



**CITY OF CLAREMONT
CITY COUNCIL MEETING
Regular Meeting
January 3, 2011
7:00 PM
Claremont City Hall, Council Chambers**

AGENDA

- 1. CALL TO ORDER**
- 2. APPROVAL OF AGENDA**
- 3. INVOCATION & PLEDGE OF ALLEGIANCE**
- 4. MAYOR'S REPORT**
- 5. APPROVAL OF MINUTES**
 - A. Regular Meeting – December 6, 2010
 - B. Closed Session- December 6, 2010
- 6. PRESENTATION**
 - A. Catawba Valley Medical Center Update
- 7. PUBLIC HEARING**
 - A. Francis Sigman Park
- 8. CITIZEN'S CONCERNS AND COMMENTS**
- 9. OLD BUSINESS**
- 10. NEW BUSINESS**
 - A. Budget Transfer
 - B. FY 2011 Operating Budget Amendment
 - C. Pierre Foods EDC Agreement
 - D. Pierre Foods Equipment Lease Agreement
 - E. Surplus Property
- 11. DEPARTMENT & COMMITTEE REPORTS**
 - A. Youth Council Report
 - B. Fire Department
 - C. Police Department

- D. Public Works
- E. Planning and Zoning
- F. Recreation
- G. Appearance Committee
- H. Veterans Memorial Committee

12. CITY MANAGER'S REPORT

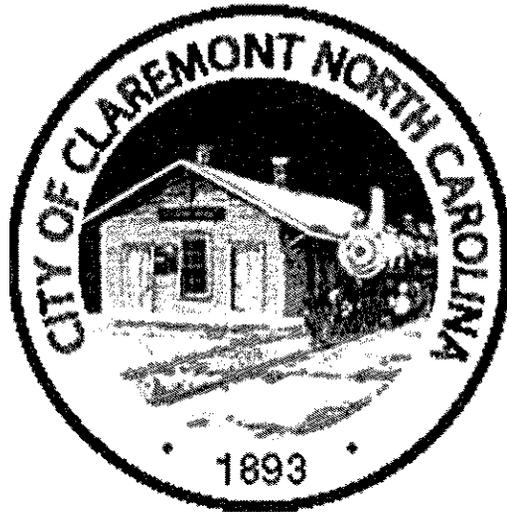
13. ADJOURN

City of Claremont Board & Committee Meetings

<u>City Council Meeting</u> 1 st Monday of each month	February 7 th	Council Chambers 7:00pm
<u>Planning Board</u> 2 nd Monday of each month	January 10 th	Council Chambers 7:00 pm
<u>Appearance Committee</u> 4 th Monday of each month	January 24 th	Council Chambers 6:00 pm
<u>Recreation Committee</u> 4 th Monday of each month	January 24 th	Claremont Library 7:00 pm
<u>Youth Council</u> 1 st Sunday of each month	January 1 st	Council Chambers 3:00 pm
<u>Friends of the Library</u> 4 th Tuesday of each month	January 25 th	Claremont Library 6:00 pm
<u>Seniors Morning Out</u> 3 rd Wednesday of each month	January 19 th	1 st Baptist Fellowship Hall 8:30 am

NOTES:

**CITY OF CLAREMONT
CITY COUNCIL MEETING
ADGENDA PACKET**



**January 3, 2011
Claremont City Hall
Council Chambers
7:00 pm**

REQUEST FOR COUNCIL ACTION

Date of Meeting: January 3, 2011

To: Mayor and the City Council

From: Doug Barrick, City Manager

Action Requested: Approval of Minutes

Approve the minutes from the regular meeting held on December 6, 2010

Recommendation: Approve the Minutes



City of Claremont
Council Meeting Minutes
Regular Meeting
December 6, 2010 - 7:00pm
Claremont City Hall, Council Chambers

Attendance Mayor David Morrow called the meeting to order at 7:00 p.m. The invocation was given by Pastor Michael. Councilmember Nicky Setzer led the Pledge of Allegiance.

Mayor David Morrow; Council members, Dale Sherrill, Shawn Brown, Timothy Lowrance, Nicky Setzer. James Stanley was excused from the meeting.

Office Staff- City Manager Doug Barrick, City Finance Officer Stephanie Corn, City Attorney Bob Grant, Henry Helton and Administrative Support Clerk Mandy Buff.

Department Heads-Gerald Tolbert, Gary Sigmon, & Tom Winkler.

Others in Attendance: Gary Bost, Rupert Little, Randi Gates, Heather Molaro, Rodney Lowman, Megan Lowman, Robert Winrow, Robert Smith, Jason Lowrance, Mahayla Brycint, Jaden, Monica, Bryson Smith, Anglea Garrison, Parker Garrison, Lindsy Dellinger, Andria Ramsey, Gene Monday, Connie Monday, Jana Sales

Presentation Melanie Starr presented the City of Claremont's Audit with the City Council.

Mayor's Mayor Morrow introduced the new city employee Mandy Buff. The Mayor spoke briefly about the Veterans Day Ceremony that was held on November 11th. The Mayor briefed the audience about the new business that will be opening in Claremont, O' Cup Bean and Bakery. He also mentioned Claremont Florist moving to Main Street and the Quilting Group. The Mayor gave thanks to Police and Fire Departments for their help with the Christmas parade. He also informed the audience the Carriage Rides for the Old Time Christmas would starting back up on December 12th.

Approval of Minutes A motion was made by Councilmember Timothy Lowrance to accept the minutes from the previous meetings. Second was made by Councilmember Shawn Brown. Motion passed unanimously.



Closed Session Minutes – A motion was made by Councilmember Tim Lowrance to accept the minutes from the previous meetings. Second was made by Councilmember Tim Lowrance. Motion passed unanimously.

Presentations Councilmember Tim Lowrance spoke briefly about the Oxford Elementary School Student Council. He also stated the Heather Malaro is the Head of the Oxford Elementary Student Council.

Rudi Gates gave a presentation on the Carolina Thread Trail’s final route. She stated that the trail will run 123.9 miles in Catawba County, 1.9 miles are existing, 42% will be along streams, 23% along bike routes/ sidewalks and 26% along right of way.

Citizen’s Comments None.

Old Business A motion was made by Dale Sherill to adopt the resolution support for the Carolina Thread Trail in Claremont. Nicky Setzer second the motion. The vote was unanimous.

DRAFT

A motion was made by Shawn Brown to adopt the resolution of support for the Claremont Water Shortage Management Plan Tim Lowrance seconded the motion. The vote was unanimous.

New Business City Manager Doug Barrick informed the City Council of a budget transfer.

Department Reports Youth Council – Councilmember Shawn Brown stated eight members attended the meeting on Sunday, December 5th. He also mentioned the Youth Council participating in the Relay for Life at the first of the year.

Fire Department – Chief Sigmon stated there will be a live burn on December 8th at 8 a.m.

Police Department – Chief Tolbert stated it was a busy month. There was a break in at Carolina Coach and Camper. Chief Tolbert also stated that eleven officer’s came out with in twenty-four hours after the tornado.

Public Works – Tom Winkler reported that 12.8 tons of rough trash was picked up.

Planning – No report.



Recreation – Henry Helton talked about the Francis Sigmon Park project. He stated that the restrooms are number one on the agenda. He also stated that the dugouts need a new roof. The total estimated budget for the project is \$133,921. There will be a hearing on January 3rd at 6 p.m. to talk about the project.

Tim Lowrance thanked Gene Monday and Danny Hedrick for their involvement in the Christmas Parade.

Appearance – No further report.

Veterans Memorial – Henry Helton stated that there will be a miniature wall instead of bricks the Veterans Memorial. He also stated that it will cost sixteen hundred dollars for the base and stone. It will cost fifty dollars per family for two lines, eighteen characters.

*City Managers
Report*

Doug Barrick reported the city did not qualify for reimbursement for the damages from the tornado. He also stated Claremont City Hall will be closed Thursday, December 23rd, Friday, December 24th, Monday, December 27th, and Friday, December 31st. Doug Barrick mentioned the Claremont Connect is in the water bills. He also informed the City Council that they needed to attend the Ethics Webinar if that have not already done so.

Closed

A motion was made by Councilmember Tim Lowrance to go into closed session to discuss the Joint Economic Development Agreement. Second was made by Councilmember Nicky Setzer and the vote was unanimous.

Adjourn

A motion was made by Councilmember Nicky Setzer to adjourn the meeting. Second was made by Councilmember Shawn Brown and the vote was unanimous.

