



**CITY OF CLAREMONT
CITY COUNCIL MEETING
Regular Meeting
February 6, 2017
6:30 PM
Claremont City Hall**

AGENDA

- 1. CALL TO ORDER**
- 2. APPROVAL OF AGENDA**
- 3. INVOCATION-** Dennis Marshall, Bethlehem United Methodist
- 4. PLEDGE OF ALLEGIANCE-** Claremont Elementary Student
- 5. MAYOR'S REPORT**
- 6. CONSENT AGENDA**
 - A. Regular Session Meeting Minutes- January 9, 2017
 - B. Closed Session Meeting Minutes- January 9, 2017
- 7. CITIZEN'S CONCERNS AND COMMENTS**
- 8. PRESENTATION**
 - A. Department Budget Goals Update
- 9. NEW BUSINESS**
 - A. Future Treatment of Waste Water Analysis Update- Informational Only
 - B. Contract to Update Pavement Condition Analysis
 - C. Acceptance of Building Reuse Grant
 - D. Ordinance 01-17 Special Revenue Project Ordinance for Prysman Building Reuse Grant
 - E. Ordinance 03-17 Budget Amendment FY 2016-2017 Budget- Prysman Cable Systems Economic Development
 - F. Ordinance 02-17 Budget Amendment FY 2016-2017 Budget
 - G. Acceptance of Duke Energy Grant for Electric Vehicle Charging Station
- 11. DEPARTMENT & COMMITTEE REPORTS**
 - A. Department Dashboard Report
 - B. Code Enforcement Report
- 12. CITY MANAGER'S REPORT**
- 13. CLOSED SESSION**
 - A. G.S. 143.318-11(4) Economic Development
- 14. ADJOURN**

REQUEST FOR COUNCIL ACTION

Date of Meeting: February 6, 2017

To: Mayor and the City Council

From: Wendy Helms, City Clerk

Action Requested: Consent Agenda

A. Regular Minutes from January 9, 2017

B. Closed Session Minutes from January 9, 2017

Recommendation: Motion to accept as presented



City of Claremont Regular Meeting Minutes Monday, January 9, 2017

The regular City Council meeting of the City of Claremont was held in the Council Chambers located at Claremont City Hall at 6:30 p.m. on Monday, January 9, 2017.

The following members of the Claremont City Council were present: Mayor Shawn Brown, Councilmember Timothy Lowrance, Councilmember David Morrow, Councilmember Dale Sherrill, Councilmember Lee Miller and Councilmember Dayne Miller.

The following personnel of the City of Claremont were present: City Manager Catherine Renbarger, City Clerk Wendy Helms, Police Chief Gary Bost, Public Services Director Tom Winkler, Public Services Supervisor Bo Prince and City Attorney Bob Grant.

Others in attendance were: Robert Winrow, Danny Hedrick, Robert Smith, Jason Lowrance, Charles Helms, Jessica Mays, Angela Brown, Jackson Brown, Lindsey Elrod, Meredith Becker, Kevin Little, DB Setzer, Les Morrow, Rebecca Bleich, Bo Teague, Scott Ramsey, Paul Beatty and Gene Monday.

CALL TO ORDER

Mayor Shawn R. Brown called the meeting to order at 6:30 p.m. A quorum was present.

APPROVAL OF AGENDA

The agenda was approved as presented.

INVOCATION & PLEDGE OF ALLEGIANCE

Kevin Little with First Baptist Church gave the invocation and Jackson Brown, from Claremont Elementary School, led the Pledge of Allegiance.

MAYOR'S REPORT

Mayor Brown introduced the new principal at Claremont Elementary School. Dr. Jessica Mays gave a presentation on new projects at Claremont Elementary.

Mayor Brown thanked the Public Services Department for their work during the recent snow storm. He also thanked City Manager Catherine Renbarger for her continued training.

CONSENT AGENDA

A. November 29, 2016 Special Called Meeting Minutes – Councilmember Timothy Lowrance made a motion to accept November 29, 2016 special called meeting minutes as presented. Councilmember David Morrow seconded the motion. The motion passed unanimously.

B. November 29, 2016 Closed Session – Councilmember Timothy Lowrance made a motion to accept the closed session minutes from November 29, 2016. Councilmember David Morrow seconded the motion. Motion passed unanimously.

C. December 5, 2016. Regular Session Meeting Minutes- Councilmember Timothy Lowrance made a motion to accept December 5, 2016 regular meeting minutes as presented. Councilmember David Morrow seconded the motion. The motion passed unanimously.

D. December 5, 2016 Closed Session Minutes- Councilmember Timothy Lowrance made a motion to accept December 5, 2016 regular meeting minutes as presented. Councilmember David Morrow seconded the motion. The motion passed unanimously.

CITIZEN CONCERNS & COMMENTS- No one approached the podium.

PRESENTATIONS-

ECCCM- Rebecca Bleich presented an update on programs offered through the Eastern Cooperative Christian Ministries. One new program will now provide automobile assistance for families with only one vehicle.

Historical Structure Report on Jessup Kline Building- Last year, City Council directed staff to evaluate the City-owned Jessup-Kline Textile Mill and collect additional information that would help the City when determining the future of that property.

Bo Teague with the Historical Association presented a historical structure report completed on the building. He did recommend to Council that the City board up the windows and fix the hole in the roof while making a decision on the property.

OLD BUSINESS- Council was presented a budget transfer. These transfers were made at the request of the department heads. This is informational only.

NEW BUSINESS

A. MPO Board Council Representation- John Marshall with the Western Piedmont Council of Governments gave a brief presentation on the Greater Hickory Metropolitan Planning Organization Board (MPO) and the Transportation Advisory Committee Board (TAC). Claremont is in need of a Council representative to serve on the TAC committee.

Councilmember Dayne Miller advised he would consider the position.

B. Resolution 01-17 Support of NCDOT Improvements for Project Longbow- As a part of Project Longbow, NCDOT has committed to extending the existing paved section of BGA Drive approximately 1,400 feet to SR 2436 (Kelly Boulevard). Before NCDOT can secure and release the committed funds, a resolution in support of the project is needed.

Motion was made by Councilmember Timothy Lowrance to approve Resolution 01-17 supporting Project Longbow. Second was made by Councilmember Lee Miller. Motion passed unanimously.

C. Adoption of Small Business Grant Program- During the November 29, 2016 economic development workshop, Council provided direction to further explore the implementation of a small business grant program with the intent of helping local businesses with façade improvements to promote investment in our commercial areas.

Two draft proposals were presented for Council consideration. Both proposals offer grants of up to \$5,000 or 50% of the project costs (whichever is less) and are only available to properties located within the designated district that are zoned Central Business or Community Business.

Option 1: Façade Improvement Grant Program. Under this option, funds would only be available for improvements to building exteriors which are visible to the general public from the street. Parking lots would also be excluded.

Option 2: Commercial District Revitalization Grant Program: Under this option, funds would be available for exterior projects including parking lots, as well as for certain interior renovations, such as HVAC, plumbing and electrical systems

Motion was made by Councilmember Dale Sherrill to accept Option 2, Commercial District Revitalization Grant Program, with the addition of text to read that in order to approve funding for improvements outside façade improvements must also be included as part of the project. Second was made by Councilmember Dayne Miller. Motion passed unanimously.

D. Consideration of Golf Cart Ordinance- Council asked staff to look into the operation of golf carts on public streets. State statute allows municipalities to create their own ordinances to address the operation of golf carts on any public street where the speed limit is 35 miles per hour or less as long as the operator is at least 16 years of age. The City Manager gave a presentation on similar golf cart ordinances and policy considerations. Councilmember Dale Sherrill expressed concerns.

No action was taken at this time.

DEPARTMENT AND COMMITTEE REPORTS

The Departmental Dashboard was accepted as presented.

CITY MANAGERS REPORT

City Manager Renbarger thanked all City departments for their work during the snow storm. She advised Council she was working on easements for the CMAQ Sidewalk Project. A draft recreation calendar of events was presented for comments. Finally she brought attention to the bench donated by the Busbee Family; it was originally from the Claremont Depot.

Motion was made by Councilmember David Morrow to recess the regular meeting at 8:09 p.m. and go into closed session reference G.S. 143.318-11(3) Consult with Attorney. Second was made by Councilmember Timothy Lowrance. Motion passed unanimously.

Motion was made by Councilmember Dayne Miller to go back into regular session at 8:28 p.m. Second was made by Councilmember David Morrow. Motion passed unanimously.

With no further business of the board, motion was made by Councilmember Timothy Lowrance to adjourn the meeting at 8:28 p.m. Second was made by Councilmember Lee Miller. Motion passed unanimously.

Respectfully submitted,
Wendy L. Helms, City Clerk

Shawn R. Brown, Mayor

Attested:

Wendy L. Helms, City Clerk

REQUEST FOR COUNCIL ACTION

Date of Meeting: February 6, 2017

To: Mayor and the City Council

From: Catherine Renbarger

Action Requested: Citizens Concerns and Comments

Open the floor to citizens for comments.

Recommendation: Open to citizens for their input.

REQUEST FOR COUNCIL ACTION

Date of Meeting: February 6, 2017

To: Mayor and the City Council

From: Catherine Renbarger, City Manager

Action Requested: Information Only; No Action Requested

During this item, staff will give a brief overview on the status of the 2016-2017 Departmental Goals and Objectives. A complete list of the goals and objectives is included in the attachment.

Recommendation: Information Only; No Action Requested



FY2016-2017 Departmental Goals & Objectives

City Council

- Continue implementation of Action Plan
- Expand on promotion and support for local businesses

Administration

- Continue implementation of Action Plan
- Expand City's presence on social media and continue updates to the City website
- Explore opportunities to market and promote the City
- Assist with implementation and closeout of federal CMAQ grant for sidewalks

Fire Department

- Expand customer and emergency
- Strive to bring all members up to NFPA 1403 standards
- Continue with national and regulatory standards
- Analyze risk assessment to improve safety

Planning Department

- Adopt a revised Land Development Plan
- Review and revise zoning & development ordinances
- Increase availability of planning services and information to City residents

Police Department

- Complete training on non-lethal weapons and tactics
- Increase the professional development of employees by adding an Intermediate Law Enforcement Certificate
- Explore the feasibility of a K-9 Officers Position
- Create a more involved, responsible community by building stronger community partnerships

Public Works Department

- Continue training opportunities for employees
- Inspect all City sidewalks and begin a plan for repair



- Establish new contacts in the maintenance field with commercial and industrial sites in the City
- With the assistance of the City engineer, complete Standard Design Specification and Details

Recreation Department

- Improve physical appearance of the City Park
- Improve in City Park and continue implementation of Park Master Plan
- Work closely with the Youth Council and Recreation Committee
- Create and promote sponsorship opportunities for local businesses

Water & Sewer Fund

- Continue in-house certifications for Distribution and Collection Systems
- Determine City's long-term plan for wastewater treatment
- Install new commercial AMR water meters
- Identify key areas of inflow & infiltration and begin work to fix identified areas

REQUEST FOR COUNCIL ACTION

Date of Meeting: February 6, 2017

To: Mayor and the City Council

From: Catherine Renbarger, City Manager

Action Requested: Information Only; Update on Wastewater Needs Analysis

During this item, staff from The Wooten Company will provide an update on the Wastewater Needs Analysis Study. To date, Claremont staff and engineers from Wooten have begun conversations with local municipalities and Catawba County regarding a potential partnership for the future treatment of our wastewater. Staff hope to have a final recommendation to Council this summer.

Recommendation: Information Only; No Action Requested

REQUEST FOR COUNCIL ACTION

Date of Meeting: February 6, 2017

To: Mayor and the City Council
From: Catherine Renbarger, City Manager

Action Requested: Accept Agreement with The Wooten Company to Update the 2011 Pavement Condition Survey Report

In 2011, the City of Claremont contracted for professional services to perform a pavement condition survey on all City-maintained streets. The report generated a Pavement Condition Rating for each block and provided cost estimates for repair. From that report, major street improvements were made to Genelia Drive and a portion Hursey Avenue. However, the current report is currently outdated as these reports are typically updated at least every 5 years.

This agreement with The Wooten Company would provide an update to the 2011 Pavement Condition Survey Report. To save costs and to provide our staff with additional knowledge, this contract provides 8 hours of training/field assistance identifying various pavement distresses and rating their severity and then allows for City of Claremont to actually compile the Street Distress Assessments. From the compiled information, the engineers will prepare cost estimates and put together a final report which will include an updated Pavement Condition Rating. This will help in budgeting and planning for future road repair and maintenance.

The costs of these professional services is \$9,450. Sufficient funds are included in the City's current fiscal budget.

Recommendation: Motion to Accept Agreement with The Wooten Company to Update the 2011 Pavement Condition Survey Report

SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between

City of Claremont (“Owner”)

and

L. E. Wooten and Company dba The Wooten Company (“Engineer”)

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Update of 2011 Pavement Condition Survey Report (“Project”).

Engineer's Services under this Agreement are generally identified as follows:

From street distress assessments, provided by the City, provide updated pavement conditions ratings and repair cost estimates for approximately 9.6 miles of City maintained streets.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period: **Update to be completed within 30 days of receipt of distress surveys from City staff.**
- C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding N/A months. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

2.01 *Payment Procedures*

- A. *Invoices*: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:

1. For cause,

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
- b. By Engineer:
- 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.

- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.
- I. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability

for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

7.01 *Basis of Payment — Report Phase*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
 - 1. A Lump Sum amount of **\$ 9,450.00**.
- B. The portion of the compensation amount billed monthly for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.

7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees' times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Appendix 1.

Attachments:

Appendix 1 - Engineer's Standard Hourly Rates

Appendix 2 – Evaluation/Report, Additional Services and Services Provided by the Owner

Appendix 3 – Client's E-Verify Affidavit

Appendix 4 – Iran Divestment Act Certification

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on Page 1.

OWNER:

City of Claremont

Typed Name: Catherine Renbarger

By (Signature): _____

Title: City Manager

Date Signed: _____

ENGINEER:

L.E. Wooten and Company dba
The Wooten Company

Typed Name: W. Brian Johnson, PE

By (Signature): _____

Title: Director, Civil/Env. Engineering

Date Signed: _____

Engineer License or Firm's Certificate Number: F-0115

State of: North Carolina

Address for giving notices:

PO Box 446
3288 E. Main Street
Claremont, NC 28610

Address for giving notices:

1430B Old Lenoir Road
Hickory, NC 28601
Attn: Clarence M. Lockamy, PE

PRE-AUDITED STATEMENT

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

Finance Officer: _____

Date: _____

This is **Appendix 1, Engineer's Standard Hourly Rates**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated _____, _____.

