and communication purposes for over ninety (90) years. This site is also home to the Town's three (3) million-gallon water tank as well as a fifty-seven-foot utility pole for the Town VHF radios (Police, Fire and Public Works) that have been used for over fifty (50) years. The reason for this location is this is the highest point in town (3,925 feet) and the Town has utilized this location for ninety (90) years for various purposes with water being the main purpose.

Manager Fox explained how the radio repeater system works and the higher up in

elevation the better the signal will be. The tree canopy has been intentionally allowed to grow to help camouflage the water tank, but trees can weaken the signal and over the past few years the signal strength has been declining.

Manager Fox re-emphasized the reason for the request is to have a pole that will provide adequate and reliable communications for Fire, Police and Public Works. No other uses other than internal communications will utilize this pole. If approved Town staff will move forward with procuring a galvanized one hundred (100) foot pole from Rutherford EMC. Blue Ridge Electric has agreed, if approved, to fabricate and install the pole for the Town at eighty (80) foot above grade. These poles are the exact same utility poles Blue Ridge Electric install everyday making them experts to complete the job. Manager Fox mentioned if approved this will not change any zoning for the neighboring properties nor will the pole have the potential of falling on any of the residences.

Manager Fox noted the importance of this from a communications safety standpoint and loss of life has already occurred due to the lack of quality communication. He asked Interim Police Chief Nathan Kirk to speak to some of the issues the Police Department have experienced in the past and presently.

Interim Chief Kirk told several stories from loss of communication. One incident occurred years ago in 1963. Police Chief William Greene was working late one night and encountered four (4) individuals that had broken into a home in Town. It turned into a police chase with the suspects, Chief Greene radioed Watauga letting them know. Once he got the car stopped, he again radioed Watauga County to which both calls went unanswered. He got out of the vehicle and was shot twice and stabbed multiple times. Chief Greene made it back to his patrol car and radioed for help again, but that call too went unanswered by Watauga. Eventually the Highway Patrol in Salisbury heard the call and got word to Watauga, but because the call didn't go out in a timely manner, when they found Chief Greene he had succumbed to his injuries.

Interim Chief Kirk stated what concerns him most and makes him lose sleep at night is if something like this were to happen again and one of his officers lose their life because of a communication failure. He further stated Officer Wood whom worked with Chief Greene was quoted as saying "our radios don't work too well down there" and that statement still is true today.

Interim Chief Kirk told two (2) more stories from his own experience with communication failure. One was a call out for a gentlemen having a heart attack on the Glen Burney Trail, fire and police were dispatched. Fire went in on the lower end and Police went in on the upper end and were able to get to him first and stabilize him. Police Officers on scene tried to radio out to give an update, but were unable to do so because of a communication failure. The final story was from when he was on a call on Village Drive at the condos behind Green Park Inn. A gentleman was having a heart attack, Interim Chief Kirk was first on the scene. He was unable to get communication out, but luckily another officer arrived on scene and could go out and find an area to get communication out to other emergency personnel.

Interim Chief Kirk concluded that every officer with the police department could tell a story of a communication failure at different times. He thanked Mayor and Council for allowing him to speak.

Manager Fox mentioned at their meeting on July 11, 2024, the Planning Board reviewed the application and made a recommendation to approve the rezoning with a condition that the Town Council require a study to be completed to explore alternatives for a viable option for locating town communications equipment. He further mentioned the Town's first and most important obligation to its citizens and stakeholders is to provide emergency services to those in need. He concluded with this has always been about one thing, improving public safety, and it has never been about anything else.

Mayor Pro-Tem Matheson asked Manager Fox asked how much better the digital 800 MHz is than what the Town currently has.

Manager Fox explained it's not better, it's different than what the Town currently has. He further explained the digital or "VIPER" has a much higher frequency, but that being said depending on the network the VHF technology can be better. Manager Fox explained some of the logistics for both and stated in a perfect scenario VIPER is the way to go, but it wouldn't necessarily work due to the reliance on cellular communication.

Mayor Sellers asked what would be the Town's options moving forward to upgrade the technology to digital or VIPER.

Manager Fox stated in that case staff would need to consult with an expert to come in and give quotes on what a full network would cost. He admitted it would be expensive and current radios and so forth wouldn't support new technology, therefore additional radios would have to be purchased adding to that cost making his best guess would be half a million in equipment and not including networking costs.

Mayor Sellers further asked if there were any options on the study Planning Board recommended at their meeting.

Manager Fox stated there certainly can be options for a study.

Council Member Harwood asked if Manager Fox knew when the trees were planted around the Green Hill site.

Manager Fox stated he didn't know the exact date, but the current tank is from 1976, so his guess would be around that time frame is when the majority of the trees were planted.

Mayor Pro-Tem Matheson confirmed the trees were planted around that time.

Council Member Harwood asked for clarification purposes the only thing being put on this parcel is an eighty (80) foot pole.

Manager Fox confirmed that is correct.

Mayor Pro-Tem Matheson asked what the cost of the new pole would be.

Manager Fox stated approximately \$12,000 to \$13,000.

Mayor Sellers opened the Public Hearing.

Tom Brydon of 402 Green Hill Circle, a ten (10) year resident, expressed his support for the Police, Fire and essential personnel. He explained he worked with a technology company for twenty-seven (27) years and while it's expensive, the Town needs to strongly consider improving the technology and move away from VHF. He further urged the Council to pursue the study.

Nathan Miller of 430 Old East Ridge Rd (Boone) spoke as a representative of a number of residents, including Protect Blowing Rock Neighborhoods LLC. The Green Hill community is focused on the importance of emergency communications. They live by a large manmade hazard, the water tank. He explained if the tank were to give away, three (3) million gallons of water could cause major damage. While this community does understand the importance of communication, they agree with the Planning Board recommendation and would like to see the Council do a study on communications. He thanked Council and staff for going above and beyond to provide information for the numerous public records request his group has made. Mr. Miller stated he respectfully disagreed with Town Manager Fox and Town Attorney Tucker Deal that a cellular company cannot utilize the tower. Mr. Miller mentioned all but one Council Member provided documentation they were not in communications with cellular companies, and the one not responding did concern this group. Mr. Miller expressed concern that the Conditional Rezoning may in fact be unlawful for the Town to do and felt the quasi-judicial process was an important avenue to take as it would call for presentation of evidence, expert witnesses and effective voices to be heard. Mr. Miller questioned the Town's avenue they have chosen with Conditional Rezoning and reminded the Town passed a telecommunication ordinance about ten (10) years ago. Mr. Miller questioned the fall zone as the pole could fall in the road, on someone's property or fall on the water tank which could be hazardous putting the Green Hill community in danger. Mr. Miller noted the topping the trees has been deemed not an option because of the Town being a "Tree City USA", but inquired as to why the Town is throwing away some of their own ordinance. Mr. Miller stated with deed restrictions in the neighborhood, the Town's new shed and if approved the communications pole violate those restrictions which open up for every neighbor sharing the common development scheme to sue the Town. Mr. Miller concluded the neighbors on Green Hill don't know what the rush is, and would like to request Council do a study to see what is really needed first before moving forward.

Al Shackelford – 489 Country Club Drive spoke as a full time resident and retired Police Chief of 40 years and Sheriff after that. He stated with his background in law enforcement and getting to the age he is all he can thank about is medical emergency. He explained

the importance of an ambulance today as it is “an emergency room on wheels”. Mr. Shackelford further explained it’s imperative for an ambulance to have the proper communication capability as their information on a patient goes directly to the hospital through radio frequency and EMT medical personnel cannot do anything to a patient until a licensed doctor authorizes it. Without the proper technology could be a life or death situation and wanted to emphasize the importance of that type of equipment. He stated in his opinion the pole is needed immediately.

Bill Bullard – 164 West Green Hill Drive expressed his dislike of the looks of the tower and felt the appearance should be strongly considered. Mr. Bullard mentioned a fifty (50) year old problem needs to be resolved and urged Council to make a decision. He further mentioned until a decision is made his suggestion that Police not be allowed in the “dead zones” alone. He concluded by saying to both sides “lets fix this” so we can move on.

Jason McDaniel – 574 Green Hill Circle mentioned if the pole falls it would fall down the road and hit his house. He didn’t feel anyone objects to the new communications tower. Rumors are that there is a cellular company looking at the location and/or “people talking to cellular companies” about a cellular tower being put there. If the Town’s attorney and their attorney would communicate that is not what is happening, he felt everyone would be happy. Asked if anyone had looked at any other high areas or looked at the high area at Tweetsie to possibly discuss putting the pole at that location. Mr. McDaniel expressed his thoughts of trimming the trees and seeing if maybe that is the problem or have an experts look and see if that may be the problem.

Janie Sellers – 412 Wonderland Drive spoke on behalf of the Blowing Rock Civic Association. Ms. Sellers explained the BRCA has had an interest in the communication tower since it was discussed at the 2023 Winter Retreat. Their organization doesn’t feel adequate information has been provided about the communications needs for them to develop a position on the matter. Ms. Sellers mentioned during the Planning Board meeting significant concerns about safety and other negative impacts to the Green Hill neighborhood were shared. Planning Board recommended a study to explore the viability of potential alternatives to the current proposal and the BRCA would urge Council to explore that study. Ms. Sellers stated the BRCA believe that data-driven decisions are good governance. Ms. Sellers concluded with asking Council to delay taking action on the current proposal and give Town staff the time to provide information about what a study would involve, allow discussions with the Green Hill neighborhood about conditions that would mitigate the possible adverse effects of a new tower.

Bill Carter – 401 Tarry Acres Circle stated he has owned his home for over forty (40) years and he is troubled by the rush to extend the Town’s communication tower. Mr. Carter further stated in his research a new form of environmental pollution RFR (radio frequency radiation) poisoning is documented to increase the risk of brain cancer. Mr. Carter said the communication tower at Green Hill is omitting RFR, and the range it omits is about a quarter of a mile. Mr. Carter mentioned extending the pole will increase the viability and will be seen by residents, visitors and travelers for miles changing the beautiful views of this area. Mr. Carter explained he’s a certified commercial real estate

expert and the tower will decrease home values in the area. He concluded with his thought is the tower should be relocated to another location as the RFR poisoning is a health hazard.

Lyn Buxton – 110 Blackberry Lane explained she is two (2) homes away from the tower and from her kitchen window she can see the water tank. Her thoughts are the trees have outgrown that area and doesn't understand why the trees cannot be cut and replaced. Ms. Buxton suggested having an arborist come and look at the trees and give their opinions on what the Town should do. Ms. Buxton concluded she lost a husband to a brain tumor, another person on their street also passed away from a brain tumor and currently have one other person on their street with a brain tumor. She stated she may not be a doctor, but in her opinion that is a "cluster" and should be considered.

Council Member Gherini asked Mr. Miller how many people from the Green Hill neighborhood are part of the Protect Blowing Rock Neighborhoods LLC.

Mr. Miller said he was not sure but believe at the Planning Board meeting it was said to be ten (10) to twenty (20).

Council Member Gherini further asked Mr. Miller how many of them are voting residents.

Mr. Miller stated he did not know that either.

Council Member Harwood asked Mr. Miller for clarification purposes if their recommendation was for the Town to pursue a VIPER tower instead of what the Town is currently doing.

Mr. Miller stated he wasn't sure about a VIPER tower, he knew the county had looked at that previously and wasn't able to make that happen.

The proposed VIPER tower from ten (10) years ago was briefly discussed.

Council Member Pickett asked Mr. Miller if Council were to vote to do the study, the study came back and proved to be the best location for whatever chosen technology, is the group going to support the choice to put it there.

Mr. Miller stated he doesn't have an answer as he would need to discuss with the client.

With no further questions or comments, Council Member Harwood made a motion to close the public hearing, seconded by Council Member Perry. Unanimously approved.

Mayor Pro-Tem Matheson asked Manager Fox to give Council what a penny is currently worth and give an estimated cost on what it would cost for the Town to go to a digital system.

Manager Fox stated that a penny tax increase is currently approximately \$175,000 per

year. The replacement of radios would be approximately half a million dollars, but the infrastructure itself for putting in new technology he would estimate at one or two million dollars.

Mayor Sellers asked if Manager Fox thought that was something the Town should look at for the future.

Manager Fox agreed, had this been done when it originally came up it would have put the Town a decade ahead of where we are now. Manager Fox explained to do a conversion like this would have to be financed and would most likely be a one or two cent tax increase for that debt service. Manager Fox mentioned that the Town's goal ultimately is to install a more sophisticated system.

Council Member Perry asked if there were any cost estimates for a phase one study as well as one that would be a complete comprehensive study.

Manager Fox explained studies go based on the scope, so that would be up for Council discussion on what type of study they want and then staff would have to do research to get a price quote based on the scope of the study.

Council Member Harwood asked if VHF technology is adequate for the Town's needs.

Manager Fox stated he felt it was adequate.

Council Member Harwood further asked if Manager Fox felt the communication issues could be solved with \$13,000 or less.

Manager Fox felt that was the case and can improve the overall coverage.

Council Harwood commented that a \$13,000 solution doesn't come our way very often.

Manager Fox agreed with his statement.

Mayor Sellers reviewed Council's options and asked for thoughts.

Council Member Harwood asked for clarity on what type of study Planning Board recommended to Council.

Mayor Sellers advised that was not made clear, they only recommended "a study".

Town Attorney Deal weighed in his thoughts was for Council to determine that since it wasn't made clear. Council can direct staff on what scope of a study that would like to be done.

Council Member Gherini felt a first phase study was a good idea, but for Council to remember that every day the Town goes without adequate communications and there is

a problem it will come back on the Town.

Mayor Pro-Tem Matheson stated he wanted to clear up a comment that was made at the Planning Board meeting. He wanted to assure everyone that neither he, as the previous Fire Chief, nor the current Fire Chief would profit in any way from this and is only for the safety of everyone.

Council Member Perry made a motion to table and instruct staff to explore a stage one (1) study, seconded by Council Member Gherini. Unanimously approved.

**ADJOURNMENT**

At 7:45 p.m. Council Member Harwood made a motion to adjourn, seconded by Council Member Pickett. Unanimously approved.

**MAYOR** \_\_\_\_\_  
**Charlie Sellers, Mayor**

**ATTEST** \_\_\_\_\_  
**Hilari Hubner, Town Clerk**

**Attachments**

**None**

TOWN OF BLOWING ROCK  
TOWN COUNCIL

Excerpt of Minutes  
of Meeting of  
August 13, 2024

A regular meeting of the Town Council of the Town of Blowing Rock, North Carolina, was held in the Council Chambers, at Blowing Rock Town Hall, 1036 Main Street, Blowing Rock, North Carolina, on August 13, 2024.

Present:

Absent:

\* \* \* \* \*

Council Member \_\_\_\_\_ moved to approve the following resolution, a copy of which had been provided to each Council Member and which was read by its title:

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BLOWING ROCK, NORTH CAROLINA REGARDING A TOWN CAPITAL PROJECT INCLUDING DECLARING ITS INTENTION TO REIMBURSE ITSELF FROM THE PROCEEDS OF ONE OR MORE TAX-EXEMPT FINANCINGS FOR CERTAIN EXPENDITURES MADE AND/OR TO BE MADE IN CONNECTION WITH THE PROJECT**

WHEREAS, the Town of Blowing Rock, North Carolina (**the “Town”**) is a municipal corporation organized and existing under the laws of the State of North Carolina; and

WHEREAS, the Town has paid beginning no earlier than 60 days prior to the date of adoption of this resolution, and will pay, on and after the date hereof, certain expenditures (**“Expenditures”**) for the design, acquisition, construction, improvement and equipping of a Town of Blowing Rock capital project, further described on Exhibit A attached hereto (**the “Project”**); and

WHEREAS, the Town Council of the Town (**the “Council”**) has determined that those moneys previously advanced no earlier than 60 days prior to the date of adoption of this resolution and to be advanced on and after the date hereof to pay the Expenditures are available only for a temporary period and it is necessary to reimburse the Town for the Expenditures from the proceeds of one or more issues of tax-exempt financing (**the “Financing”**).

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL AS FOLLOWS:**

Section 1. The Council hereby declares the Town's intent to reimburse the Town with the proceeds of the Financing for the Expenditures with respect to the Project made on and after the date referenced above. The Town reasonably expects on the date hereof that it will reimburse the Expenditures with the proceeds of the Financing.

Section 2. Each Expenditure was and will be either (a) of a type properly chargeable to capital account under general federal income tax principles (determined in each case as of the date of the Expenditures), (b) a cost of issuance with respect to the Financing, (c) a nonrecurring item that is not customarily payable from current revenues, or (d) a grant to a party that is not related to or an agent of the Town so long as such grant does not impose any obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the Town.

Section 3. The maximum principal amount of the Financing expected to be issued for the Project is \$4,565,000.

Section 4. The Town will make a reimbursement allocation, which is a written allocation by the Town that evidences the Town's use of proceeds of the Financing to reimburse an Expenditure, no later than 18 months after the later of the date on which the Expenditure is paid or the Project is placed in service or abandoned, but in no event more than three years after the date on which the Expenditure is paid. The Town recognizes that exceptions are available for certain "preliminary expenditures," costs of issuance, certain de minimis amounts, expenditures by "small issuers" (based on the year of issuance and not the year of expenditure) and expenditures for construction projects of at least 5 years.

Section 5. The actions of the Town Manager, the Town Finance Officer and other agents and representatives of the Town in furtherance of financing the Project, including but not limited to retaining professionals and providing the United States Department of Agriculture with RUS Bulletin 1780-27, Form RD 1942-46 and Form RD 1940-1, are approved, ratified and confirmed.

Section 6. This resolution shall take effect immediately upon its passage.

Council Member \_\_\_\_\_ seconded the motion, and members of the Council voted as follows:

Yes -

No -

Absent -

Abstained -

**EXHIBIT A**

The design, acquisition, construction, and equipping of water and wastewater system renovations and improvements, including renovation of the Town's water treatment plant and wastewater treatment plant and the replacement of the Town's Mayview Sewer Lift Station.

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The undersigned Clerk of the Town of Blowing Rock, North Carolina, certifies that the foregoing is a correct and complete copy of a resolution duly adopted by the Town Council at a regular meeting duly called and held on August 13, 2024. A quorum was present and acting throughout such meeting. Such resolution has not been repealed, revoked, rescinded or amended, but remains in full effect as of today.

**WITNESS** my signature and the seal of the Town of Blowing Rock, North Carolina, this  
\_\_\_\_ day of \_\_\_\_\_, 2024.

[SEAL]

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Town Clerk  
Town of Blowing Rock, North Carolina

## Chapter \_\_\_\_ ANIMAL CARE AND ENFORCEMENT

### SECTION 1. AUTHORITY

Pursuant to NCGS Chapters 67, 130A, and 153A, and other applicable law, Caldwell County hereby establishes these Ordinances.

