

**CITY OF CLAREMONT
CITY COUNCIL MEETING
AGENDA PACKET**



**March 3, 2014
Claremont City Hall
7:00 pm**



**CITY OF CLAREMONT
CITY COUNCIL MEETING**

Regular Meeting

March 3, 2014

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. CONSENT AGENDA

- A. Regular Meeting Minutes – February 3, 2014
- B. Closed Session Minutes- February 3, 2014
- C. Proclamation of Red Cross Month
- D. Resolution 13-13 Surplus Property
- E. Resolution 14-13 WPCOG Manufacturing Communities Program Support
- F. Public Notice of Special City Council Meeting – March 29th 8:30am

6. CITIZEN'S CONCERNS AND COMMENTS

7. PUBLIC HEARING

- A. Chapter 9 of the Claremont Zoning Code Updates

8. OLD BUSINESS

9. NEW BUSINESS

- A. Ordinance 08-13 Budget Amendment
- B. Ordinance 09-13 Update Chapter 9 of Zoning Ordinances
- C. Approve Contract with Abee Architecture for Police Dept Addition
- D. Approve Contract with Davis & Floyd for North WWTP Engineering Services
- E. Approve Contract with Davis & Floyd for North WWTP Survey Services

10. DEPARTMENT & COMMITTEE REPORTS

- A. Youth Council Report
- B. Parks & Recreation Committee
- C. Monthly Department Dashboard Report

11. CITY MANAGER’S REPORT

12. CLOSED SESSION

13. ADJOURN

City of Claremont Board & Committee Meetings

<u>City Council Meeting</u> 1 st Monday of each month	March 3 rd	Council Chambers 7:00pm
<u>Planning Board</u> 2 nd Monday of each month	March 10 th	Council Chambers 7:00 pm
<u>Appearance Committee</u> 4 th Monday of each month	March 24 th	Claremont City Offices 6:00 pm
<u>Parks & Recreation</u> 4 th Monday of each month	March 24 th	Claremont City Offices 6:00 pm
<u>Youth Council</u> 1 st Sunday of each month	April 5 th	Council Chambers 3:00 pm
<u>Friends of the Library</u> 4 th Tuesday of each month	March 25 th	Claremont Library 6:00 pm
<u>Seniors Morning Out</u> 3 rd Wednesday of each month	March 19 th	1 st Baptist Fellowship Hall 8:30 am

NOTES:



City of Claremont Fiscal Year 2014 Resolution Index

Resolutions

Number	Title	Meeting Date
01-13	Surplus Property	July 1, 2013
02-13	Surplus Property	August 5, 2013
03-13	NCLM Delegate	September 3, 2013
04-13	Annex 13-02 Sufficiency	October 7, 2013
05-13	Annex 13-02 Public Hearing	October 7, 2013
06-13	Planning Board ETJ Members	November 4, 2013
07-13	Local Water Supply Plan	November 4, 2013
08-13	WPCOG Delegates 2014	December 2, 2013
09-13	Travel Policy	December 2, 2013
10-13	FEMA Applicants Agent	December 2, 2013
11-13	Claremont Daze 2014	January 6, 2014
12-13	Surplus Property	February 3, 2014
13-13	Surplus Property	March 3, 2014
14-13	WPCOG Manufacturing Support	March 3, 2014



City of Claremont Fiscal Year 2014 Ordinance Index

Ordinances

Number	Title	Meeting Date
01-13	Budget Ordinance (Golden Leaf)	July 1, 2013
02-13	Budget Ordinance (Rescue Squad)	August 5, 2013
03-13	Budget Ordinance (HVAC)	September 3, 2013
04-13	Budget Ordinance (Police Truck)	October 7, 2013
05-13	Tobacco Free	November 4, 2013
06-13	Annexation (13-02) West Main St.	November 4, 2013
07-13	Fire Department Updates	February 3, 2014
08-13	Budget Ordinance (Appropriate Rev)	March 3, 2014
09-13	Chapter 9 Zoning Updates	March 3, 2014

REQUEST FOR COUNCIL ACTION

Date of Meeting:

To: Mayor and the City Council

From: Doug Barrick, City Manager

Action Requested: Approval of Consent Agenda

- A. Regular Meeting Minutes – February 3, 2014
- B. Closed Session Minutes- February 3, 2014
- C. Proclamation of Red Cross Month
- D. Resolution 13-13 Surplus Property
- E. Resolution 14-13 WPCOG Manufacturing Communities Program Support
- F. Public Notice of Special City Council Meeting – March 29th 8:30am

Recommendation: Approve the Consent Agenda



City of Claremont Regular Meeting Minutes Monday, February 3, 2014

The regular City Council meeting of the City of Claremont was held in the Council Chambers located at Claremont City Hall at 7:00 p.m. on Monday, February 3, 2014.