Engineer's Standard Hourly Rates

THE WOOTEN COMPANY
 SCHEDULE OF FEES
 ENGINEERING COST BREAKDOWN
 HOURLY RATES FOR WAGE CATEGORIES

Wage Category	Hourly Billing Rate
Engineer I	\$ 84
Engineer II	\$ 103
Engineer III	\$ 133
Engineer IV	\$ 180
Architect II	\$ 123
Designer I	\$ 63
Designer II	\$ 77
Designer III	\$ 99
Designer IV	\$ 123
Landscape Designer II	\$ 92
Construction Admin I	\$ 81
Construction Admin II	\$ 132
Construction Admin III	\$ 180
Inspector I	\$ 67
Inspector II	\$ 75
Inspector III	\$ 85
Survey Technician	\$ 55
Survey Field Supervisor	\$ 80
Surveyor Project Manager	\$ 135
Project Surveyor	\$ 97
GIS Analyst III	\$ 99
Community Development Specialist II	\$ 81
Project Assistant	\$ 70
Project Coordinator	\$ 104
Reimbursables: Mileage will be billed at the current IRS Standard Mileage Rate, Subcontracted Services and other expenses at cost plus 10%.	

The Wooten Company makes annual adjustments on July 1st. The above hourly rates reflect current rates for the period through June 30, 2017. Hourly billing rates (per diem rates) will change effective July 1, 2017 to reflect Direct Payroll Costs (salaries) being paid at that time.

APPENDIX 2

**TO THE
ENGINEERING SERVICES CONTRACT
BETWEEN
THE CITY OF CLAREMONT
AND
L.E. WOOTEN AND COMPANY DBA THE WOOTEN COMPANY
FOR**

UPDATE OF 2011 PAVEMENT CONDITION SURVEY REPORT

The following Attachment shall become a part of the Contract Agreement.

1.A. EVALUATION/REPORT

- (1) Provide a maximum of 8 hours training/field assistance to City staff in identifying the various pavement distresses and rating their severity.
- (2) Provide "11x17" base maps (Ortho), to scale, for use by City staff when identifying and rating pavement distresses.
- (3) From the Street Distress Assessments, provided by the Owner, develop new Pavement Condition Rating (PCR) for each block of the City maintained streets (approximately 9.6 miles). Street classifications shall be as established in the original report.
- (4) Prepare cost estimates for repairs. Estimates will be in 2017 construction dollars.
- (5) Prepare final report which will include a description of the evaluation process, summary of the overall condition of the streets within the City, tables showing the pavement distresses and Pavement Condition Rating of each street block and repair cost estimates.
- (6) Present final report to the City staff.
- (7) Deliver to the City four (4) hard copies of the report and one (1) digital copy in PDF format.

1.B. ADDITIONAL SERVICES

In addition to the foregoing services being performed, the following services may be provided upon prior written authorization of the Owner.

- (1) Conduct research and surveys and prepare necessary plats and maps for the determination of property ownership and identification of sites and easements to be acquired for the construction of the project if required.
- (2) Prepare redesigns for the Owner after Final Report has been accepted by the Owner.
- (3) Appear before courts or boards on matters of litigation or hearings related to the project.

- (4) Design other additional improvements not included in the original scope of services.
- (5) Provide street assessment with Engineer's staff and perform street distress assessments.

2.A. SERVICES PROVIDED BY THE OWNER

- (1) Designate a person to act as the Owner's representative with respect to the work to be performed under the Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret, and define the Owner policies.
- (2) Provide adequate staff to conduct pavement distress identification and ratings.
- (3) Submit pavement distress identification and ratings, in an acceptable format, to the Engineer for review, compilation and evaluation.
- (4) Assist the Engineer by placing at his disposal all available information pertinent to the projects as may be required by the Engineer.
- (5) Guarantee access to and make all provisions for the Engineer to enter upon public and private property as required to perform his services.
- (6) Examine all sketches, drawings, specifications, proposals, and other documents presented by the Engineer.
- (7) Bear all cost of incidentals for the compliance with the requirements of this Article and the foregoing Article entitled "Additional Services".

~ End of Document ~



Creative Regional Solutions Since 1968

Meeting Date: Monday, February 6, 2017

TO: City Of Claremont City Council, Manager and Clerk
FROM: Leah Martin, Sr. Planner
SUBJECT: NC Commerce Building Reuse Grant for Prysman Phase II Grant

Background : The City of Claremont has been awarded a \$500,000 grant to be used towards Prysman's restoration of their fiber optic preform operations. The project involves \$20 million to restore manufacturing operations in three idle building areas totaling more than 30,000 sq feet and the creation of 50 full-time jobs with excellent wages and benefits.

Grant Terms and Security: The funding is a grant to the City and will be land as a 0% forgivable loan once the required 50 full-time job commitment is met. Prysman successfully closed out its Phase I building reuse grant through the City with reporting in October.

Fiscal / Budgetary Effect: The grant requires from the City of Claremont a match of 5% or \$25,000. In the application, the 5% match was dedicated to the grant administration.

Actions To Be Taken:

- 1. Acceptance of Grant Agreement:** The grant agreement has three primary elements – the Grant Agreement with NC Commerce and the Legally Binding Commitment and Promissory Note with Prysman Cables and Systems USA, LLC – the owner of the land and building.

Council Action: Council vote to accept the Grant Agreement.

- 2. Special Revenue Project Ordinance:** The budget reflects the revenues and expenditures of the project.

Council Action: Council vote on the Project Ordinance as presented.

- 3. Proposed WPCOG Agreement for Administration:** Attached for your review and approval is an administration services contract for the project. This contract was included in the grant funding application as the 5% match from the City of Claremont for \$25,000.

Council Action: Council vote on WPCOG contract as presented.

Thank you for the opportunity to serve Claremont on this project. Please do not hesitate to call me at 828 485-4252 if you have questions or concerns.



Commerce

ROY COOPER
Governor

GEORGE SHERRILL
Interim Secretary

January 21, 2017

The Honorable Shawn R. Brown
City of Claremont
PO Box 446
Claremont, NC 28610-0446

Re: Contract Agreement for Grant Number 2017-087-3201-2587; Your Signature and Reply is Requested
Project Title: "Project Acronym/Prysmian Group"

Dear Mayor Brown:

Enclosed for your review and signature are two complete sets of contract documents required to finalize the grant award from the North Carolina Rural Infrastructure Authority. Below is a description of the documents enclosed along with an explanation of the signatures required for each document.

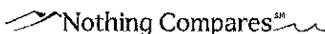
Document:	Document Description:	Signed By:
Grant Agreement	Contract: Outlines the terms of Grant Agreement between the Department of Commerce and the Unit of Local Government.	Highest Elected Official - Unit of Local Government
Exhibit A	Scope of Services: Outlines the scope of the renovation/construction project.	No Signature Required
Exhibit B	Payment Schedule: Outlines the process for the Unit of Local Government to request reimbursements from Department of Commerce.	No Signature Required
Exhibit C	Reporting Schedule: Outlines the schedule of reports that are due from the Unit of Local Government to the Department of Commerce and when they are due.	No Signature Required
Exhibit D	Closeout/Job Requirements: Outlines the process for the Unit of Local Government to report the creation and maintenance of jobs to the Department of Commerce.	No Signature Required
Exhibit E	Legally Binding Commitment (LBC): Outlines terms and conditions of the Loan.	Highest Elected Official - Unit of Local Government and Legal Property Owner listed on the Deed.
Exhibit F	Promissory Note: Defines the repayment terms of the Loan in the event of default.	Legal Property Owner listed on the Deed.
Exhibit G	Limited Waiver of Confidentiality: Contains employment information reported to the Department of Commerce's Division of Employment Security.	Each Business involved in the project.
Exhibit H-1	Iran Divestment Act Certification	Highest Elected Official - Unit of Local Government.
Exhibit H-2	Iran Divestment Act Certification	Legal Property Owner listed on the Deed.

Execute two originals of these documents and return one of them to my attention at the address below. If you have any questions regarding the enclosed documents, please contact me at (919) 814-4671.

Sincerely,

Nichole M. Gross
Data and Compliance Specialist

Enclosure



The North Carolina Department of Commerce (“Commerce”), an agency of the State of North Carolina (“State”), enters into this Rural Economic Development Grant Agreement (“Grant Agreement”) with the **City of Claremont** (the “Governmental Unit” and, together with Commerce, the “Parties”).

WHEREAS, the North Carolina General Assembly (“General Assembly”) has determined that it is the policy of the State to stimulate economic activity and to create new jobs for citizens of the State by providing matching grants or loans to specific local governmental units so as to productively reuse certain buildings and properties or expand rural health care facilities subject to the requirements of N.C.G.S. §§143B-472.127 and .128; and

WHEREAS, under N.C.G.S. §143B-472.128, the General Assembly created the North Carolina Rural Infrastructure Authority (“Rural Authority”) to review applications for and, where appropriate, authorize such matching grants or loans, and, under N.C.G.S. §§143B-472.126 and .127, the General Assembly authorized Commerce to administer such grants or loans; and

WHEREAS, pursuant to N.C.G.S. §§143B-472.127 and .128, and based on the terms, conditions and representations in this Grant Agreement’s Exhibits A (Scope of Project), Exhibit B (Payment Schedule), Exhibit C (Reporting Schedule), Exhibit D (Closeout Schedule/Job Requirements), Exhibit E (LBC), Exhibit F (Promissory Note) and Exhibit G (Waiver of Confidentiality (“Waiver”)), the Rural Authority has approved a grant (the “Grant”) to the Governmental Unit; and

WHEREAS, without limitation, the Rural Authority awarded the Grant: (1) based on the application filed by the Governmental Unit and any subsequent materials supporting the application that have been approved of by Commerce in writing, all of which are incorporated by reference herein; (2) based on the representation in the application that **Prysmian Cables and Systems USA, LLC** (the “Owner”) owns certain real property located at:

2512 Penny Rd.
Claremont, NC 28610

in **Catawba** County, North Carolina (the “Property”); (3) based on Commerce’s Grant requirements and guidelines, which are incorporated herein and which may be amended, modified or supplemented and applied accordingly to this Grant Agreement by Commerce in its sole discretion; and for (4) the creation and retention of certain jobs in the course of completing certain renovations/construction work at the Property (altogether, the “Project,” as summarized in Exhibit A to this Grant Agreement).

NOW, THEREFORE, in consideration of the mutual promises and such other valuable consideration as set out herein, the Parties mutually agree to the following terms and conditions:

1. Scope of Program/Agreements to be Executed.

- (a). As conditions of the Grant Agreement:
- i. The highest elected official of the Governmental Unit shall execute two originals of this Grant Agreement in its exact form (unless Commerce approves of a change to its terms in writing) and shall return one of them to Commerce;
 - ii. The Governmental Unit shall ensure that its highest elected official and a duly authorized representative of the Owner execute two originals of the Rural Economic Development Loan Agreement and Legally Binding Commitment ("LBC") in its exact form (unless Commerce approves of a change to its terms in writing) and shall return one such original to Commerce with the one executed original of the Grant Agreement;
 - iii. The Governmental Unit shall ensure with the Owner that every individual or entity that has any ownership interest in the real property which is the subject of the Project executes two originals of the Promissory Note attached as Exhibit F in its exact form and shall return one such original to Commerce with the one executed originals of the Grant Agreement; and
 - iv. Exhibit A refers to the entity (or entities, as applicable) required to create and maintain certain full-time new jobs ("New Jobs") to complete the Project as the "Company," the "Employer" and the "Business" (together and hereinafter, the "Business"). The Governmental Unit shall ensure that an authorized representative of each Business executes a Waiver of Confidentiality ("Waiver"), attached as Exhibit G, and shall return the original of any such Waiver to Commerce with the executed originals of the Grant Agreement. The Governmental Unit shall also ensure that any additional Business which becomes involved in the Project after the Grant Agreement is finalized executes a Waiver upon its involvement, the original of which the Governmental Unit shall promptly forward to Commerce.
- (b). The Governmental Unit shall provide Commerce with any information obtained pursuant to the LBC and allow Commerce to execute any rights of the Governmental Unit under the LBC, including the Governmental Unit's rights of access, review or monitoring and Commerce's rights as a third-party beneficiary thereunder.
- (c). The Governmental Unit shall exercise all of its rights and duties under the LBC in a prudent and timely manner to ensure the use of the Grant funds for the intended purposes and objectives and to preserve the rights of Commerce in this Grant Agreement and the LBC.
- (d). The LBC specifies how many New Jobs the Business must create and maintain in the performance of the Project and, if the Business fails to do so, those Grant funds that the Owner must repay to the Governmental Unit for return to Commerce or else repay directly to Commerce, upon request and as directed. If such New Jobs are not created or maintained, then the Governmental Unit shall return to Commerce any Grant funds it has not already disbursed to the Owner, make a timely demand for repayment from the Owner and, if such repayment is not forthcoming, initiate and fully litigate legal proceedings against the Owner to recover such repayment.

- (e). Without limitation, failure by the Governmental Unit to timely demand repayment from and, if necessary, initiate and fully litigate such legal proceedings against the Owner may affect the future consideration of the Governmental Unit for grant programs administered by Commerce. Further, and without limitation, if the Governmental Unit fails to timely initiate legal proceedings against the Owner for such repayment and Commerce elects to do so instead, the Governmental Unit is responsible and agrees to reimburse Commerce for all litigation costs and reasonable attorneys' fees that Commerce incurs in pursuing repayment.

2. Changes in the Project or Other Conditions.

- (a). A "Project Change" is any material alteration, addition, deletion or expansion of the Project, including (without limitation) material changes to construction or rehabilitation, the terms or conditions of the loan under the LBC ("Loan"), the required number of New Jobs, the matching investment in the Project, any cessation of business by the Owner or any Business and any filing of bankruptcy by the Governmental Unit, the Owner or any Business. There shall be no Project Changes unless expressly approved of by Commerce in a separate, prior written agreement stating, if applicable, the costs and schedule for completing the Project Change.

Notwithstanding the foregoing and wherever referred to in this Grant Agreement, "cessation of business," "ceasing to do business" and "ceases to do business" shall not include (1) ceasing operations to maintain, service or upgrade real or personal property of the Owner, (2) seasonal shutdowns of operations as long as such cessation do not exceed a total of four (4) weeks in any calendar year (excluding time attributable to an event of force majeure as described below) and (3) under the circumstances of for the period of time described in Paragraph 17 below.

- (b). Additionally, the Governmental Unit shall immediately notify Commerce of any change in conditions or local law, or any other event, which may significantly affect its ability to oversee, administer or perform this Grant Agreement, the LBC or the Project. In its sole and unreviewable discretion, Commerce may deem such a change in conditions, local law or other event to constitute a Project Change.

3. Term of Grant Agreement. The effective period of this Grant Agreement shall commence on **12/15/2016** ("Effective Date") and shall terminate on **12/15/2018** unless terminated on an earlier date under the terms of this Grant Agreement (either one of which dates shall constitute the "Termination Date") or unless extended for an express term in writing by the Governmental Unit.

4. Funding. The Rural Authority grants to the Governmental Unit an amount not to exceed **\$500,000.00** for expenditures directly relating to the Project. The Governmental Unit hereby represents and warrants that all Grant funds shall be utilized exclusively for the purpose of the Project and consistent with all applicable laws, rules, regulations and requirements, and that the Governmental Unit shall not make or approve of any improper expenditure of Grant funds (including Loan funds). Administrative expenses of the

Governmental Unit are not eligible for Grant funding and any such use of Grant funds will violate this Grant Agreement.