### SECTION 2. PURPOSE

- (a) Animal cruelty. To define and prohibit the abuse of animals.
- (b) Rabies. To protect citizens and other animals from rabies transmitted by unconfined, uncontrolled, or unimmunized dogs, cats, ferrets, or other animals.
- (c) Dangerous and potentially Dangerous Dogs. To regulate, restrict and/or prohibit the harboring of dogs which are dangerous or potentially dangerous to persons.
- (d) Stray animals. To regulate, restrict or prohibit the keeping of any stray domestic animals.
- (e) Animal nuisance. To regulate animals which may be a nuisance.
- (f) Wild or exotic animals, poisonous reptiles, and dangerous animals. To regulate, restrict and/or prohibit the harboring or keeping or ownership of wild or exotic animals, poisonous reptiles, and dangerous animals.
- (g) Animal bites. To establish rules and procedures for dealing with animal bites.
- (h) Impoundment of animals. To regulate and establish procedures for the impoundment and confinement of animals.
- (i) Redemption of impounded animals. To regulate and establish procedures for redeeming animals impounded in the County's Animal Shelter.
- (j) Destruction of animals. To regulate and establish procedures for destroying diseased, stray, unwanted or unclaimed animals.

### SECTION 3. DEFINITIONS

The following words, terms, and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Adequate Environment means the provisions of a safe and sanitary environment for an animal which is free of debris, hazards, waste, and filth.

Adequate Food means provisions at suitable intervals, not to exceed 24 hours of a sufficient quantity of wholesome foodstuff suitable for the species and age to maintain a reasonable level of nutrition for the animal.

Adequate Shelter means any suitable weatherproof structure intended to be inhabited by an animal, built in such a way as to have 4 sides, 1 side having ample opening to allow for an entrance for the animal. The structure must have a top and bottom large enough for the animal to turn around while inside.

Adequate Water means constant access to a supply of clean, fresh, unfrozen, and potable water is provided in a sanitary manner.

Animal Enforcement Officer means Animal Control Officers as defined by State Law.

Animal Shelter means any premises designated by the County for the purpose of impounding and caring for all animals found running at large or otherwise subject to impounding in accordance with the provisions of this Chapter.

Appeal Board means the Dangerous Dog Appeal Board.

Attack means an approach to a person by an unrestrained animal in a vicious, terrorizing, or threatening manner or apparent attitude of attack without the animal having been teased, molested, provoked, beaten, tortured, or otherwise harmed.

Board means the Caldwell County Board of Commissioners.

Breeder means any person or establishment which breeds animals for the purpose of resale to the public or dealers.

Cat means all domestic felines.

Cold Weather Shelter means a shelter which provides a secondary source of heat, with or without the inclusion of additional resources such as cedar shavings or straw, when the outside temperature is below 32 degrees Fahrenheit.

County means Caldwell County, North Carolina.

Dangerous Dog means any dog owned or harbored primarily, or in part, for the purpose of dog fighting, is trained for dog fighting, or has without provocation, killed or inflicted severe injury on a Person.

(a) This term includes, but is not limited to, any dog which either assaults, bites, attacks, or inflicts serious injury on a human being, without provocation on public or private property, and/or has killed or injured a pet or domestic animal without provocation.

(b) Exceptions: No dog is dangerous pursuant to this definition if:

1. At the time the threat, injury, or damage was sustained, the person attacked was teasing, tormenting, abusing, or assaulting the dog; or was committing or attempting to commit a crime; or
2. The dog is used by a law enforcement officer to carry out the law enforcement officer's official duties.
3. The dog has attacked or injured a pet or domesticated animal in defense of an attack by another animal or is protecting or defending its young.

Dog means all domestic canines.

Domestic Animal means animals, such as dogs, cats, horses, sheep, cattle, goats, hogs, poultry, domesticated by man, to live and breed in a tame condition.

Exposed to Rabies means any person or animal which has bitten, been bitten by, or otherwise been exposed to the bodily fluids of any animal known or suspected to have been infected with rabies.

Hot Weather Shelter means an Adequate Shelter which shall be in a shaded area when the temperature exceeds 80 degrees Fahrenheit.

Inherently Dangerous Mammal means any live member of the Canidae, Felidae, or Ursidae families, including hybrids thereof, which, due to their inherent nature, may be considered dangerous to humans and which include:

- (a) Canidae, including any member of the dog (canid) family not customarily domesticated by humans, or any hybrids thereof, including wolf hybrids which are a cross between a wolf and a domestic dog, but not including domestic dogs (*Canis familiaris*);
- (b) Felidae, including any member of the cat family weighing over 15 pounds not customarily domesticated by man, or any hybrids thereof, but not including domestic cats (*Felis catus*); and
- (c) Ursidae, including any member of the bear family, or any hybrids thereof.

Kennel means any Person or group of Persons engaged in boarding animals.

NCGS means the North Carolina General Statutes.

Neutered means any male animal that has been operated upon to prevent reproduction.

Nuisance means any act of an animal which annoys or disturbs rights and privileges common to the public or enjoyment of private property. The commission of a nuisance act on more than one occasion shall be evidence of a nuisance. A nuisance act includes, but is not limited to, the following:

- (a) Turning garbage containers or removing garbage from a container.
- (b) Damaging gardens, foliage or other real or personal property of another person.
- (c) Defecating or urinating on property, other than the owners', without permission.
- (d) Offensive odors of animals emanating from another property or are dangerous to public health.
- (e) Continuously or frequently roaming or found on the property of another person.
- (f) Not confined to a building or secure enclosure when in estrus.
- (g) Diseased or dangerous to the health of the public.
- (h) Loitering on school grounds or in a public recreation area.
- (i) Chasing, harassing or otherwise molesting other animals, pedestrians, bicyclists, or vehicles.

Owner means any Person or group of Persons owning, keeping, having custody or control over, sheltering, feeding, harboring, or allowing an animal to remain on or about their property for more than 14 consecutive days. In the event the Owner of an animal is a minor, for purposes of this Chapter, the parent or guardian of the minor shall be considered the Owner of that animal. The Owner of an animal is responsible for the care, actions, and behavior of their animals.

Person means any individual, corporation, firm, partnership, association, or other legal entity.

Pet means a domesticated animal kept for pleasure rather than utility.

Potentially Dangerous Dog means a dog determined by the County to have:

- (a) Inflicted a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization; or
- (b) Killed or inflicted severe injury upon a domestic animal when not on the owner's real property; or
- (c) Approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

Restraint means a portion of land owned or occupied by an Owner, not including any portion of land accessible to the public as a right-of-way.

Restraint means an animal which is:

- (a) Controlled by means of a chain, leash, or other like device.
- (b) On or within a vehicle being driven or parked.
- (c) Within a secure enclosure.
- (d) Within the dwelling house of the Owner.

Secure Enclosure means a fence or structure with 4 sides of adequate height to prevent the dog from escaping, made from metal or chain link fencing or equivalent fencing material, forming, or causing a humane secure enclosure. The door or gate must have a latch capable of being securely locked to prevent the animal from escaping or the entry of young children. The secure enclosure must have a securely fitting top made from metal or any chain link fencing or equivalent fencing to prevent the dog from climbing out, and a floor made of concrete, concrete pavers or equivalent to prevent the dog from digging out of the secure enclosure. For purposes of this definition, a home, mobile home, or separate garage does not qualify.

Spayed means any female animal that has been operated upon to prevent reproduction.

State means the State of North Carolina.

State Law means the laws, regulations, and rules of North Carolina.

Stray means any dog, cat, or ferret appearing to be stray, homeless, or unwanted, or is not displaying a valid rabies tag.

## **SECTION 4. ESTABLISHMENT OF THE OFFICE OF ANIMAL CONTROL**

- (a) The Department of Animal Care Enforcement is established to enforce this Chapter.
- (b) Employees or agents enforcing this Chapter are designated as Animal Enforcement Officers. In the performance of their duties, Animal Enforcement Officers have all the powers, authority and immunity granted under this Chapter and State Law to enforce the provisions of this Chapter, and State Law, as they are related to the care, treatment, control or impounding of animals.
- (c) Except as may be otherwise provided by State Law, local laws or ordinances, no officer, agent, or employee of the County charged with the duty of enforcing the provisions of this Chapter or other applicable laws shall be personally liable for any damage which may accrue to persons or property as a result of any act required or permitted in the discharge of those duties, unless acting with malice.

## **SECTION 5. GENERAL DUTIES OF THE OFFICE OF ANIMAL CARE ENFORCEMENT**

- (a) The Office of Animal Care Enforcement has the following responsibilities:
  1. Enforcing all state laws, rules and regulations, and all County ordinances relating to the care, custody and control of domesticated dogs and cats.
  2. Assisting in the enforcement of State Law regarding animals, including the vaccination of animals against rabies, and the confinement or controlling of dangerous animals and Dangerous Dogs.
  3. Investigating allegations of animal cruelty or abuse.
  4. Canvassing the County, including homes within the County, as deemed necessary, to confirm all animals are vaccinated against rabies, as required by local ordinance or State Law.
  5. Operating in compliance with the policies of the Board and County Animal Shelter.
  6. Keeping accurate and detailed records including:

- i. Impoundment and disposition of all animals coming into the County Animal Shelter.
- ii. Bite cases, violations and complaints, and related investigations of same.
- iii. All County funds derived from the operation of the Animal Control Program.
- iv. All rabies vaccinations administered within the County by veterinarians, Animal Care Enforcement staff and any certified rabies vaccinator appointed by the local Health Director.
- v. All other records deemed necessary.

## **SECTION 6. ESTABLISHMENT OF A DANGEROUS DOG APPEAL BOARD**

There is hereby created a The Dangerous Dog Appeal Board, hereby established, to serve as the official appellate body hearing all Dangerous Dog appeals pursuant to State Law. The Appeal Board convenes at the direction of the County Animal Care Enforcement Director or designee. The Appeal Board is composed of 5 members and 1 alternate appointed by the County Board of Public Health who serve 3-year staggered terms. The following criteria will be considered when appointing members to the Appeal Board:

- (a) A person familiar with animals and experience working with them on a regular basis.
- (b) A person active in animal welfare issues.
- (c) A law enforcement officer.
- (d) Two citizens at large.

## **SECTION 7. ENFORCEMENT IN MUNICIPALITIES**

Animal Care Enforcement officers have no authority to enforce this Chapter within the boundaries of any municipality unless the governing body of the municipality adopts an authorizing resolution.

## **SECTION 8. DECEASED ANIMALS**

- (a) The Owner or person in charge of an animal which dies from any cause, and the Owner, lessee or person in charge of any land upon which any animals die, must bury the dead animal to a depth of at least 3 feet beneath the surface of the ground within 24 hours after the death of the animal is known, or otherwise dispose of the animal in a manner approved by the state veterinarian.
- (b) It shall be unlawful for any Person to remove the carcasses of dead animals from their premises to the premises of another, without the written permission of the Person and without burying the animal in accordance with this Section.
- (c) The Animal Care Enforcement Officer is not responsible for picking up any deceased animal from properties or roadways.
- (d) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

## **SECTION 9. ANIMAL CRUELTY**

- (a) It shall be unlawful for any Person to molest, tease, torture, torment, deprive of necessary sustenance, cruelly beat, mutilate, wound, injure, poison, abandon, kill or subject to conditions detrimental to the health or general welfare of any animal, or to cause or procure that action. The terms torture and torment include every act, omission, or neglect where unjustifiable physical pain, suffering or death is caused or permitted. Exceptions include:
  - 1. The lawful taking of animals under the jurisdiction and regulations of the North Carolina Wildlife Resources Commission.
  - 2. Lawful activities conducted for purposes of biomedical research or training or for purposes of production of livestock, poultry, or aquatic species.
  - 3. Activities conducted for lawful veterinary purposes.
  - 4. The lawful destruction of any animal by its Owner, veterinarian, Health Director, or Animal Care Enforcement Officer, for the purpose of protecting the public, other animals, property, or the public health.

(b) General care; prohibited acts. All animals shall be kept and treated in an Adequate Environment, and it shall be unlawful for any person to engage in any of the following:

1. Failure to provide Adequate Food, Adequate Water, and cold and hot weather shelter:
  - i. All animals, unless otherwise indicated in this Chapter, shall be given at suitable intervals, not to exceed 24 hours, a quantity of wholesome foodstuff in proper containers suitable for the age and species of the animal, and sufficient to maintain a healthy level of nutrition.
  - ii. All animals shall have access to a constant supply of clean, fresh water.
  - iii. All animals shall have Adequate Shelter from the weather.
  - iv. Examples of inadequate shelter include, but are not limited to, the following:
    - A. Underneath outside steps, decks, and stoops.
    - B. Underneath houses.
    - C. Inside or underneath motor vehicles.
    - D. Inside metal barrels.
    - E. Inside cardboard boxes.
    - F. Inside temporary animal carriers or crates.
    - G. Shelters situated in flood-prone areas.
    - H. Shelters surrounded by debris, obstructions, or impediments which may endanger an animal.
2. Failure by any Owner to keep an animal in good health and comfort, failure to provide veterinary care when needed to prevent suffering, and failure to provide humane care and treatment.
3. Examples of cruel treatment include, but are not limited to, the following:
  - i. Permitting a collar, rope, or chain to become embedded in, or cause injury, to an animal's neck.
  - ii. Permitting a choke or pinch collar to be used as a primary collar when an animal is left unsupervised.

- iii. Permitting a dog, cat, or ferret to be tethered or contained in such a way as to prevent it from having Adequate Shelter.
- iv. Intentionally permitting animals to engage in fighting.
- v. Permitting animals to live in crowded or unsanitary conditions.
- vi. Failure or refusal to obtain medical treatment for an animal when the need for treatment is apparent.
- vii. Chaining or tethering an animal to a stationary object for a period or under conditions which are harmful or potentially harmful to the animal. Examples of improper chaining or tethering include, but are not limited to, the following:
  - A. Using length or weight of a chain or tether which is not appropriate for the size, weight, and age of the animal.
  - B. Using a chain or tether made of rope, twine, cord, or similar material.
  - C. Using a chain or tether less than 12 feet in length and/or without swivels on one end. All chains or tethers must be attached to the animal by a properly fitted harness or collar.
  - D. Allowing an animal to be chained or tethered which would prevent confinement to the owner's property, or which chain or tether could become entangled and prevent the animal from moving about freely, lying down comfortably, or having access to Adequate Food, Water and Shelter.
  - E. Using a chain as a primary collar. All collars used for the purpose of chaining or tethering animals must be made of nylon or leather.
- viii. Selling or offering for sale, bartering or giving away within the County baby chicks, ducklings or other fowl under 6 weeks of age, or rabbits under 8 weeks of age, as pets, toys, premiums or novelties; provided, however, this Section shall not be construed to prohibit the sale or display of baby chicks, ducklings or other fowl or rabbits in proper facilities by breeders or stores engaged in the business of selling for purposes other than for pets or novelties.

ix. Coloring, dyeing, staining, or otherwise changing the natural color of baby chickens or other fowl or rabbits.

(c) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

## **SECTION 10. FEMALE IN ESTRUS (HEAT)**

(a) It shall be unlawful for any Owner or keeper of a female dog in estrus (heat) not to confine the dog in a secured enclosure.

(b) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

## **SECTION 11. KEEPING OF INHERENTLY DANGEROUS MAMMALS**

(a) Inherently Dangerous Animal means either an Inherently Dangerous Mammal or an Inherently Dangerous Reptile as defined in this Section.

(b) Inherently Dangerous Mammal means any live member of the Canidae, Felidae, or Ursidae families, including any hybrid thereof, which, due to its inherent nature, may be considered dangerous to humans and includes:

1. Canidae, means any member of the dog (Canid) family not customarily domesticated by people, or any hybrids thereof, but not including a domestic dog (*Canis lupus familiaris*) or wolf hybrids which are a cross between a wolf and a domestic dog;
2. Felidae, means any member of the cat family not customarily domesticated by people, and any hybrid thereof, but not including a domestic cat (*Felis catus*);
3. Ursidae, means any member of the bear family, and any hybrid thereof; and
4. Nonhuman primates and prosimians.

(c) Inherently Dangerous Reptile means any live member of the class reptilia which:

1. Is venomous, including, but not limited to, all members of the following families: Helodermidae, Viperidae, Crotalidae, Altractaspidae, Hydrophilidae and Elapidae;
2. Is a “rear fanged” snake of the family Colubridae known to be dangerous to humans, including, but not limited to, all members of the following families: Dispholidus typus, Thebtornis kirtlandii and Rhabdophis spp.; or
3. Is a member of the order Crocodilia.

(d) Inherently Dangerous Animal at Large means an Inherently Dangerous Animal permitted or allowed to be at large outside of the approved confinement or on other property, including the property of the owner, or within the premises of the owner in such manner as to endanger any person lawfully entering such premises.

(e) Harboring an Inherently Dangerous Animal means to allow an Inherently Dangerous Animal to remain, lodge, be fed, or to be given shelter or refuge within the person’s home or any other premises in which the person resides or over which the person has control.

(f) The Harboring of an Inherently Dangerous Animal is prohibited unless a person harbored the Inherently Dangerous Animal prior to May 13, 2024. No Inherently Dangerous Animals shall be permitted to be harbored within the county after May 13, 2024.

(g) The following are exempt from all provisions of this Chapter:

1. Any facility accredited by the Association of Zoos and Aquariums (AZA);
2. Any licensed or accredited research or medical institution;
3. Any licensed or accredited educational institution;
3. A veterinary clinic in possession of an inherently dangerous animal for treatment or rehabilitation purposes;
4. A traveling circus or carnival as long as the circus or carnival does not maintain a permanent location within the County and is in compliance with all state laws; and
5. A person temporarily transporting an Inherently Dangerous Animal through the County if the transit time is not more than 24 hours, and the animal is at all

times maintained within a confinement sufficient to prevent the animal from being at large.

(h) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

## **SECTION 12. CONFINEMENT AND PROCEDURE OF POTENTIALLY DANGEROUS DOGS**

(a) The Owner of a dog deemed Potentially Dangerous by the Office of Animal Care Enforcement is notified in writing and provided with the reasons for the determination.

(b) The Owner must immediately confine the dog in a humane secure enclosure; and

(c) If no humane, secure enclosure is available at the Owner's residence, the dog shall be confined at the Animal Control Shelter or a boarding facility approved by the County, at the Owner's expense.

(d) Within 3 days of the determination, the Owner may appeal by filing written objections with the Appeal Board.

1. The Appeal Board will schedule a hearing within 10 days of the filing of the objections. Based upon testimony and evidence, the Appeal Board will determine if the dog should be considered dangerous or overturn the declaration.
2. The Owner of the dog and any complainants will be notified of the determination by first class mail or email.
3. If the Appeal Board finds the dog is a Dangerous Dog, the Owner of the dog is required to keep the dog in accordance with all state and local laws pertaining to Dangerous Dogs.