The following members of the Claremont City Council were present: Mayor Shawn Brown, Mayor Pro Tem Timothy Lowrance, Councilmember Dayne Miller, Councilmember Nicky Setzer, Councilmember Dale Setzer and Councilmember Dale Sherrill.

The following personnel of the City of Claremont were present: City Manager Doug Barrick, City Attorney Bob Grant, Finance Officer Stephanie Corn, Administrative Support Clerk Wendy Helms, Public Works Director Tom Winkler, Rick Damron, Lieutenant Allen Long, Jessica Miler and Police Chief Gary Bost.

Others in attendance were: Melinda Bumgarner, Robert Smith, Susan Tucker, Savannah Frye, Ruffin Snow, Eyan Townsend, Jack Whitener, Angela Brown, Duane Cozzen, Terri Miller, Laurie LoCicero and Andrea Ramsey.

1. CALL TO ORDER

Mayor Shawn R. Brown called the Claremont City Council meeting to order at 7:00 p.m.

2. APPROVAL OF AGENDA

The agenda was approved as presented.

3. INVOCATION & PLEDGE OF ALLEGIANCE

The invocation was given by Reverend Ruffin Snow. Councilmember Nicky Setzer led the pledge of allegiance.

4. MAYOR'S REPORT

Mayor Brown reported that Councilmember Dayne Miller will be replacing Councilmember D.B. Setzer as Council liaison to the Youth Council. He also read a letter from Henry Helton, expressing his gratitude for naming the 2014 Claremont Daze in his honor. Mayor Brown read an email from the Town of Catawba, thanking Claremont for their help during the recent snow storm.

5. CONSENT AGENDA

A. January 6, 2014 Regular Meeting Minutes – Councilmember Timothy Lowrance made a motion to accept January 6, 2014 regular meeting minutes as presented. Councilmember Dayne Miller seconded

the motion. The motion passed unanimously.

B. January 6, 2014 Closed Session Meeting- Councilmember Timothy Lowrance made a motion to accept January 6, 2014 closed session meeting minutes as presented. Councilmember Dayne Miller seconded the motion. The motion passed unanimously.

C. Resolution 12-13 Surplus Property- Councilmember Timothy Lowrance made a motion to accept Resolution 12-13 for Surplus Property as presented. Councilmember Dayne Miller seconded the motion. The motion passed unanimously.

6. CITIZEN'S CONCERN'S & COMMENTS- none

7. OLD BUSINESS-

A. Presentation of Current Year Fire Department Updates- December marked the mid-point of the fiscal year and the Fire Chief was out of town attending the National Fire Academy at the last Council meeting, Chief Travis will give a brief presentation on the status of the Fire Department goals and CIP items

8. NEW BUSINESS

A. Ordinance 07-13 Fire Department Structure- This ordinance updates the operational procedures of the Claremont Fire Department and transitions the administrative duties of the department to the Fire Chief and the officers of the department. These changes also establish the duties of the Chief to issue standard operating guidelines for the department and align the membership requirements of the department to North Carolina Standards. It furthermore establishes the Standard Operating Guidelines as the basis of operations for the department.

The highlighted sections of the ordinance reflect updates and or revisions from the current ordinance.

B. Approve Contract for Construction repairs to McLin Creek Sewer Lines- As a result of the July 2013 flooding, one of the McLin Creek sewer outfall support piers was damaged. The City has worked with FEMA and our engineers to come up with funding and a plan to repair and reconstruct this line. Construction bids for this project will be opened on Thursday January 30th.

Bids came in extremely high. With one bid at \$127,000 and the other at 149,000. Councilmember Timothy Lowrance made a motion to reject the bids presented. Councilmember Nicky Setzer seconded the motion. Motion passed unanimously.

Councilman Dayne Miller asked about a piece of property on Centennial Blvd. and as to why it had not been annexed into the city limits. Council asked City Manager Barrick to report back with further information.

9. DEPARTMENT & COMMITTEE REPORTS

A. Youth Council – Savannah Frye presented the Youth Council report.

B. Parks and Recreation Committee- Jessica Miller spoke on behalf of the Recreation Committee.

C. Monthly Department Dashboard Report- There were no questions in reference to the new monthly dashboard report.

10. CITY MANAGER'S REPORT- City Manager Barrick spoke about Inter Gov. This program allows the City and the County to transmit data back and forth, easily. He also informed everyone of the Firefighter Rookie School being held at Claremont Fire Department. They have 35 people committed to the entire program.