5. Independent Status of the Governmental Unit.
 - (a). The Governmental Unit is an entity independent from the Rural Authority and Commerce. The Grant Agreement, the LBC, the Project and any actions taken pursuant to them shall not be deemed to create a partnership or joint venture between or among Commerce, the Rural Authority, the Governmental Unit or any third party (including, without limitation, the Owner or any Business). Nor shall the Grant Agreement, the LBC or the Project be construed to make the Governmental Unit (including its employees, agents, members or officials) or any third party (including, without limitation, the Owner or any Business) employees, agents, members or officials of Commerce or the Rural Authority. Neither the Governmental Unit nor any third party (including, without limitation, the Owner or any Business) shall have the ability to bind Commerce or the Rural Authority to any agreement for payment of goods or services or represent to any person that they have such ability.
 - (b). The Governmental Unit shall be responsible for payment of all of its expenses, including rent, office expenses and all forms of compensation to employees. The Governmental Unit shall provide worker's compensation insurance to the extent required for its operations and shall accept full responsibility for payments of unemployment tax or compensation, social security, income taxes, and any other charges, taxes or payroll deductions required by law in connection with its operations, for itself and its employees who are performing work pursuant to this Grant Agreement. All expenses incurred by the Governmental Unit are its sole responsibility, and neither Commerce nor the Rural Authority shall be liable for the payment of any obligations incurred in the performance of the Project.
6. Method of Payment. Commerce shall pay the Grant funds to the Governmental Unit in accordance with the Payment Schedule attached hereto as Exhibit B after receipt of written requests for payment from the Governmental Unit certifying that the conditions for such payment under this Grant Agreement have been met and that the Governmental Unit is entitled to receive the amount so requested and any other documentation that may be required by Commerce.
7. Obligation of Funds. The Governmental Unit shall not obligate Grant funds prior to the Effective Date or subsequent to the Termination Date of this Grant Agreement. All obligations outstanding as of the Termination Date shall be liquidated within thirty days.
8. Project Records.
 - (a). The Governmental Unit shall maintain full, accurate and verifiable financial records, supporting documents and all other pertinent data for the Project in such a manner as to clearly identify and document the expenditure of the State funds provided under this Grant Agreement separate from accounts for other awards, monetary

contributions or other revenue sources for this Project.

- (b). The Governmental Unit shall retain all financial records, supporting documents and all other pertinent records related to the Project for a period of five (5) years from the Termination Date. In the event such records are audited, all Project records shall be retained beyond the five-year period until the audit is concluded and any and all audit findings have been resolved.

9. Monitoring, Reports and Auditing.

- (a). The Governmental Unit agrees to ensure compliance and provide its assistance with such monitoring and auditing requirements as the State may request, including following the Termination Date of this Grant Agreement. Additionally, the Governmental Unit shall regularly monitor all performance under Grant-supported activities, including activities performed by the Owner and any Business, to ensure that time schedules are being met, New Jobs are being created and maintained and other performance goals are being achieved.
- (b). The Governmental Unit shall furnish Commerce detailed written progress reports according to the time periods specified in Exhibit C or as otherwise requested by Commerce. Such reports should describe the progress made by the Governmental Unit, the Owner and any Business toward achieving the purpose(s) of the Project, including specifically the goals of New Job creation and maintenance. Such descriptions should include the successes and problems encountered during the reporting period. Failure to submit a required report by the scheduled submission date will result in the withholding of any forthcoming payment until Commerce is in receipt of the delinquent report and the report meets with Commerce's approval, in Commerce's sole discretion.
- (c). The Governmental Unit acknowledges and agrees that, with regard to the Grant funds, it will be subject to the audit and reporting requirements prescribed by N.C.G.S §159-34, Local Government Finance Act - Annual Independent Audit; rules and regulations. Such audit and reporting requirements may vary depending upon the amount and source of Grant funding received by the Governmental Unit and are subject to change from time to time. Upon completion, the Governmental Unit shall forward to Commerce one copy of any audited financial statements and accompanying reports generated covering the period between the Effective Date and Termination Date of this Grant Agreement.
- (d). Within thirty (30) days after the Termination Date, the Governmental Unit shall submit a final report to Commerce describing the activities and accomplishments of the Project. The final report shall include a review of performance and activities over the entire Project period. In the final report, the Governmental Unit should describe the Project, how it was implemented, to what degree the established Project objectives were met and the difficulties encountered, what the Project changed and its cost.
- (e). The Governmental Unit grants the State and any of its related agencies, commissions or departments (including, without limitation, Commerce, the North Carolina State

Auditor and the North Carolina Office of State Budget and Management) and any of their authorized representatives, at all reasonable times and as often as necessary (including after the Termination Date), access to and the right to inspect, copy, monitor, and examine all of the books, papers, records and other documents relating to the Grant Agreement, the LBC or the Project. Likewise, the Governmental Unit shall ensure that the Owner and any Business provide the same access. In addition, the Governmental Unit agrees to comply at any time, including after the Termination Date, with any requests by the State (including, without limitation, the Rural Authority or Commerce) for other financial and organizational materials to permit the State to comply with its fiscal monitoring responsibilities or to evaluate the short- and long-range impact of its programs.

10. Termination; Availability of Funds.

- (a). If the Governmental Unit fails to fulfill in a timely and proper manner its obligations or violates any of the covenants or stipulations under this Agreement, if the Owner fails to fulfill in a timely and proper manner its obligations or violates any of its covenants or stipulations under the LBC or if any Business fails to fulfill those requirements applicable to it in the LBC, the Governmental Unit agrees that Commerce has the right to terminate this Grant Agreement and/or the LBC by giving, as applicable, the Governmental Unit or the Governmental Unit and the Owner written notice specifying the Termination Date, which Commerce may determine in its sole discretion. Upon such termination, Commerce shall have no responsibility to make additional Grant payments. Upon such termination, the Governmental Unit shall not expend any Grant funds (including Loan funds) without Commerce's express written authorization and shall return all unspent Grant funds to Commerce upon demand.
- (b). The obligations of the Rural Authority and/or Commerce to pay any amounts under this Grant Agreement are contingent upon the availability and continuation of funds for such purpose. If funds for the Grant (and therefore the Loan) become unavailable, the Governmental Unit agrees that Commerce has the right to terminate this Grant Agreement and/or the LBC by giving written notice specifying the Termination Date, which Commerce shall determine in its sole discretion. Upon such termination, the State shall have no responsibility to make additional Grant payments. Further, upon such termination, the Governmental Unit shall not expend any Grant funds (including Loan funds) without Commerce's express written authorization and shall return all unspent Grant funds to Commerce upon demand.

11. Liabilities and Loss. The Governmental Unit hereby agrees to release, indemnify and hold harmless the State (including, without limitation, the Rural Authority and Commerce), and their respective members, officers, directors, employees, agents and attorneys (together, the "Indemnified Parties"), from any claims of third parties (including, without limitation, the Owner and the Business) arising out of any act or omission of the Governmental Unit or any third party (including, without limitation, the Owner and the Business) in connection

with the performance of this Grant Agreement, the LBC or the Project, and for all losses arising from their implementation. Without limiting the foregoing, the Governmental Unit hereby releases the Indemnified Parties from, and agrees that such Indemnified Parties are not liable for, and agrees to indemnify and hold harmless the Indemnified Parties against, any and all liability or loss, cost or expense, including, without limitation, reasonable attorneys' fees, fines, penalties and civil judgments, resulting from or arising out of or in connection with or pertaining to, any loss or damage to property or any injury to or death of any person occurring in connection with the Project, or resulting from any defect in the fixtures, machinery, equipment or other property used in connection with the Project or arising out of, pertaining to, or having any connection with, the Project or the financing thereof (whether arising out of acts, omissions, or negligence of the Governmental Unit or of any third party (including, without limitation, the Owner and the Business), or of any of their agents, contractors, servants, employees, licensees, lessees, or assignees), including any claims and losses accruing to or resulting from any and all subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project.

12. Governmental Unit Representations and Warranties. The Governmental Unit hereby represents and warrants that:
- (a). The execution and delivery of this Grant Agreement have been duly authorized by all necessary Governmental Unit action and are not in contravention of law or in contravention of the provisions of any indenture agreement or undertaking to which the Governmental Unit is a party or by which it is bound.
 - (b). There is no action, suit proceeding, or investigation at law or in equity or before any court, public board or body pending, or to the knowledge of the Governmental Unit, threatened against or affecting it, the Owner or the Business, that could or might adversely affect the Project or any of the transactions contemplated by this Grant Agreement or the validity or enforceability of this Grant Agreement or the abilities of the Governmental Unit or the Owner to discharge their obligations under this Grant Agreement. If it is subsequently found that an action, suit, proceeding, or investigation did or could threaten or affect the development of the Project, the Governmental Unit shall be liable to Commerce for repayment of the entire amount of the Grant and this Grant Agreement may be terminated by Commerce effective upon notice.
 - (c). No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Grant Agreement by the Governmental Unit or the performance of any of its obligations hereunder, or all such requisite governmental consents or approvals have been obtained. The Governmental Unit shall provide Commerce with evidence of the existence of any such necessary consents or approvals at the time of the execution of this Grant Agreement.
 - (d). The Governmental Unit is solvent.
 - (e). A cash match grant, loan or other funding ("Cash Match") equal to the amount of the Loan shall have been unconditionally committed to the Project. The Governmental

Unit shall have procured and contributed at least five percent (5%) of this Cash Match, but no part of this 5% contribution can have derived, either directly or indirectly, from any other State or federal source. All Cash Match funds shall be utilized exclusively for the purpose of the Project, and there shall be no improper expenditures of Cash Match funds. All Cash Match funds shall be expended prior to or simultaneously with and at the same rate as the Owner's expenditure of Loan funds.

- (f). Upon the Governmental Unit's reasonable inquiry of and receipt of supporting evidence from the Owner, both the Owner and any Business are duly authorized to do business under North Carolina law and are not delinquent on any federal, state or local taxes, licenses or fees.

13. Cessation/Termination, Bankruptcy, Dissolution or Insolvency.

- (a). Under the LBC, the Owner agrees at all times to preserve its legal existence, except that it may merge or consolidate with or into, or sell all or substantially all of its assets to, any entity that expressly undertakes, assumes for itself and agrees in writing to be bound by all of the obligations and undertakings of the Owner contained in the LBC. If the Owner so merges, consolidates or sells its assets without such an undertaking being provided, it agrees in the LBC to repay to the Governmental Unit or Commerce, upon request and as directed, all unspent Loan funds. Further, a merger, consolidation or sale without such an undertaking shall constitute a material default under the LBC, and the Governmental Unit or Commerce may terminate the LBC upon written notice to the Owner and hold the Owner liable for any other repayment provided for under the LBC.
- (b). Other than as provided for in Paragraph 13(a) above, if the Owner or any Business ceases to do business or becomes the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, it shall be the sole responsibility of the Governmental Unit to (i) immediately notify Commerce and (ii) pursue any claim for Grant funds owed the State by the Owner or Business, including in any legal proceeding, to obtain the maximum payment allowed by law. To the extent the Governmental Unit fails to pursue repayment of the Grant funds in such a proceeding and obtain the maximum payment allowed by law, and without limitation, the Governmental Unit shall be liable to Commerce for all amounts that should have been awarded to the Unit in the proceeding if it had taken the necessary action (notwithstanding whether such amounts would have actually been paid by the Owner or Business). Alternatively, without limitation, if the Governmental Unit fails to pursue repayment of the Grant funds in such a proceeding and Commerce elects to do so instead, the Governmental Unit is responsible and agrees to reimburse Commerce for all legal costs and reasonable attorneys' fees that Commerce incurs in pursuing repayment.
- (c). If the Governmental Unit fails to provide Commerce notice of the Owner or any Business ceasing to do business or becoming the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, it shall constitute

a material default under this Grant Agreement. If there is such a cessation or such a proceeding, Commerce may terminate the Grant Agreement upon written notice to the Governmental Unit. If there is such a cessation or such a proceeding, the Governmental Unit agrees that Commerce has the right to terminate this Grant Agreement and/or the LBC by giving, as applicable, the Governmental Unit or the Governmental Unit and the Owner written notice specifying the Termination Date, which Commerce may determine in its sole discretion. Upon such termination, the Governmental Unit, the Owner and any Business shall not expend any Grant or Loan funds without Commerce's express written authorization and shall return all unspent Grant or Loan funds to Commerce upon demand and if permissible under applicable bankruptcy, dissolution or insolvency law.

14. Additional Repayment Requirements and Remedies.

- (a). The repayment requirements and remedies addressed in this Paragraph 14 are in addition to those repayment requirements and other remedies set forth elsewhere in this Grant Agreement, including the requirements to repay unspent Grant funds. No remedy conferred or reserved by or to the State is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy provided for in this Grant Agreement, or now or hereinafter existing at law, in equity, or by statute, and any such right or power may be exercised from time to time and as often as may be deemed expedient.
- (b). If there is a breach of any of the requirements, covenants or agreements in this Grant Agreement or the LBC, or if there are any representations or warranties which are untrue as to a material fact in this Grant Agreement, the LBC or in relation to the LBC or the Project (including the performance thereof), the Governmental Unit agrees that Commerce has the sole discretion to require repayment from the Governmental Unit of an amount of Grant funds to be determined in Commerce's sole discretion but not to exceed the amount of Grant funds the Governmental Unit has already received under this Grant Agreement. Such requirements, covenants or agreements include but are not limited to Paragraphs 1, 2(a), 4, 10(a), 12 and 13 of this Grant Agreement and include but are not limited to the creation and retention of the New Jobs and the retention of the Baseline Number of jobs under the LBC.

15. No Waiver by the State. Failure of the State (including, without limitation, the Rural Authority and Commerce) at any time to require performance of any term or provision of this Grant Agreement or the LBC shall in no manner affect the rights of the State at a later date to enforce the same or to enforce any future compliance with or performance of any of the terms or provisions hereof. No waiver of the State of any condition or the breach of any term, provision or representation contained in this Grant Agreement or the LBC, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of that or any other term, provision or representation.

16. Waiver of Objections to Timeliness of Legal Action. The Governmental Unit knowingly waives any objections it has or may have to timeliness of any legal action (including any administrative petition or civil action) by the State (including, without limitation, the Rural Authority or Commerce) to enforce its rights under this Grant Agreement. This waiver includes any objections the Governmental Unit may possess based on the statutes of limitations or repose and the doctrines of estoppel or laches.