Adopted this the 3rd day of January, 2010



DRAFT

David B. Morrow, Mayor

Douglas L. Barrick, City Clerk

REQUEST FOR COUNCIL ACTION

Date of Meeting: **January 3, 2011**

To: Mayor and the City Council

From: Doug Barrick, City Manager

Action Requested: Approval of Minutes

Approve the minutes from the closed session meeting held on December 6, 2010

Recommendation: Approve the Minutes

REQUEST FOR COUNCIL ACTION

Date of Meeting: January 3, 2011

To: Mayor and the City Council

From: Doug Barrick, City Manager

Action Requested: Catawba Valley Medical Center Facility Upgrade Presentation

Bill Shillito with the Catawba Valley Medical Center Foundation Board will give a brief presentation to the council about the new services and major facility upgrade at the Catawba Valley Medical Center.

Recommendation: Hear the presentation

REQUEST FOR COUNCIL ACTION

Date of Meeting: January 3, 2011

To: Mayor and the City Council

From: Doug Barrick, City Manager

Action Requested: Francis Sigman Park PARTF Grant Public Hearing

The North Carolina Parks and Recreation Trust Fund (PARTF) requires that the City Council hold a public hearing prior to applying for grants to ensure the public has a chance to weigh in on potential projects and park needs.

Recommendation: Hold the Public Hearing



**CITY OF CLAREMONT
PUBLIC HEARING NOTICE
FOR IMMEDIATE RELEASE**

December 22, 2010

The City of Claremont will hold a public hearing to discuss a pending grant application through the North Carolina Parks and Recreation Trust Fund (PARTF) for the renovation and expansion of Francis Sigman Park. The public is encouraged to attend this meeting and give input on application and budget for this park. The meeting will be held during the regularly scheduled City of Claremont Council meeting on January 3, 2011 at 7:00 pm in the Council Chambers of the Claremont City Hall. For more information please contact Claremont City Hall at 828-459-7009

MEDIA CONTACT:

Doug Barrick
City Manager

City of Claremont

Francis Sigmon Park

PROJECTS BUDGET

Restrooms (22 feet X 23 feet)	30,000.00
Adult Softball Field }	
Fencing around Softball Field }	
Fence in front of park }	30,500.00
Backstop }	
Dugout }	
Cover outfield fence (71.00 per 40 ft – 12 units)	860.00
Lighting for the Softball Field	
6 lights	6,000.00
Greenway Walking trail	15,000.00
3 Handicap parking areas	
Lighting for walking trail (Duke Energy)	
Monthly charges	
Sept Tank	3,500.00
Signs for direction in the park	1,000.00
Park	
Parking	
Football/soccer Field	
New roofs on baseball dugouts (6)	2,000.00
Upgrade parking lot	
20 Ton Gravel @ 19.00	5,000.00
Cement steps (250 Cu Ft @ 90 per yard) & Sidewalks	10,000.00
football/soccer field & baseball field	
Hand rails (steel)	2,280.00
Bleachers (4)	
2 Football – 2 softball (1799.00)	7,200.00
Benches (4) 2 football – 2 Softball (408.00)	1,700.00
Scores Table (3 @ 404.00)	1,300.00
Score Boards (4 @ 2500.00)	10,000.00
Contingency	7,581.00
	Total 133,921.00



City of
Claremont
 North Carolina



Francis Sigmon Park Renovation Project



Existing Features

- FIELD /
 STRUCTURE
- FENCE
- GOAL
 POST
- FLAG
 POLE
- LIGHT
 POLE

PARTF Features (in Green)

- | | | |
|---|---|---|
| <p>1 PARKING LOT
UPGRADE</p> <p>2 NEW
DRIVEWAY</p> <p>3 NEW FENCE
WITH
TWO GATES</p> <p>4 NEW FOOTBALL
BLEACHERS</p> <p>5 NEW ADULT
SOFTBALL FIELD</p> | <p>6 NEW SOFTBALL
FIELD FENCE</p> <p>7 NEW SOFTBALL
FIELD LIGHTS</p> <p>8 NEW
GREENWAY</p> <p>9 NEW
GREENWAY
LIGHTING</p> <p>10 NEW
SOFTBALL
BLEACHERS</p> | <p>11 NEW
SOFTBALL
DUGOUTS</p> <p>12 REHAB
DUGOUTS
(TWO FIELDS)</p> <p>13 NEW
RESTROOM</p> <p>14 3 NEW
HANDICAP
PARKING AREAS</p> <p>15 2 NEW
CONCRETE
STAIRWAYS</p> |
|---|---|---|

Future Development (Yellow)

- GREENWAY EXPANSION

REQUEST FOR COUNCIL ACTION

Date of Meeting: January 3, 2011

To: Mayor and the City Council

From: Doug Barrick, City Manager

Action Requested: Budget Transfer

Monies in two separate budget lines have been transferred to cover expenditures. These transfers will cover the cost associated with fixing a heat pump at City Hall and the cost to cover the additional insurance on the new police vehicles.

Recommendation: Informational Only

CITY OF CLAREMONT
CLAREMONT, NORTH CAROLINA

Dec. 7, 2010

I, Stephanie Corn, authorize the following transfers in the 10/11 budget lines.

<u>Line</u>	<u>Debit</u>	<u>Credit</u>
10-4200-1500 Maint/Buildings/Grounds	\$ 280.89	
10-4200-1400 Travel / Training		\$ 280.89

Monies moved to pay for heating repairs.

10-5100-5400 Insurance & Bonds	\$ 675.92	
10-5100-3310 Sm. Tools / Equipment		\$ 675.92

Monies moved to pay for liability, collision, and comp. insurance on new police vehicles.



Doug Barrick, City Manager


Stephanie Corn, Finance Officer

REQUEST FOR COUNCIL ACTION

Date of Meeting: January 3, 2011

To: Mayor and the City Council

From: Doug Barrick, City Manager

Action Requested: FY 2011 Operating Budget Amendment

In order to transfer Heart Drive to NCDOT for maintenance additional work has been required by NCDOT. This work consists of the installation of a drain along the driveway at Poppleman Plastics, painting of the center and edge lines, and cleaning out of the ditches. Under the current estimates this work will cost \$21,548 including a contingency. This Budget amendment will transfer the estimated amount from the Powell Bill Fund Balance, which is currently \$171,043.98 to the Powell Bill operating fund. Any unspent Powell Bill funds at year end will be transferred back to the Powell Bill Fund Balance.

Recommendation: Approve Budget Amendment

City Council of the City of Claremont

Catawba County, North Carolina

Ordinance No. 16-10

AN ORDINANCE OF THE CITY OF CLAREMONT AMENDING CLAREMONT
MUNICIPAL BUDGET FOR FISCAL YEAR 2011

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

Powell Bill Fund

Transfer \$21,548 from the Powell Bill Fund Balance to the Powell Bill Fund Contracted Services Budget Line Item. This will increase the Powell Bill Fund Budget from \$100,300 to \$121,848 for fiscal year 2011.

Powell Bill Fund

	<u>Increase</u>	<u>Decrease</u>
Powell Bill Fund Balance		\$21,548
Powell Bill FY 11 Budget	\$21,548	

INTRODUCED at a regular meeting of the City Council of the City of Claremont on January 3, 2011.

ADOPTED at a regular meeting of the City Council of the City of Claremont on January 3, 2011.

MAYOR David Morrow

ATTEST:

Doug Barrick, City Clerk

APPROVED AS TO FORM:

Bob Grant, City Attorney

REQUEST FOR COUNCIL ACTION

Date of Meeting: January 3, 2011

To: Mayor and the City Council

From: Doug Barrick, City Manager

Action Requested: Approve the Pierre Foods Economic Development Agreement

Approve the draft economic development agreement between the City of Claremont and Pierre Foods. This agreement will provide for tax incentives equal to an 80% reduction in property taxes over the next five years, if Pierre Foods creates and keeps 500 additional jobs at the Claremont Plant. Pierre will also have to invest \$16,800,000 in the plant prior to any City funding. The funding for this agreement has been awarded to the City by the North Carolina One Fund. Pierre will apply for funding and the City will in turn apply for funding. Once the City has been awarded the funding for that application the funding will be allocated to Pierre Foods. If Pierre Foods does not create 500 jobs then they are not eligible for funding for that year.

Recommendation: Approve Agreement

Pierre: 8/11/16/10

Prepared by: Bob Grant, Claremont City Attorney
P.O. Box 446, Claremont, NC 28610

**STATE OF NORTH CAROLINA
COUNTY OF CATAWBA**

**JOINT ECONOMIC DEVELOPMENT
AGREEMENT**

This **JOINT ECONOMIC DEVELOPMENT AGREEMENT** (this "Agreement") is made and entered into this ___ day of _____, 2010, by and between **the City of Claremont**, (the "City") a North Carolina Body Politic Corporate in Nature, having a mailing address of **P.O. Box 446, Claremont, North Carolina 28610**, and **Pierre Foods, Inc.** ("Pierre"), a Delaware corporation qualified to do business under the laws of the State of Ohio and having a mailing address of 9990 Princeton Road, Cincinnati, Ohio 45246. All material transactions regarding this Agreement shall be deemed to have occurred in Catawba County, North Carolina.