11. CLOSED SESSION- Motion was made by Councilmember Timothy Lowrance to recess the regular meeting and go into closed session in reference to G.S. 143-318.11(a)(3) (Attorney Client Privilege) at 7:43 p.m. Second was made by Councilmember Nicky Setzer.

Motion was made by Councilmember Timothy Lowrance to adjourn the closed session meeting at 8:09 p.m. Second was made by Councilmember Nicky Setzer. Motion passed unanimously.

Councilmember's questioned whether there had been any contact with the motel. City Manager Barrick will try and contact them and see what plans they have for that property.

Advance Pierre has purchased the property formally owned by the Ham House. City Manager Barrick will be in touch with Advance Pierre to set up a meeting to talk about the demolition that is planned.

12. ADJOURN- Motion was made by Councilmember Nicky Setzer to adjourn the meeting at 8:12 p.m. Second was made by Councilmember Timothy Lowrance. Motion passed unanimously.

Respectfully submitted,
Wendy L. Helms, Administrative Support Clerk

Shawn R. Brown, Mayor

Attested:

Douglas L. Barrick, City Clerk



City of Claremont

Mayors Proclamation

WHEREAS, March is American Red Cross Month - a special time to recognize and thank our Everyday Heroes – those who reach out to help their neighbors when they are in need; and

WHEREAS, we would like to remember our heroes here in Claremont who give to help people in need. They work tirelessly to help locally in time of disaster, when someone needs life-saving blood, or the comfort of a helping hand. They provide round-the-clock support to members of the military, veterans and their families, and teach lifesaving classes in CPR, aquatics safety and first aid; and

WHEREAS, Across the country and around the world the American Red Cross responded to hurricanes, tornadoes, floods and wildfires, the tragedy at the Boston Marathon, and typhoon Haiyan in the Philippines; and

WHEREAS, When an injured service member ended up in a hospital far from home, the American Red Cross offered comfort. When a hospital patient needed blood, American Red Cross blood donors helped them. When a lifeguard jumped in to save a drowning child or someone stepped up to help a heart attack victim, the American Red Cross was there; and

WHEREAS, We dedicate the month of March to all those who support the American Red Cross mission to prevent and alleviate human suffering in the face of emergencies. Our community depends on the American Red Cross, which relies on donations of time, money and blood to fulfill its humanitarian mission.

NOW THEREFORE, I Mayor Shawn R. Brown, do hereby proclaim,

March 2014 as American Red Cross Month

I encourage all Americans to support this organization and its noble humanitarian mission. and urge Claremont residents to thank the American Red Cross heroes who volunteer their time, give blood, take life-saving courses, provide financial support, and reach out to those in need on a daily basis.

In witness whereof I have hereunto set my
Hand and caused this seal to be affixed

Shawn R. Brown, Mayor
This the 3rd day of March 2013



**CITY OF CLAREMONT
NORTH CAROLINA**

RESOLUTION # 13-13

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 Equipment		
MAKE	MODEL	SERIAL NUMBER
Coats	5030A	0008105013
Snap-On	EEWB304A	G61GU003

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 March 2014.

Shawn R. Brown, Mayor

ATTEST:

Doug Barrick
City Clerk



**CITY OF CLAREMONT
NORTH CAROLINA**

RESOLUTION # 14-13

**A RESOLUTION OF SUPPORT FOR THE WPCOG's INVESTING IN
MANUFACTURING COMMUNITIES PROGRAM APPLICATION**

WHEREAS, the Western Piedmont Council of Governments is designated by the Economic Development Administration (EDA) as an Economic Development District and said district includes Alexander, Burke, Caldwell and Catawba Counties (Hickory-Lenoir-Morganton Metropolitan Statistical Area); and

WHEREAS, the region continues to sustain a long tradition of manufacturing, employing as many as 79,689 persons within that employment sector in 2000; and

WHEREAS, regional manufacturers currently employ 37,771 persons, representing 27% of the workforce (three times the national average of 9%); and

WHEREAS, manufacturing wages in the region pay 16% higher than the average wage; and

WHEREAS, the Investing in Manufacturing Communities Program (IMCP) Challenge is an initiative of various federal agencies designed to accelerate the resurgence of manufacturing in the United States; and,

WHEREAS, the United States Government ranks the region highly for its concentrations of manufacturing in the furniture and textile sectors; and

WHEREAS, the EDA plans to designate twelve regions as "Manufacturing Communities"; and

WHEREAS, the Western Piedmont Council of Governments and its partners developed an application to submit to the Economic Development Administration; and

WHEREAS, the IMCP initiative presents opportunities for the region to sustain and grow manufacturing employment for the benefit of the citizens of our community; and

WHEREAS, the benefits derived from such a designation advances the region's economic development efforts and improves the a quality of life for its residents; and

NOW, THEREFORE BE IT RESOLVED, that the City of Claremont supports the IMCP application, agrees to serve as a regional partner, and encourages the federal agencies to designate the Economic Development District as a “Manufacturing Community.”