17. Force Majeure. If (a) during the term of this Grant the real or personal property located on or constituting the Property suffers damage or destruction caused by acts of God, fires, floods, storms, insurrection, riots, acts of the public enemy, national catastrophe, or similar unexpected events, (b) such damage or destruction was not principally caused by the negligence, willful misconduct or violation of applicable law by the Owner, (c) the Owner uses reasonable efforts to repair, or to work around, such damage or destruction reasonably promptly, and (d) as a direct result of such damage or destruction the Owner cannot satisfy the requirements and obligations of Sections 3 of the LBC as and when the LBC requires, then the Owner will be entitled to an extension of time not to exceed sixty (60) days to satisfy the requirements and obligations of Section 3 of the LBC; provided that the Governmental Unit in its sole discretion with respect to the obligations it is owed by the Owner, may elect to extend that sixty day period to give the Owner additional time to satisfy those requirements.

18. Special Provisions and Conditions.
 - (a). Non-discrimination. The Governmental Unit agrees not to discriminate by reason of age, race, religion, color, sex, national origin or disability related to the activities of this Grant Agreement.
 - (b). Conflict of Interest. The Governmental Unit shall forward to Commerce along with the executed copies of this Grant Agreement a copy of its policy and any ordinance or resolution it has adopted addressing conflicts of interest that may arise involving the members of the Governmental Unit's governing body and/or any of its employees or officers involved in the Grant, the LBC or the Project. Such policy, ordinance or resolution shall address situations in which any of these individuals may directly or indirectly benefit, other than through receipt of their normal compensation in their capacities as the Governmental Unit's employees, officers or members of its governing body, from the Grant, the LBC or Project, and shall include actions to be taken by the Unit or the individual, or both, to avoid conflicts of interest and the appearance of impropriety. Additionally, the Governmental Unit certifies that, as of the date it executes this Grant Agreement, no such individuals have such a conflict of interest or will directly or indirectly benefit, except in the capacities described above, from the Grant, LBC or Project. Throughout the duration of this Grant Agreement, the LBC and the Project, the Governmental Unit has the duty to promptly inform Commerce of any such conflict of interest or direct or indirect benefit of which it becomes aware.

- (c). Compliance with Laws. The Governmental Unit shall at all times observe and comply with all laws, regulations, codes, rules, ordinances and other requirements (together, "Laws") of the state, federal and local governments which may in any manner affect the performance of the Grant Agreement, the LBC or the Project.
 - (d). Non-Assignability. The Governmental Unit shall not assign or transfer any interest in the Agreement without the prior written consent of Commerce; provided, however, that claims for money due to Governmental Unit from Commerce under this Agreement may be assigned to any commercial bank or other financial institution without such approval.
 - (e). Personnel. The Governmental Unit represents that it has, or will secure at its own expense, all personnel required to monitor, carry out and perform the scope of services of this Agreement. Such employees shall not be employees of Commerce. Such personnel shall be fully qualified and shall be authorized under state and local law to perform such services.
19. Notice. All notices required or permitted to be delivered hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States mails, certified, return receipt requested, first class, postage prepaid and addressed as follows:

If to the Rural Authority or Commerce: Attn: **Hazel Edmond**
North Carolina Department of Commerce
Rural Economic Development Division
301 North Wilmington Street
4346 Mail Service Center
Raleigh, North Carolina 27699-4346

If to the Governmental Unit: Attn: **The Honorable Shawn R. Brown**
City of Claremont
PO Box 446
Claremont, NC 28610-0446

or addressed to such other address or to the attention of such other individual as Commerce or the Governmental Unit shall have specified in a notice delivered pursuant to this subsection.

20. Entire Agreement. This Grant Agreement supersedes all prior agreements between or among the Rural Authority and/or Commerce and the Governmental Unit with regard to the Project and expresses their entire understanding with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to a writing signed by both Commerce and the Governmental Unit.
21. Execution. This Grant Agreement may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and such counterparts, together, shall constitute one and the same Grant Agreement which shall be sufficiently evidenced by one of such original counterparts.
22. Construction. This Grant Agreement shall be construed and governed by the laws of the State of North Carolina.
23. Severability. Each provision of this Grant Agreement is intended to be severable and, if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect or impair any other provision of this Grant Agreement, but this Grant Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

24. Acceptance. If the Governmental Unit agrees to the Grant conditions as stated, please return the executed documents specified in Paragraph 1(a). This Grant may be withdrawn if Commerce has not received such documents within thirty (30) days from the date of the cover letter from Commerce to the Governmental accompanying this Grant Agreement and its Exhibits.

IN WITNESSETH WHEREOF, the parties hereto have executed this Grant Agreement as of the date first above written.

City of Claremont

Signature: _____ [SEAL]

Printed Name: _____

Title: _____

Date: _____

North Carolina Department of Commerce

Signature: *Susan Fleetwood* _____ [SEAL]

Printed Name: Susan Fleetwood _____

Title: Executive Director of Economic Development _____

Date: 1/20/17 _____

City of Claremont
Project Acronym/Prysmian Group

**EXHIBIT A
SCOPE OF PROJECT**

Summary: The City of Claremont requests assistance to support the renovation of a 1.2M sq. ft. building located at 2512 Penny Road. The building was constructed in 1981. Prysmian Cables and Systems manufactures a wide variety of cable applications in the energy and telecom cable systems industry. Prysmian is a publicly traded company with over 22,000 employees across 50 countries and 98 facilities. Renovations include the repair and upgrade of three idle building areas that total more than 30,000 sq. ft. of space.

**EXHIBIT B
PAYMENT SCHEDULE**

Eligible Expenditures:

Vacant Building Category: within the existing building footprint

Existing Business Building Category: within the existing building and/or additions

Rural Health Care Category: within the existing building, additions and/or new construction

Eligible costs under all funding categories include, but are not limited to: materials and labor to install HVAC, electrical, plumbing, fire alarm/suppression systems, roofing, flooring, carpentry, drywall, paint, etc. This is not an exhaustive list; grantees should contact the Rural Development Division for questions about whether a specific expense is eligible under the program.

The following costs are specifically prohibited under the program and may not be submitted for reimbursement or the matching funds requirement: building purchase, architectural costs, engineering costs, permit fees, surveys, legal fees, machinery & equipment, telephone hardware and software, computer hardware and software, furnishings, paving, fencing, kitchen equipment, refrigeration equipment, etc. This is not an exhaustive list; grantees should contact the Rural Development Division for questions about whether a specific expense is eligible under the program.

Any company in which any project partner has an ownership or management interest in may act as a contractor for the renovation project only if the company holds a valid NC General Contractors license. The relationship must have been disclosed to the Rural Development Division and a copy of the company's license must have been included in the application. Licensed contracting companies owned or operated by any project partner that are used in the renovation project will be required to submit original invoices from the provider for all labor, materials, services and subcontracted work plus proof that those invoices have been paid in full.

Reimbursement Requirements:

The Department of Commerce will reimburse 50% of eligible expenditures up to the total grant amount upon receipt of the following:

1. A completed financial request form,
2. Evidence that the 5% local government match has been satisfied (first payment request),
3. Copies of eligible project invoices that support the request amount,
4. Evidence that the invoices submitted for reimbursement have been paid-in-full. Evidence may include copies cleared checks, wire transfer or ACH receipts, and/or credit card receipts. Invoices paid with cash and those not paid in full will not be reimbursed, and
5. Satisfaction of reporting requirements according to Exhibit C below.

Eligible expenditures may not be incurred prior to the effective date or subsequent to the termination date of the grant. Payments are subject to the availability of funds.

City of Claremont
Project Acronym/Prysmian Group

**EXHIBIT C
REPORTING SCHEDULE**

Progress reports are due on January 15th and July 15th for each year that the grant remains open. The final report and job verification documentation are due at the time of project completion or no later than 30 days after the grant end-date, whichever is sooner. The reporting schedule remains in effect for the duration of the grant including time extensions.

Failure to submit progress reports as required:

1. Will result in non-payment of payment requests,
2. Can result in the immediate termination of the grant,
3. Can result in the demand for immediate repayment of any funds paid by The Department of Commerce, and
4. Will negatively impact the grantee's eligibility for future Commerce grants.

**EXHIBIT D
JOB VERIFICATION AND CLOSE OUT REQUIREMENTS**

Building Reuse and Rural Health Care loans are eligible for forgiveness once the creation and maintenance of the full-time jobs committed for the project, as well as, all reporting requirements are approved by Commerce. Below are the requirements and procedure for approval.

Job Verification

To be considered eligible, a full-time job must be filled with one employee who works at least 35 hours per week and is paid at least minimum wage. Part-time, full-time equivalents, or contract/consulting positions are not eligible.

Grantees should submit the following as evidence of job creation and maintenance:

1. **Job Certification Form**—both the grantee and the participating business are required to complete respective sections of this form that attests to the creation of the number of jobs full-time jobs committed to receive the grant. The form must be signed by the authorized representatives of the local government grantee and the participating business.
2. **NCUI 101 Forms**—The grantee should submit copies of each company's *Employer's Quarterly Tax and Wage Report* (NCUI 101 forms) that have been submitted to the North Carolina Employment Security Commission according to the requirements below.
 - NCUI 101 Forms should be submitted to Commerce.
 - The forms must include the appropriate number of quarters to show that the company maintained the required employment level for six-consecutive months.
 - The employment level reported must meet or exceed the baseline number of employees reported at the time of the application plus the number of new, full-time jobs committed for the grant.
 - The jobs created and the baseline must be maintained concurrently during the same six-month period.
 - If the NCUI 101 forms include employees from other locations in North Carolina, the names of the employees working in the grant funded project facility should be highlighted, and a multi-site report should be provided.
 - If the NCUI 101 forms include both full and part-time employees an "f" should be written next to the name of each full-time employee and a "p" should be written next to the name of each part-time employee.
3. **Final Report**—the grantee must submit the Final Report Form that describes the activities and outcomes of the project.
4. **Photos**—the grantee must submit digital photos on CD that show a variety of views of the completed project.

All reporting and job verification forms can be found on the Commerce website at <http://www.nccommerce.com/rd/rural-grants-programs/forms> . Email completed forms and reports to rgpreports@nccommerce.com .

_____ (the "Governmental Unit") enters into this Loan Agreement and Legally Binding Commitment (the "LBC," including the "Loan," defined below with _____ (the "Owner" and, together with the Governmental Unit, the "Parties").

WHEREAS, pursuant to N.C.G.S. §§143B-472.127 and .128, the North Carolina Rural Infrastructure Authority (the "Rural Authority") of the State of North Carolina ("State") has awarded a grant (the "Grant") to the Governmental Unit, and the North Carolina Department of Commerce ("Commerce"), an agency of the State, will administer the Grant; and

WHEREAS, the Grant is memorialized in an agreement (the "Grant Agreement") between Commerce and the Governmental Unit, and the Grant Agreement includes Exhibit A (Scope of Project), Exhibit B (Payment Schedule), Exhibit C (Reporting Schedule), Exhibit D (Closeout Schedule/Job Requirements), Exhibit E (this LBC, which incorporates by reference the Grant Agreement and its other Exhibits), Exhibit F (Promissory Note) and Exhibit G (Waiver of Confidentiality ("Waiver")); and

WHEREAS, without limitation, the Rural Authority awarded the Grant: (1) based on the application filed by the Governmental Unit and any subsequent materials supporting the application that have been approved of by Commerce in writing, all of which are incorporated into the Grant Agreement by reference; (2) based on the representation in the application that the Owner owns certain real property located at:

in _____ County, North Carolina (the "Property"); (3) based on Commerce's Grant requirements and guidelines, which are incorporated herein and which may be amended, modified or supplemented and applied accordingly to the Grant Agreement and this LBC by Commerce in its sole discretion; and for (4) the creation and retention of certain jobs in the course of completing certain renovations/construction work at the Property (altogether, the "Project," as summarized in Exhibit A to this Grant Agreement); and

WHEREAS, the Governmental Unit and the Owner are required to enter into this LBC as a condition of the Governmental Unit loaning the Grant funds to the Owner.

NOW, THEREFORE, in consideration of the mutual promises and such other valuable consideration set out herein, the Parties mutually agree to the following terms and conditions:

1. Third-Party Beneficiary. The Parties agree that the State (including, without limitation, Commerce and the Rural Authority) is an intended third-party beneficiary of this LBC (including the Loan) and may, at its option, enforce the terms of this LBC or appear as a party in any litigation concerning the LBC.

2. Loan.
 - (a) The Governmental Unit hereby loans to the Owner the sum of **\$500,000.00** (the "Loan"), which consists entirely of State Grant funds, to fund the Project. Exhibit A to the Grant Agreement refers to the entity (or entities, as applicable) required to create and maintain certain full-time new jobs, as defined in Paragraph 3(a), to complete the Project under this LBC as the "Company," the "Employer" and the "Business" (together and hereinafter, the "Business"). The Owner specifically acknowledges that: it must repay the Loan in accordance with the terms of this LBC if the Business does not create and maintain the new jobs required by Paragraph 3(a) below; and as evidence of its obligation to repay the Loan, the Owner has executed the Promissory Note, Exhibit F to the Grant Agreement, which the Owner represents, acknowledges and agrees has been signed by every individual or entity that has any ownership interest in the Property and is fully binding on the Owner.
 - (b). As conditions of receiving the Loan:
 - i. The highest elected official of the Governmental Unit and a duly authorized representative of the Owner shall execute two originals of the LBC in its exact form (unless Commerce approves of a change to its terms in writing), and the Governmental Unit shall return one such original to Commerce;
 - ii. Every individual or entity that has any ownership interest in the Property shall execute two originals of the Promissory Note in its exact form, and the Governmental Unit shall return one such original to Commerce; and
 - iii. The Owner and the Governmental Unit shall ensure that an authorized representative of each Business executes a Waiver, Exhibit G to the Grant Agreement, and the Governmental Unit shall forward the original of any such Waiver to Commerce.
 - (c). The Owner hereby represents and warrants that all Loan funds shall be utilized exclusively for the purpose of the Project and that it shall not make or approve of any improper expenditures of Loan funds.

3. New Job Creation, Maintenance of New Jobs and Baseline Number of Jobs and Verification.
 - (a). New Job Creation and Maintenance of New Jobs and Baseline Number of Jobs. A "New Job" shall mean a full-time job (consisting of at least 35 hours per week of employment and eligibility for all benefits generally available for full-time employees of the Business) which is with the Business, is located in North Carolina, has a wage at least equal to the minimum wage, is created and maintained by the Business in order to complete the Project and is over and above the **553** full-time jobs in North Carolina ("Baseline Number") that the Business reported having at the time of the application for the Project. The Owner agrees that the Business shall be required to create and maintain in existence for six (6) consecutive months **95** New Jobs prior to the Termination Date, unless this term is extended pursuant to Paragraph 5. Separate and apart from these New Jobs, the Owner agrees that the Business shall be required

to maintain in existence its Baseline Number of jobs for as long as it takes the Business to create and maintain its required number of New Jobs.