WITNESSETH:

WHEREAS, the City is desirous of fostering joint economic development within its boundaries; and

WHEREAS, North Carolina General Statutes Section 158-7.1(a) authorizes the City to make appropriations for the purpose of aiding and encouraging the location of business enterprises and industrial and commercial plants in or near its boundaries; and

WHEREAS, Pierre is a Delaware corporation, registered with the State of North Carolina, lawfully authorized to do business within the State of North Carolina; and

WHEREAS, Pierre is engaged in manufacturing fully cooked beef, pork, chicken and bakery products within the meaning of North Carolina General Statutes Section 158-7.1; and

WHEREAS, Pierre intends to or cause to be improved and equipped an existing industrial facility (the "Facility") located within the limits of the City at 3437 East Main Street, Claremont, NC 28610, for the purpose of manufacturing packaged food products; and

WHEREAS, in order to engage in such enterprise, Pierre intends to cause to be improved and to occupy a building or buildings thereon for use as the Facility; acquire and/or relocate equipment, and install the same therein; and undertake such other work as may be appropriate to accomplish the improvement described herein (collectively, the "Improvements"); and

WHEREAS, Pierre anticipates that the total cost of the Improvements, including the cost of real property and inclusive of any equipment or fixtures, during the improvement period, as defined below, will equal or exceed **Sixteen Million Eight Hundred Thousand (\$16,800,000) Dollars**; and

WHEREAS, the Improvements are expected to increase the tax base of the City by a related amount and will create a minimum of 500 new net jobs; and

WHEREAS, in an effort to encourage and maintain the highest educational attainment, Pierre will enroll and actively participate in Education Matters (as more fully described on Exhibit C hereto); and, for this and future projects, will agree to make it a goal or preference to not hire anyone without a minimum of a high school diploma for anyone 25 years of age or below and a high school diploma or GED for anyone 25 years of age or above; and ~~[Education Matters needs to be defined. Are these high school diploma requirements acceptable?]~~

WHEREAS, as an inducement to Pierre, and to assist Pierre in connection with the Improvements, the City is willing to appropriate and expend City funds to provide certain economic development incentives for the creation of jobs, as provided in this Agreement, all such appropriations and expenditures to be made pursuant to the terms and conditions of this Agreement and N.C.G.S. Section 158-7.1(a), and

WHEREAS, the City has approved the appropriation and expenditure as hereinafter set forth for the specific purpose of making economic development grants based on the value of the property improvement and the Improvements to be made; and

WHEREAS, Pierre, acknowledges that but for the City's provision of economic development grants, it would not have agreed to enter into this enterprise; and

WHEREAS, Pierre is expected to be a community-oriented company and intends to participate in philanthropy, community events and programs intended to increase health and happiness of its employees and the greater community as a whole; and ~~[What does this mean? I would delete it.]~~

WHEREAS, in consideration of these economic development incentives, Pierre agrees to comply with the covenants and conditions binding upon it as set forth in this Agreement; and

WHEREAS, the parties are desirous of reducing their agreement to written form;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

The City and Pierre agree that this Agreement shall apply only with respect to Improvements undertaken or payments for such improvements by Pierre between January 1, 2010 and December 31, 2012 (the "improvement period") unless, after appropriate notice and public hearing as required by law, if any, the parties shall agree in writing to extend the same. In no event shall the amounts established herein be increased due to any extension of time for fulfillment of the terms and conditions of this Agreement. ~~[Will all improvements (\$16.8 million) be completed by 12/31/12?]~~

1. This Agreement is executed subject to the fulfillment, on or before May January 15, 2010, [Update.]2011, of each of the following conditions precedent, except to the extent that Pierre may, in its absolute discretion, waive one or more thereof in whole or in part (except Section 1.1):

- 1.1 The City shall deliver to Pierre an Opinion of Counsel for the City, in form and substance reasonably satisfactory to Pierre, that this Agreement has been duly authorized, executed and delivered by the City;
- 1.2 The City shall deliver to Pierre, in form and substance reasonably satisfactory to Pierre, evidence in the form of a Resolution or Resolutions, or official minutes, of the City duly adopted authorizing the economic development incentives set forth in this Agreement; and
- 1.3 The City shall deliver to Pierre an Opinion of Counsel for the City, in form and substance reasonably satisfactory to Pierre, stating that this Agreement complies with the terms and requirements of N.C.G.S. Section 158-7.1(a) and is binding upon and enforceable against the City with its terms.

City agrees to use its best efforts to cause such conditions to be satisfied on or before May/January 15, 2010 [Update.] 2011.

2. This Agreement is executed subject to the fulfillment, on or before May/January 15, 2010, 2011. of each of the following conditions precedent, except to the extent that the City may, in its absolute discretion, waive one or more thereof in whole or in part (except Section 2.1).

- 2.1 Pierre shall deliver to the City a certificate confirming that it has acquired for this project the real property and that the construction and/or installation of the Improvements will result in the creation, maintenance and availability of a minimum of 500 new net jobs with a preference or goal to not hire anyone without a minimum of a high school diploma for anyone 25 years of age or below and a high school diploma or GED for anyone 25 years of age or above in Catawba County, and that a minimum of 16 jobs will pay wages that are above the average wage requirement in Catawba County under the North Carolina Department of Commerce, which is \$15.63 per hour or \$32,500 per year. [OK?] Pierre agrees to enroll in and utilize the guidelines of Education Matters [Define. Any cost to Pierre?] in the creation, maintenance and availability of these 500 new net jobs in Catawba County, and Pierre agrees to annually provide human and capital resources in support of employees' educational attainment. A job is defined as employment that provides 1600 hours or more per year of work and which provides at least fifty (50) percent of the cost of employee-only health insurance. The 2009 estimated hourly entry wage for all Catawba County occupations as reported by the North Carolina Employment Security Commission is \$8.83 (the "Estimated Hourly Entry Wage"). Pierre agrees to pay a minimum of 110% of the Estimated Hourly Entry Wage (including earned bonuses) for other positions (aside from the 16 positions referenced above) within the facility excluding the time during which an individual is under a 90 day probationary or training period. [OK?] Such certificate shall be in the form or substantially in the form of the certificate attached to this Agreement as Exhibit "A".

- 2.2 An Opinion of Counsel for Pierre, in form and substance reasonably satisfactory to the City, that this Agreement has been duly authorized, executed and delivered by Pierre; and

- 2.3 An Opinion of Counsel for Pierre, in form and substance reasonably satisfactory to the City, stating that this Agreement is binding upon and enforceable, both in Pierre's registered state of incorporation and in North Carolina, against Pierre in accordance with its terms.

Pierre agrees to use its best efforts to cause such conditions to be satisfied on or before May January 15, 2010 [Update.] 2011.

3. In order to induce the City to enter into this Agreement and to appropriate and expend monies for payment of economic development incentives pursuant to this Agreement, Pierre represents and warrants to the City that as of the execution date hereof:

3.1 It is a corporate company duly organized and existing under the laws of the State of Delaware, has a place of business within the State of North Carolina, and is in good standing and authorized to do business in the State of North Carolina;

3.2 It has the corporate power and authority to own its properties and assets and to carry on its business as now being conducted and has the corporate power and authority to execute and perform this Agreement;

3.3 This Agreement (i) is the valid and binding instrument and agreement of Pierre, enforceable against Pierre in accordance with its terms; (ii) does not violate any order of any court or other agency of government binding on Pierre, the charter documents or operating agreement of Pierre or any provision of any indenture, agreement or other instrument to which Pierre is a party, and (iii) does not conflict with, result in a breach of, or constitute an event of default, or an event which, with notice or lapse of time, or both, would constitute an event of default, under any indenture, agreement or other instrument to which Pierre is a party;

3.4 There is no suit, claim, action or litigation pending, or to the best knowledge of Pierre threatened, relating to the Improvements or the use of the Improvements for their intended purpose;

3.5 To the best of Pierre's knowledge, there is no impediment to the use of the Property for the purposes contemplated by this Agreement.

3.6 Pierre is not engaged in a business that would be exempt from property taxes.

4. Subject to satisfaction of the conditions set forth in Sections 1, 2 and 3 above, Pierre covenants and agrees with the City that in consideration of the appropriation and expenditure by the City of such economic development incentives, Pierre shall make substantial improvements to the Facility during the investment period. Cumulative expenditures will meet or exceed Sixteen Million Eight Hundred Thousand (\$16,800,000) Dollars by December 31, 2012, all of which will qualify and result in additional value for ad valorem (including without limitation business personal and real property) tax purposes as determined by the Catawba County tax office. Pierre further covenants and agrees it will maintain, in good condition (ordinary wear and tear excepted), in place said improvements through December 31, 2020. [What if destroyed by fire or other Act of God? Can Pierre cancel? Looks like in Section 7, Pierre would be required to rebuild. Ok?]