(e) If the Owner of a dog that has been deemed Potentially Dangerous does not file an appeal with the Appeal Board within 3 business days of the notification of the determination, the dog shall automatically be a Dangerous Dog.

## **SECTION 13. CONFINEMENT REQUIREMENTS AND CONFISCATION OF DANGEROUS DOGS**

- (a) The Owner of a dog which has been deemed dangerous will be notified in writing and provided the reasons for the determination. The Owner shall immediately confine the dog in a humane secure enclosure. If no secure enclosure is available at the Owner's residence, the dog shall be confined at the Animal Care Enforcement shelter or a boarding facility, approved by the County, at the Owner's expense, until a humane secure enclosure is constructed on the Owner's property. The enclosure must meet the approval of the Animal Care Enforcement Director, who has the authority to mandate additional confinement requirements. If no adequate humane secure enclosure is constructed upon the Owner's property after the expiration of 30 days of notice of declaration, the dog shall be euthanized.
- (b) The Owner shall conspicuously and securely display the County's Dangerous Dog warning sign on the secure enclosure. Additional uniform Dangerous Dog warning signs shall be conspicuously and securely posted at all points of entrance to the residence and must be visible and legible from the public highway or street. Uniform Dangerous Dog warning signs must be purchased from the Animal Care Enforcement Department at the Owner's expense.
- (c) The Owner of a dog which has been deemed dangerous shall have the dog spayed/neutered at the Owner's expense and provide proof of the spay/neuter to the Animal Care Enforcement Department within 30 days of the date of written notification.
- (d) The Owner of a dog which has been deemed dangerous shall have the dog micro-chipped at the owner's expense and register the micro-chip number with the Animal Care Enforcement Department within 2 business days of the date of written notification.
- (e) A dog which has been deemed dangerous either by Animal Care Enforcement or by the Appeal Board shall be kept in a humane secure enclosure. The Owner shall post a plainly visible sign upon the secure enclosure warning a Dangerous Dog is on the premises. The humane secure enclosure shall be locked to prevent the escape of the dog or the entry of young children. The dog may be removed from the secure enclosure for exercise or veterinary care so long as it is under the control of its Owner using a securely attached leash and muzzle.
- (f) An Animal Care Enforcement officer is empowered to confiscate a dog and harbor it at the Owner's expense if the dog is found in violation of state and/or local laws pertaining to Dangerous Dogs. If any Dangerous Dog is confiscated under this Section, the Owner of the Dangerous Dog shall be given written notice at the time of confiscation advising the dog will be humanely euthanized by the Animal Care Enforcement Department at the expiration of 3 business days.

(g) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

**SECTION 14. REQUIRED NOTIFICATION TO ANIMAL CARE ENFORCEMENT BY OWNERS OF DANGEROUS DOGS**

(a) The Owner of a Dangerous Dog shall inform the Office of Animal Care Enforcement, as soon as practicable, but no later than 24 hours after the occurrence of any of the following:

1. An assault, attack or biting upon any human being committed by a Dangerous Dog.
2. An assault, attack or biting upon any domesticated animal or pet by a Dangerous Dog.
3. The destruction of or damage to the property of another by a Dangerous Dog.
4. The roaming or escape of any animal required to be restrained or confined to a secure enclosure.

(b) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

**SECTION 15. TRANSFER OF OWNERSHIP OR RELOCATION OF DANGEROUS DOGS**

(a) If the Owner of a Dangerous Dog wishes to transfer ownership or possession of the dog to another Person, the Owner shall provide written notice to the authority which made the determination under this Chapter, providing the name and address of the new Owner or possessor of the dog before the ownership of the dog is transferred.

- (b) If the Owner of a Dangerous Dog plans to relocate and/or change address, the Owner shall provide written notice to the authority which made the determination under this Chapter, providing the new address and or date of relocation prior to this occurrence.
- (c) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

## **SECTION 16. LAW ENFORCEMENT DOGS PARTIALLY EXCLUDED**

Any dog used by a law enforcement agency in the investigation of crimes, or as otherwise necessary in the enforcement of the law, is excluded from the requirements of this Chapter, except for rabies and bite requirements pursuant to State Law.

## **SECTION 17. DOGS USED FOR GUARD DUTY**

- (a) A sign warning a guard or dog is on the premises shall be displayed. The Owner shall post a plainly visible sign upon the secure enclosure, warning of a Dangerous Dog or animal on the premises. Any person owning, maintaining, or harboring a dog for sentry or guard purposes must register the dog with the Office of Animal Care Enforcement.
- (b) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

## **SECTION 18. ENFORCEMENT INTERFERENCE**

- (a) It shall be unlawful for any Person to interfere with, hinder or molest the Animal Care Enforcement Office agents, officers, or veterinarians in the performance of any duty authorized by this Chapter or State Law, or to seek to release any animal in the custody of those agents.

(b) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

## **SECTION 19. ANIMALS CREATING A NUISANCE**

- (a) Pursuant to State Law, a County may define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety or welfare of its citizens, and the peace and dignity of the County; and may define and abate nuisances.
- (b) Nothing in this Chapter shall prevent a private citizen from bringing an action to abate a nuisance, or from bringing an action for damage, loss, or injury to the private citizen or their property resulting from an animal being a public nuisance.
- (c) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

## **SECTION 20. EXCLUSION FOR HUNTING DOGS**

This Chapter shall not be interpreted as restricting persons owning specially trained hunting/working dogs from using the dogs for hunting/working in the presence of the Owner or an agent of the Owner and are lawfully being used for hunting or training in compliance with applicable statutes, regulations or ordinances of the State and the County.

## **SECTION 21. NUISANCES PROHIBITED**

It shall be unlawful for any Owner to permit a dog, cat, or ferret to create a nuisance as defined by this Chapter.

- (a) Nuisance acts. It shall be unlawful for an Owner to permit an animal or animals to create a public nuisance, or to maintain a public nuisance created by an animal or animals. The commission of a nuisance act on more than one occasion shall be evidence of a nuisance. A nuisance act, includes but is not limited to:

1. Continuously or frequently roaming or found on the property of another person.
2. Turning over garbage containers or removing garbage from a container.
3. Damaging gardens, foliage, or other real or personal property of another.
4. Urinating or defecating on private property without the permission of the property owner.
5. Walking on or sleeping on an automobile of another.
6. Maintaining in an unsanitary condition which is offensive to sight or smell.
7. Not confining to a building or secure enclosure while in estrus.
8. Chasing, snapping at, attacking, or otherwise molesting pedestrians, cyclists, motor vehicle passengers, farm stock, or domestic animals.
9. Housed or restrained less than 5 feet from a public street, road, or sidewalk.
10. Habitually loiters on school grounds or County recreational property.

(b) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

## **SECTION 22. PROCEDURE FOR COMPLAINT**

Any citizen who personally witnesses a violation of this Chapter may file an animal nuisance complaint by completing a nuisance/complaint form. Before initiating a civil or criminal proceeding pursuant to this Chapter or any State statute, the Animal Services Director or designee has the option of requesting the complaining party sign a sworn statement of the alleged offense and require the cooperation of the complaining party in court appearances arising from the complaint.

## **SECTION 23. RABIES CONTROL**

- (a) It shall be unlawful for any animal owner or other person to fail to comply with State Law relating to the control of rabies.
- (b) It is the purpose of this Chapter to supplement State Law by providing a procedure for the enforcement of rabies control, in addition to the criminal penalties provided by State Law.
- (c) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

## **SECTION 24. RABIES VACCINE OF DOGS, CATS, AND FERRETS**

- (a) It shall be unlawful for an Owner to fail to provide current vaccine against rabies for any dog, cat, or ferret 4 months of age or older. Should the County Animal Care Enforcement, County Board of Health, the Board, or the State Public Health Veterinarian order pets be inoculated to prevent a threatened epidemic, or to control an existing epidemic, it shall be unlawful for an Owner to fail to provide current inoculation against rabies for that pet.
- (b) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

## **SECTION 25. RABIES VACCINE TAG**

- (a) Upon complying with provisions of State Law, the vaccinator shall issue to the Owner of the animal vaccinated, a metallic tag, stamped with the number and the year issued, indicating the animal has been vaccinated against rabies.
- (b) It shall be unlawful for any dog to fail to provide the dog with a collar or harness to which a current tag issued under this Section is securely attached. The collar or harness, with attached tag, must be worn at all times.
- (c) Pursuant to State Law, cat owners are not required to provide a cat with a collar or harness to which a current tag is attached, however, the cat owner must be able to immediately provide a current vaccine tag upon being asked by the County.

- (d) It shall be unlawful for any Person to use for any animal a rabies vaccine tag issued for another animal.
- (e) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

## **SECTION 26. REPORT AND CONFINEMENT OF ANIMALS BITING PERSONS OR SHOWING SYMPTOMS OF RABIES**

- (a) Every dog, cat, or ferret, which has bitten any person or which shows symptoms of rabies shall be confined immediately and be promptly reported to the Animal Care Enforcement Office, and thereupon shall be securely quarantined at the direction of the Animal Care Enforcement Office for a period of 10 days and shall not be released from the quarantine except by written permission from the Animal Care Enforcement Office.
- (b) Dogs, cats, and ferrets quarantined under this Section shall be confined in a veterinary hospital, boarding kennel approved by the Office of Animal Care Enforcement, or County Animal Shelter, at the expense of the Owner; provided, however, if an Animal Care Enforcement officer determines the Owner of an animal requiring quarantine has adequate confinement facilities upon his or her own premises, the animal control officer shall authorize the animal to be confined on the premises. The Animal Care Enforcement officer may not authorize the animal to be confined on the Owner's premises unless the Owner has a fenced-in area in his or her yard, and the fenced-in area has no entrances or exits which are not locked, and the animal is currently vaccinated against rabies. Proof will be required at the time of investigation. If the animal is confined on the Owner's premises, the Animal Care Enforcement officer shall revisit the premises for inspection purposes, midway through the confinement period, and again at the conclusion of the confinement period.
- (c) In the case of stray dogs or cats whose ownership is not known, the dogs, cats, or ferret may be euthanized, and the head examined for rabies, or kept for the supervised quarantine period required by this Section at the County Animal Shelter.
- (d) If rabies does not develop within 10 days after a dog, cat is quarantined under this Section, the dog, cat, or ferret may be released from quarantine with the written permission of the Animal Care Enforcement Office. If the dog, cat, or ferret has

been confined in the County Animal Shelter, the Owner shall pay any applicable veterinarian fees and boarding fees set by and approved by the Board. Any animal which has bitten a Person, and which has not been reclaimed within 24 hours following the mandatory 10-day rabies observation quarantine period, shall be destroyed by the Animal Care Enforcement Office.

- (e) In the case of any carnivore or bat, the animal may be euthanized, and the head examined for rabies.
- (f) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

## **SECTION 27. DESTRUCTION OF ANIMAL EXPOSED TO RABID ANIMAL**

- (a) Unvaccinated animals exposed to a known rabid animal shall be immediately destroyed. If the animal has a current rabies inoculation, it shall be revaccinated and returned to the Owner.
- (b) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

## **SECTION 28. AREA-WIDE EMERGENCY QUARANTINE**

- (a) When reports indicate a positive diagnosis of rabies, the County Health Director may order an area-wide quarantine for such period as deemed necessary. Upon invoking of such emergency quarantine, no dog, cat, or other carnivore shall be taken into the streets or permitted to be in the streets during such period. During such quarantine, no dog, cat, or ferret, or other carnivore may be taken or shipped from the County without written permission of the Office of Animal Care Enforcement. During the quarantine period, the local health authorities shall be empowered to provide for a program of mass immunization by the establishment of temporary emergency rabies vaccination facilities strategically located throughout the County.

- (b) In the event there are additional positive cases of rabies occurring during the period of quarantine, the period of quarantine may be extended at the discretion of the County Health Director.
- (c) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

## **SECTION 29. POSTMORTEM DIAGNOSIS**

- (a) If an animal dies while under observation for rabies, the head of the animal shall be submitted to the County Health Department for shipment to the State Laboratory of Public Health for rabies diagnosis.
- (b) The carcass of any animal suspected of dying of rabies shall be surrendered to the County Animal Care Enforcement Office. The head of the animal shall be submitted to the County Health Department for shipment to the State Laboratory of Public Health for rabies diagnosis.
- (c) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

## **SECTION 30. UNLAWFUL KILLING, RELEASING AND THE LIKE OF CERTAIN ANIMALS**

- (a) It shall be unlawful for any Person to kill or release any animal under observation for rabies, any animal suspected of having been exposed to rabies or any animal which has bitten a human, or to remove the animal from the County without written permission from the Animal Care Enforcement Office.
- (b) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a

maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

### **SECTION 31. FAILURE TO SURRENDER ANIMAL FOR QUARANTINE OR DESTRUCTION**

- (a) It shall be unlawful for any Person to fail or refuse to surrender any animal for quarantine or destruction as required by this Chapter and State Law when demand is made by the Animal Control Officer.
- (b) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

### **SECTION 32. IMPOUNDMENT**

Any animal which appears to be lost, stray or unwanted, or which is found not to be wearing a valid rabies vaccination tag, and not under restraint in violation of this Chapter, shall be impounded by the Animal Control Office by any means necessary and confined in an animal shelter in a humane manner. Impoundment of the animal shall not relieve the Owner from any penalty which may be imposed for violation of this Chapter.

### **SECTION 33. TRAPPING**

- (a) The Animal Care Enforcement Department is authorized to place, upon request, live-capture animal traps on private property of the requestor or public property, to trap and remove stray, at-large, unwanted or nuisance animals. It is unlawful for any Person other than an Animal Care Enforcement Officer or designee to remove any animal from the trap, or to damage, destroy, move, or tamper with the trap.
- (b) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

### **SECTION 34. REDEMPTION BY OWNER GENERALLY**

- (a) The Owner of an impounded animal may redeem the animal within 72 hours from the time of notification of impoundment is given, as required by State Law, by complying with all applicable provisions of this Chapter, and paying any applicable veterinary fees and a boarding fee.
- (b) No animal Owner may be permitted to adopt their own animal under the provisions of this Section to reclaim an animal which has been impounded pursuant to State Law or this Chapter.

## **SECTION 35. DESTRUCTION OR ADOPTION OF UNREDEEMED ANIMALS GENERALLY**

- (a) Disposition of animals in Animal Services custody.
  - 1. Stray animals are held for a period of 96 hours to allow Owners to reclaim the animals.
  - 2. Cats deemed to be feral by the Animal Services Director or designee are held for a period of 72 hours. For the purposes of this Section, feral shall mean a cat which has escaped from a domestic or captive status and is living as a wild animal or a cat which was never domesticated.
- (b) Animals can be reclaimed by Owners for fees in accordance with the fee schedule. The Owner of an impounded animal shall be entitled to redeem the animal, except as provided in this Chapter, upon the payment of all applicable fees, and upon furnishing proof of ownership. Animals cannot be reclaimed without proof of a current rabies vaccine, or a rabies vaccine given by Animal Services Certified Rabies Vaccinators (CRVs).
- (c) Dogs must wear rabies inoculation tags upon being reclaimed.
- (d) If not claimed within 96 hours, stray animals are made available for adoption, transferred to a rescue group, or euthanized.
- (e) Upon proof of ownership, owner-surrendered animals are made available for disposition by the Director of Animal Services or designee after a period of 24 hours.
- (f) Nothing in this Section shall prevent an animal which is seriously ill or injured from being euthanized for humane reasons prior to the end of a stray hold.
- (g) No animal which has been impounded by reason of being a stray or unclaimed by its Owner, shall be allowed to be adopted from the County Animal Shelter during

a period of emergency rabies quarantine, except by special authorization of the County Health Director.

- (h) Any person adopting an animal from the County Animal Shelter is required to sign an adoption contract with the Animal Shelter.
- (i) The Animal Control Office has the right to refuse adoption of animals to:
  1. Persons less than 18 years of age.
  2. Persons who have previously been cited for violations of this Chapter.
- (j) The maximum number of animals adopted to the same household is 3 per calendar year.
- (k) Any animals which exhibit fierce, dangerous, or aggressive behavior will not be offered for adoption.
- (l) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

#### **SECTION 36. PROCEDURE FOR REDEMPTION OR ADOPTION OF UNVACCINATED DOG, CAT, OR FERRET**

All dogs, cats, or ferrets 4 months of age or older which leave the County Animal Shelter, or any animal hospital or veterinary clinic, shall be required to have a current rabies vaccination.

#### **SECTION 37. DESTRUCTION OF WOUNDED OR DISEASED ANIMALS**

Notwithstanding any other provision of this Chapter, any animal impounded which is badly wounded or diseased, shall be destroyed humanely, only after consultation with the Office of Animal Control and a veterinarian licensed to practice in the State of North Carolina. This consultation will include a physical review of the animal by a licensed veterinarian, and the veterinarian's agreement the animal is suffering and should be euthanized. If the animal has identification, the Office of Animal Care Enforcement shall attempt to notify the Owner before consulting with a licensed veterinarian and euthanizing the animal.

## **SECTION 38. PENALTY**

- (a) Fees shall be charged in accordance with the County's fee schedule. The Animal Care Enforcement Director has the authority, in their discretion, to reduce or waive fees for special circumstances.
- (b) Any Person violating any of the provisions of this Chapter shall be subject to the imposition by citation of a civil penalty for each such violation in the amount of \$25, which shall be paid in full within 30 business days of the service of the citation by a representative of the County Animal Care Enforcement Office or any law enforcement officer, or both in accordance with NCGS 153A-123. If the offender does not pay the penalty within 30 business days, the County may recover the penalty plus court costs and attorney fees in a civil action in the nature of a debt.
- (c) Each subsequent violation of any of the provisions of this Chapter shall subject the violator to the imposition by citation of a civil penalty in the amount of \$100, which shall be paid in full within 30 business days of the service of the citation. If the offender does not pay the penalty within 30 business days, the County may recover said penalty plus court costs and attorney fees in a civil action in the nature of a debt.
- (d) Failure to make payment and correct the violation or violations within 30 business days will result in an additional penalty of \$25 per violation per day until the violation is corrected and the citation is paid. All funds derived from the civil penalties collected shall be used in the operation and maintenance of the County Animal Shelter.
- (e) If any dangerous animal or Dangerous Dog as defined in this Chapter shall, when unprovoked, attack, assault, wound, bite or otherwise injure or kill a human being, the Owner shall pay a \$300 civil penalty and, after a 10-day waiting period, exclusive of Sundays and holidays, the dog shall be destroyed by the Office of Animal Care Enforcement.
- (f) If any dangerous animal or Dangerous Dog shall, when unprovoked, kill, wound, or worry or assist in killing or wounding any domestic animal or pet, the Owner of the animal or dog shall pay a \$200 civil penalty, and the dog will be humanely euthanized by the Animal Care Enforcement Department at the expiration of 3 business days.
- (g) If any dangerous animal or Dangerous Dog is found in violation of State Law, the Owner of the animal or dog shall pay a \$150 civil penalty, and the dog will be humanely euthanized by the Animal Care Enforcement Department at the expiration of 3 business days.