- (b). Verification. When the New Jobs required by Paragraph 3(a) have been created and maintained for six (6) consecutive months, the Owner shall notify the Governmental Unit so that it and/or Commerce can verify their creation and maintenance, as well as the maintenance of the Baseline Number of jobs and the satisfaction of all other conditions and terms of this LBC and the Project. The Owner shall cause any Business to provide to the Governmental Unit and Commerce, or their respective designees, full and complete access to all records of the Business necessary to verify the number and types of jobs created and maintained, the wages paid to employees and all other conditions and terms of this LBC and the Project. Failure of any Business to provide such access upon request shall constitute a material default by the Owner under the terms of this LBC and, in the sole discretion of the Governmental Unit and/or Commerce, may subject the Owner to repayment in an amount calculated under Paragraph 13 below.

4. Changes in the Project or Other Conditions.

- (a). A "Project Change" is any material alteration, addition, deletion or expansion of the Project, including (without limitation) material changes to construction or rehabilitation, the terms or conditions of the loan under the LBC, the required number of New Jobs, the matching investment in the Project, any cessation of business by the Owner or any Business and any filing of bankruptcy by the Owner or any Business. There shall be no Project Changes unless expressly approved of by Commerce and the Governmental Unit in a separate, prior written agreement stating, if applicable, the costs and schedule for completing the Project Change.
- (b). Additionally, the Owner shall immediately notify the Governmental Unit of any change in conditions or local law, or any other event, which may significantly affect the ability of it or any Business to perform the LBC or the Project. In their sole discretion, the Governmental Unit or Commerce may deem such a change in conditions, local law or other event to constitute a Project Change.

5. Term of LBC. The effective period of this LBC shall commence **12/15/2016** ("Effective Date") and shall terminate **12/15/2018** unless terminated on an earlier date under the terms of this LBC (either one of which dates shall constitute the "Termination Date") or unless extended for an express term in writing by the Governmental Unit.

6. Independent Status of the Governmental Unit.

- (a). The State (including, without limitation, the Rural Authority and Commerce) and the Governmental Unit are independent entities from one another and from the Owner and any third party (including, without limitation, any Business). The Grant Agreement, the LBC, the Project and any actions taken pursuant to them shall not be deemed to create a partnership or joint venture between the State and the Governmental Unit or between or among either of them and the Owner or any third party (including, without limitation, any Business). Nor shall the Grant Agreement, the LBC or the Project be construed to make any employees, agents or members of the Owner or any third party (including, without limitation, any Business) into employees, agents, members or officials of the Governmental Unit or the State or to

make employees, agents, members or officials of the Governmental Unit into employees, agents, members or officials of the State. Neither the Owner nor any third party (including, without limitation, any Business) shall have the ability to bind the Governmental Unit or the State to any agreement for payment of goods or services or represent to any person that they have such ability. Nor shall the Governmental Unit have the ability to bind the State to any agreement for payment of goods or services or represent to any person that it has such ability.

- (b). The Owner and any third party (including, without limitation, any Business) shall be responsible for payment of all their expenses, including rent, office expenses and all forms of compensation to their employees. The Owner and any third parties (including, without limitation, any Business) shall provide worker's compensation insurance to the extent required for their operations and shall accept full responsibility for payments of unemployment tax or compensation, social security, income taxes, and any other charges, taxes or payroll deductions required by law in connection with their operations, for themselves and their employees who are performing work pursuant to this LBC or the Project. All expenses incurred by the Owner or any third party (including, without limitation, any Business) are their sole responsibilities, and neither the Governmental Unit nor the State (including, without limitation, Commerce and the Rural Authority) shall be liable for the payment of any obligations incurred in the performance of the Project.

7. Project Records.

- (a). The Owner shall maintain and cause any Business to maintain full, accurate and verifiable financial records, supporting documents and all other pertinent data for the Project in such a manner as to clearly identify and document the expenditure of the State funds provided under this LBC separate from accounts for other awards, monetary contributions or other revenue sources for this Project.
- (b). The Owner shall retain and cause any Business to retain all financial records, supporting documents and all other pertinent records related to this LBC, the Loan and the Project for a period of five (5) years from the Termination Date. In the event such records are audited, all such records shall be retained beyond the five-year period until the audit is concluded and any and all audit findings have been resolved.

8. Monitoring, Reports and Auditing. The Owner agrees to generate and to cause any Business to generate such reports regarding the LBC or the Project as may be requested by the Governmental Unit or the State (including, without limitation, the Rural Authority or Commerce) in such form as they may request, including after the Termination Date. The Owner further grants and shall cause any Business to grant the Governmental Unit or the State (including any of its agencies, commissions or departments such as Commerce, the North Carolina State Auditor and the North Carolina Office of State Budget and Management) and any of their authorized representatives, at all reasonable times and as often as necessary (including after the Termination Date), access to and the right to inspect, copy, monitor and examine all of the books, papers, records and other documents relating to the LBC or the Project. In addition, the Owner agrees to comply and to cause any Business to comply at any time, including after the Termination Date, with any requests by the State (including, without limitation, the Rural Authority or Commerce) for other financial and organizational materials to permit the State to comply with its fiscal

monitoring responsibilities or to evaluate the short- and long-range impact of its programs.

9. Termination; Availability of Funds.

- (a). If the Owner fails to fulfill in a timely and proper manner its obligations or violates any of its covenants or stipulations under the LBC or if any Business fails to fulfill those requirements applicable to it in the LBC, the Owner agrees that the Governmental Unit or Commerce has the right to terminate the LBC by giving the Owner written notice specifying the Termination Date, which shall be determined by the Governmental Unit or Commerce in their sole discretion. Upon such termination, neither the State nor the Governmental Unit shall have any responsibility to make Loan payments. Further, upon such termination, the Owner shall not expend any Loan funds without the express written authorization of the Governmental Unit and Commerce and shall return all unspent Loan funds to either the Governmental Unit or Commerce, upon request and as directed.
- (b). If the Governmental Unit fails to fulfill in a timely and proper manner its obligations or violates any of the covenants or stipulations under its Grant Agreement with Commerce, the Owner agrees that Commerce has the right to terminate its Grant Agreement with the Governmental Unit and/or terminate this LBC by giving, as applicable, the Governmental Unit or the Governmental Unit and the Owner written notice specifying the Termination Date, which Commerce may determine in its sole discretion. Upon such termination, neither the State nor the Governmental Unit shall have any responsibility to make Loan payments. Further, upon such termination, the Owner shall not expend any Loan funds without the express written authorization of the Governmental Unit and Commerce and shall return all unspent Loan funds to either the Governmental Unit or Commerce, upon request and as directed.
- (c). The obligations of the Rural Authority and/or Commerce to pay any Grant funds to the Governmental Unit and for the Governmental Unit to pay any Loan amounts to the Owner under this LBC are contingent upon the availability and continuation of funds for such purpose. If funds for the Grant and therefore the Loan become unavailable, the Owner agrees that either Commerce or the Governmental Unit has the right to terminate this LBC by giving written notice specifying the Termination Date, which either the Governmental Unit or Commerce may determine in their sole discretion. Upon such termination, neither the State nor the Governmental Unit shall have any responsibility to make Loan payments. Further, upon such termination, the Owner shall not expend any Loan funds without the express written authorization of the Governmental Unit and Commerce and shall return all unspent Loan funds to the Governmental Unit or Commerce, upon demand and as directed.

10. Liabilities and Loss. The Owner hereby agrees to release, indemnify and hold harmless the Governmental Unit and the State (including the Rural Authority and Commerce), and their respective members, officers, directors, employees, agents and attorneys (hereinafter collectively referred to as "Indemnified Parties"), from any claims of third parties (including, without limitation, any Business) arising out of any act or omission of the Owner or any third party (including, without limitation, any Business) in connection with the performance of this LBC or the Project, and for all losses arising from implementation of this LBC or the Project. Without limiting the foregoing, the Owner hereby releases the Indemnified Parties from, and agrees that such Indemnified Parties are not liable for, and

agrees to indemnify and hold harmless the Indemnified Parties against, any and all liability or loss, cost or expense, including, without limitation, reasonable attorneys' fees, fines, penalties and civil judgments, resulting from or arising out of or in connection with or pertaining to, any loss or damage to property or any injury to or death of any person occurring in connection with the Project, or resulting from any defect in the fixtures, machinery, equipment or other property used in connection with the Project or arising out of, pertaining to, or having any connection with, the Project or the financing thereof (whether or not arising out of acts, omissions or negligence of the Owner or of any third party (including, without limitation, any Business), or of any of their agents, contractors, servants, employees, licensees, lessees, or assignees), including any claims and losses accruing to or resulting from any and all subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project.

11. Owner Representations and Warranties. The Owner hereby represents and warrants that:
- (a). The Owner and every Business are duly authorized to do business under North Carolina law and are not delinquent on any federal, state or local taxes, licenses or fees.
 - (b). This LBC has been entered into and executed on behalf of the Owner by an individual with full actual and apparent authority to bind the Owner to the terms hereto, and the execution and delivery of this LBC have been duly authorized by all necessary action, and are not in contravention of law nor in contravention of any certificate of authority, bylaws or other applicable organizational documents of the Owner, nor are they in contravention of the provisions of any indenture, agreement or undertaking to which the Owner is a party or by which it is bound.
 - (c). The Promissory Note has been executed by every individual or entity that has any ownership interest in the Property and is fully binding on the Owner.
 - (d). There is no action, suit, proceeding or investigation at law or in equity before any court, public board or body pending, or, to the Owner's knowledge, threatened against or affecting the Owner, that could or might adversely affect the Project, the creation of the New Jobs or any of the transactions contemplated by this LBC, or the validity or enforceability of this LBC or the Owner's ability to discharge its obligations under this LBC.
 - (e). Upon the Owner's reasonable inquiry of any Business, there is no action, suit, proceeding or investigation at law or in equity before any court, public board or body pending, threatened against or affecting any Business that could or might adversely affect the Project, the creation of the Jobs or any of the transactions contemplated by this LBC or the validity or enforceability of this LBC or the ability of any Business to create the Jobs specified herein.
 - (f). No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this LBC by the Owner or the performance of any of its obligations hereunder, or else all such requisite governmental consents or approvals have been obtained. The Owner shall provide the Governmental Unit or Commerce with evidence of the existence of any such necessary consents or approvals at the time of the execution of this LBC.
 - (g). The Owner is solvent and has inquired of and received reasonable evidence from any Business of the solvency of that Business.

- (h). A cash match grant, loan or other funding (“Cash Match”) equal to the amount of the Loan shall have been unconditionally committed to the Project. The Governmental Unit shall have procured and contributed at least five percent (5%) of this Cash Match, but no part of this 5% contribution can have derived, either directly or indirectly, from any other State or federal source. The Owner hereby represents and warrants that all Cash Match funds shall be utilized exclusively for the purpose of the Project and that it shall not make or approve of improper expenditures of Cash Match funds. The Owner shall expend all Cash Match funds prior to or simultaneously with and at the same rate as its expenditure of Loan funds.

12. Cessation/Termination, Bankruptcy, Dissolution or Insolvency.

- (a). The Owner shall at all times preserve its legal existence, except that it may merge or consolidate with or into or sell all or substantially all of its assets to any entity that expressly undertakes, assumes for itself and agrees in writing to be bound by all of the obligations and undertakings of the Owner contained in this LBC. If the Owner so merges, consolidates or sells its assets without such an undertaking being provided, it agrees to repay to the Governmental Unit or Commerce, upon request and as directed, all unspent Loan funds. Further, any merger, consolidation or sale without such an undertaking shall constitute a material default under this LBC, and the Governmental Unit or Commerce may terminate the LBC upon written notice to the Owner and hold the Owner liable for any other repayment provided for under this LBC.
- (b). Other than as provided for in Paragraph 12(a), if the Owner or any Business ceases to do business or becomes the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, the Owner shall give the Governmental Unit immediate notice of the event, shall not expend any Loan funds without the express written authorization of the Governmental Unit and shall return all unspent Loan funds to the Governmental Unit or Commerce, upon demand and as directed and if permissible under applicable bankruptcy, dissolution or insolvency law.
- (c). If the Owner fails to provide the Governmental Unit notice of the Owner or any Business ceasing to do business or becoming the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, it shall constitute a material default under this LBC. If there is such a cessation or such a proceeding, the Governmental Unit or Commerce may terminate the LBC upon written notice to the Owner. Upon such termination, the Owner shall not expend any Loan funds without the express written authorization of the Governmental Unit and shall return all unspent Loan funds to the Governmental Unit or Commerce upon demand and as directed and if permissible under applicable bankruptcy, dissolution or insolvency law.
- d). Notwithstanding the foregoing and wherever referred to in this LBC, “ceases to do business” shall not include (1) ceasing operations to maintain, service or upgrade real or personal property of the Owner, (2) season shutdowns of operations as long as such cessation does not exceed a total of four (4) weeks in any calendar year (excluding time attributable to an event of force majeure as described below) and (3) under the circumstances for the period of time described in Paragraph 22 below.

13. Additional Repayment Requirements and Remedies.

- (a). The repayment requirements and remedies addressed in this Paragraph 13 are in addition to those repayment requirements and other remedies set forth elsewhere in this LBC, including the requirements to repay unspent Loan funds. No remedy conferred or reserved by or to the State or the Governmental Unit is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy provided for in this LBC, or now or hereinafter existing at law, in equity, or by statute, and any such right or power may be exercised from time to time and as often as may be deemed expedient.
- (b). The Owner acknowledges that the Grant by the Rural Authority and the Loan by the Governmental Unit are predicated upon the creation and maintenance of the New Jobs and maintenance of the Baseline Number of jobs required by Paragraph 3(a) and that failure to create and/or maintain them will constitute a material default of this LBC.
- i. If the Business fails to create and maintain such New Jobs, then the Owner shall repay to the Governmental Unit or Commerce, as directed, an amount equal to the product of (i) \$5,263.16 (the amount of Loan funds divided by the number of New Jobs required to be created in Paragraph 3(a) and (ii) the number of New Jobs required to be created in Paragraph 3(a), minus the number of New Jobs actually created, above the Baseline Number reported, that have been in existence for six (6) consecutive months.
- ii. Additionally, in the event that the Business fails to maintain its Baseline Number of jobs as required under Paragraph 3(a), the Business shall lose credit for any qualifying New Jobs under this LBC by the same number of jobs that the Baseline Number is short. For example, if the Baseline Number of jobs falls short by three (3) jobs as of the date the Business has created and maintained all required New Jobs, the number of New Jobs deemed created and maintained shall be reduced by three (3). The amount the Business must repay shall then be calculated in accordance with Paragraph 13(b)i.
- iii. Either Commerce or the Governmental Unit shall notify the Owner in writing of the amount to be repaid and direct the Owner whether to repay such amount to the Governmental Unit for return to Commerce or repay the amount directly to Commerce. All such amounts shall be due immediately upon demand by the Governmental Unit or Commerce. If not paid within thirty (30) days following demand, the unpaid amount due hereunder and under the Promissory Note shall bear interest at the rate of 10% per annum after demand until paid. Upon default in such payment, the Governmental Unit or Commerce may employ an attorney to enforce their respective rights and remedies, and the Owner hereby agrees to pay the legal costs and reasonable attorneys' fees of the Governmental Unit and Commerce plus all other reasonable expenses incurred by such party in exercising any of its rights and remedies upon such defaults.
- (c). If there is a breach of any of the requirements, covenants or agreements in this LBC (including, without limitation, a failure to repay the amount required under Paragraph 13(b) within the time required), or if there are any representations or warranties which are untrue as to a material fact in this LBC or in relation to the LBC or the Project

(including the performance thereof), the Owner agrees that the Governmental Unit or Commerce may require repayment from the Owner of an amount of Loan funds to be determined in their sole discretion but not to exceed the amount of Loan funds the Owner has already received under this LBC. Such requirements, covenants or agreements include but are not limited to Paragraphs 2, 3, 4, 9, 11 and 12 of this LBC.