5. Also subject to satisfaction of the conditions set forth in Sections 1, 2 and 3 above, Pierre covenants and agrees with the City that in consideration of the appropriation and expenditure by the City of such economic development incentives, Pierre shall create a minimum of 500 net new jobs, these 500 jobs are in addition to the 717 jobs already in place at the time of this Agreement, by December 31, 2012 and maintain or make available those jobs in place through December 31, 2020. **[OK?]**

6. Payment of economic development incentives will be made as provided in this Section 6. The City will provide annual payments equal to 80% of the ad valorem taxes associated with the additional value as paid to the City for a five year period, commencing with the taxes payable for the tax values on January 1, 2011, and January 1 of the succeeding four years. In no event will the cumulative payments by the City exceed three hundred nine thousand one hundred twenty dollars (\$309,120). Said amount shall be payable in five (5) annual installments, beginning in calendar year 1 and payable through calendar year 5. For purposes of this Agreement, "CY 1" means calendar year 2012 and "CY 2" through "CY 5" means the succeeding four (4) calendar years. Upon payment of ad valorem taxes by Pierre to the City for each of CY 1 through CY 5, and certification by Pierre in the form or substantially in the form of the certificate attached hereto as Exhibit B, of improvements made to the date of such certification with proof of taxes and monthly equipment lease payments paid by Pierre and verification that Pierre has created and maintained jobs as outlined in the schedule above, the City will, within sixty (60) days, pay to Pierre an economic development incentive payment, the amount of which is calculated by multiplying by .80 the total ad valorem tax revenue received by the City attributable to the value of the improvements made by Pierre pursuant to this Agreement in excess of the amount attributable to improvements already in place and taxed on the site as of January 1, 2010. This same process will be followed by the City in each of the immediately following four (4) years. Regardless of the calculation, the maximum amount the City would pay in each of the calendar years 1 through 5 will be \$61,824. No incentives will be paid by the City after the fifth year pursuant to this Agreement, but nothing in this Agreement precludes the City and Pierre from entering into a subsequent agreement pertaining to other economic development incentives. Pierre shall furnish to the City on or before December 31 of each calendar year the certification required by this Section 6. If requested, Pierre shall provide the City, at the City's expense, independent certification as to such expenditures. **[Are these maximums acceptable?]**

7. Notwithstanding the provisions of Paragraph 8, in the event Pierre is unable to meet the requirements of Paragraphs 4,5 and 6 as a result of (i) an event of force majeure, including but not limited to fires, explosions, acts of God, acts of public enemy, insurrections, riots, terrorism, embargoes, labor disputes, including strikes, lockouts and job actions, or boycotts; (ii) the inability to obtain the governmental permits or approvals (including zoning) necessary for the acquisition of the land or undertaking and operating the Improvements after a good faith effort to obtain same has been made; (iii) shortages of materials or energy; (iv) changes in laws; or (v) other causes beyond the control of and arising without the fault or negligence of Pierre; then, in such event, the improvement period shall be extended for a period equal to the delay caused by any of the foregoing events so long as Pierre shall (a) have furnished the City on

a timely basis, upon the occurrence of such event, a notice thereof, and (b) take all commercially reasonable steps necessary to relieve the effect of such event and to resume completion of the Improvements.

8. It shall be an Event of Default if any one or more of the following events shall occur for any reason whatsoever (and whether such occurrence shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):
- a. If Pierre, except in the event of force majeure, shall commit a material breach of a material covenant or obligation hereunder (including without limitation, the obligation to meet the investment goals and maintaining the minimum number (500) of net newly created jobs, in addition to the 717 jobs in place at the time this Agreement was executed, as set forth herein) and such breach shall continue for a period of sixty (60) or more days following the receipt of written notice from the City;
 - b. If Pierre fails to timely file Exhibit A or Exhibit B within the same calendar year that any taxes are paid and any qualifying incentive would be due to Pierre, this shall be deemed a breach of the Agreement and the sole remedy will be that City will not owe Pierre any incentive that may have otherwise been due;
 - c. If any material representation, warranty or other statement of fact contained in this Agreement or in any writing, certificate, report or statement furnished by Pierre to the City in connection with the transaction described in this Agreement, shall be false or misleading in any material respect when given;
 - d. If Pierre shall be unable to pay its debts generally as they become due; files a petition to take advantage of any insolvency statute; makes an assignment for the benefit of creditors; commences a proceeding for the appointment of a receiver, trustee, liquidator or conservator of itself or of the whole or any substantial part of its property, files a petition or answer seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state;
 - e. If a Court of competent jurisdiction shall enter an order, judgment, or decree appointing a custodian, receiver, trustee, liquidator, or conservator of Pierre or of the whole or any substantial part of its properties, or approve a petition filed against Pierre seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute; or if, under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction shall assume custody or control of Pierre or of the whole or any substantial part of its properties or
 - f. If Pierre shall allow its taxable assets, employment and payroll amounts to fall below the minimum values agreed upon in this Agreement, as each of the same pertain to the Facility contemplated by this Agreement;

- g. The State of North Carolina has committed up to \$600,000 in One NC incentives which will be paid to Pierre under job creation performance criteria, ~~[Criteria need to be clearly set forth in agreement. Also, need to explain One NC incentives — where is State's commitment to these funds?]~~ and are payable in years 1-4 of the Agreement. One NC grant awards require a 100% local match. Combined local incentives are expected to include a local grant by Duke Energy's Carolinas Investment Fund and grants based on 5 years of performance from Catawba County/City of Claremont, which could lead to a shortfall of matching funds in years if Pierre fails to meet the performance criteria as established herein. Should Pierre fail to reach and maintain the performance criteria as established herein, and, the cumulative total local government incentives to Pierre over 5 years fail to match \$600,000 or the total cumulative One NC incentive grant payments, whichever is less, and should the State of North Carolina pursue payments by local sources to match One NC grants made in years 1-5, Pierre will agree to either refund payments to the State or will agree to provide payment equal to the shortfall in order to hold the local governments harmless on earlier One NC payments received by the company; provided, however, Pierre shall not be responsible for any refunds or shortfall payments if the City fails to pay any local incentives in breach of its obligations hereunder. ~~[Need more information on One NC. This paragraph is not very clear.]~~

Notwithstanding Section 8(a) or Section 8(f), Pierre shall not be in default under Section 8(a) or Section 8(f) if a position is temporarily vacant due to normal employee turnover so long as the position has not been eliminated, Pierre is actively seeking to fill the position, and Pierre in fact fills the position within a reasonable period of time.

9. Remedy: If an Event of Default occurs, the obligation of the City as set out herein shall terminate, and Pierre shall immediately refund to the City all economic development incentive payments paid to Pierre prior to the date of the Event of Default plus interest at the rate of prime plus one percent (1%). The date the prime interest rate shall be determined shall be the date the City sends to Pierre notice of the Event of Default. ~~[OK?]~~
10. Both Pierre and the City acknowledge that any and all monies appropriated and expended by the City for economic development incentives, as provided in this Agreement, are for a bona fide public purpose and are expended in good faith reliance on North Carolina General Statute 158-7.1. In the event a Court of competent jurisdiction, after final appeal, rules in a lawsuit to which either Pierre or the City is a party, that all monies expended by the City pursuant to this Agreement were not offered and accepted in good faith and pursuant to and in compliance with North Carolina General Statute 158-7.1 and, further, that such monies must be repaid, then Pierre will make such repayment. Further, if any elected officials, officers agents or employees of the City are found by a Court of competent jurisdiction, after final appeal, to be personally liable for any of the monies so expended, and such liability is not covered by the City's public officials' liability insurance, then Pierre will indemnify such elected officials, officers, agents or employees individually to the extent of the monies expended by the City

pursuant to this Agreement, including all court costs and reasonable attorney fees; provided, however, such indemnification obligation of Pierre shall not apply if the liability of such elected officials, officers, agents or employees resulted from intentional or criminal misconduct or a breach of fiduciary obligations to the City. The City agrees to maintain adequate public official liability coverage. In the event one or more lawsuits are brought against the City or any City elected official, officer, agent or employee challenging the legality of this Agreement, then the City, in the exercise of sole discretion, shall defend against any and all such lawsuits.