- (h) Any person in possession of or keeping an inherently dangerous mammal within the County shall be in violation of this Chapter and shall be subject to the imposition by citation of a civil penalty for each such violation in the amount of \$300, which shall be paid in full within 72 hours of the service of the citation by an Animal Care Enforcement Department, or any law enforcement officer. If the offender does not pay the penalty within 30 business days, the County may recover the penalty plus court costs and attorney fees in a civil action in the nature of a debt. Failure to make payment and correct the violation or violations within the 30 business days will result in an additional penalty of \$600 per violation per day until the violation is corrected. All funds derived from the civil penalties collected shall be used in the operation and maintenance of the County Animal Shelter.
- (i) Violation of this Chapter may subject the violator to criminal as well as civil action. Violation of this Chapter shall be a misdemeanor for which a criminal summons may be issued. Any person convicted of this violation shall be punishable as provided in NCGS 14-4. Each day's violation of this Section is a separate offense.
- (j) In addition, enforcement of this Chapter may be by appropriate equitable remedy, injunction or order of abatement issued by a court of competent jurisdiction.

# Resolution

## Adopting the Amended Caldwell County Animal Care Enforcement Ordinances

WHEREAS, the Caldwell County Animal Care Enforcement Division updated its ordinances to comply with new regulations set in place by the State of North Carolina; and

WHEREAS, the Animal Care Enforcement Ordinance states that each municipality within Caldwell County must grant the Caldwell County Animal Care Enforcement Division power to enforce the provisions of its ordinance within the limits of the municipality; and

WHEREAS, any ordinance that is inconsistent with the amended Animal Care Enforcement Ordinance shall be repealed; and

NOW, THEREFORE, LET IT BE RESOLVED THAT, the Town of Blowing Rock adopts the Caldwell County Animal Care Enforcement Ordinance as amended on May 13, 2024; and

BE IT FUTHER RESOLVED THAT, the Town of Blowing Rock grants permission for the Caldwell County Animal Care Enforcement Division to operate and enforce the provisions of the amended Animal Care Enforcement Ordinance within the limits of the Town of Blowing Rock.

Adopted this 13 Day of August, 2024

(Seal)

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Mayor

## **PROCLAMATION FOR CONSTITUTION WEEK**

**WHEREAS:** The Constitution of the United States of America, the guardian of our liberties, embodies the principles of limited government in a Republic dedicated to rule by the law; and

**WHEREAS:** September 17, 2024 marks the two hundred and thirty-seventh anniversary of the framing of the Constitution of the United States of America by the Constitutional Convention; and

**WHEREAS:** It is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary, and to the patriotic celebrations which will commemorate it; and

**WHEREAS:** Public Law 915 guarantees the issuing of the proclamation each by the President of the United States of America designating September 17 through 23 as Constitution Week,

**NOW, THEREFORE I, \_\_\_\_\_** by virtue of the authority vested in me as Mayor of the town of Blowing Rock, North Carolina do hereby proclaim the week of September 17th-23rd as **CONSTITUTION WEEK**, and ask our citizens to reaffirm the ideal the Framers of the Constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through the guardian of our liberties

**IN WITNESS WHEREOF**, I hereunto set my hand and caused the Seal of the Town of Blowing Rock to be affixed this \_\_\_\_\_ day of \_\_\_\_\_ of the year of our Lord two thousand

**MAYOR**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SEAL** attest \_\_\_\_\_

## **Consent Agenda - Staff Report**

**To: Mayor Charlie Sellers and the Blowing Rock Town Council**

**From: Shane Fox, Town Manager**

**Subject: HCCOG – Great Trails State Grant**

**Date: August 13, 2024**

### **Information:**

Recently the Village Foundation of Blowing Rock has been working to develop a project to transform the Annie Cannon Gardens and the Glen Burney Trail for generations to come. The concept would reconfigure the entrance to the Annie Cannon Gardens and construct a new trailhead for the Glen Burney Trail. As of now, this project is just in the concept stages with more design work and ultimate approval that must be done through the Town Council and the Public Lands and Recreation Advisory Board. Funding for the conceptual project could come from a series of sources, including the Village Foundation, private donors, and grant monies. A potential grant would be The Great Trails State Grant. The GTS grant is an annual grant that allows local governments to apply for up to \$500,000 in grant monies for trail construction and trail maintenance. This grant could be used for the development of the conceptual project including construction costs. The grant requires a match of 50% for every dollar awarded. The grant match could come from the series of funding options, including the Village Foundation, donors, etc. The current grant application deadline is September 3, 2024. The High-Country Council of Government has agreed to write and apply on behalf of the Town and the Village Foundation for the grant. The grant writing and submittal, along with the administration of the grant would be performed by the HCCOG for a fee of \$10,000, but only if the grant is awarded, of which the fee would be paid by the grant itself, not the Town. If not awarded, the HCCOG would have no fee administrated. For the HCCOG to proceed with writing and submitting the grant application, the Town Council must give official approval for the HCCOG to proceed. No obligation would be incurred by the town for allowing for the grant to be submitted.

### **Recommendation:**

Staff recommends the Town Council approves the HCCOG to move forward with Grant preparation to include the writing of the grant, submittal, and administration of the grant if awarded.

### **Attachments:**

1. Certification and Approval by Governing Board
2. Attorney's Certification of Site Control
3. HCCOG Engagement Letter

## **Certification & Approval by Governing Board**

I hereby certify the information contained in the attached Great Trails State Program application is true and correct, and the required matching funds for the grant will be available within three years of submitting the application. This application has been approved by the governing board.

<p style="text-align: center;"><b>Chief Elected Official</b> (Print or Type Name and Title)</p>
<p style="text-align: center;">(Signature)</p>
<p>If two sponsors are applying together, this form must be completed and signed by each board.</p>

## Attorney's Certification of Site Control

Project Sponsor: \_\_\_\_\_ Project Name: \_\_\_\_\_

**Instructions:** Review the Site Plan for the project. An attorney must certify that the project sponsor has control of the entire site of a proposed development project for providing public recreation by September 3, 2024.

**Important:** The application can be declared ineligible without this certification.

**1. TYPE OF SITE CONTROL:** Indicate the type(s) of control the applicant has for the project site.

**TYPE OF CONTROL** Check all that apply

<input type="checkbox"/> Fee Simple Title	<input type="checkbox"/> Entire Site. <input type="checkbox"/> Portion of site
<input type="checkbox"/> Lease  (25 years or longer)	<input type="checkbox"/> Entire Site. <input type="checkbox"/> Portion of site
<input type="checkbox"/> Easement	<input type="checkbox"/> Entire Site. <input type="checkbox"/> Portion of site

**2. LIMITATIONS, CONDITIONS OR ENCUMBRANCES:**

No limitations, conditions, or encumbrances  
 Limitations, conditions, or encumbrances

Attach additional pages describing any conditions or limitations in current or proposed leases, easements or use agreements. Include restrictions on the local government's use of the site or the rights to be reserved by the landowner that may impact the local government's ability to complete the project in a timely manner and/or provide for public recreational use for at least 25 years. Attach additional pages if needed.

**3. ATTORNEY'S CERTIFICATION**

I have reviewed the site of the proposed project identified on this page and certify that the information provided above is accurate to the best of my knowledge.

NAME (Printed/Typed) \_\_\_\_\_

TITLE \_\_\_\_\_

SIGNATURE \_\_\_\_\_ Date \_\_\_\_\_

**Doug Matheson**  
Chair of the Board

468 New Market Blvd.  
Boone, NC 28607

**Dennis Aldridge**  
Vice-Chair

[www.hccog.org](http://www.hccog.org)



**Larry Fontaine**  
Secretary

Phone: 828-265-5434

**Jeff Whitson**  
Treasurer

Fax: 828-265-5439

August 8, 2024

Shane Fox

Blowing Rock Town Manager  
1036 Main Street  
PO Box 47  
Blowing Rock, NC 28605

**Re: Grant Application/Administration Annie Cannon Park/ Glen Burney Trail**

Mr. Fox,

As discussed, the High Country Council of Governments (COG) will assist in the application of the Great Trails State Program Grant.

Town of Blowing Rock and The Village Foundation will provide to the High Country COG all necessary information needed for the application such as project description, Cost estimate, site plans, approval of the Governing body, Attorney Certification, emergency plan, letters of support and any other information necessary to submit a competitive application.

The COG will compile all submitted information, prepare and submit the application and be responsible for obtaining any additional information needed throughout the application process. Should the grant be awarded, the COG will be responsible for all administration and reporting required by the granting agency.

Our fee for the services described above will be \$10,000. Should the grant not be awarded, no money is owed to the COG. More detailed contracts will be issued if/when the grant is awarded.

Chris Grubb CFM, CZO

Planning & Development Director

High Country Council of Governments

[cgrubb@hccog.org](mailto:cgrubb@hccog.org)

828-265-5434 (ext 121)



## Blowing Rock, North Carolina

### Proclamation

WHEREAS, Blowing Rock, North Carolina does affirm and acknowledge the harm and hardship caused by drug overdose; and

WHEREAS, we recognize the purpose of International Overdose Awareness Day as remembering loved ones lost to overdose and ending the stigma of drug-related deaths; and

WHEREAS, we resolve to play our part in reducing the toll of overdose in our community, which claimed the lives of 320 people in NC in February 2023, together with countless more affected forever; and

WHEREAS, we resolve to play our part in reducing deaths by overdose, knowing that 64.7% had at least one potential opportunity for intervention, and

WHEREAS, we affirm that the people affected by overdose are our children, our parents, our siblings, our neighbors, and they deserve our love, compassion and support, easy access to life-saving supplies, and treatment, and

WHEREAS, we affirm that the people who love people at risk of overdose or grieve those lost are our children, our parents, our siblings, our neighbors, and deserve our love, compassion and support, and opportunities to remember their loved ones publicly.

THEREFORE, I, \_\_\_\_\_, do hereby proclaim August 31st, 2024, as End Overdose in Watauga Day in Watauga County, North Carolina, and encourage all residents to consider being trained in the use of life-saving overdose reversal medication and having it available to use\*, to seek education and resources for support of people with Substance Use Disorders and the people who love them, and to seek education and support of people who grieve those lost to overdose deaths.

This the \_\_\_\_\_ day of August, 2024.

MAYOR \_\_\_\_\_

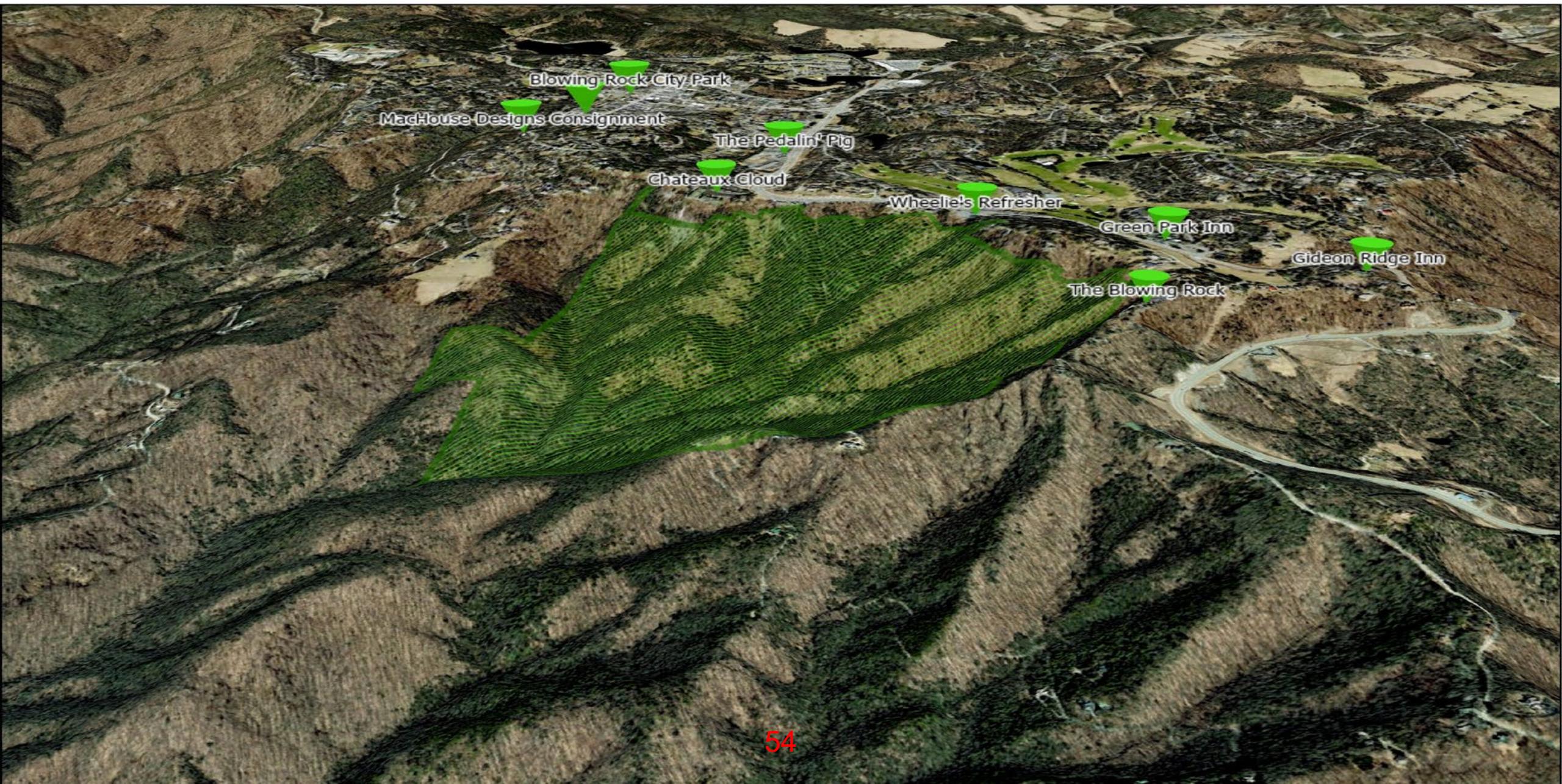
Charlie Sellers

# Johns River Headwaters GTSP Trail Grant Proposal



**FOOTHILLS  
CONSERVANCY**  
OF NORTH CAROLINA

# Johns River Headwaters Conservation Project



# Johns River Headwaters Property

Protected by FCNC on February 9, 2024

326-acre parcel adjoining USFS land

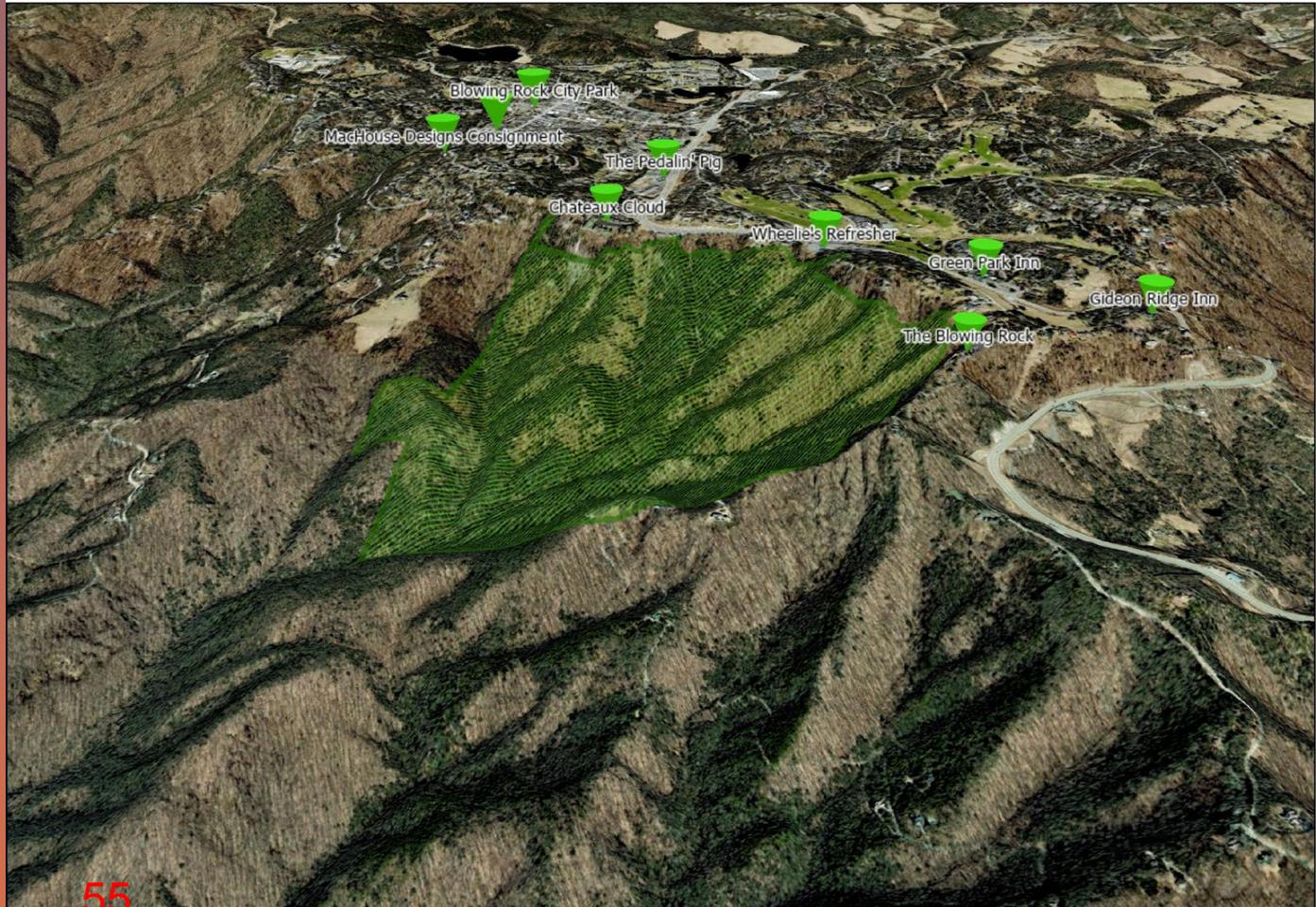
Protects significant natural communities and drinking water supply