14. No Waiver by Governmental Unit or the State. Failure of the Governmental Unit or the State (including, without limitation, the Rural Authority and Commerce) at any time to require performance of any term or provision of this LBC shall in no manner affect the rights of the Governmental Unit or the State at a later date to enforce the same or to enforce any future compliance with or performance of any of the terms or provisions hereof. No waiver of the Governmental Unit or the State of any condition or the breach of any term, provision or representation contained in this LBC, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of that or any other term, provision or representation.
15. Waiver of Objections to Timeliness of Legal Action. The Owner knowingly waives any objections it has or may have to timeliness of any legal action (including any administrative petition or civil action) by the Governmental Unit or the State (including Commerce) to enforce their rights under this LBC. This waiver includes any objections the Owner may possess based on the statutes of limitations or repose and the doctrines of estoppel or laches.
16. Special Provisions and Conditions.
 - (a). Nondiscrimination. The Owner agrees that it will not, and will ensure that the Business will not, discriminate by reason of age, race, religion, color, sex, national origin or disability related to the activities of this LBC or the Project.
 - (b). Compliance with Laws. The Owner shall at all times, and shall cause any Business at all times to, observe and comply with all laws, regulations, codes, rules, ordinances and other requirements (together, "Laws") of the state, federal and local governments which may in any manner affect the performance of the LBC or the Project.
 - (c). Non-Assignability. The Owner shall not assign or transfer any interest in the LBC without the prior written consent of the Governmental Unit and Commerce; provided however, that claims for money due to the Owner from the Governmental Unit under this LBC may be assigned to any commercial bank or other financial institution without such approval.
 - (d). Personnel. The Owner represents that it and any Business have or will secure at their own expense all personnel required to monitor, carry out and perform the scope of services of this LBC and the Project. Such employees shall not be employees of the State (including, without limitation, the Rural Authority or Commerce) or the Governmental Unit. Such personnel shall be fully qualified and shall be authorized under state and local law to perform such services.

22. Force Majeure. If (a) during the Grant Term the real or personal property located on or constituting the Property suffers damage or destruction caused by acts of God, fires, floods, storms, insurrection, riots, acts of the public enemy, national catastrophe, or similar unexpected events, (b) such damage or destruction was not principally caused by the negligence, willful misconduct or violation of applicable law by the Owner, (c) the Owner uses reasonable efforts to repair, or to work around, such damage or destruction reasonably promptly, and (d) as a direct result of such damage or destruction the Owner cannot satisfy the requirements and obligations of Sections 3 of this Agreement as and when this Agreement requires, then the Owner will be entitled to an extension of time not to exceed sixty (60) days to satisfy the requirements and obligations of Section 3 of this Agreement; provided that the Governmental Unit in its sole discretion with respect to the obligations it is owed by the Owner, may elect to extend that sixty day period to give the Owner additional time to satisfy those requirements.

IN WITNESS WHEREOF, the parties hereto have executed this LBC as of the date first above written.

Governmental Unit Name: _____

Signature: _____ [SEAL]

Printed Name: _____

Title: _____

Owner Name: _____

Signature: _____ [SEAL]

Printed Name: _____

Title: _____

For VALUE RECEIVED and subject to the terms of and secured by the Rural Economic Development Loan Agreement and Legally Binding Commitment – Private-Owner Building Reuse Program, Reference Number **2017-087-3201-2587** (“LBC,” which is incorporated by reference herein), the undersigned borrower[s] (the “Owner”) jointly and severally promise[s] to pay to lender the **City of Claremont** or its assigns (together, the “Governmental Unit”) or to the intended third-party beneficiary of this Promissory Note, the North Carolina Department of Commerce (“Commerce”), upon demand and as directed by either the Governmental Unit or Commerce, an amount of principal loan (“Loan”) funds under the LBC up to and including **\$500,000.00** Dollars but which amount shall not exceed the amount of Loan funds the Owner has actually received under the LBC, plus interest and attorney’s fees as addressed below. Unless otherwise specified herein, capitalized terms in this Promissory Note shall have the same meaning as those set forth in the LBC.

The Owner acknowledges and represents that: (i) the undersigned is or are the only person(s), entity or entities who or that have any ownership interests in the certain real property located at:

in _____ County, North Carolina (the “Property”); and (ii) the undersigned shall be jointly and severally liable for any and all debts secured by this Promissory Note.

The Owner further acknowledges that: (i) in order for the Owner to receive the Loan, the LBC requires the Owner to complete a “Project”; (ii) in order for the Owner to receive the Loan, what the LBC identifies as the “Business” must maintain certain jobs and create and maintain certain other jobs in working with the Owner to complete the Project; (iii) the Loan from the Governmental Unit to the Owner under the LBC consists entirely of a grant from the State of North Carolina to the Governmental Unit, subject to certain clawback provisions; (iv) Commerce is an intended third-party beneficiary to the LBC and to this Promissory Note; and (v) the LBC specifies those circumstances in which the Governmental Unit or Commerce can terminate the LBC and require the Owner to repay an amount of Loan funds according to a formula or else in an amount to be determined in the sole discretion of the Governmental Unit or Commerce but which amount shall not exceed the amount of Loan funds the Owner has actually received under the LBC.

Upon default, the Governmental Unit and/or Commerce may employ attorneys to enforce their rights and remedies under this Promissory Note and the LBC, and the Owner agrees to pay their reasonable attorneys’ fees, plus all other reasonable expenses they incur in exercising their rights and remedies upon default. The rights and remedies of the Governmental Unit and

Commerce, as described in this Promissory Note and the LBC, shall be cumulative and may be pursued singly, successively or together against the Owner (including each of the undersigned), the Property, or any other funds, property or security held by the Owner for payment or security, in the sole discretion of the Governmental Unit and Commerce. The failure to exercise any such right or remedy shall not be a waiver or release of such rights or remedies or the right to exercise any of them at another time.

The Owner hereby waives protest, presentment, notice of dishonor and notice of acceleration and maturity and agrees to remain bound for the payment of principal, interest and all other sums due under this Promissory Note and the LBC, notwithstanding any change or changes by way of release, surrender, exchange, modification or substitution of any security for this Promissory Note, or by way of any extension or extensions of time for the payment of principal and interest; and the Owner waives all and every kind of notice of such change or changes and agrees that the same may be made without notice of or consent to any of them.

This Promissory Note may not be amended, changed or altered except in writing executed by the Owner, the Governmental Unit and Commerce.

If not repaid within 30 days following demand hereunder, the Loan funds demanded by the Governmental Unit or Commerce under this Promissory Note shall bear interest at the rate of 10% per annum after demand until repaid. If either the Governmental Unit or Commerce initially demands Loan repayment from the Owner ("First Demand") in an amount less than the Loan funds the Owner has actually received under the LBC but, failing to receive repayment and, in its discretion under the LBC, increases the Loan repayment demand ("Second Demand") to the full amount the Owner has received under the LBC, then such interest on the difference between the First and Second Demands shall begin to accrue as of the date of the Second Demand.

For example, if under the terms of the LBC, a Business engages in an improper expenditure of Loan funds, the Governmental Unit has the discretion to require in a First Demand the partial repayment of Loan funds received by the Owner. Interest will begin to accrue at 10% per annum on whatever portion of the sum is not repaid as of the 31st day after the First Demand. Further, if the Owner fails to repay the First Demand in full, the Governmental Unit retains the discretion under the LBC to terminate the LBC and issue a Second Demand for the full repayment by the Owner of all Loan funds. Interest will continue accruing at 10% per annum on the original principal amount still unpaid from the First Demand and, following the expiration of 30 days from the Second Demand, interest will begin to accrue at 10% per annum on the additional unpaid principal Loan amount in the Second Demand.

Payment shall be made in lawful money of the United States of America via United States Mail First Class, Federal Express or UPS to the attention of the person at the address or in person at the address of the Governmental Unit or Commerce as directed in writing.

This Note shall be governed by, and construed in accordance with, the laws of the State of North Carolina.

IN WITNESS WHEREOF, the undersigned has (have) caused these presents to be executed under seal, pursuant to authority duly given, the day and year first above written.

EVERY SIGNATORY BELOW EXPRESSLY REPRESENTS THAT ALL INDIVIDUALS OR ENTITIES WITH ANY OWNERSHIP INTERESTS IN THE PROPERTY HAVE EXECUTED THIS PROMISSORY NOTE.

Dated as of: _____, 20 _____

If by Individual: _____

Signature: _____ [SEAL]

Printed Name: _____

Dated as of: _____, 20 _____

If by Entity: _____

Signature: _____ [SEAL]

Printed Name: _____

**CITY OF CLAREMONT
ORDINANCE 1-17**

**SPECIAL REVENUE PROJECT ORDINANCE
PRYSMIAN CABLES, LLC– ECONOMIC DEVELOPMENT**

BE IT ORDAINED by City Council of Claremont, North Carolina, that pursuant to Section 13.2 of Chapter 150 of the General Statutes of North Carolina, the following Capital Project Fund Ordinance is hereby adopted.

Section 1. That this ordinance provides for the receipt of a NC Commerce Building Reuse Grant in the amount of \$500,000 to be used toward building renovations for Prysmian Cables, LLC. This is a 0% forgivable loan provided all conditions of the grant are met. This grant requires a local match of 5% or \$25,000 which will be used to pay for grant administration and professional services.

Section 2. This ordinance shall remain in effect for the duration of the project; subject to periodic review by the City Council.

Section 3. The City Manager is hereby directed to act on behalf of the City Council in all matters associated with the project within the terms of all contracts, agreements and legal requirements binding on the project and within limits of the funds appropriated herein.

Section 4. The following revenues are available for this project:

NC Commerce –Building Reuse Grant	\$500,000.00
Transfer from General Fund	<u>\$25,000.00</u>
Total Revenues	\$525,000.00

Section 5. The following amounts are appropriated for the project:

Grant Administration (WPCOG)	\$25,000.00
Economic Development – Prysmian Cables, LLC.	<u>\$500,000.00</u>
Total Appropriations	\$525,000.00

Section 6. The City Manager is directed to report annually on the financial status of this project and keep the City Council informed of any unusual occurrences associated with the project.

Adopted this the 6th day of February, 2017.

Shawn R. Brown, Mayor

Attested:

Wendy L. Helms, City Clerk

AGREEMENT BETWEEN THE
WESTERN PIEDMONT COUNCIL OF GOVERNMENTS AND
THE CITY OF CLAREMONT
FOR THE PROVISION OF
ADMINISTRATIVE ASSISTANCE
NORTH CAROLINA DEPARTMENT OF COMMERCE
RURAL ECONOMIC DEVELOPMENT DIVISION
PRYSMIAN CABLES AND SYSTEMS USA, LLC
“PHASE II”
BUILDING REUSE GRANT
FEBRUARY 6, 2017 –JANUARY 15, 2019

This AGREEMENT, entered into on this the ____ day of _____, 2017 by and between the Western Piedmont Council of Governments (hereinafter referred to as the "Planning Agency") and the City of Claremont, North Carolina (hereinafter referred to as the "Local Government"); WITNESSETH THAT:

WHEREAS, the Planning Agency is empowered to provide technical assistance by the North Carolina General Statutes and by resolution passed by the Planning Agency on April 17, 1972. Technical assistance shall consist of the provision of services as described in Attachment A, which is herein made a part of this Contract;

WHEREAS, the Local Government has requested the Planning Agency to provide such technical assistance to the Local Government; and

WHEREAS, the Planning Agency desires to cooperate with the Local Government in every way possible to the end that the proposed activities are carried out in an efficient and professional manner;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. **Personnel.** That during the period of this Contract, the Planning Agency will furnish the necessary trained personnel to the Local Government.
2. **Travel/Printing.** The Local Government will pay for expenses related to conferences, conventions, seminars, local travel, etc. of the personnel when the Local Government requests or approves travel related to the Local Government's planning program, or if it is beneficial to both parties, the costs will be shared on an agreed-upon ratio.
The Local Government will also pay for expenses related to printing of report(s), mailings to advisory boards, and other costs not related to normal travel and staffing costs associated with personnel furnished by the Planning Agency.

3. **Compensation.** The Local Government will pay the Planning Agency an amount of \$25,000 (twenty-five thousand dollars) for the satisfactory performance of all services related to administration of the project as defined in the attached Scope of Services. It is expressly understood and agreed that total compensation shall not exceed the sum specified without prior approval of both agencies.
4. **Termination/Modifications.** The Local Government may terminate this Contract by giving the Planning Agency a thirty-day written notice. Furthermore, if there is a need to amend the proposal outlined in Attachment A, either party may do so with the written approval of the other.
5. **Time of Performance.** The Planning Agency shall ensure that all services required herein shall be completed and all required reports, maps, and documents submitted during the period beginning February 6, 2017 and ending January 15, 2019.
6. **Interest of Members, Officers, or Employees of the Planning Agency, Members of the Local Government, or Other Public Officials.** No member, officer, or employee of the Planning Agency or its agents; no member of the governing body of the locality in which the program is situated; and no other public official of such locality or localities who exercise any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any financial interest, either direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Agreement. Immediate family members of said members, officers, employees, and officials are similarly barred from having any financial interest in the program. The Planning Agency shall incorporate, or cause to be incorporated, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purpose of this section.
7. **Access to Records and Record Retainage.** All official project records and documents must be maintained during the operation of this project and for a period of three years following closeout. The NC Department of Commerce, the Attorney General of the State of North Carolina, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the Planning Agency which are pertinent to the execution of this Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions.
8. **Liquidated Damages Clause.** If the project fails to be carried out within the time frame outlined in the administrative proposal due to activities attributed to the Planning Agency, the Local Government may assess the Planning Agency a sum in the amount of \$100 per week for any subsequent weeks until completion.
9. **Termination of Agreement for Cause.** If, through any cause, the Planning Agency

shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or violate any of the covenants, conditions, or stipulations of this Agreement, the Local Government shall thereupon have the right to terminate this Agreement by giving written notice of such termination and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared under this Agreement shall, at the option of the Local Government, become its property, and the Planning Agency shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials in direct proportion to the extent of services actually completed.

10. **Grantee Assurances.** In the performance of this Agreement, the Planning Agency shall comply with all applicable federal rules and procedures.