11. All notices, certificates or other communications required or permitted to be given or served hereunder shall be deemed given or served in accordance with the provisions of this Agreement if the notice is (i) mailed in a sealed wrapper and is deposited in the United States mail, certified mail, return receipt requested, postage prepaid, or (ii) deposited with a national overnight courier service that retains receipts for its deliveries, properly addressed as follows:

City of Claremont: City of Claremont
P.O. Box 446
Claremont, NC 28610
Attn: Tom Hogg, Interim City Manager

Copy to: City of Claremont
P.O. Box 446
Claremont, NC 28610
Attn: Robert Grant, City Attorney

Company: Pierre Foods, Inc.
9990 Princeton Road
Cincinnati, Ohio 45246
Attn: ~~General Counsel~~ Chief Financial Officer

The City of Claremont or Pierre may, by notice given to the other, designate any further or different addresses to which notices, certificates, requests or other communications shall be sent.

12. This Agreement shall inure to the benefit of, and is binding upon, the City of Claremont and Pierre and their respective successors and assigns. However, neither this Agreement, nor any rights, privileges, or claims created by this Agreement may be transferred by Pierre without the prior, written approval of the City, which approval will not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary, Pierre may assign in writing this Agreement to an affiliate upon written notice to the City, provided that such affiliate agree to abide by all of the terms and conditions of this Agreement.
13. Except as otherwise provided in this Agreement, this Agreement may not be amended, changed, modified or altered except by written agreement of the parties.

14. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions of this Agreement.
15. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such fully-executed counterpart.
16. This Agreement is governed by and shall be construed in accordance with the laws of the State of North Carolina, venue in Catawba County.
17. The term of this Agreement shall commence on the date of execution and expire upon payment by the City of all payments due to Pierre hereunder, unless earlier terminated as provided herein.
18. Both Pierre and the City of Claremont acknowledge and stipulate that this Agreement is the product of mutual negotiation and bargaining and that it has been drafted by Counsel for both Pierre and the City of Claremont. As such, the doctrine of construction against the drafter shall have no application to this Agreement.

Executed the date first set forth above.

**Attest:
(SEAL)**

Clerk

**Attest:
(SEAL)**

**The City of Claremont,
A North Carolina Municipal Corporation**

By: _____
David Morrow, Mayor

Pierre Foods, Inc.

By: _____

Secretary

**STATE OF NORTH CAROLINA
COUNTY OF CATAWBA**

I, _____ a Notary Public of said County and State, certify that _____ personally came before me this day and acknowledged that she is City Clerk of the City of Claremont, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the municipal corporation, the foregoing instrument was signed in its name and by its Mayor, sealed with its corporate seal and attested by her as its City Clerk.

Witness my hand and seal this _____ day of _____, 2010.

Notary Public

(SEAL)

My Commission Expires: _____

STATE OF _____
COUNTY OF _____

I, _____ a Notary Public of said county and state, certify that _____ personally came before me this day and acknowledged that he/she is Secretary of Pierre Foods, Inc., a Delaware corporation, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by its _____, sealed with its corporate seal, and attested by himself/herself as Secretary.

Witness my hand and seal this _____ day of _____, 2010.

[Seal]

Notary Public

My commission expires: _____

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

Stephanie Corn, Finance Director

Approved as to form on behalf of The City of Claremont only:

Bob Grant, City Attorney

EXHIBIT A

Joint Economic Development Agreement
Between The City of Claremont and Pierre Foods, Inc.

CERTIFICATE

TO: The City of Claremont

This Certificate is delivered pursuant to Section 2.1 of the Joint Economic Development Agreement (the "Agreement"), dated _____, 2010, between the City of Claremont and Pierre Foods, Inc. ("Pierre"). Any capitalized term not otherwise defined herein shall have the meaning assigned to such term in the Agreement.

I, _____, do hereby certify, for and on behalf of Pierre, that:

Pierre has acquired for this project the real property and that the construction and/or installation of the Improvements will result in the creation, maintenance and availability of a minimum of 500 new net jobs, in addition to the 717 jobs that were in place at the time this Agreement was first executed, with a preference or goal to not hire anyone without a minimum of a high school diploma for anyone 25 years of age or below and a high school diploma or GED for anyone 25 years of age or above in Catawba County, and that a minimum of 16 jobs will pay wages that are above the average wage requirement in Catawba County under the North Carolina Department of Commerce, which is \$15.63 per hour or \$32,500 per year. Pierre agrees to enroll in and utilize the guidelines of Education Matters in the creation, maintenance and availability of these 500 new net jobs in Catawba County, and Pierre agrees to annually provide human and capital resources in support of employees' educational attainment. The 2009 estimated hourly entry wage for all Catawba County occupations as reported by the North Carolina Employment Security Commission is \$8.83 (the "Estimated Hourly Entry Wage"). Pierre agrees to pay a minimum of 110% of the Estimated Hourly Entry Wage (including earned bonuses) for other positions (aside from the 16 positions referenced above) within the facility excluding the time during which an individual is under a 90 day probationary or training period.

Calendar of Responsibilities:

- By January 5: Company makes payment to City according to Tax Listing filed by January 31st, previous year unless extension is requested and approved for April 15th. Any extension request must be filed by January 31st.
- By March 5: Within 60 days of payment, Company must provide Exhibit B, supporting documents, proof of payment and invoice for reimbursement as required within Contract.
- By April 15: Company must provide Real/Personal Property Tax listings to County Tax Office.
- By April 22: County Tax Office to provide Tax Listing on Specified Accounts for Budgeting purposes
- By May 1: EDC provides Budget for Incentives to City Budget Office
- By May 5: EDC reviews Company request for payment; Requests forwarded through City Manager for payment.

Dated at Catawba County, North Carolina, this _____ day of _____, 2010.

Pierre Foods, Inc.

BY: _____

TITLE: _____

EXHIBIT B

**Joint Economic Development Agreement
Between The City of Claremont and Pierre Foods, Inc.**

CERTIFICATE

TO: The City of Claremont

This Certificate is delivered pursuant to Section 2, Section 4, Section 5 and Section 6 of the Joint Economic Development Agreement ("the "Agreement") dated _____, 2010, between the City of Claremont and Pierre Foods, Inc. ("Pierre"). Any capitalized term not otherwise defined herein shall have the meaning assigned to such term in the Agreement.

Pierre does hereby certify that:

(a) The following improvements were made during the 20__ Calendar Year: _____

(b) The following jobs were created during the 20__ Calendar Year: _____ and _____ are currently employed at the Claremont facility and all of these jobs are in addition to the 717 jobs that were already in place at the time this Agreement was first executed;

(c) The average wage of all of those employed at the facility during the 20__ Calendar Year is as follows: (Wage Forms Total Payroll divided by number of employees) _____; and

(d) Total cumulative personal and real property valuation installed at the facility during the 20__ Calendar Year: _____.

(e) Proof of taxes paid is attached to this certificate.

(f) Proof of equipment lease payments paid is attached to this certificate.

Dated at Catawba County, North Carolina, this ____ day of _____, 20__.

Calendar of Responsibilities:

- By January 5: Company makes payment to City according to Tax Listing filed by January 31st, previous year unless extension is requested and approved for April 15th. Any extension request must be filed by January 31st.
- By March 5: Within 60 days of payment, Company must provide Exhibit B, supporting documents, proof of payment and invoice for reimbursement as required within Contract.
- By April 15: Company must provide Real/Personal Property Tax listings to County Tax Office.
- By April 22: County Tax Office to provide Tax Listing on Specified Accounts for Budgeting purposes
- By May 1: EDC provides Budget for incentives to City Budget Office
- By May 5: EDC reviews Company request for payment; Requests forwarded through City Manager for payment.

Pierre Foods, Inc.

BY: _____ TITLE: _____

EXHIBIT C

DESCRIPTION OF EDUCATION MATTERS

Education Matters is partnership among business, government and education working together to increase the value of education and educational attainment in Catawba County, North Carolina.

Participating employers enroll in the program at a bronze, silver or gold level, as more fully described at <http://educationmattersincatawba.org/wordpress/wp-content/uploads/2010/04/Education-Matters-Business-Application.pdf>.

DRAFT

REQUEST FOR COUNCIL ACTION

Date of Meeting: January 3, 2011

To: Mayor and the City Council

From: Doug Barrick, City Manager

Action Requested: Approve the Pierre Foods Equipment Lease Agreement

Approve the equipment lease agreement with Pierre Foods. The City of Claremont was awarded a grant from the Golden Leaf Foundation of North Carolina in the amount of \$225,000 in order to provide this lease agreement to Pierre Foods. This agreement will lease equipment to Pierre Foods for a three year period at which time the equipment will then be owned by Pierre Foods. The City is not responsible for the maintenance of the equipment and is basically providing a loan for the equipment. This equipment will be used in the pretreatment of wastewater at the Claremont facility.