Preserves iconic viewshed

Major community fundraising effort to purchase the land



Johns River Headwaters Conservation Project



# Photos of the Property



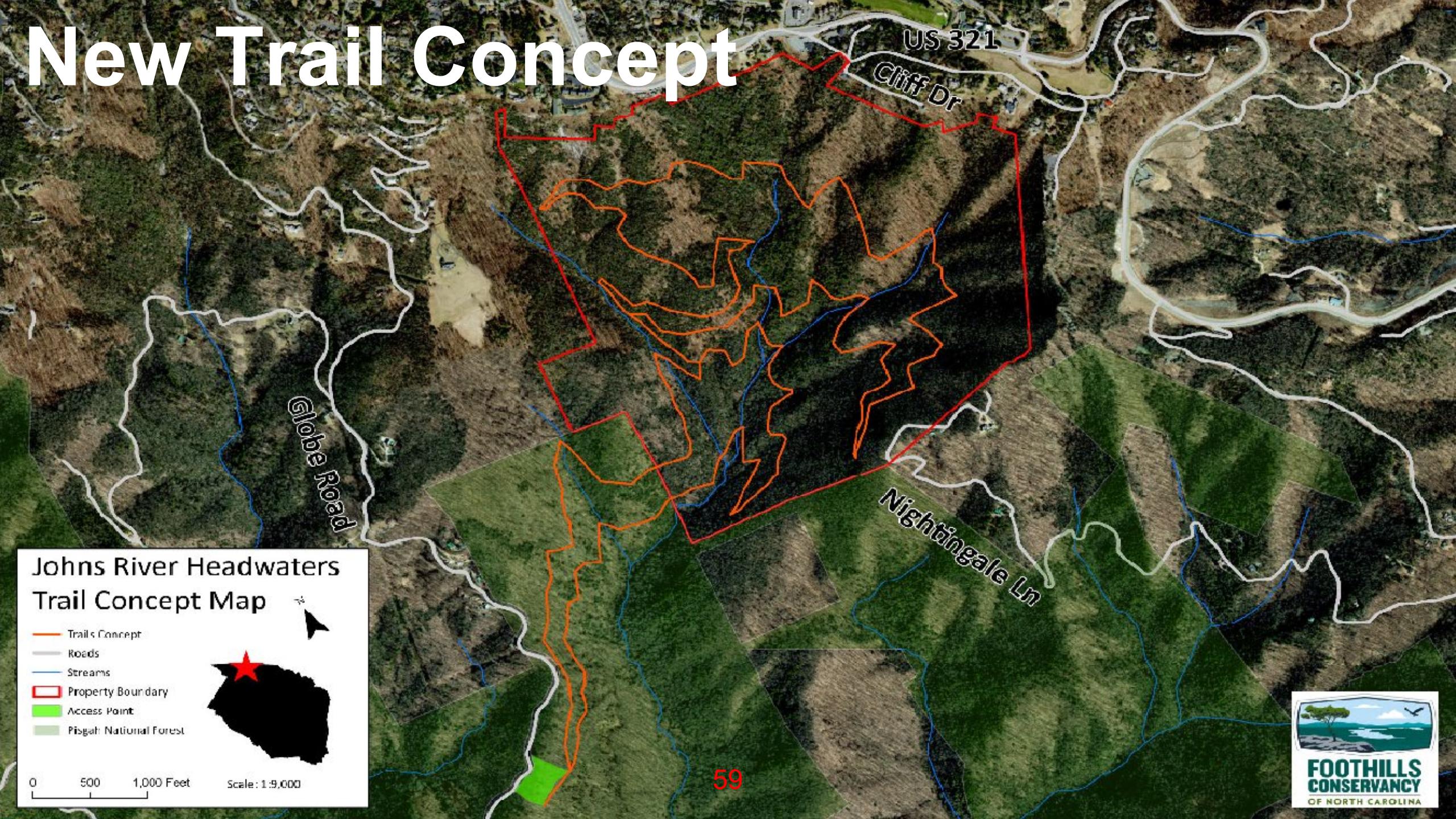
# Photos of the Property



# Photos of the Property



# New Trail Concept



# Trail Concept

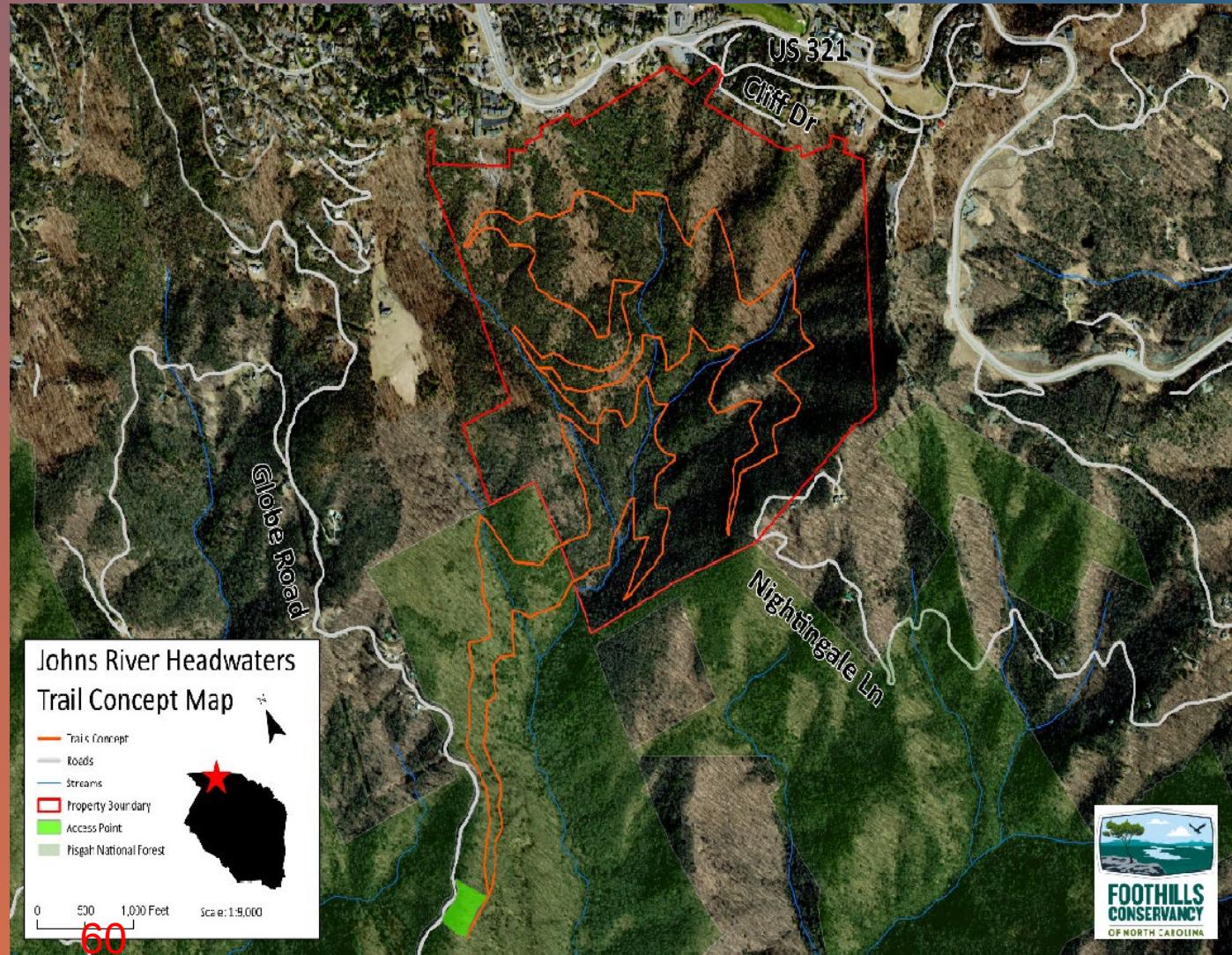
Concept plan derived from public comments

Focused on access from USFS lands off of Globe Rd

Terrain is steep and challenging, probable stream crossings

Will require NEPA permitting (Federal process)

Trail system will need a full and comprehensive planning process



# Great Trails State Program Grant

\$25 Million 1-time grant fund

\$100K grant minimum

2:1 match for Tier 2 Counties

Cash, non-Cash, and non-state grant funds accepted as match

App Deadline: September 3, 2024

## Great Trails State Program (GTSP)



### Award Timeline:

- Notice of Funding Opportunity (NOFO): March 1, 2024
- Application Deadline: September 3, 2024
- Awards made: Early 2025
- Contracts to selected recipients: Issued within 30 days of award announcement
- Project Period: 3 years

Contact [Recreation Resources Service \(RRS\)](#) for application assistance.

All applicants should [register](#) to submit an online application through [WebGrants](#).  
If you already have an account, you do not need to re-register.

# How would the grant work?

Foothills Conservancy of North Carolina (FCNC) writes the grant, Caldwell County approves the draft and submits grant

If awarded, Caldwell County would contract with FCNC to execute the grant and higher subcontractors as needed

FCNC would complete the design and permitting process to get project to shovel-ready status

Caldwell County closes out grant in webgrant system

FCNC would seek grant funding for construction of trail system



# Other Questions

- o

What is being asked of the City of Blowing Rock?

Write a letter of support for the grant

Contribute \$15K towards grant match. (Caldwell County is being asked to contribute \$15K and FCNC would contribute \$20K)

Why is FCNC asking Caldwell to be Applicant?

FCNC is applying for other GTSP grants. Having a different applicant increase the chance of a grant award.

Who will be responsible for building and maintain the trails?

FCNC will be responsible for building and maintain the trails, not Caldwell County

Who is responsible for the raising the match funds?

FCNC will be responsible for raising the match funds from other local governments and private donors

How long will this take?

The federal NEPA process can take three years to complete. FCNC will work to complete the project as quickly as possible

# Thank You for Your Consideration!

## Regular Agenda - Staff Report

**To: Mayor Charlie Sellers and the Blowing Rock Town Council**

**From: Shane Fox, Town Manager**

**Subject: Capital Loan 2024-2025 – bids and financing approval**

**Date: August 13, 2024**

### **Information:**

As a part of the 2024-2025 approved annual budget, the Town Council approved staff to proceed with soliciting bids for a Capital Loan to purchase vehicles and equipment requested and submitted within the annual budget. Those items for purchased total \$570,000 and included the following:

- New audio video for the Council Chambers
- Financial Software
- New heat pump for Town Hall
- Police Cruiser with lights, graphics, cameras, etc.
- Police equipment – various, radios, cameras, etc.
- Streets- Truck and Dingo
- Landscaping – Truck
- Plant Ops – Utility Truck, Mower, Push Camera

The Town publicly advertised and solicited bids on July 16<sup>th</sup> with all bids due by August 6<sup>th</sup>. We received a total of 7 bids, with a low bid received from Huntington Bank with terms of 4 years at 3.74% interest.

### **Recommendation:**

Staff recommends the Town Council approves the low bid received from Huntington Bank for a term of 4 years at 3.74% interest.

### **Attachments:**

1. Bid Sheet with results
2. Term Sheet – Huntington Bank
3. Financing Schedule
4. Resolution – to accept financing and terms from Huntington Bank
5. Installment Financing Agreement

## Town of Blowing Rock, North Carolina

2024 Installment Financing Contract

Summary of Bids Received

August 6, 2024

Bank	Rate	Fees	Effective Rate	Prepayment	Additional Terms
Huntington Bank	3.7400%	\$3,000	3.9635%	Before Year 2 @ 101% After Year 2 @ Par	Additional \$500 fee if funds are escrowed at Huntington Proposal must be accepted by August 9th Rate is locked until August 22nd
Cogent Bank	3.9400%	\$500	3.9772%	Any payment date @ 102%	Proposal must be accepted by August 19th Rate is locked until September 5th Escrow can be funded at Cogent (not required)
US Bank	4.0600%	Amount Not Specified	4.0600%	After 13 months @ 103%	Rate is locked until October 5th Can be funded into no fee escrow account at US Bank Town responsible for taxes, maintenance, and insurance US Bank to provide documentation
First National Bank	4.1600%	\$0	4.1600%	Any time at par	Rate is locked for 60 days Town is responsible for UCC fees Audits due within 120 days of fiscal year end Require business loan agreement
First Citizens Bank	4.4800%	\$0	4.4800%	Any time at par	Must close within 30 days
Flagstar Bank	4.4150%	\$0	4.4150%	Any payment date @ 101%	Rate is locked until September 6th Proceeds funded into no fee escrow at Flagstar Bank Flagstar to provide documentation
United Community Bank	5.2800%	Amount Not Specified	5.2800%	Any time at par	Borrowing amount NTE 100% of collateral cost Must close by August 22nd Default rate of 2.00% may be added Must maintain deposit accounts



## TERM SHEET

<b>DATE:</b>	August 6, 2024
<b>TYPE OF TRANSACTION:</b>	Installment Purchase Contract (the "IPC")
<b>ISSUER:</b>	Town of Blowing Rock, NC (the "Town")
<b>PURCHASER:</b>	Huntington Public Capital Corporation ("Huntington")
<b>FINANCED AMOUNT:</b>	\$592,000.00
<b>USE OF PROCEEDS:</b>	The proceeds of the IPC will be used 1) to pay the costs of acquiring various equipment, as detailed below and 2) to pay the costs of issuance.
<b>SECURITY:</b>	The IPC will be secured by a security interest in the Equipment being financed. Huntington will be filing a UCC on the Equipment at its own expense. The Town's obligation to pay the debt service under the 2024 Contract will be subject to annual appropriation by the Town Council.
<b>INSURANCE:</b>	The Town, at its own expense, will provide insurance naming Huntington as loss payee and additional insured on the Equipment being financed.
<b>BOND COUNSEL:</b>	Sands Anderson PC
<b>PURCHASER'S COUNSEL:</b>	TBD
<b>FEE TO HUNTINGTON FOR COUNSEL:</b>	\$1,500.00
<b>CLOSING DATE:</b>	August 22, 2024
<b>TAX STATUS:</b>	Tax-Exempt, Bank Qualified
<b>FINAL MATURITY:</b>	August 1, 2028
<b>PAYMENTS:</b>	Annually interest and principal payments on August 1, beginning August 1, 2025. Interest will be calculated on a 30/360 basis.
<b>INTEREST RATE:</b>	3.74%
<b>ESCROW AGENT:</b>	If the Equipment is not ready for delivery at Closing, an Escrow Account at the Bank of the Town's choosing would be required at the Town's expense with Huntington's sign-off on the disbursements.
<b>ESCROW FEE:</b>	n/a
<b>RATE ADJUSTMENT:</b>	If the funding of the IPC has not occurred by August 22, 2024, then the Interest Rate and payment will be adjusted to maintain Huntington's economics as of the date of issuing this Term Sheet.
<b>OPTIONAL PREPAYMENT:</b>	The IPC is subject to optional prepayment, in whole but not in part, upon 30 days prior written notice to the Purchaser as follows: <ul style="list-style-type: none"> <li>• 101% of the then principal balance plus accrued interest any time before August 1, 2026.</li> <li>• 100% of the then principal balance plus accrued interest anytime on or after August 1, 2026.</li> </ul>

<b>DOCUMENTATION:</b>	Transaction documents shall be prepared by the Town's Special Counsel, subject to review by Huntington and its Purchaser's Counsel.
<b>DIRECT PLACEMENT:</b>	Huntington is extending credit as a lender in the usual course of its loan business through the purchase of the IPC for its own account in its normal and customary business practice, with no current intention on the resale, distribution or transfer thereof.
<b>CREDIT APPROVAL:</b>	The terms set forth herein reflect a proposed, preliminary structure and are subject to final credit approval by Huntington and the negotiation of mutually acceptable documentation. They do not represent all of the terms and conditions that may ultimately be included in a financing between the Issuer and Huntington.
<b>PAYING AGENT:</b>	Town of Blowing Rock, NC
<b>RATING:</b>	Not required by Huntington
<b>POS/OFFICIAL STATEMENT:</b>	Not required by Huntington
<b>CUSIP:</b>	Not required by Huntington
<b>DTC CLOSING:</b>	Not required by Huntington
<b>PROPOSAL EXPIRATION:</b>	This proposal shall expire at Huntington's option if (a) Huntington has not received the Issuer's written acceptance by August 14, 2024 and (b) if the closing date of the IPC has not occurred by August 22, 2024.
<b>HUNTINGTON CONTACT:</b>	Abby King Huntington Public Capital Cell: (614) 204-0121 Email: <a href="mailto:abby.king@huntington.com">abby.king@huntington.com</a>

Respectfully Submitted,

Abigail E King

**ACCEPTED BY:**  
Town of Blowing Rock, NC

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Issuer TIN \_\_\_\_\_

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**TOWN OF BLOWING ROCK, NORTH CAROLINA**  
**2024 INSTALLMENT FINANCING (GENERAL FUND EQUIPMENT)**  
**FINANCING SCHEDULE**

Jul-24							Aug-24							
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	
1	2	3	4	5	6							1	2	3
7	8	9	10	11	12	13	4	5	6	7	8	9	10	
14	15	16	17	18	19	20	11	12	13	14	15	16	17	
21	22	23	24	25	26	27	18	19	20	21	22	23	24	
28	29	30	31				25	26	27	28	29	30	31	

DATE	TASK	RESPONSIBILITY
July 15	Distribute Draft of Bank RFP	FTA
July 16	Distribute Bank RFP to Banks	FTA
August 6	Bank Bids Due; Call to Select Winning Bank	Working Group
August 13	Town Council Adopts Approving Resolution; Approves Winning Bidder	T
August 15	Circulate Drafts of Closing Documents	BC
August 22	Closing	Working Group

Town Council typically meets 2<sup>nd</sup> Tuesday of each month

**Responsibility Legend:**

Role	Entity	Defined
Issuer	Town of Blowing Rock	"T"
Bond Counsel	Sands Anderson PC	"BC"
Financial Advisor	First Tryon Advisors	"FTA"
Bank Lender	Huntington Public Capital	"BL"
Bank Counsel	TBD	"LC"