IN WITNESS WHEREOF, the Planning Agency and the Local Government have executed this Agreement as of the date first above written.

LOCAL GOVERNMENT:
TOWN OF VALDESE

PLANNING AGENCY:
WESTERN PIEDMONT COUNCIL OF GOV'TS.

By: _____
Town Manager

By: _____
Executive Director

LOCAL GOVERNMENT:

PLANNING AGENCY:

By: _____
Mayor

By: _____
Chairman

Preaudit statement:

This instrument has been preaudited in the manner prescribed by the Local Government Budget and Fiscal Control Act.

By: _____
Local Government Finance Officer

ATTACHMENT A
SCOPE OF SERVICES

CITY OF CLAREMONT
NORTH CAROLINA DEPARTMENT OF COMMERCE
RURAL ECONOMIC DEVELOPMENT DIVISION
WORK PROGRAM/BUDGET
FEBRUARY 6, 2017 – JANUARY 15, 2019

Introduction

The Western Piedmont Council of Governments (WPCOG) has worked with City of Claremont on the NC Department of Commerce Rural Economic Development Division Building Reuse Grant for Prysmian Cables and Systems USA, LLC. The project is locally referred to as Phase II of Prysmian's restoration of their fiber optic preform operations. The City of Claremont has been awarded a \$500,000 grant to be used towards the project that involves \$20 million to restore manufacturing operations in three idle building areas totaling more than 30,000 sq feet and the creation of 50 full-time jobs while maintaining their positions at the Rocky Mount, NC facility.

The Scope of Services proposal is intended to describe the various administrative activities the WPCOG will provide as related to the NC Department of Commerce Rural Economic Development Division Building Reuse grant funds.

WPCOG Services

Leah Martin will serve as Project Administrator and will provide the following specific activities:

- Assistance with development of the City of Claremont's Award Package.
- Development and management of the overall project filing system.
- Preparation of all pay request recommendations for the City.
- Requisition of the grant funds.
- Preparation of all required reports during the project construction.
- Update Manager on status of project.

The City will be responsible for the following:

- Adequate office space including utilities.
- Direct payment of legal and audit services and general administrative costs.

- All administrative costs not specifically identified as WPCOG responsibilities.

Administrative Fee

The WPCOG proposes to provide the above-described services for a fee not to exceed contract of \$25,000.

Amendments and Termination

The City of Claremont can terminate this contract by giving a one-month written notice. Should there be the need to amend this proposal during the term of the project; either party may do so with the approval of the other.

REQUEST FOR COUNCIL ACTION

Date of Meeting: February 6, 2017

To: Mayor and the City Council

From: Catherine Renbarger, City Manager

Action Requested: Adopt Ordinance 3-17 Amending the FY2016-2017 Budget

This budget amendment is needed to appropriate the City's local match portion of the Building Reuse Grant with Prysmian. The amendment calls for \$25,000 in appropriated fund balance to be moved to the Building Reuse – Prysmian Project Fund as the City's 5% local match.

Recommendation: Motion to Adopt Ordinance 3-17 Amending the FY2016-2017 Budget

City Council of the City of Claremont

Catawba County, North Carolina

Ordinance No. 3-17

AN ORDINANCE OF THE CITY OF CLAREMONT AMENDING CLAREMONT
MUNICIPAL BUDGET FOR FISCAL YEAR 2017

THE CITY COUNCIL OF THE CITY OF CLAREMONT DOES HEREBY ORDAIN AS
FOLLOWS:

General Fund

	<u>Increase</u>	<u>Decrease</u>
<u>Revenues</u>		
Appropriated Fund Balance		
10.3990.0000	\$25,000	
<hr/>		
Total	\$25,000	
<u>Expenditures</u>		
Transfer to Building Reuse – Prysman Project Fund		
10.4200.9700	\$25,000	
<hr/>		
Total	\$25,000	

INTRODUCED at the regular meeting of the City Council of the City of Claremont on
February 6, 2017.

ADOPTED at the regular meeting of the City Council of the City of Claremont on
February 6, 2017.

MAYOR Shawn R. Brown

ATTEST:

Wendy Helms, City Clerk

APPROVED AS TO FORM:

Bob Grant, City Attorney

REQUEST FOR COUNCIL ACTION

Date of Meeting: February 6, 2017

To: Mayor and the City Council

From: Stephanie Corn, Finance Officer

Action Requested: Adopt Ordinance 02-17 Amending the FY2016-2017 Budget

This budget amendment will move the pay per call money (\$22,750) into part time salaries for quarterly disbursement to firefighters. This is done annually.

Other amendments are at the request of Department Heads to align budgets for the second half of the year.

Recommendation: Motion to Adopt Ordinance 02-17 Amending the FY2016-2017 Budget

City Council of the City of Claremont
Catawba County, North Carolina
Ordinance No. 02-17

AN ORDINANCE OF THE CITY OF CLAREMONT AMENDING CLAREMONT
MUNICIPAL BUDGET FOR FISCAL YEAR 2017

THE CITY COUNCIL OF THE CITY OF CLAREMONT DOES HEREBY ORDAIN AS FOLLOWS:

GENERAL FUND

<u>Expenditures</u>	<u>Increase</u>	<u>Decrease</u>
10-4200-1400 Travel & Training	\$ 2,000.00	
10-4200-0400 Audit Fees		\$ 2,000.00
10-5100-4500 Contracted Services	\$ 300.00	
10-5100-1110 Telephone		\$ 300.00
10-5300-0800 Employee Relations	\$ 1,000.00	
10-5300-3310 Small Tools & Equipment		\$ 1,000.00
10-5300-1700 Maintenance / Vehicles	\$ 2,900.00	
10-5300-1600 Maintenance/ Equipment		\$ 2,900.00
10-5300-1500 Maintenance / Buildings Grounds	\$ 750.00	
10-5300-4400 Fire Prevention Programs		\$ 750.00

<u>Expenditures</u>	<u>Increase</u>	<u>Decrease</u>
10-5300-0300 Part Time Salaries	\$ 22,750.00	
10-5300-0400 Pay Per Call Incentives		\$ 22,750.00
10-5450-1110 Telephone	\$ 50.00	
10-5450-5700 Misc. Expenses		\$ 50.00
	<u>\$ 32,450.00</u>	<u>\$ 32,450.00</u>

INTRODUCED at the regular meeting of the City Council of the City of Claremont on February 6, 2017.

ADOPTED at the regular meeting of the City Council of the City of Claremont on February 6, 2017.

Shawn R. Brown, Mayor

ATTEST:

Wendy Helms, City Clerk

APPROVED AS TO FORM:

Bob Grant, City Attorney

REQUEST FOR COUNCIL ACTION

Date of Meeting: February 6, 2017

To: Mayor and the City Council

From: Catherine Renbarger, City Manager

Action Requested: Accept Agreement with Duke Energy for Plug-In Electric Vehicle Charging Station

In late 2016, the City applied for, and was awarded, a \$5,000 grant from Duke Energy which would provide the funds to install an electric vehicle charging station at the City Park. Since that time, Duke Energy has been working to prepare contract documents and provide project specifications for all of the municipalities that received grants.

The contract with Duke is attached as a part of this Council Item and is requested to be submitted back to Duke Energy by March 1st. Staff are currently working to obtain proposals from vendors on the actual costs of the project. Staff recommend approving the agreement contingent upon the grant providing sufficient funds to cover the costs of the project. Tom Winkler and Leslie Meadows have both been working on this project and will be available to answer any questions.

Recommendation: Motion to Accept Funding Agreement with Duke Energy for Plug-In Electric Vehicle Charging Station Contingent Upon Sufficient Funding

FUNDING AGREEMENT
FOR
PLUG-IN ELECTRIC VEHICLE CHARGING STATION PROJECTS

This Funding Agreement for Plug-In Electric Vehicle Charging Station Projects (this “**Agreement**”) is made and entered into as of this 16th day of January, 2017 (the “**Effective Date**”), by and between Duke Energy Carolinas, LLC (“**Duke Energy**”), and City of Claremont (“**Performing Party**”). Each of Duke Energy and Performing Party may be referred to herein as a “**Party**” and collectively as “**Parties**”.

RECITALS:

WHEREAS, as set forth in that certain Consent Decree entered into by Duke Energy on October 20, 2015 (the “**Consent Decree**”), Duke Energy is required to spend \$3,000,000 to implement environmental mitigation projects in the State of North Carolina designed to reduce air emissions from reduced vehicle emissions or reduced use of fossil-fueled electricity generation;

WHEREAS, of the aggregate amounts required to be spent pursuant to the Consent Decree, Duke Energy has allocated up to \$1,000,000 for the reimbursement of costs incurred by certain Duke Energy customers to purchase and install electric vehicle charging stations;

WHEREAS, this project is designed to provide direct financial support to Duke Energy customers (and, in certain instances, customers of those customers) that wish to install and own electric vehicle charging stations, including, without limitation, the charge ports associated therewith (collectively, the “**Charging Stations**”) and require assistance funding such purchase and installation;

WHEREAS, the Performing Party has expressed a desire to procure and install certain Charging Stations and has requested that Duke Energy provide funding for the Performing Party to procure, construct and install such Charging Stations; and

WHEREAS, Duke Energy has agreed to provide funding to the Performing Party to procure, construct and install the Charging Stations in the manner set forth herein;

NOW THEREFORE, in consideration of the recitals, the mutual promises and conditions set forth in this Agreement and other good and valuable consideration, Duke Energy and Performing Party agree as follows:

AGREEMENT

1. **Project**. The Performing Party covenants to Duke Energy that the Performing Party shall, in accordance with the terms and conditions set forth herein, (a) purchase and install all Charging Stations for each Project (as defined below) set forth on Exhibit A and (b) continue own, operate and maintain such Charging Stations after the purchase and installation thereof. The Performing Party shall be responsible for all ongoing costs of ownership associated with each Charging Station, including, but not limited to, associated energy, maintenance, repair and connectivity costs.

2. **Project Descriptions and Requirements**.

a. Project Descriptions. Exhibit A further describes each project to be completed by the Performing Party hereunder and specifically sets forth the general locations at which the Charging Stations are permitted to be installed, the aggregate number of charge ports to be installed at each such location, and the aggregate amount of funds reserved by Duke Energy for such project (collectively, a “**Project**”). Exhibit B contains a map detailing the approved locations for each Project. The Performing Party may only install the Charging Stations at an approved location and shall not change or modify the location of any Project (outside of the approved locations) or the aggregate number of charge ports to be installed at any Project without the prior written consent of Duke Energy. Exhibit D contains a good faith estimate of the aggregate cost to procure, install and construct each Project (the “**Estimated Eligible Costs**”) as set forth in a detailed budget broken down to indicate equipment costs, construction and installation and related labor costs.

b. Charging Station Requirements.

(i) All Charging Stations purchased by the Performing Party shall be new and unused and shall be owned by the Performing Party.

(ii) The Performing Party shall install proper signage at each Project location indicating that parking spaces at which any charge port is located are for “Plug-In Electrical Vehicle Use Only.”

(iii) The Charging Stations shall be either AC level 1 (provided cord set is hardwired), AC level 2, or DC Fast Charge and shall be installed at locations designed to support charging of plug-in electric vehicles while parked for several hours.

(iv) The location of each Project must be well-lit and safe, shall be in compliance with the Americans with Disabilities Act, and shall meet all requirements of Exhibit C.

(v) Each Project shall be located in an area reasonably accessible to the public and may not be located in a privately owned parking lot or in a Park N Ride lot.

3. Term. This Agreement will commence on the Effective Date and continue until the third (3rd) anniversary of the date Duke Energy provides any funding hereunder or until otherwise terminated earlier pursuant to this Agreement. The Performing Party hereby acknowledges that all Projects must be completed in their entirety by no later than December 31, 2017.

4. Award Amount. Subject to the terms and conditions set forth herein, Duke Energy will provide funding to the Performing Party for each Project in an amount equal to the lesser of (i) the Estimated Eligible Costs for such Project as set forth in Exhibit D and (ii) an amount equal to \$5,000 per charge port at any Project (with a cap of \$20,000 per Project location and \$50,000 in the aggregate). With respect to any Project, the Performing Party shall be responsible for all costs incurred in excess of the funding provided to the Performing Party pursuant to this Section 4.

5. Use of Funds. The Performing Party shall apply all funding received by Duke Energy hereunder solely and exclusively towards approved Eligible Costs.

6. Funding Procedures. Subject to the terms and conditions of this Agreement, Duke Energy shall provide funding to the Performing Party in the following manner.

a. Eligible Costs. For purposes of this Agreement, the term “**Eligible Costs**” shall mean only those costs associated with the procurement, construction, and installation of the Charging Stations, including, but not limited to, reasonable costs associated with placing the Charging Stations in service, including the charging station equipment, installation labor, related materials and supplies, permitting fees, and utility service extension costs. For the avoidance of doubt, in no event shall any costs associated with network connectivity or data subscriptions be considered Eligible Costs hereunder and all such costs shall be deemed to be outside of the scope of this Agreement and not subject to funding by Duke Energy.

b. Funding Request. Promptly following the date hereof, the Performing Party shall provide evidence to Duke Energy of its binding commitment to procure, install and construct the Charging Stations for each Project. Such evidence may include executed purchase orders, signed agreements, or other similar documentation reasonably acceptable to Duke Energy. Upon Duke Energy’s satisfaction of such commitment, Duke Energy shall provide to the Performing Party the funding amount determined pursuant to Section 4 hereof.

c. Project Certifications. No later than five (5) days following completion of a Project, the Performing Party shall provide to Duke Energy a certificate signed by an authorized officer certifying (i) the aggregate Eligible Costs actually incurred by the Performing Party to complete the work for such Project, (ii) that all such costs are accurate and constitute Eligible Costs, have been paid in full by the Performing Party, and are consistent with the terms and conditions of the Agreement. Together with such certificate, the Performing Party shall also provide copies of all invoices received by the Performing Party with respect to such Project and all evidences of payment thereof, including cancelled checks, payment confirmations or other similar documentation. If the actual Eligible Costs incurred by the Performing Party for a Project are less than the funding amount determined pursuant to Section 4 (such amount, the “**Overpayment**”), the Performing Party shall reimburse Duke Energy the amount of such Overpayment concurrently with the provision of the certificate required hereby.