Recommendation: Approve Agreement

Prepared by: Bob Grant, Claremont City Attorney
P.O. Box 446, Claremont, NC 28610

**STATE OF NORTH CAROLINA
COUNTY OF CATAWBA**

**EQUIPMENT LEASE
AGREEMENT**

This **EQUIPMENT LEASE AGREEMENT** (this "Lease") is made and entered into this ___ day of _____, 2010, by and between **the City of Claremont**, (the "City") a North Carolina Body Politic Corporate in Nature, having a mailing address of **P.O. Box 446, Claremont, North Carolina 28610**, and **Pierre Foods, Inc.** ("Pierre"), a Delaware corporation registered with the State of Delaware and having a mailing address of 9990 Princeton Road, Cincinnati, Ohio 45246. All material transactions regarding this Agreement shall be deemed to have occurred in Catawba County, North Carolina.

Subject to the terms and conditions stated herein, and subject also to condition that the City's obligations under this Lease shall not exceed the lesser of **TWO HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$225,000)** or the amount received from the Golden L.E.A.F. (Long-term Economic Advancement Foundation), Inc. ("Golden LEAF") for the purpose of funding this Lease (the "Grant"), City agrees to lease to Pierre, and Pierre agrees to lease from City, the Equipment described hereinafter.

1. **THE EQUIPMENT.** Within one hundred fifty (150) days after the execution of this Lease by the later party to execute it, Pierre will select and identify to City one or more pieces of wastewater pretreatment equipment ("the Equipment") for use by Pierre in its manufacturing plant located in Claremont, North Carolina. Unless otherwise approved by the City, with the consent of Golden LEAF, the Equipment shall be consistent with the Equipment list provided by the City to Golden LEAF in the City's application for the Grant, except that no funds may be used for purchase or installation of floor drains. City will purchase the Equipment selected and identified by Pierre, in the amount of **TWO HUNDRED TWENTY FIVE THOUSANDS DOLLARS (\$225,000)** inclusive of sales tax, shipping and handling, and lease the Equipment to Pierre. Any amount in excess of \$225,000 will be paid by Pierre. City will be the owner of the Equipment at all times during the lease term. Each piece of the Equipment will be listed on separate Exhibits to this Lease (each an "Exhibit" and collectively the "Exhibits"). Grant funds shall be used only for the purposes described above and shall not be used for any other purposes including, without limitation, the following: (i) the cost of installing the Equipment in the facility, (ii) the cost of modifications to the Facility which are or maybe necessary to accommodate the Equipment, or (iii) the cost of providing electrical service or other utilities at the Facility necessary to operate the Equipment. [Is this the expected use of the money?]

2. **EQUIPMENT LEASED AS IS.** City leases the Equipment to Pierre, and Pierre leases the Equipment from City, AS IS. City has made no express warranties, and any and all implied warranties are excluded, including, without limitation, warranties of merchantability and fitness for a particular purpose. Pierre is solely responsible for selecting the Equipment. To the fullest extent allowed, City hereby assigns all warranties

made to it by supplier, manufacturers, and any service providers to Pierre, and Pierre agrees that it will make all claims of any kind relating to the Equipment against such supplier, manufacturer, and/or service provider.

3. **INSPECTION AND ACCEPTANCE OF EQUIPMENT.** Unless sooner rejected, each piece of the Equipment will be deemed irrevocably accepted for purposes of this Lease the first to occur of: i) the passage of a reasonable time for inspection as described in Section 25-2-602 of the Uniform Commercial Code; ii) thirty (30) days after Pierre receives shipment from the supplier; or iii) expiration of the inspection period allowed by the manufacturer or supplier of the Equipment. When Pierre receives each piece of the Equipment, Pierre shall inspect the Equipment promptly and advise City promptly if Pierre elects to reject it. If Pierre rejects any piece of the Equipment, Pierre is responsible for any and all communications with the shipper, supplier or manufacturer of the rejected equipment; provided, however, that City will reasonably cooperate with Pierre in processing the rejection and return of the Equipment. It shall be the responsibility of Pierre to preserve all evidence of non-conformity as required by Section 25-2-515 of the Uniform Commercial Code. Pierre will be solely responsible for any costs incurred in rejection and return of the Equipment, including, but not limited to, freight charges to deliver and return the Equipment. If City does not receive a full refund or credit for the full purchase price, including taxes, shipping and handling for the rejected equipment, then the amount not refunded or credited will apply toward the TWO HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$225,000.00) maximum expenditure by City, and such amount will be included in the amortization of the lease payments.
4. **LEASE TERM.** This Lease shall apply to all pieces of Equipment described in the fully completed Exhibits to be attached to this Lease. The City shall complete each Exhibit upon acquisition of each piece of Equipment. The lease term for each piece of Equipment shall be further defined on each corresponding Exhibit attached hereto, and shall commence on the date that Pierre receives shipment of each piece of Equipment, except for any piece of Equipment that is timely rejected by Pierre as provided in Section 3. The lease term for each piece of Equipment shall not terminate prior to January 1, 2013 and shall not exceed the lesser of the useful life of the equipment or eighty-four (84) months. The useful life of the equipment will be determined with reference to applicable I.R.S. depreciation tables and must be approved by Golden LEAF. The term of this Lease (the "Lease Term") shall commence at execution and terminate at the end of the last term set forth on an Exhibit attached hereto.
5. **LEASE PAYMENTS.** For each piece of Equipment, the monthly lease payment shall be equal to the amount necessary to amortize the principal sum expended by City for that piece of Equipment as provided in Section 1, together with interest at the rate of three percent (3.00%) per annum, compounded annually, over the lease term for that piece of Equipment. An amortization schedule and monthly payments for each piece of Equipment shall be set forth on each Exhibit attached hereto. If and when City has spent the full amount of TWO HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$225,000.00) and all Equipment has been received (and not timely rejected by Pierre), the total of all lease payments, shall not exceed \$2,968.89 per month, unless the term of the lease for any piece of Equipment is less than eighty-four (84) months. Lease payments for each piece of Equipment are due and payable on first day of the month

after Pierre's receipt and acceptance of that piece of Equipment, and subsequent lease payments are due and payable on the first day of each calendar month thereafter until all lease payments set forth on the Exhibits to this Lease have been paid.

6. **OPTION TO PURCHASE; PREPAYMENT OPTION.** At the end of the lease term for each piece of Equipment set forth on the Exhibits hereto, if all lease payments for the piece of Equipment have been paid and Pierre is not otherwise in material default of its obligations under the terms of this Lease, then Pierre shall have the right and option to purchase the piece of Equipment from City for the sum of ONE DOLLAR (\$1.00). Pierre may exercise this option by giving City written notice of its intent to do so at least sixty (60) days before the end of the lease term for each piece of Equipment.

Beginning on January 1, 2013, if all lease payments are current and Pierre is not otherwise in material default of its obligations under the terms of this Lease, Pierre shall have the right and option to purchase the Equipment and terminate this Lease by paying the remaining principal balance of the lease payments for all pieces of Equipment, together with any accrued interest component of the lease payments and any other amounts owed under this Lease, including, without limitation, the full payment obligation resulting from any job creation shortfall described in Section 8.d below.

7. **PIERRE'S RESPONSIBILITIES FOR THE EQUIPMENT.** At all times during the Lease, Pierre shall have the following responsibilities with regard to the Equipment:
 - a. Pierre shall, at its expense, insure the Equipment against loss or damage by reason of insurable hazard, including theft, and shall cause City to be listed as the loss payee for the Equipment. The policy of insurance shall require the insurer to give written notice to City at least thirty (30) days prior to any cancellation of the required coverage. No less than annually, Pierre shall provide to City a certificate of insurance evidencing that the required coverage is in effect.
 - b. Pierre shall, at its expense, maintain general commercial and worker's compensation insurance for the operations at its City of Claremont, North Carolina manufacturing plant.
 - c. Pierre shall, at its expense, maintain the Equipment and keep it in good working condition and repair, ordinary wear and tear excepted.
 - d. Pierre shall pay any and all ad valorem taxes, or other taxes or assessments of any nature whatsoever levied upon the Equipment by any taxing authority. If any such taxes or assessments are billed to City, then Pierre will timely pay such bill in accordance with its terms.
 - e. Immediately upon acceptance of the Equipment, Pierre shall install the equipment in its City of Claremont, North Carolina manufacturing plant, and shall not remove from it from said manufacturing plant; provided, however, that Pierre may, after giving written notice to City, move the equipment to another manufacturing facility owned or leased by Pierre and located within City of Claremont, North Carolina.