**Town of Blowing Rock, North Carolina**  
 2024 Installment Financing (General Fund Equipment)  
**DISTRIBUTION LIST**

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Name, Title and Address	Work Number	Email Address
<b>ISSUER</b>		
Town of Blowing Rock, North Carolina 1036 Main Street Blowing Rock, NC 28605		
Shane Fox, Town Manager Tasha Brown, Finance Officer	(828) 295-5200 (828) 295-5200	<a href="mailto:sfox@townofblowingrocknc.gov">sfox@townofblowingrocknc.gov</a> <a href="mailto:tbrown@tobr.us">tbrown@tobr.us</a>
<b>BOND COUNSEL</b>		
Sands Anderson 1005 Slater Road, Suite 200 Durham, NC 27703		
Paul Jacobson, Shareholder Ashley L. Anderson, Counsel	(919) 313-0045 (919) 313-0047	<a href="mailto:pjacobs@sandsanderson.com">pjacobs@sandsanderson.com</a> <a href="mailto:aanderson@sandsanderson.com">aanderson@sandsanderson.com</a>
<b>FINANCIAL ADVISOR</b>		
First Tryon Advisors 6101 Carnegie Blvd., Suite 210 Charlotte, NC 28209		
Amy Vitner, Managing Director Brandon DeCoste, Vice President	(704) 926-2457 (704) 926-2981	<a href="mailto:avitner@firsttryon.com">avitner@firsttryon.com</a> <a href="mailto:bdecoste@firsttryon.com">bdecoste@firsttryon.com</a>
<b>BANK</b>		
Huntington Public Capital 41 S. High Street Columbus, OH 43215		
Abby King	(614) 204-0121	<a href="mailto:abby.king@huntington.com">abby.king@huntington.com</a>
<b>BANK COUNSEL</b>		
TBD		
-		
-		
<b>Email Distribution:</b>		
<a href="mailto:sfox@townofblowingrocknc.gov">sfox@townofblowingrocknc.gov</a> ; <a href="mailto:tbrown@tobr.us">tbrown@tobr.us</a> ; <a href="mailto:pjacobs@sandsanderson.com">pjacobs@sandsanderson.com</a> ; <a href="mailto:aanderson@sandsanderson.com">aanderson@sandsanderson.com</a> ; <a href="mailto:avitner@firsttryon.com">avitner@firsttryon.com</a> ; <a href="mailto:bdecoste@firsttryon.com">bdecoste@firsttryon.com</a> ; <a href="mailto:abby.king@huntington.com">abby.king@huntington.com</a>		

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2024 Installment Financing  
Proposed Final Numbers

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## SOURCES AND USES OF FUNDS

Town of Blowing Rock, North Carolina  
2024 Installment Financing  
Proposed Final Numbers

Dated Date	08/22/2024
Delivery Date	08/22/2024

### **Sources:**

Bond Proceeds:	
Par Amount	588,000.00
	588,000.00

### **Uses:**

Project Fund Deposits:	
Project Fund	566,359.00
Delivery Date Expenses:	
Cost of Issuance	21,400.00
Other Uses of Funds:	
Additional Proceeds	241.00
	588,000.00



## BOND SUMMARY STATISTICS

Town of Blowing Rock, North Carolina  
 2024 Installment Financing  
 Proposed Final Numbers

Dated Date	08/22/2024
Delivery Date	08/22/2024
First Coupon	08/01/2025
Last Maturity	08/01/2028
Arbitrage Yield	3.707227%
True Interest Cost (TIC)	3.707227%
Net Interest Cost (NIC)	3.740000%
All-In TIC	5.296011%
Average Coupon	3.740000%
Average Life (years)	2.484
Weighted Average Maturity (years)	2.484
Duration of Issue (years)	2.396
Par Amount	588,000.00
Bond Proceeds	588,000.00
Total Interest	54,630.18
Net Interest	54,630.18
Total Debt Service	642,630.18
Maximum Annual Debt Service	160,797.00
Average Annual Debt Service	163,035.14
Underwriter's Fees (per \$1000)	
Average Takedown	
Other Fee	
Total Underwriter's Discount	
Bid Price	100.000000

<b>Bond Component</b>	<b>Par Value</b>	<b>Price</b>	<b>Average Coupon</b>	<b>Average Life</b>	<b>PV of 1 bp change</b>
Bond Component	588,000.00	100.000	3.740%	2.484	137.48
	588,000.00			2.484	137.48

	TIC	All-In TIC	Arbitrage Yield
Par Value	588,000.00	588,000.00	588,000.00
+ Accrued Interest			
+ Premium (Discount)			
- Underwriter's Discount			
- Cost of Issuance Expense		(21,400.00)	
- Other Amounts			
Target Value	588,000.00	566,600.00	588,000.00
Target Date	08/22/2024	08/22/2024	08/22/2024
Yield	3.707227%	5.296011%	3.707227%



## BOND PRICING

Town of Blowing Rock, North Carolina  
2024 Installment Financing  
Proposed Final Numbers

<b>Bond Component</b>	<b>Maturity</b>	<b>Date</b>	<b>Amount</b>	<b>Rate</b>	<b>Yield</b>	<b>Price</b>
Bond Component:						
	08/01/2025	140,000	3.740%	3.740%	100.000	
	08/01/2026	144,000	3.740%	3.740%	100.000	
	08/01/2027	149,000	3.740%	3.740%	100.000	
	08/01/2028	155,000	3.740%	3.740%	100.000	
						588,000
Dated Date				08/22/2024		
Delivery Date				08/22/2024		
First Coupon				08/01/2025		
Par Amount					588,000.00	
Original Issue Discount						
Production				588,000.00		100.000000%
Underwriter's Discount						
Purchase Price				588,000.00		100.000000%
Accrued Interest						
Net Proceeds				588,000.00		



**BOND DEBT SERVICE**

Town of Blowing Rock, North Carolina  
2024 Installment Financing  
Proposed Final Numbers

Dated Date 08/22/2024  
Delivery Date 08/22/2024

<b>Period Ending</b>	<b>Principal</b>	<b>Coupon</b>	<b>Interest</b>	<b>Debt Service</b>
06/30/2026	140,000	3.740%	20,708.38	160,708.38
06/30/2027	144,000	3.740%	16,755.20	160,755.20
06/30/2028	149,000	3.740%	11,369.60	160,369.60
06/30/2029	155,000	3.740%	5,797.00	160,797.00
	588,000		54,630.18	642,630.18



## BOND DEBT SERVICE

Town of Blowing Rock, North Carolina  
2024 Installment Financing  
Proposed Final Numbers

Dated Date                    08/22/2024  
Delivery Date                08/22/2024

<b>Period Ending</b>	<b>Principal</b>	<b>Coupon</b>	<b>Interest</b>	<b>Debt Service</b>	<b>Annual Debt Service</b>
08/01/2025	140,000	3.740%	20,708.38	160,708.38	
06/30/2026					160,708.38
08/01/2026	144,000	3.740%	16,755.20	160,755.20	
06/30/2027					160,755.20
08/01/2027	149,000	3.740%	11,369.60	160,369.60	
06/30/2028					160,369.60
08/01/2028	155,000	3.740%	5,797.00	160,797.00	
06/30/2029					160,797.00
	588,000		54,630.18	642,630.18	642,630.18



## FORM 8038 STATISTICS

Town of Blowing Rock, North Carolina  
2024 Installment Financing  
Proposed Final Numbers

Dated Date                    08/22/2024  
Delivery Date                08/22/2024

<b>Bond Component</b>	<b>Date</b>	<b>Principal</b>	<b>Coupon</b>	<b>Price</b>	<b>Issue Price</b>	<b>Redemption at Maturity</b>
Bond Component:						
	08/01/2025	140,000.00	3.740%	100.000	140,000.00	140,000.00
	08/01/2026	144,000.00	3.740%	100.000	144,000.00	144,000.00
	08/01/2027	149,000.00	3.740%	100.000	149,000.00	149,000.00
	08/01/2028	155,000.00	3.740%	100.000	155,000.00	155,000.00
		588,000.00			588,000.00	588,000.00

	<b>Maturity Date</b>	<b>Interest Rate</b>	<b>Issue Price</b>	<b>Stated Redemption at Maturity</b>	<b>Weighted Average Maturity</b>	<b>Yield</b>
Final Maturity	08/01/2028	3.740%	155,000.00	155,000.00		
Entire Issue			588,000.00	588,000.00	2.4842	3.7072%

Proceeds used for accrued interest	0.00
Proceeds used for bond issuance costs (including underwriters' discount)	21,400.00
Proceeds used for credit enhancement	0.00
Proceeds allocated to reasonably required reserve or replacement fund	0.00



## DISCLAIMER

Town of Blowing Rock, North Carolina  
2024 Installment Financing  
Proposed Final Numbers

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A regular meeting of the Town Council of the Town of Blowing Rock, a municipal corporation of the State of North Carolina, was duly held on August 13, 2024, proper notice of such meeting having been given as required by North Carolina statute, and minutes of said meeting have been duly recorded in the minutes of the Town in accordance with law for the purpose of recording the minutes of said Town Council.

Present:

Absent:

Also Present:

\* \* \* \* \*

Town Manager Fox introduced the following resolution, the title of which was read and a copy of which had been previously distributed to each member of the Town Council:

**RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT FINANCING AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH THE FINANCING OF EQUIPMENT FOR THE TOWN OF BLOWING ROCK, NORTH CAROLINA**

WHEREAS, the Town Council (**the “Town Council”**) of the Town of Blowing Rock, North Carolina (**the “Town”**) desires to finance the costs of acquiring vehicles and other equipment for Town municipal purposes, as more particularly described in the request for proposals (**the “RFP”**) sent by the Town’s financial advisor to financial institutions (**together, the “Project”**) by executing and delivering an installment financing contract, as authorized under Section 160A-20 of the General Statutes of North Carolina; and

WHEREAS, in response to the RFP Huntington Public Capital Corporation (**the “Lender”**) submitted a proposal to the Town dated August 6, 2024 (**the “Lender’s Proposal”**) pursuant to which the Lender will enter into an installment financing agreement with the Town in an amount of up to \$592,000 to finance the Project and pay certain costs associated with the

financing (**the “Installment Financing Agreement”**), to be secured by a lien on the Project for the benefit of the Lender; and

WHEREAS, the Installment Financing Agreement shall be for a term of less than five years and the Town is not included on the most recently published Unit Assistance List issued by the Department of State Treasurer and therefore the Installment Financing Agreement is not subject to approval by the North Carolina Local Government Commission.

NOW, THEREFORE, BE IT RESOLVED by the Town Council as follows:

1. There exists in the Town a need to finance the costs of the Project.
2. After due consideration, the Town Council accepts the Lender’s Proposal and has determined that the most efficient manner of financing the Project will be through entering into the Installment Financing Agreement between the Town and the Lender.
3. Pursuant to the Installment Financing Agreement, the Lender will advance an amount sufficient, together with any other available funds, to (i) pay the costs of the Project and (ii) pay certain financing costs associated therewith, and the Town will repay the advancement in installments, with interest thereon (**the “Installment Payments”**).
4. In order to provide for the financing of the Project and the payment of the financing costs associated therewith, the Town is hereby authorized to enter into the Installment Financing Agreement and receive an advancement pursuant thereto in the principal amount not to exceed \$592,000. The Town shall repay the advancement in installments due in the amounts and at the times set forth in the Installment Financing Agreement. The payments of the Installment Payments shall be designated as principal and interest as provided in the Installment Financing Agreement. The interest rate payable under the Installment Financing Agreement shall be 3.74% per annum (subject to adjustment in certain events as may be provided in the Installment Financing Agreement), and the final Installment Payment due under the Installment Financing Agreement

shall be less than five years from the date of the execution and delivery of the Installment Financing Agreement.

5. The Town Council hereby approves the Installment Financing Agreement in substantially the form presented at this meeting. The Mayor or Mayor Pro-Tem, the Town Manager and the Finance Director of the Town are each hereby authorized to execute and deliver the Installment Financing Agreement in substantially the form presented at this meeting and not inconsistent with the Lender's Proposal, containing such modifications as the person executing such documents, with the advice of counsel, shall approve, such execution to be conclusive evidence of approval by the Town Council of any such changes. The Town Clerk or any Deputy Town Clerk or Assistant Town Clerk is hereby authorized and directed to affix the corporate seal of the Town to the Installment Financing Agreement and to attest the same as may be required.

6. The Town Council believes that funds sufficient to make payment of all amounts payable under the Installment Financing Agreement can be obtained. While recognizing that it is not empowered to make any binding commitment to make such payments beyond the current fiscal year, the Town Council hereby states its intent to make annual appropriations for future fiscal years in amounts sufficient to make all such payments and hereby recommends that future Town Councils do likewise during the term of the Installment Financing Agreement. In accordance with Section 160A-20 of the General Statutes of North Carolina, no deficiency judgment may be rendered against the Town in any action for breach of any contractual obligation under the Installment Financing Agreement, and the taxing power of the Town is not and may not be pledged directly or indirectly to secure any moneys due under the Installment Financing Agreement.

7. The Chair or Vice Chair, the Town Manager, the Finance Director, the Town Attorney, the Clerk to the Town Council or any Deputy or Assistant Clerk to the Town Council, Sands Anderson PC as special counsel to the Town, and any other officers, agents and employees

of the Town, are hereby authorized and directed to execute, deliver, and affix the corporate seal of the Town as needed, to such other agreements (including any escrow agreement as may be required by the Lender in relation to proceeds to be received under the Installment Financing Agreement), documents, instruments, closing certificates, tax certificates, opinions and other items of evidence and take such other actions as shall be deemed necessary or appropriate to consummate the transactions described above. The actions of the Town Manager and the Town Finance Officer in retaining the assistance of First Tryon as financial advisor for the Town and Sands Anderson PC as bond counsel for the Town to assist with the financing of the Project, including execution of an engagement agreement, are approved and ratified. Any such actions heretofore taken by such persons prior to the date hereof that is within the authority conferred herein is hereby ratified, confirmed and approved.

8. The Town covenants that it will not take or permit, or omit to take or cause to be taken, any action that would adversely affect the exclusion from gross income of the recipient thereof for federal income tax purposes of the interest components of the Installment Payments. The Town acknowledges that the continued exclusion of interest on the Bond from the owner's gross income for federal income tax purposes depends, in part, on compliance with the arbitrage limitations imposed by Section 148 of the Internal Revenue Code of 1986, as amended (**the "Code"**) and covenants that it will comply with all the requirements of Section 148 of the Code, including the rebate requirements.

9. The Town Council, on behalf of the Town, intends for the Installment Financing Agreement to be treated as complying with the provisions of Section 148(f)(4)(D) of the Code and Section 1.148-8 of the U.S. Treasury Regulations thereunder, which provides an exception from such rebate requirements, since the Installment Financing Agreement (1) is issued by the Town which is a governmental unit with general taxing powers, (2) no obligation which is a part of this Installment

Financing Agreement issue is a private activity bond, (3) 95% or more of the net proceeds of the Installment Financing Agreement are to be used for local governmental activities of the Town, and (4) the aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by the Town during the calendar year 2024 (and bonds issued by any subordinate entity of the Town) is not reasonably expected to exceed \$5,000,000 increased by the lesser of \$10,000,000 or so much as are attributable to the financing of the construction of public school facilities within the meaning of Section 148(f)(D)(vii) of the Code.

10. The Town Council, on behalf of the Town, certifies by this resolution that it does not reasonably anticipate the issuance by it or its subordinate entities of more than \$10,000,000 in “qualified tax-exempt obligations” (excluding private activity bonds) during the calendar year 2024 and will not designate (excluding any tax-exempt obligations deemed designated pursuant to the provisions of § 265(b)(3)(D)(ii) of the Code), or permit the designation by any of its subordinate entities of any tax-exempt obligations during the calendar year 2024 which would cause the \$10,000,000 limitation of Section 265(b)(3)(D) of the Code to be violated, and hereby designates the Installment Financing Agreement as “qualified tax-exempt obligations” for the purpose of § 265(b)(3) of the Code.

11. This resolution shall take effect immediately upon its adoption.

Upon motion of \_\_\_\_\_, and seconded by \_\_\_\_\_, the foregoing resolution entitled “RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT FINANCING AGREEMENT AND RELATED

DOCUMENTS IN CONNECTION WITH THE FINANCING OF EQUIPMENT FOR THE TOWN OF BLOWING ROCK, NORTH CAROLINA" was adopted by the following vote:

Ayes:

Noes:

\* \* \* \* \*

I, Hilari Hubner, Town Clerk for the Town of Blowing Rock, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of said Town Council for said Town at a regular meeting held on August 13, 2024, as it relates in any way to the adoption of the foregoing resolution and that said proceedings are to be recorded in the minutes of said Town Council.

I DO HEREBY FURTHER CERTIFY that proper notice of such regular meeting was given as required by North Carolina law.

WITNESS my hand and the official seal of said Town this \_\_\_\_ day of August, 2024.

---

Hilari Hubner  
Town Clerk  
Town of Blowing Rock, North Carolina

[SEAL]

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

---

Tasha Brown  
Finance Director  
Town of Blowing Rock, North Carolina

### **INSTALLMENT FINANCING AGREEMENT**

**THIS INSTALLMENT FINANCING AGREEMENT** (this "Agreement") is dated as of \_\_\_\_\_, 2024 and is between the **TOWN OF BLOWING ROCK, NORTH CAROLINA**, a public body of the State of North Carolina (the "Town"), and **HUNTINGTON PUBLIC CAPITAL CORPORATION** (the "Lender").

#### **RECITALS:**

The Town has the power, pursuant to Section 160A-20 of the North Carolina General Statutes, to enter into installment contracts to finance the purchase of personal property and to secure its obligations under such contracts by security interests in all or a portion of the property purchased. This Agreement provides for the Lender to advance \$592,000 to the Town to enable the Town to acquire the Equipment (as defined below), and provides for securing the Town's obligations under this Agreement by creating certain security interests in favor of the Lender.

**NOW THEREFORE**, for and in consideration of the mutual promises in this Agreement, and other good and valuable consideration, the parties hereby agree as follows:

### **ARTICLE I**

#### **DEFINITIONS; INTERPRETATION**

Unless the context clearly requires otherwise, capitalized terms used in this Agreement and not otherwise defined shall have the following meanings:

"Additional Payments" means any of the Lender's reasonable and customary fees and expenses related to the transactions contemplated by this Agreement, any of the Lender's expenses (including reasonable attorneys' fees) in prosecuting or defending any action or proceeding in connection with this Agreement, any required license or permit fees, state and local sales and use or ownership taxes or property taxes which the Lender is required to pay as a result of this Agreement, inspection and reinspection fees, and any other amounts payable by the Town (or paid by the Lender on the Town's behalf) as a result of its covenants under this Agreement (together with interest that may accrue on any of the above if the Town shall fail to pay the same, as set forth in this Agreement).

"Amount Advanced" has the meaning assigned in Section 2.02.

"Bond Counsel Opinion" means a written opinion (in form and substance acceptable to the Lender) of an attorney or firm of attorneys acceptable to the Lender.

"Business Day" means any day on which banks in the State are not by law authorized or required to remain closed.

"Closing Date" means the date on which this Agreement is first executed and delivered by the parties.

"Code" means the Internal Revenue Code of 1986, as amended, including regulations, rulings and revenue procedures promulgated thereunder or under the Internal Revenue Code of 1954, as amended, as applicable to the County's obligations under this Agreement and all proposed (including temporary) regulations which, if adopted in the form proposed, would apply to such obligations. Reference to any specific Code provision shall be deemed to include any successor provisions thereto.

"Equipment" has the meaning assigned in Section 2.03, and is generally expected to include the personal property described in Exhibit A.

"Event of Default" means one or more events of default as defined in Section 6.01.