7. Performing Party Obligations.

a. Licenses and Permits. The Performing Party hereby certifies that, prior to the commencement of any work for any Project, it has secured, and shall maintain and renew all permits, licenses, approvals and certifications required by any party, including, without limitation, any owner of such Project location or governmental or regulatory agency, for proper execution and completion of such work.

b. Compliance with Laws. The Performing Party shall comply, and shall cause all of its subcontractors to comply, with all applicable state, Federal and local laws relating to each Project and any of the work related thereto.

c. Audit Rights. Performing Party shall, for at least three (3) years after the completion of any Project, keep and maintain such records or accounts of the Performing Party as are necessary to verify and support any and all charges paid for with respect to such

Project using the funding provided hereunder. This includes verification that any and all material, services, labor, and other expenses incurred for such Project have been paid. All books and records shall be maintained in accordance with generally accepted accounting principles. Such books and records shall be made available, on mutually agreeable dates and times, at the Performing Party's facility for verification, copying, audit and inspection by representatives of Duke Energy. Any such audit shall be at Duke Energy's expense and conducted during the Performing Party's normal working hours; provided, however, that the Performing Party shall provide reasonable assistance necessary to enable Duke Energy to conduct such audit and shall not be entitled to charge Duke Energy for any such assistance.

d. Optional Data Collection. From time to time, Duke Energy may contact the Performing Party to participate in Duke Energy's data collection on PEV charging practices in order to better understand the needs of electric vehicle drivers. The Performing Party may elect to participate in such collection process its sole discretion but shall not be required to do so.

8. Representations and Warranties. The Performing Party hereby represents and warrants to Duke Energy that:

a. it is duly organized and validly existing under the laws of its jurisdiction of incorporation or formation and is qualified to do business in all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary;

b. it has all requisite legal power and authority to carry on its business and to execute this Agreement and to perform the terms, conditions and provisions hereof, as evidenced pursuant to N.C. Gen. Stat. 160A-11.;

c. the execution, delivery and performance of this Agreement have been duly authorized by all requisite corporate action;

d. this Agreement constitutes the legal, valid and binding obligation of it, enforceable in accordance with the terms hereof;

e. there is no action, suit, proceeding or order now pending or, to its knowledge, threatened against it before any government authority that could reasonably be expected to materially and adversely affect the ability of the Performing Party to perform its obligations hereunder; and

f. it hereby ratifies, adopts, and agrees to all representations in the approved application and deliverables it has provided to Duke Energy during the proposal process and agrees to give prompt written notice to Duke Energy if there is any material change in these certifications or deliverables.

9. Performing Party Certifications.

a. The Performing Party has not otherwise committed to acquire or install associated electric vehicle charging stations (without project funding support) and is not using and shall not use any portion of the funding hereunder to satisfy any obligations that it may have under other applicable regulations or requirements of law.

b. The Performing Party is a retail or wholesale customer of Duke Energy or Duke Energy Progress, LLC (or is a customer of a wholesale customer of Duke Energy or Duke Energy Progress, LLC) and is located within the State of North Carolina.

10. Indemnification. To the maximum extent permitted by applicable law, the Performing Party shall indemnify, defend and hold harmless Duke Energy (including its parent, subsidiary and affiliate companies), its officers, employees, agents, and any other party with an ownership interest in the premises, from and against all liability, loss, costs, claims, damages, expenses, judgments, and awards, whether or not covered by insurance, in any way related to or arising or claimed to have arisen in whole or in part from the acts or omissions of the Performing Party, its employees, volunteers, subcontractors, agents or assignees in its performance of, or failure to perform under, this Agreement. This indemnification shall include all costs including attorney's fees reasonably incurred in pursuing indemnity claims under or enforcement of this Agreement. Performing Party waives all rights of recovery, including for contribution, against Duke Energy and its directors, officers, employees, affiliates and subcontractors for any matters to which this Section may apply. The provisions of this Section 10 shall survive the termination of this Agreement.

11. Insurance.

a. Without limiting any obligations or liabilities of the Performing Party under this Agreement, the Performing Party shall provide and maintain, and shall require its subcontractors to provide and maintain, for the term of this Agreement, at its own expense, insurance coverages, to the extent applicable, in forms and amounts no less than the following: (i) Workers' Compensation specific to the applicable statutory requirements for the work to be performed; (ii) Employer's Liability Insurance of not less than \$1,000,000 each accident/employee/disease; (iii) Commercial General Liability Insurance having an available limit of at least \$1,000,000 per occurrence/\$2,000,000 in the aggregate for contractual liability, personal injury, bodily injury to or death of persons, and/or loss of use or damage to property; (iv) Commercial/Business Automobile Liability Insurance (including owned, non-owned or hired autos) having an available limit of at least \$1,000,000 each accident for bodily injury, death, property damage, with any fellow employee exclusion removed, and contractual liability; and (v) Umbrella/Excess Liability insurance with available limits of at least \$1,000,000 per occurrence and follow form of the underlying Employer's Commercial General and Auto Liability insurance, and provide at least the same scope of coverages thereunder.

b. All insurance policies provided and maintained by the Performing Party and each subcontractor shall: (i) be underwritten by insurers which are rated A.M. Best "A- VII" or higher; (ii) specifically include Duke Energy and its directors, officers, employees, affiliates, and subcontractors as additional insureds, with respect to Performing Party's or its subcontractors' acts, omissions, services, products or operations, whether in whole or in part, excluding, however, for Worker's Compensation/Employer's Liability and E&O; (iii) be endorsed to provide, where permitted by law, waiver of any rights of subrogation against Duke Energy and its directors, officers, employees, affiliates and subcontractors; (iv) provide that such policies and additional insured provisions are primary with respect to the acts, omissions, services, products or operations of Performing Party or its subcontractors, whether in whole or in part, and without right of contribution from any other insurance, self-insurance or coverage available to Duke Energy and its affiliates; and (v) contain a standard cross liability clause and separation of insured and severability of interest provisions except with

respect to the limits of the insurer's liability. Evidence of such coverage shall be provided via Performing Party's certificate of insurance furnished to Duke Energy prior to the start of any work, upon any policy replacement or renewal and upon Duke Energy's request. All insurance policies shall provide that the insurer will provide at least thirty (30) days' written notice to the Performing Party, who in turn shall provide at least thirty (30) days' written notice to Duke Energy prior to cancellation or non-renewal of any policy (or ten (10) days' notice in the case of non-payment of premium). Performing Party's compliance with these provisions and the limits of insurance specified herein shall not constitute a limitation of Performing Party's liability or otherwise affect Performing Party's indemnification obligations pursuant to this Agreement.

12. Default and Termination.

a. If Duke Energy determines, in its sole discretion, that the Performing Party has failed to comply with any term or condition in this Agreement, Duke Energy may terminate this Agreement immediately upon written notice by Duke Energy to the Performing Party. If this Agreement is so terminated, the Performing Party shall be liable to repay to Duke Energy all of the funding amounts distributed to it under this Agreement.

b. If notified by Duke Energy in writing that it is in violation of any of the terms, conditions or provisions of this Agreement, and a default has occurred, and Duke Energy elects not to terminate the Agreement immediately pursuant to Section 12.a above, the Performing Party shall have thirty (30) days from the date of such notification to remedy the default or, if Duke Energy believes the remedy will take in excess of thirty days to complete, the Performing Party shall have thirty days to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the thirty days and failure by the Performing Party to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in Duke Energy at its discretion, declining to make any further payments to the Performing Party, or in the termination of this Agreement by Duke Energy. If this Agreement is terminated, the Performing Party shall be liable to repay to Duke Energy all of the funding amounts made to it under this Agreement.

c. If Performing Party becomes insolvent, or fails generally to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of creditors; commences any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of itself or its debts or assets, or adopts an arrangement with creditors, under any bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar law of the United States or any state thereof for the relief of creditors or affecting the rights or remedies of creditors generally, Duke Energy may terminate this Agreement immediately upon written notice by Duke Energy to the Performing Party.

d. Upon receipt of notice of termination from Duke Energy, the Performing Party shall immediately stop work on the terminated portion of the Agreement unless otherwise directed by Duke Energy. If so requested by Duke Energy, the Performing Party shall provide to Duke Energy a report with supporting information describing the status of any Project as of the date of such termination.

e. No remedy herein conferred upon or reserved by Duke Energy is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to Duke Energy upon any default by the Performing Party shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by Duke Energy.

13. Miscellaneous.

a. Assignability. Neither this Agreement nor any right, interest or obligation hereunder may be assigned by the Performing party without the prior written consent of Duke Energy, and any attempt to do so shall be null, void and ineffective.

b. Governing Law. The laws of the State of North Carolina shall govern this Agreement, except that the North Carolina conflict of law provisions shall not be invoked in order to apply the laws of any other state or jurisdiction.

c. Disputes. The Parties shall attempt to resolve any claims, disputes and other controversies arising out of or relating to this Agreement (collectively, “**Disputes**”) promptly by negotiation between executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. A Party may give the other Party written notice of a Dispute which has not been resolved in the normal course of business. Executives of both Parties shall meet at a mutually acceptable time and place, and as often as they reasonably deem necessary, to attempt to resolve the Dispute. All negotiations pursuant to this clause are to be deemed confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the Dispute has not been resolved by negotiation within sixty (60) Days of the disputing Party’s initial notice, then either Party may initiate litigation. Venue for any such action shall lie exclusively in the appropriate state or federal courts in and for the State of North Carolina. Performing Party and Duke Energy agree to relinquish and waive their rights to a trial by jury in any action brought hereunder.

d. Notices. All notices, requests, consents and other communications hereunder shall be in writing and shall be dispatched by nationwide overnight courier service, such as (without limitation) Federal Express, or by United States Certified Mail, Return Receipt Requested, postage prepaid, address to the parties as follows:

If to Duke Energy:

Duke Energy Carolinas, LLC
400 S. Tryon Street
14th Floor
Charlotte, NC 28202
Attn: Stacy Phillips
Email: stacy.phillips@duke-energy.com

With a copy to: (which will not constitute as notice)

Duke Energy Carolinas, LLC
550 S. Tryon Street

45th Floor
Charlotte, NC 28202
Attn: Andre Rose, Deputy General Counsel
Email: andre.rose@duke-energy.com

If to the Performing Party:

City of Claremont
P.O. Box 446
Claremont, NC 28610
Attn: Catherine Renbarger
Email: crenbarger@cityofclaremont.org

Notices under this Agreement shall be deemed given upon the earlier of the date of delivery or the date upon which delivery is refused. Any changes in the names or addresses set out in this Section 13.d, shall be through written notice in conformity with the requirements set forth herein.

e. Section Headings. The headings of the several sections of this Agreement are inserted solely for the convenience of reference and are not a part of and are not intended to govern, limit or aid in the construction of any term or provision of this Agreement.

f. Entire Agreement. This Agreement is the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements between the parties. No claim of waiver, modification, consent or acquiescence with respect to any of the provisions of this Agreement shall be made against either party, except on the basis of a written instrument executed by and on behalf of such parties. The parties acknowledge and agree that the recitals provided above constitute an integral part of this Agreement and shall be given the same force and effect as any other provision in this Agreement.

g. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

h. Other Parties. Nothing in this Agreement shall be construed as giving any person, firm, corporation or other entity, other than the parties hereto, any rights, remedy or claim under or in respect to this Agreement or any provision thereof.

i. No Waiver. Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

j. Survival. All of the warranties, covenants and representations of Performing Party, including, but not limited to Section 8, shall survive the termination of this Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized representative as of the date first above written.

City of Claremont

Duke Energy Carolinas, LLC

By: _____
Name: _____
Title: _____

By: _____
Name: Melisa Johns _____
Title: Vice President, Business and Product
Development- Distributed Energy Technology

Exhibit A

Project Descriptions

Locations Approved by Duke Energy for Installation of Ports: Claremont City Park

Quantity of Ports Awarded: 1

Funds Reserved: \$5,000

Exhibit B

Project Location Maps

Google Maps



Exhibit C

Accessibility Requirements

(See Attached)

Exhibit D

Estimated Eligible Costs

Claremont January 2017 Dashboard Report

Police Dept.			Fire Dept.			Financials						
		Month	YTD			Month	YTD			% In	% Out	
Calls Answered		647	647	Calls for Service		33	33	General Fund		88%	57%	
Citations Served		135	135	Working Fires		3	3	Water/Sewer Fund		65%	38%	
Warnings		76	76	Training Hours			0	Rescue Squad				
Number of Arrests		9	9	Prevention Programs		4	4					
Accidents		7	7	Structural Responses		8	8			Month	YTD	
Warrants		23	23	EMS Calls		14	14	Calls for Service			0	
Open Cases		10	10							Training Hours		0
Other Activities & Announcements			Other Activities & Announcements			Other Activities & Announcements			Other Activities & Announcements			
Ofcers. Kirby and Goff attended Death & Crime Scene First Respondes Class. Capt. Long, Cpl. Martin, Officer Bumgarner and Officer Goff had a Cub Scout group come to the PD for a presentation on Police work, Crime Scene Investigation as well as 1st Responder procedures.			Installation of communication equipment , station sign completed, station lighting completed.									
Public Works			Utility Dept.			Planning & Zoning Dept.						
		Month	YTD			Month	YTD			Month	YTD	
Vehicles Serviced		12	12	Water Turned Off		5	5	Total Zoning Permits		2	2	
Recycling Tons- Dec 2016		9.75	112.66	Water Taps		0	0	Commercial Projects		0	0	
Solid Waste Tonnage		38.92	38.92	Water Purchased			0	New Dwelling Units		0	0	
Street Lights Replaced		6	6	Water Sold		7,517,000	7,517,000	Customers w/ Inquiries		7	7	
Work Orders		38	38	McLin WWTP Avg.			0	New Plats Reviewed		0	0	
Sewer Line Jetted/ Manholes		1010 (8)	1010 (8)	North WWTP Avg.			0	Plng Brd Agenda Items		0	0	
Other Activities & Announcements			Other Activities & Announcements			Other Activities & Announcements			Other Activities & Announcements			
Water leak on Catawba Street. Road will be repaired by first week of February.			Crews are working on inflow and infiltration to the sewer system.			Code Enforcement, EnerGov/Ereview training, site plan/utility review for Substance and Agracel Inc.						

Code Enforcement Report

January, 2017

	A	B	C	D
2	<u>Property Owner</u>	<u>Property Address</u>	<u>Issue</u>	<u>Status</u>
3	Jonathan Miller	3060 Oak St	unfinished house	House must reach completion by March 2017 in order to keep mortgage loan with bank. Spot checked 1/18/17. Jonathan was on site with a drill.
4	Janice Salyers	2730 E US Hwy 70	outdoor storage-Tim's Towing	Allowed inside property on 1/25/17 to verify tires are gone. Property is now in full compliance of code. The total \$3,250.00 in daily fines aquired has yet to be collected. Case Closed?
5	7-Eleven Inc.	3137 N. Oxford	sign obstructing the right-of-way	Visited 1/18/17 and 1/25/17. Spoke with manager on duty. Agreed to move sign back out of sightline, behind bush. Was moved as of 1/30/17. Case Closed.
6	Charles Stone (Dollar General)	3037Centennial Blvd.	outdoor storage/trashy	Spot checked 1/25/17. Less Carts, Still Trashy. Asst. Manager stated that rarely can all carts be gone at same time, due to delievery/transport schedule. To notifiy me if/when happens. A trash sweep of parking lot has been scheduled. Will continue to follow-up.
7	HSM Inc.	S. Oxford St	sediment/erosion control	HSM staff met with Tom on site 1/25/17. Agreed to grade and install French drainage ditch. HSM is currently taking bids on this project.
8				
9				