- f. In its and its employees' use and maintenance of the Equipment, Pierre will comply with all applicable federal, state and local laws, including, but not limited to, OSHA rules and regulations pertaining to employee safety in the maintenance and use of the Equipment.
8. PIERRE'S ECONOMIC DEVELOPMENT OBLIGATIONS. In addition to making the lease payments, and as integral consideration for this Lease, Pierre agrees that it will do the following at its Claremont, North Carolina manufacturing plant:
- a. No later than December 31, 2012, Pierre will create a minimum of five hundred (500) new jobs at its Claremont facility paying an annual average wage of \$26,461. A job is defined as employment that provides 2,000 hours or more per year of work and which provides at least fifty (50) percent of the cost of employee-only health insurance. Further for the purposes of calculating the number of new jobs, if Pierre fails to maintain one or more of the 717 jobs that existed at its Claremont, NC facility as of March 1, 2010; each such existing job not maintained will be subtracted from new jobs actually created and maintained. Why is this 2,000 hours when other documents require 1600 or more hours?
 - b. Pierre shall maintain or make available these five hundred (500) new jobs in place through December 31, 2020.
 - c. Immediately after its execution of this Lease, Pierre will provide to City a copy of its First Quarter 2010 Form NCUI 101 ("Employer's Quarterly Tax and Wage Report"). Within forty-five (45) days after the end of first calendar quarter of each year this Lease is in effect, Pierre shall provide to City a copy of its most recent quarterly Form NCUI 101. City may provide a copy of all NCUI 101's to Golden LEAF. Pierre further agrees to provide to the City and Golden LEAF such additional information that may be reasonably requested by the City and/or Golden LEAF to verify the job creation, wage, and benefit requirements set forth in Section 8.a. Can Pierre comply with the 45 days?
 - d. In the event that Pierre fails to achieve its job creation obligations set forth in Section 8.a.; Pierre must pay to the City for each job not created a pro rata portion of the amount equal to the difference between the total interest that would be owed under the life of this Lease and the total interest that would have been owed over the life of this Lease had the interest rate been eight percent (8%) compounded annually, regardless of whether this Lease is or could be earlier terminated. This amount will be considered additional rent and may be paid in equal monthly installments until the end of this Lease and will not accrue additional interest. This amount must be paid in full prior to Pierre's exercise of its option to purchase any piece of Equipment.
 - e. If a job position is temporarily vacant due to normal employee turnover, such temporary vacancy shall not be considered a failure to maintain the job so long as the position has not been eliminated, Pierre is actively seeking to fill the position, and Pierre in fact fills the position within a reasonable period of time.
9. QUIET ENJOYMENT. Pierre will keep the Equipment free from any and all liens,

encumbrances and claims. So long as Pierre is not in default under the Lease, City will not interfere with its quiet use and enjoyment of the Equipment during the Lease Term.

10. PURCHASE MONEY SECURITY INTEREST AND UCC FINANCING STATEMENT FILING. Pierre grants to City a purchase money security interest in the Equipment (including any replacements, substitutions, additions, attachments and proceeds). Pierre authorizes City to file one or more UCC Financing Statements for the Equipment, including fixture filings for any piece or pieces of the Equipment that will be fixtures upon installation. Pierre shall permit no other liens or security agreements to attach to the Equipment.
11. LOSS OR DAMAGE TO THE EQUIPMENT. From the time each piece of the Equipment is delivered to a carrier for shipment to Pierre through and including the end of the lease term, Pierre is responsible for any loss, theft, damage to or destruction of the Equipment ("Loss") from any cause at all, whether or not the Loss is covered by insurance. Pierre is required to make all payments under the Lease even if there is a Loss. Pierre must notify City immediately if there is any Loss. Then at Pierre's option, it will either (a) repair the Equipment so it is in good condition and working order to City's reasonable satisfaction; or (b) replace the Equipment with like equipment in good condition and repair and of the same manufacture and equal or greater capacity and capability, with clear title thereto in City; or (c) elect not to repair or replace the Equipment. In any event, Pierre will remain responsible for all lease payments as they come due to the end of the lease term.
12. RETURN OF EQUIPMENT. Unless Pierre exercises the option to purchase the Equipment, at the end of the lease term Pierre shall deliver the Equipment, within a reasonable time so as to allow for the Equipment to be disconnected and made ready for shipment, at its expense, in good repair and operable condition (ordinary wear and tear excepted) to any place within the CityCatawba County, North Carolina that City directs.
13. ASSIGNMENT. Pierre may not assign, sell, transfer, or sublease the Equipment its interest in this Lease, except that Pierre may assign this Lease and its obligations hereunder to any successor to its business by merger or consolidation or to any party acquiring substantially all of the assets of Pierre's business. The rights and obligations of this Lease shall bind and benefit any successors or assigns of Pierre.
14. DEFAULT. Each of the following is a default ("Default") under the Lease: (a) failure to pay any lease payment or any other payment within 10 days of its due date; (b) Pierre fails to perform any of its obligations under the Lease, and this failure continues for 10 days after notice from City to Pierre; (c) Pierre becomes insolvent, dissolves or is dissolved, assigns its assets for the benefit of creditors or enters, voluntarily or involuntarily, into any bankruptcy or other reorganization proceeding; (d) Pierre provided to City incorrect or untrue information regarding any material matter in connection with entering into this Lease. ~~[10 days is a short period for default. Consider 15 or 20.]~~
15. REMEDIES. If a Default occurs, City may do one or more of the following: (a) cancel or terminate the Lease; (b) require Pierre to deliver the Equipment to City, or to any place within the CityCatawba County, North Carolina designated by City, as set forth in Section 12; (c) peacefully repossess the Equipment without court order, and Pierre will

- a. *Legal Existence.* It is a duly formed and validly existing limited liability company under the law of the State of Delaware and is authorized to transact business in the State of North Carolina. It is in good standing in both states. It has the power and authority and the legal right to execute, make, deliver and perform its obligations under this Lease.
- b. *Legal Authority.* It has taken all actions necessary to authorize, consummate and implement the transactions contemplated under this Lease to do so as the binding act of Pierre.
- c. *No Legal Action.* It has no actual knowledge of any legal or administrative proceedings pending or overtly threatened against or affecting it which would materially adversely affect its financial position or its ability to perform its obligations under this Lease.
- d. *Grant Agreement.* It has read and understands the Grantee Acknowledgement and Agreement governing Golden LEAF's Grant to the City (the "Grant Agreement"), and has no actual knowledge of any facts or circumstances that could be reasonably expected to impair its ability to satisfy the expectations set forth therein. **[Need to see this.]**
- e. *No Conflict.* The Lease, the Grant Agreement, and the performance of its obligations thereunder do not conflict with, or result in a violation of its operating agreement, or any applicable provisions of statutory laws or regulations, or to the best of its knowledge, any provision of any loan agreement or other agreement to which it is a party or by which any of its properties are bound. The execution delivery and performance of the Lease by it (i) do not and will not violate or conflict with any Court Order, injunction or any agreement by which it is bound, and (ii) will not result in the creation or imposition of any lien, charge or encumbrance upon any of its assets, except as set forth or contemplated by the terms of this Lease.
- f. *No Adverse Knowledge.* It has no knowledge of any adverse circumstance or condition, financial or otherwise, which would materially affect its ability to perform its obligations under this Lease.
20. **ADDITIONAL INFORMATION.** Pierre shall provide to the City such additional information that may be reasonably required by the City to comply with the City's reporting obligations under the Grant Agreement. This obligation shall survive the termination of this Lease.
21. **MISCELLANEOUS.** The terms and conditions of this Lease make up the entire agreement between the parties regarding the lease of the Equipment. Any change in the terms and conditions of the Lease must be in writing and signed by both parties. All of City's rights and remedies will survive termination of this Lease. All notices under this Lease will be given in writing and will be considered given when deposited in the U.S. mail, postage prepaid, return receipt requested; or facsimile or electronically transmitted, addressed to the respective address given in section 18, above, or to a substitute address specified in writing by one party to the other. Any failure to require strict

performance of any provision in this Lease will not be construed as a consent or waiver of any other breach of the same or any provision. If any portion of this Lease is deemed invalid, it will not affect the balance of this Lease.

In witness thereof, the parties have executed this Lease as indicated below.

City of Claremont

Pierre Foods, Inc.

By: _____
David Morrow, Mayor

By: _____
First Name Last Name:
Position
Title:

**STATE OF NORTH CAROLINA
COUNTY OF CATAWBA**

I, _____ a Notary Public of said County and State, certify that _____ personally came before me this day and acknowledged that she is City Clerk of the City of Claremont, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the municipal corporation, the foregoing instrument was signed in its name and by its Mayor, sealed with its corporate seal and attested by her as its City Clerk.

Witness my hand and seal this _____ day of _____, 2010.

Notary Public

(SEAL)

My Commission Expires: _____

**STATE OF _____
COUNTY OF _____**

I, _____ a Notary Public of said county and state, certify that _____ personally came before me this day and acknowledged that he/she is Secretary of Pierre Foods, Inc., a Delaware corporation, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by its _____, sealed with its corporate seal, and attested by himself/herself as Secretary.

Witness my hand and seal this _____ day of _____, 2010.