"Event of Nonappropriation" means any failure by the Governing Council to adopt, by the first day of any Fiscal Year, a budget for the Town that includes an appropriation for Required Payments as contemplated by Section 3.05.

"Finance Officer" means the Town officer from time to time charged with preparing the Town's draft budget as initially submitted to the Governing Board for its consideration.

"Fiscal Year" means the Town's fiscal year beginning July 1 or such other fiscal year as the Town may later lawfully establish.

"Governing Council" means the Town's governing board as from time to time constituted.

"Installment Payments" means the payments payable by the Town pursuant to Section 3.01.

"Net Proceeds," when used with respect to any amounts derived from claims made on account of insurance coverages required under this Agreement, any condemnation award arising out of the condemnation of all or any portion of the Equipment, or any amounts received in lieu or in settlement of any of the foregoing, means the amount remaining after deducting from the gross proceeds thereof all expenses (including reasonable attorneys' fees and costs) incurred in the collection of such proceeds, and after reimbursement to the Town or the Lender for amounts previously expended to remedy the event giving rise to such payment or proceeds.

"Payment Dates" means the dates indicated in Exhibit B.

"Required Payments" means Installment Payments and Additional Payments.

"Section 160A-20" means Section 160A-20 of the North Carolina General Statutes, as amended, or any successor provision of law.

"Security Property" means the Equipment.

"State" means the State of North Carolina.

"Town" means the Town of Blowing Rock, North Carolina.

"Town Representative" means the Town's Finance Director or such other person or persons at the time designated, by a written certificate furnished to the Lender and signed on the Town's behalf by the presiding officer of the Town's Governing Town Council, to act on the Town's behalf for any purpose (or any specified purpose) under this Agreement.

"UCC" means the Uniform Commercial Code or any successor law as in effect from time to time in the State, currently Chapter 25 of the North Carolina General Statutes.

All references in this Agreement to designated "Sections" and other subdivisions are to the designated sections and other subdivisions of this Agreement. The words "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision unless the context indicates otherwise. Words importing the singular number shall include the plural number and vice versa.

## **ARTICLE II**

### **SECURITY PROVIDED BY THIS AGREEMENT; ADVANCE**

**2.01. Security for Payment and Performance.** This Agreement secures the Town's payment, as and when the same shall become due and payable, of all Required Payments and the Town's timely compliance with all terms, covenants and conditions of this Agreement.

**2.02. Advance.** The Lender advances \$592,000 (the "Amount Advanced") to the Town on the Closing Date, and the Town hereby accepts the Amount Advanced from the Lender. All of the Amount Advanced and all investment earnings thereon, if any shall be used only for acquisition of the Equipment and costs of issuing and delivering this Agreement.

**2.03. Security Agreement.**

(a) This Agreement is intended as and constitutes a security agreement pursuant North Carolina law with respect to all property acquired by the Town with funds advanced by the Lender pursuant to this Agreement, all personal property obtained in substitution or replacement therefor, and all personal property obtained in substitution or replacement for any portion of the Security Property, and all proceeds of the foregoing, including insurance proceeds (collectively, the

"Equipment").

The Town hereby grants to the Lender a security interest in the Equipment to secure the Required Payments.

(b) The Town shall cause Equipment title documents to reflect the security interests granted herein and, if requested by the Lender, to execute, deliver and file, or cause to be filed, in such place or places as may be required by law, financing statements (including any continuation statements required by the UCC or requested by the Lender) in such form as the Lender may reasonably require to perfect and continue the security interest in the Equipment.

**2.04. Town's Limited Obligation.** (a) THE PARTIES INTEND THAT THIS TRANSACTION COMPLY WITH SECTION 160A-20. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE TOWN'S FAITH AND CREDIT WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS AN IMPROPER DELEGATION OF GOVERNMENTAL POWERS OR AS A DONATION OR A LENDING OF THE TOWN'S CREDIT WITHIN THE MEANING OF THE STATE CONSTITUTION. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE TOWN IN VIOLATION OF SECTION 160A-20. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the Town's moneys (other than the funds held under this Agreement), nor shall any provision of this Agreement restrict the future issuance of any of the Town's bonds or obligations payable from any class or source of the Town's moneys (except to the extent this Agreement restricts the incurrence of additional obligations secured by the Security Property). To the extent of any conflict between this Section and any other provision of this Agreement, this Section shall take priority.

(b) Nothing in this Section is intended to impair or prohibit execution on the Security Property if the Required Payments are not paid when due or otherwise upon the occurrence of an Event of Default under this Agreement.

**2.05. Town's Continuing Obligations.** The Town shall remain liable for full performance of all its covenants under this Agreement (subject to the limitations described in Section 2.04), including payment of all Required Payments, notwithstanding the occurrence of any event or circumstances whatsoever, including any of the following:

- (a) The Lender's waiver of any right granted or remedy available to it;
- (b) The forbearance or extension of time for payment or performance of any obligation under this Agreement, whether granted to the Town, a subsequent owner of the Equipment or any other person;
- (c) The release of all or part of the Security Property or the release of any party who assumes all or any part of such performance;
- (d) Any act or omission by the Lender (but this section provision does not relieve the Lender of any of its obligations under this Agreement);

- (e) The sale of all or any part of the Security Property; or
- (f) Another party's assumption of the Town's obligations under this Agreement.

## ARTICLE III

### **TOWN'S PAYMENT OBLIGATION AND RELATED MATTERS**

**3.01. Installment Payments.** The Town shall repay the Amount Advanced by making Installment Payments to the Lender in lawful money of the United States at the times and in the amounts set forth in Exhibit B, except as otherwise provided in this Agreement. As indicated in Exhibit B, the Installment Payments reflect the repayment of the Amount Advanced and include designated interest components.

**3.02. Additional Payments.** The Town shall pay all Additional Payments on a timely basis directly to the person or entity to which such Additional Payments are owed in lawful money of the United States.

**3.03. Prepayment.** The Town may prepay the outstanding principal component of the Amount Advanced, at its option, in whole but not in part, upon providing 30 days advance written notice to Lender, and by paying (a) at any time before August 1, 2026, all Additional Payments then due and payable, all interest accrued and unpaid to the prepayment date, and 101% of the outstanding principal amount and (b) on or after August 1, 2026, all Additional Payments then due and payable, all interest accrued and unpaid to the prepayment date, and 100% of the outstanding principal amount.

#### **3.04. [Reserved]**

**3.05. Appropriations.** (a) The Finance Officer shall include in the initial proposal for each of the Town's annual budgets the amount of all Installment Payments and estimated Additional Payments coming due during the Fiscal Year to which such budget applies. Notwithstanding that the Finance Officer includes such an appropriation for Required Payments in a proposed budget, the Governing Council may determine not to include such an appropriation in the Town's final budget for such Fiscal Year.

(b) The Finance Officer shall deliver to the Lender, within 15 days after the beginning of each Fiscal Year, a certificate stating whether an amount equal to the Installment Payments and estimated Additional Payments coming due during the next Fiscal Year has been appropriated by the Town in such budget for such purposes. If such amount has not been so appropriated, the Finance Officer shall send by U.S. mail, postage prepaid, a copy of such certificate to the LGC, to the attention of its Secretary, at 3200 Atlantic Avenue, Raleigh NC 27604.

(c) The actions required of the Town and its officers pursuant to this Section shall be deemed to be and shall be construed to be in fulfillment of ministerial duties, and it shall be the duty of each and every Town official to take such action and do such things as are required by law in the

performance of the official duty of such officials to enable the Town to carry out and perform the actions required pursuant to this Section and the remainder of this Agreement to be carried out and performed by the Town.

(d) The Town reasonably believes that it can obtain funds sufficient to pay all Required Payments when due.

**3.06. No Abatement.** There shall be no abatement or reduction of the Required Payments for any reason, including, but not limited to, any defense, recoupment, setoff, counterclaim, or any claim (real or imaginary) arising out of or related to the Equipment, except as expressly provided in this Agreement. The Town assumes and shall bear the entire risk of loss and damage to the Equipment from any cause whatsoever. The Installment Payments shall be made in all events unless the Town's obligation to make Installment Payments is terminated as otherwise provided in this Agreement.

## ARTICLE IV

### TOWN'S COVENANTS, REPRESENTATIONS AND WARRANTIES

**4.01. Indemnification.** To the extent permitted by law, the Town shall indemnify, protect and save the Lender and its officers and directors harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys' fees, arising out of, connected with, or resulting directly or indirectly from the Security Property or the transactions contemplated by this Agreement, including without limitation the possession, condition or use of the Equipment. The indemnification arising under this Section shall survive the Agreement's termination.

**4.02. Covenant as to Tax Exemption.** (a) The Town shall not take or permit, or omit to take or cause to be taken, any action that would cause its obligations under this Agreement to be "arbitrage bonds" or "private activity bonds" within the meaning of the Code, or otherwise adversely affect the exclusion from gross income for federal income tax purposes of the designated interest component of Installment Payments to which such components would otherwise be entitled. If the Town should take or permit, or omit to take or cause to be taken, any such action, the Town shall take or cause to be taken all lawful actions within its power necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

(b) In particular, the Town covenants that it shall not permit the Amount Advanced, plus the investment earnings thereon (the "Proceeds"), to be used in any manner that would result in 5% or more of the Installment Payments being directly or indirectly secured by an interest in property, or derived from payments in respect of property or borrowed money, being in either case used in a trade or business carried on by any person other than a governmental Town, as provided in Code Section 141(b), or result in 5% or more of the Proceeds being used directly or indirectly to make or finance loans to any persons other than a governmental Town, as provided in Code Section 141(c); provided, however, that if the Town receives a Bond Counsel Opinion that compliance with any such covenant is not required to prevent the interest components of Installment Payments from

being includable in the counterparty's gross income for federal income tax purposes under existing law, the Town need not comply with such covenant.

(c) Unless the Town qualifies for one or more exceptions to the arbitrage rebate requirement with respect to this financing, the Town shall provide for the rebate to the United States of (i) at least 90% of the required rebate amount (A) on or before 60 days after the date that is five years from the Closing Date, and (B) at least once during each five years thereafter while the Obligations remain outstanding, and (ii) the entire required rebate amount on or before 60 days after the date of final payment of the Obligations. Payments shall be made in the manner prescribed by the Internal Revenue Service. The Town shall cause the required rebate amount to be recomputed as of each fifth anniversary of the Closing Date, and again as of the date of final payment of the Obligations. The Town shall provide the Lender with a copy of the results of such computation within 20 days after the end of each computation period or final payment of the Obligations. Each computation shall be prepared or approved, at the Town's expense, by a person with experience in matters of accounting for federal income tax purposes, a bona fide arbitrage rebate calculating and reporting service, or nationally-recognized bond counsel, in any case reasonably acceptable to the Lender. The Town shall engage such rebate consultant to perform the necessary calculations not less than 60 days prior to the date of the required payment.

(d) The Town acknowledges that its personnel must be familiar with the arbitrage rebate rules, because the tax-exempt status of the interest on the Obligations depends upon continuing compliance with such rules. The Town therefore covenants to take all reasonable action to assure that Town personnel responsible for the investment of and accounting for financing proceeds comply with such rules.

**4.03. Validity of Organization and Acts.** The Town is validly organized and existing under State law, has full power to enter into this Agreement and has duly authorized and has obtained all required approvals and all other necessary acts required prior to the execution and delivery of this Agreement. This Agreement is a valid, legal and binding obligation of the Town.

**4.04. Maintenance of Existence.** The Town shall maintain its existence, shall continue to be a local governmental unit of the State, validly organized and existing under State law, and shall not consolidate with or merge into another local governmental unit of the State, or permit one or more other local governmental units of the State to consolidate with or merge into it, unless the local governmental unit thereby resulting assumes the Town's obligations under this Agreement.

**4.05. Acquisition of Permits and Approvals.** All permits, consents, approvals or authorizations of all governmental entities and regulatory bodies, and all filings and notices required on the Town's part to have been obtained or completed as of today in connection with the authorization, execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement and the acquisition of the Equipment have been obtained and are in full force and effect, and there is no reason why any future required permits, consents, approvals, authorizations or orders cannot be obtained as needed.

**4.06. No Breach of Law or Contract.** Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement, nor the fulfillment of or compliance with the terms and conditions of this Agreement, (a) to the best of the

Town's knowledge, constitutes a violation of any provision of law governing the Town or (b) results in a breach of the terms, conditions or provisions of any contract, agreement or instrument or order, rule or regulation to which the Town is a party or by which the Town is bound.

**4.07. No Litigation.** There is no litigation or any governmental administrative proceeding to which the Town (or any official thereof in an official capacity) is a party that is pending or, to the best of the Town's knowledge after reasonable investigation, threatened with respect to (a) the Town's organization or existence, (b) its authority to execute and deliver this Agreement or to comply with the terms of this Agreement, (c) the validity or enforceability of this Agreement or the transactions contemplated by this Agreement, (d) the title to office of any Governing Council member or any other Town officer, (e) any authority or proceedings relating to the Town's execution or delivery of this Agreement, or (f) the undertaking of the transactions contemplated by this Agreement.

**4.08. No Current Default or Violation.** (a) The Town is not in violation of any existing law, rule or regulation applicable to it, (b) the Town is not in default under any contract, other agreement, order, judgment, decree or other instrument or restriction of any kind to which the Town is a party or by which it is bound or to which any of its assets are subject, including this Agreement, and (c) no event or condition has happened or existed, or is happening or existing, under the provisions of any such instrument, including this Agreement, which constitutes or which, with notice or lapse of time, or both, would constitute an event of default hereunder or thereunder.

**4.09. No Misrepresentation.** No representation, covenant or warranty by the Town in this Agreement is false or misleading in any material respect.

**4.10. Environmental Warranties and Indemnification.** (a) The Town warrants and represents to the Lender that, to the best of the Town's knowledge after thorough investigation, the Equipment is not now and has not ever been used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials.

(b) The Town covenants that the Equipment shall be kept free of Hazardous Materials and shall not be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in connection with the normal maintenance and operation of the Equipment, and the Town shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of the Town or any lessee, the release of Hazardous Materials onto the Equipment or suffer the presence of Hazardous Materials on the Equipment, except in connection with the normal maintenance and operation of the Equipment.

(c) The Town shall comply with, and ensure compliance by all users and lessees with, all applicable federal, State and local laws, ordinances, rules and regulations with respect to Hazardous Materials and shall keep the Equipment free and clear of any liens imposed pursuant to such laws, ordinances, rules and regulations. If the Town receives any notices from any governmental agency or any lessee with regard to Hazardous Materials on, from or affecting the Equipment, the Town shall immediately notify the Lender. The Town shall conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the

Equipment in accordance with all applicable federal, State and local laws, ordinances, rules, regulations and policies and to the Lender's satisfaction.

(d) "Hazardous Materials" means any explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials, asbestos or any materials containing asbestos, or any other substance or material as defined by any federal, State or local environmental law, ordinance, rule or regulation including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. sections 9601 *et seq.*), the Hazardous Materials Transportation Act, as amended (49 U.S.C. sections 1801 *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. sections 9601 *et seq.*), and the regulations adopted and publications promulgated pursuant thereto.

(e) To the extent permitted by law, the Town shall indemnify and hold the Lender harmless from and against (i) any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including clean-up costs), judgments and expenses (including attorneys', consultants' or experts' fees and expenses) of every kind and nature suffered by or asserted against the Lender as a direct or indirect result of any warranty or representation made by the Town in subsections (a) through (c) above being false or untrue in any material respect, or (ii) any requirement under any law, regulation or ordinance, local, State or federal, which requires the elimination or removal of any hazardous materials, substances, wastes or other environmentally regulated substances by the Lender or the Town or any transferee or assignee the Lender or the Town.

(f) The Town's obligations under this Section shall continue in full force and effect notwithstanding full payment of the Required Payments or execution on the security interests created under this Agreement.

**4.11. Further Instruments.** Upon the Lender's request, the Town shall execute, acknowledge and deliver such further instruments reasonably necessary or desired by the Lender to carry out more effectively the purposes of this Agreement or any other document related to the transactions contemplated by this Agreement, and to subject to the liens and security interests hereof and thereof all or any part of the Security Property intended to be given or conveyed hereunder or thereunder, whether now given or conveyed or acquired and conveyed subsequent to the date of this Agreement.

**4.12. The Lender's Advances for Performance of Town's Obligations.** If the Town fails to perform any of its obligations under this Agreement, the Lender is hereby authorized, but not obligated, to perform such obligation or cause it to be performed. All expenditures incurred by the Lender (including any advancement of funds for payment of taxes, insurance premiums or other costs of maintaining the Security Property, and any associated legal or other expenses), shall be secured as Additional Payments under this Agreement. The Town promises to pay all such amounts to the Lender immediately upon demand.

**4.13. Equipment Will Be Used and Useful.** The acquisition of the Equipment is necessary and expedient for the Town, and will perform essential functions of the Town appropriate for units of local government. The Town has an immediate need for, and expects to make immediate use of, all of the Equipment, and does not expect such need or use to diminish in any

material respect during the term of the Agreement. The Equipment will not be used in any private business or put to any private business use.

**4.14. Financial Information.** (a) The Town shall send to the Lender a copy of the Town's audited financial statements for each Fiscal Year within 30 days of the Town's acceptance of such statements, but in any event within 120 days of the completion of such Fiscal Year.

(b) The Town shall furnish the Lender, at such reasonable times as the Lender shall request, all other financial information (including, without limitation, the Town's annual budget as submitted or approved) as the Lender may reasonably request. The Town shall permit the Lender or its agents and representatives to inspect the Town's books and records and make extracts therefrom.

**4.15. Taxes and Other Governmental Charges.** The Town shall pay, as Additional Payments, the full amount of all taxes, assessments and other governmental charges lawfully made by any governmental body during the term of this Agreement. With respect to special assessments or other governmental charges which may be lawfully paid in installments over a period of years, the Town shall be obligated to provide for Additional Payments only for such installments as are required to be paid during the Agreement term. The Town shall not allow any liens for taxes, assessments or governmental charges with respect to the Security Property or any portion thereof to become delinquent (including, without limitation, any taxes levied upon the Security Property or any portion thereof which, if not paid, will become a charge on any interest in the Security Property, including the Lender's interest, or the rentals and revenues derived therefrom or hereunder).

**4.16. Town's Insurance.** (a) The Town shall, at its own expense, acquire, carry and maintain broad-form extended coverage property damage insurance with respect to all Equipment in an amount equal to the estimated replacement cost of the Equipment. Such property damage insurance shall include the Lender as a loss payee. The Town shall provide evidence of such coverage to the Lender promptly upon acquisition of the Equipment. Any Net Proceeds of the insurance required by this subsection (a) shall be payable as provided in Section 5.15.

(b) The Town shall, at its own expense, acquire, carry and maintain comprehensive general liability insurance in an amount not less than \$1,000,000 for personal injury or death and \$1,000,000 for property damage.