[Seal]

Notary Public

My commission expires: _____

EXHIBIT A

Equipment Lease Agreement
Between The City of Claremont and Pierre Foods, Inc.

CERTIFICATE

TO: The City of Claremont

The Equipment

- i. Description:
- ii. Cost:
- iii. Term:
- iv. Monthly payment:
- v. Amortization Schedule:

REQUEST FOR COUNCIL ACTION

Date of Meeting: January 3, 2011

To: Mayor and the City Council

From: Doug Barrick, City Manager

Action Requested: Approve a Resolution for Surplus Property

The 1985 Chevy truck up for surplus is an army surplus vehicle that operates on a 24 system and is requiring a total rebuild. The cost of the rebuild is more than the useful value of the vehicles and it is not essential for City operations. The equipment is an old box of radios that was found at the Fire Dept. These radios are no longer useful under the current radio configuration. These items will be sold via Govdeals.com.

Recommendation: Approve Resolution

**CITY OF CLAREMONT
NORTH CAROLINA**

RESOLUTION # 29-10

A RESOLUTION DECLARING SURPLUS PROPERTY

WHEREAS, it has been determined by the City Council that certain property owned by the City of Claremont is dilapidated and in need of repair or replacement; and

WHEREAS, it has been determined that the cost of repair is beyond the value of the piece of equipment; and

WHEREAS, the City Council is desirous of disposing of the property.

WHEREAS, North Carolina General Statute 160a-270(c) enables municipalities to conduct auctions of real or personal property electronically by authorizing the establishment of an electronic auction services.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Claremont that the following pieces of property shall be declared surplus property and sold via GovDeals online auction service:

Surplus Vehicles					
YEAR	MAKE	MODEL	VIN #	MILEAGE	COND.
1985	Chevy	Custom Deluxe	1GCHD34JXFF337793	26,779	Needs Repair to 24 Volt System

Surplus Equipment			
Description	ITEM	MODEL	Serial Number
Motorola	Walkie	HT 600	651APQ2136B
Motorola	Walkie	HT 600	651APG2005
Motorola	Walkie	MT 1000	751ARN2126C
Motorola	Walkie	HT 600	651APQ2134B
Motorola	Walkie	HT 600	651APQ2133B
Motorola	Walkie	MT 1000	751ARN2127C
Motorola	Walkie	MT 1000	751ARN2125C

Motorola	Walkie	HT 1000	402ATN5477
Motorola	Walkie	HT 1000	402AWN8809
Motorola	Walkie	HT 1000	402ATN5478
Motorola	Mobile	Radius GM 216	778TSN3471
Motorola	Walkie	HT 440	402AJL0810
Motorola	Mobile	Radius GM 216	778TSN3555
Motorola	Mobile Base	Mocom 70	220HDN17
Motorola	Mobile Base	Mitrek	433R6A3662
Motorola	Mobile Base	Mocom 70	FDID 0104
Motorola	Mobile Base	Motrac	1-53960
Motorola		Plectron	R720C2-30847
Motorola		Plectron	R720C2-26827
Federal	Siren		6817
Federal	Siren		6816
Regency	Mobile		305-A95800
Regency	Mobile		305-A95627
Regency	Mobile		305-A95616

NOW, THEREFORE, IT IS FURTHER RESOLVED that the City Manager is hereby authorized to dispose of said vehicles and equipment in accordance with law.

Adopted this 3rd day of January 2011.

David B. Morrow, Mayor

ATTEST:

Doug Barrick
Town Clerk

Department & Committee Reports

Date of Meeting: January 3, 2011

To: Mayor and the City Council

From: Doug Barrick, City Manager

Action Requested: Allow Departments, Committees & Manager to report on monthly activities and take questions.

Item 10

- A. Youth Council Report
- B. Fire Department
- C. Police Department
- D. Public Works
- E. Planning and Zoning
- F. Recreation
- G. Appearance Committee
- H. Veterans Memorial Committee

Item 11

City Managers Report

Recommendation: Take Reports



CLAREMONT FIRE DEPARTMENT

2850 FIRE HOUSE LANE
CLAREMONT, NC 28610
828/459-9296 FAX 828/459-9732

The Claremont Fire Department responded to 35 calls for the month of December 2010 and 314 year to date.

Man hours spent on fire calls for the month totaled 752.18.

Average member response to calls, this month 9 and for the year 9.

Average response time to calls 3 min. 31 seconds till the first engine was on the scene.

Training for the month totaled 577.5 hours for the department.

There were 4 business inspections for the month.

The Fire Prevention Office performed 4 program this month, installed 7 smoke detectors, replaced 15 smoke detector batteries and performed 3 child safety seat inspections.

Chief Sigmon and Wendy Helms attended the Firehouse Software Conference held in Wilmington on December 2nd and 3rd.

The volunteer membership sponsored a local family for Christmas.

Members participated in a live burn located at 3167 West Main Street. This house was donated by the Terry family for the fire department use.

Respectively submitted,

Gary W. Sigmon, Chief

*Claremont Police Department
Monthly Service
December 2010*

<i>Calls Answered</i>	<i>898</i>	<i>Court Hours</i>	<i>13</i>
<i>Felonious Crimes</i>	<i>2</i>	<i>Citations to Court</i>	<i>21</i>
<i>Misdemeanor</i>	<i>18</i>	<i>Warnings</i>	<i>38</i>
<i>Accidents (PI)</i>	<i>1</i>	<i>Business Escorts</i>	<i>18</i>
<i>Accidents (PD)</i>	<i>5</i>	<i>Funeral Escorts</i>	<i>0</i>
<i>Warrants for Arrest</i>	<i>0</i>	<i>Vehicles Impounded</i>	<i>1</i>
<i>Subpoenas Served</i>	<i>3</i>	<i>Assisted Motorist</i>	<i>16</i>
<i>Open Businesses</i>	<i>24</i>	<i>Alarms Answered</i>	<i>21</i>
<i>Property Checks</i>	<i>1164</i>	<i>Part-Time hours</i>	<i>391</i>
<i>Animal Calls</i>	<i>1</i>		

Noted Events during the Month

- 1. There were no incidents to report during the Annual Christmas Parade. We had 17 Officers on duty during parade.*
- 2. Cpl. Clark and Cpl. Buff attended 1st Line Supervision Classes.*
- 3. Ofcr. Martin and Ofcr. Allen attended a class in Verbal Judo.*
- 4. Cpl. Buff attended Field Training Officer's School.*
- 5. Sgt. Cozzen and Ofcr. Arbelaez completed Radar Re-Certification.*
- 6. Sgt. Cozzen, Sgt. Long, Cpl. Buff and Ofcr. Arbelaez completed Intoxilyzer Re-Certification.*
- 7. Ofcr. Russell completed Taser training.*
- 8. Cpl. Clark and Ofcr. Allen will be attending Intoxilyzer training in January.*
- 9. We had an attempted Larceny of construction materials from property on Kelly Blvd. suspect was apprehended and materials returned to owner. Capt. Bost will be going to the Grand jury seeking indictments'.*
- 10. We delivered three dinner packages consisting of turkey, ham vegetables and desserts. Donated by Carolina Coach and Camper along with three gift cards from the Police Department to three families in need during the Holiday season.*

Respectfully Submitted

Herald R. Tolbert

Chief of Police

CLAREMONT PUBLIC WORKS MONTHLY REPORT

WATER DEPARTMENT

<u>30</u>	WATER TURNED ON
<u>33</u>	WATER TURNED OFF
<u>36</u>	METERS RE-READ
<u>1</u>	WATER LEAKS
<u>0</u>	WATER TAPS
<u>0</u>	SEWER TAPS
<u>5</u>	DIRTY WATER COMPLAINTS
<u>1150+5</u>	JET SEWER LINES/ MANHOLES

MAINTENANCE DEPT.

<u>585</u>	LEAF BAGS TAKEN TO LANDFILL
<u>4.95</u>	TONS OF ROUGH TRASH PICKED UP
<u>190</u>	HRS. CHIPPING LIMBS
<u>0</u>	HRS. MOWING
<u>72</u>	HRS. BUSH HOG
<u>98</u>	HRS. CLEAN STORM DRAINS
<u>65</u>	HRS. CLEAN CURB & GUTTERING
<u>7</u>	# OF WHITE GOOD PICKUPS

PERSONNEL

<u> </u>	OVERTIME HOURS
<u> </u>	TRAINING HOURS

PARK

<u>3</u>	# OF TIMES RE-STOCK BATHROOMS
<u>3</u>	# OF TRASH PICKUPS

OTHER

jetted out 800 feet of main sewer line on church street and wash out 3 man holes

jetted out 350 feet of main sewer line on huffman street and washed out 2 man holes

water leak on north lookout street 3/4 inch water service