(c) The Town shall also maintain workers' compensation insurance issued by a responsible carrier authorized under State law to insure the Town against liability for compensation under applicable State law as in effect from time to time.

(d) All insurance shall be maintained with generally recognized responsible insurers and may carry reasonable deductible or risk-retention amounts. All such policies shall be deposited with the Lender, provided that in lieu of such policies there may be deposited with the Lender a certificate or certificates of the respective insurers attesting the fact that the insurance required by this Section is in full effect. Prior to the expiration of any such policy, the Town shall furnish the Lender evidence satisfactory to the Lender that the policy has been renewed or replaced or is no longer required by this Agreement.

(e) No Town agent or employee shall have the power to adjust or settle any property

damage loss greater than \$50,000 with respect to the Equipment, whether or not covered by insurance, without the Lender's prior written consent.

(f) The Lender shall not be responsible for the sufficiency or adequacy of any required insurance and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the Lender.

(g) The Town shall deliver to the Lender annually by June 30 of each year a certificate stating that the risk coverages required by this Agreement are in effect, and stating the carriers, policy numbers, coverage limits and deductible or risk-retention amounts for all such coverages.

## ARTICLE V

### THE EQUIPMENT

**5.01. Acquisition.** The Town shall comply with the provisions of Article 8 of Chapter 143 of the North Carolina General Statutes, accept all portions of the Equipment when properly delivered, and thereafter promptly place each such portion in service.

**5.02. Changes in Location.** The Town shall promptly inform the Lender if any component of the Equipment shall be moved from the location designated for garaging of such Equipment at the time of its acquisition if such location is outside the Town.

**5.03. Acquisition within Funds Available.** The Town represents that, based upon its examination of the plans and specifications for the Equipment, the Equipment can be acquired for a total price within the total amount of funds to be available under this Agreement, income anticipated to be derived from the investment thereof (if any) and other funds previously identified and designated for such purposes. If the total amount available for such purposes shall be insufficient to pay the entire cost of acquiring the Equipment, the Town promises to pay any such excess costs, with no resulting reduction or offset in the amounts otherwise payable by the Town under this Agreement.

**5.04. Disclaimer of Warranties.** The Town agrees that the Lender has not designed the Equipment, that the Lender has not supplied any plans or specifications with respect thereto and that the Lender (a) is not a manufacturer of, nor a dealer in, any of the component parts of the Equipment or similar Equipment, (b) has not made any recommendation, given any advice nor taken any other action with respect to (i) the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Equipment or any component part thereof or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Equipment or any component part thereof or any property or rights relating thereto at any stage of the acquisition and equipping thereof, (c) has not at any time had physical possession of the Equipment or any component part thereof or made any inspection thereof or of any property or rights relating thereto, and (d) has not made any warranty or other representation, express or implied, that the Equipment or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed, or will accomplish the results which the Town intends therefor, or (iii) is safe in any manner or respect.

THE LENDER MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE EQUIPMENT OR ANY COMPONENT PART THEREOF, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE, and further including the design or condition thereof; the safety, quality or capacity thereof; compliance thereof with the requirements of any law, rule, specification or contract pertaining thereto; any latent defect; the Equipment's ability to perform any function; that the Amount Advanced will be sufficient to pay all costs of the acquisition of the Equipment; or any other characteristic of the Equipment; it being agreed that the Town is to bear all risks relating to the Equipment and the transactions contemplated by this Agreement, and the Town hereby waives the benefits of any and all implied warranties and representations of the Lender.

The provisions of this Section shall survive the Agreement's termination.

**5.05. Right of Entry and Inspection.** The Lender and its representatives and agents shall have the right to enter upon the Town's property and inspect the Equipment from time to time, and the Town shall cause any vendor, contractor or sub-contractor to cooperate with the Lender and its representatives and agents during such inspections.

No right of inspection or approval granted in this Section shall be deemed to impose upon the Lender any duty or obligation whatsoever to undertake any inspection or to make any approval. No inspection made or approval given by the Lender shall be deemed to impose upon the Lender any duty or obligation whatsoever to identify or correct any defects in the Equipment or to notify any person with respect thereto, and no liability shall be imposed upon the Lender, and no warranties (either express or implied) are made by the Lender as to the quality or fitness of any improvement, any such inspection and approval being made solely for the Lender's benefit.

**5.06. Compliance with Requirements.** (a) The Town shall observe and comply promptly with all current and future requirements relating to the Equipment's use or condition imposed by (i) any judicial, governmental or regulatory body having jurisdiction over the Equipment or any portion thereof or (ii) any insurance company writing a policy covering the Equipment or any portion thereof, whether or not any such requirement shall necessitate structural changes or improvements or interfere with the use or enjoyment of the Equipment.

(b) The Town shall obtain and maintain in effect all licenses and permits required for the Equipment's operation.

(c) The Town shall in no event use the Equipment or any part thereof, nor allow the same to be used, for any unlawful purpose, or suffer any act to be done or any condition to exist with respect to the Equipment or any part thereof, nor any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private, or which may make void or violable any insurance then in force with respect thereto.

**5.07. Use and Operation.** The Town shall use and operate the Equipment and related property as vehicles for Town use, and for no other purpose unless required by law. The Town shall

be solely responsible for the Equipment's operation, and shall not contract with any other person or entity for the Equipment's operation.

**5.08. Maintenance and Repairs; Additions.** (a) The Town shall keep the Equipment in good order and repair (reasonable wear and tear excepted) and in good operating condition, shall not commit or permit any waste or any other thing to occur whereby the value or usefulness of the Equipment might be impaired, and shall make from time to time all necessary or appropriate repairs, replacements and renewals.

(b) The Town may, also at its own expense, make from time to time any additions, modifications or improvements to the Equipment that it may deem desirable for its governmental or proprietary purposes and that do not materially impair the effective use, nor materially decrease the value or substantially alter the intended use, of the Equipment. The Town shall do, or cause to be done, all such things as may be required by law in order fully to protect the security of and all the Lender's rights under this Agreement.

(c) Any and all additions to or replacements of the Equipment and all parts thereof shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the "Equipment" for the purposes of this Agreement.

(d) Notwithstanding the provisions of subsection (c) above, however, the Town may, from time to time in its sole discretion and at its own expense, install machinery, equipment and other tangible property in or on the Equipment. All such property shall remain the Town's sole property in which the Lender shall have no interest; provided, however, that any such property which becomes permanently affixed to the Equipment shall be subject to the lien and security interest arising under this Agreement if the Lender shall reasonably determine that the Equipment would be damaged or impaired by the removal of such machinery, equipment or other tangible property.

**5.09. Security.** The Town shall take all reasonable steps necessary to safeguard the Equipment against theft. The security afforded the Equipment shall at all times be equal to or better than the security afforded the Town's personal property that is not subject to this Agreement.

**5.10. Utilities.** The Town shall pay all charges for utility services furnished to or used on or in connection with the Equipment.

**5.11. Risk of Loss.** The Town shall bear all risk of loss to and condemnation of the Equipment.

**5.12. Condemnation.** The Town shall immediately notify the Lender if any governmental authority shall institute, or shall notify the Town of any intent to institute, any action or proceeding for the taking of, or damages to, all or any part of the Equipment or any interest therein under the power of eminent domain, or if there shall be any damage to the Equipment due to governmental action, but not resulting in a taking of any portion of the Equipment. The Town shall file and prosecute its claims for any such awards or payments in good faith and with due diligence and cause the same to be collected and paid over to the Lender, and to the extent permitted by law hereby irrevocably authorizes and empowers the Lender, in the Town's name or otherwise, to collect and

receipt for any such award or payment and to file and prosecute such claims. If the Town receives any Net Proceeds arising from any such action, the Town shall apply such Net Proceeds as provided in Section 5.15.

**5.13. Title.** Title to the Equipment and any and all additions, repairs, replacements or modifications thereto shall at all times be in the Town, subject to the lien of this Agreement. Upon the Town's payment in full of all Required Payments, the Lender, at the Town's expense and request, shall cancel this Agreement.

**5.14. No Encumbrance, Mortgage or Pledge of Equipment.**

(a) The Town shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics' and materialmen's liens), charge, encumbrance or other claim in the nature of a lien on or with respect to the Equipment. The Town shall promptly, at its own expense, take such action as may be duly necessary to discharge any such mortgage, pledge, lien, charge, encumbrance or claim not excepted above which it shall have created, incurred or suffered to exist.

(b) The Town shall reimburse the Lender for any expense incurred by the Lender to discharge or remove any such mortgage, pledge, lien, security interest, encumbrance or claim.

**5.15. Damage and Destruction; Use of Net Proceeds.** (a) The Town shall promptly notify the Lender if (i) the Security Property or any portion thereof is stolen or is destroyed or damaged by fire or other casualty, (ii) a material defect in the Equipment shall become apparent, or (iii) title to or the use of all or any portion of the Equipment shall be lost by reason of a defect in title. Each notice shall describe generally the nature and extent of such damage, destruction or taking.

(b) If the Net Proceeds arising from any single event, or any single substantially related sequence of events, is not more than \$50,000, the Town shall retain such Net Proceeds and apply the same to the prompt completion, repair or restoration of the Equipment, and shall promptly thereafter report to the Lender regarding the use of such Net Proceeds.

(c) If the Net Proceeds arising from any single event, or any single substantially related sequence of events, is more than \$50,000, then the Town shall cause such Net Proceeds to be paid to an escrow agent (which shall be a bank, trust company or similar entity exercising fiduciary responsibilities) or deposit in a special escrow fund to be held by such escrow agent. The Town shall thereafter provide for the application of all Net Proceeds to the prompt completion, repair or restoration of the Equipment, as the case may be. The escrow agent shall disburse Net Proceeds for the payment of such costs upon receipt of requisitions therefor. If the Net Proceeds shall be insufficient to pay in full the cost of completion, repair or restoration, the County shall either (i) complete the work and pay any cost in excess of the Net Proceeds, or (ii) not carry out such completion, repair or restoration, and instead apply the Net Proceeds, together with other available funds as may be necessary, to the prepayment of all outstanding Required Payments pursuant to Section 3.03.

(d) Any repair, restoration, modification, improvement or replacement paid for in whole

or in part out of Net Proceeds shall be the Town's property and shall be part of the Equipment.

## ARTICLE VI

### DEFAULTS AND REMEDIES; EXECUTION

**6.01. Events of Default.** An "Event of Default" is any of the following:

- (a) The Town's failing to make any Installment Payment when due.
- (b) The occurrence of an Event of Nonappropriation.
- (c) The Town's breaching or failing to perform or observe any term, condition or covenant of this Agreement on its part to be observed or performed, other than as provided in subsections (a) or (b) above, including payment of any Additional Payment, for a period of 15 days after written notice specifying such failure and requesting that it be remedied shall have been given to the Town by the Lender, unless the Lender shall agree in writing to an extension of such time prior to its expiration.
- (d) The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law by or against the Town as a debtor, or the appointment of a receiver, custodian or similar officer for the Town or any of its property, and the failure of such proceedings or appointments to be vacated or fully stayed within 30 days after the institution or occurrence thereof.
- (e) Any warranty, representation or statement made by the Town in this Agreement is found to be incorrect or misleading in any material respect on the Town Date (or, if later, on the date made).
- (f) Any lien, charge or encumbrance prior to the security interest created under Section 2.03, or affecting the validity of the Agreement, is found to exist, or proceedings are instituted against the Town to enforce any lien, charge or encumbrance against the Equipment and such lien, charge or encumbrance would be prior to the lien of this Agreement.

**6.02. Remedies on Default.** Upon the continuation of any Event of Default, the Lender may, without any further demand or notice, exercise any one or more of the following remedies:

- (a) Declare the unpaid principal components of the Installment Payments immediately due and payable;
- (b) Proceed by appropriate court action to enforce the Town's performance of the applicable covenants of this Agreement or to recover for the breach thereof;
- (c) Avail itself of all available remedies under this Agreement, including execution as provided in Section 6.03, and recovery of reasonable attorneys' fees and other expenses.

Notwithstanding any other provision of this Agreement, the Town and the Lender intend to

comply with Section 160A-20. No deficiency judgment may be entered against the Town in violation of Section 160A-20.

**6.03. Execution on Personal Property.** Upon the continuation of any Event of Default and in addition to all other remedies granted in this Agreement, the Lender shall have all the rights and remedies of a secured party under the applicable law of the State of North Carolina and may proceed to execute upon the Security Property.

**6.04. Possession of Equipment.** After a foreclosure sale, the Town shall immediately lose the right to possess, use and enjoy the Equipment (but may remain in possession of the Equipment as a lessee at will of the Lender), and thereupon the Town (a) shall pay monthly in advance to the Lender a fair and reasonable rental value for the use and possession of the Equipment (in an amount the Lender shall determine in its reasonable judgment), and (b) upon the Lender's demand, shall deliver possession of the Equipment to the Lender or, at the Lender's direction, to any purchaser of the Equipment after an execution sale.

In addition, upon the continuation of any Event of Default, the Lender, to the extent permitted by law, is hereby authorized to (i) take possession of the Equipment, with or without legal action, (ii) lease the Equipment, (iii) collect all rents and profits therefrom, with or without taking possession of the Equipment, and (iv) after deducting all costs of collection and administration expenses, apply the net rents and profits first to the payment of necessary maintenance and insurance costs, and then to the Town's account and in reduction of the Town's corresponding Required Payments in such fashion as the Lender shall reasonably deem appropriate. The Lender shall be liable to account only for rents and profits it actually receives.

**6.05. No Remedy Exclusive; Delay Not Waiver.** All remedies under this Agreement are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy. If any Event of Default shall occur and thereafter be waived by the Lender, such waiver shall be limited to the particular breach so waived and shall not be deemed a waiver of any other breach under this Agreement.

**6.06. Payment of Costs and Attorney's Fees.** If the Lender employs an attorney to assist in the enforcement or collection of Required Payments, or if the Lender voluntarily or otherwise shall become a party to any suit or legal proceeding (including a proceeding conducted under any state or federal bankruptcy or insolvency statute) to protect the Equipment, to protect the lien of this Agreement, to enforce collection of the Required Payments or to enforce compliance by the Town with any of the provisions of this Agreement, the Town agrees to pay reasonable attorneys' fees and all of the costs that may reasonably be incurred (whether or not any suit or proceeding is commenced), and such fees and costs shall be secured as Required Payments.

## ARTICLE VII

### MISCELLANEOUS

**7.01. Notices.** (a) Any communication required or permitted by this Agreement must be in writing.

(b) Any communication under this Agreement shall be sufficiently given and deemed given when delivered by hand or five days after being mailed by first-class mail, postage prepaid, addressed as follows:

- (i) If to the Town, to Shane Fox, Manager, 1036 Main Street, P.O. Box 47, Blowing Rock, NC 28605
- (ii) If to the Lender, to \_\_\_\_\_, Attention: \_\_\_\_\_

(c) Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others.

**7.02. No Assignments by Town.** The Town shall not sell or assign any interest in this Agreement.

**7.03. Assignments by the Lender.** The Lender may, at any time and from time to time, assign all or any part of its interest in the Security Property or this Agreement, including, without limitation, the Lender's rights to receive Required Payments. Any assignment made by the Lender or any subsequent assignee shall not purport to convey any greater interest or rights than those held by the Lender pursuant to this Agreement. Any assignment by the Lender may be only to a bank, insurance company, or similar financial institution.

The Town agrees that this Agreement may become part of a pool of obligations, and the Lender or its assignees may assign or reassign all or any part of this Agreement, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Agreement, but only if such certificates are sold only to a bank, insurance company, or similar financial institution. The Lender or its designees may assign or reassign either this entire contract or a partial interest herein, subject to the foregoing restrictions. Notwithstanding the foregoing, no assignment or reassignment of the Lender's interest in the Equipment or this Agreement shall be effective unless and until the Town shall receive a duplicate original counterpart of the document by which such assignment or reassignment is made disclosing the name and address of each such assignee.

The Town further agrees that the Lender's interest in this Agreement may be assigned in whole or in part upon terms which provide in effect that the assignor or assignee will act as a collection and paying agent for any holders of certificates of participation in this Agreement, provided the Town receives a copy of such agency contract and such collection and paying agent covenants and agrees to maintain for the full remaining term of this Agreement a written record of each assignment and reassignment of such certificates of participation.

The Town agrees to execute any document reasonably required in connection with any assignment. Any assignor must provide notice of any assignment to the Town, and the Town shall keep a complete and accurate record of all assignments as required by the Code. After the giving of any such notice, the Town shall thereafter make all payments in accordance with the notice to the assignee named therein and shall, if so requested, acknowledge such assignment in writing, but such acknowledgment shall in no way be deemed necessary to make the assignment effective.

**7.04. Amendments.** No term or provision of this Agreement may be amended, modified or waived without the prior written consent of the Town and the Lender.

**7.05. Governing Law.** The Town and the Lender intend that State law shall govern this Agreement.

**7.06. Liability of Officers and Agents.** No officer, agent or employee of the Town shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated by this Agreement. Such officers or agents shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve an officer, agent or employee of the County from the performance of any official duty provided by law.

**7.07. Severability.** If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

**7.08. Non-Business Days.** If the date for making any payment or the last day for performance of any act or the exercising of any right shall not be a Business Day, such payment shall be made or act performed or right exercised on or before the next preceding Business Day.

**7.09. Entire Agreement.** This Agreement constitutes the Town's entire agreement with respect to the general subject matter covered by this Agreement.

**7.10. Binding Effect.** Subject to the specific provisions of this Agreement, and in particular Section 7.03, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

[Signature page to follow]

**IN WITNESS WHEREOF**, the parties have duly signed, sealed and delivered this Agreement by duly authorized officers, all as of the date first above written.

**(SEAL)**

**ATTEST:**

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Town Clerk

**TOWN OF BLOWING ROCK,  
NORTH CAROLINA**

---

By: Shane Fox  
Town Manager

**HUNTINGTON PUBLIC CAPITAL  
CORPORATION**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*[Signature Page- Financing Agreement between Town of Blowing Rock, North Carolina, and Huntington Public Capital Corporation]*

## **EXHIBIT A -- EQUIPMENT DESCRIPTION**

New Audio and Video for Council Chambers  
Finance Software (Smart Fusion)  
Heat Pump & Dual Fuel for Town Hall & P&R Bldg  
Police SUV with Lights, Graphics, Cameras  
Sig Sauer P320, Lights, Optics, Holsters  
2-Johnson VP8000 Portable Radios  
Flock Safety LPR Cameras  
Street New Cab & Chassis to replace 2015 Dodge 5500  
Street Dingo  
Landscaping Truck to replace Tundra  
New Mower  
Field Ops Utility Truck  
Push Camera  
Shoring Boxes

**EXHIBIT B – PAYMENT SCHEDULE**

See attached