Adopted this 3rd day of March 2014.

Shawn R. Brown, Mayor

ATTEST:

Doug Barrick
City Clerk



**CITY OF CLAREMONT
NORTH CAROLINA**

PUBLIC NOTICE

SPECIAL MEETING OF THE CLAREMONT CITY COUNCIL

March 29, 2014 at 8:30 a.m.

Public Notice is hereby given that the Council of the Municipal Corporation of the City of Claremont will hold a Special Meeting of the City Council at 8:30 a.m., Saturday, March 29, 2014 at the City of Claremont City Hall located at 3288 East Main Street, Claremont, NC 28610. The purpose of this meeting is the 2014 -2015 Budget Retreat.

The Following Newspapers will be notified on March 4, 2014:

Claremont Courier
Hickory Daily Record
Observer- News Enterprise

Shawn R. Brown, Mayor

ATTEST:

Doug Barrick
City Clerk

REQUEST FOR COUNCIL ACTION

Date of Meeting:

To: Mayor and the City Council

From: Doug Barrick, City Manager

Action Requested: Citizen's Concerns and Comments

North Carolina General Statutes require that the City Council allow time at each public meeting for Citizen Input.

Recommendation: Hear Public Concerns and Comments

REQUEST FOR COUNCIL ACTION

Date of Meeting: March 3, 2014

To: Mayor and the City Council

From: Laurie LoCicero, City Planner

Action Requested: Hold Public Hearing for Ordinance 09-13 Zoning Text

North Carolina General Statutes require that the City Council Hold a Public Hearing prior to any changes in the City Ordinance.

Please find the attached proposed language for Zoning Ordinance. This text amendment reflects new state law concerning the proceedings of the Board of Adjustment. This Planning Board and staff worked with the City Attorney to draft this text amendment. New language is *italicized and underlined*, deleted text has strikethrough. The highlights of changes to the Board of Adjustment proceedings:

1. Hearings do not have to be advertised in the local newspaper but the property needs to have a notice of upcoming hearing posted and the neighboring property owners have to be notified with a first class letter.
2. Conditional Use Permits, appeals and administrative review can all be approved by a simple majority vote; a **variance still requires 4/5** of the voting members of the Board to concur for approval
3. Standardized notification of the Board's decision to any interested parties and the applicant
4. Standardized the process to appeal of a decision made by the zoning administrator
5. Revises and clarifies the standards for approving a variance, record keeping and issuing subpoenas

The Planning Board voted to recommend this text amendment for approval at their February meeting upon recommendation from planning staff and the City Attorney. The public hearing was advertised in the Observer News Enterprise 10 days prior to the hearing, February 21 and February 28.

Recommendation: Hold Public Hearing

ARTICLE P
BOARD OF ADJUSTMENT

9-3-261 Establishment of the Board of Adjustment

A Board of Adjustment is hereby established as provided in Section 160A-388 of the General Statutes of North Carolina. The Planning Board shall function as the Board of Adjustment as provided in Section 160A-388 of the General Statutes of North Carolina. The Board of Adjustment shall hear and decide applications for special and conditional use permits, requests for variances, and appeals of decisions of administrative officials charged with enforcement of the Code of Ordinances. As used in this Article, the term "decision" includes any final and binding order, requirement or determination.

9-3-262 Jurisdiction and Decision of the Board of Adjustment

The concurring vote of four-fifths (4/5) of the members of the Board of Adjustment – seven (7) of the eight (8) voting members – shall be necessary to approve any variance of the Ordinance. To reverse any order, requirement, decision, or determination of the Zoning Enforcement Officer of the City of Claremont, or to decide in favor of the applicant any matter upon which it is required to pass under the Ordinance or to effect any variation of such Ordinance a simple majority of the voting members is required. In accordance with NCGS 160A-388(e) no member of the Board of Adjustment shall participate or vote in any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection. Vacant positions and members who are disqualified from voting are not calculated for the concurring four-fifths vote or simple majority vote. Alternate members may serve temporarily (including voting) in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a regular member. Alternate members shall be eligible for appointment by the City Council as a regular member of the Board of Adjustment. ~~On all appeals, applications and other matters brought before the Board of Adjustment, said Board shall inform in writing all parties involved of its decision and the reasons therefore~~

9-3-263 Proceedings of the Board of Adjustment

The Board of Adjustment shall elect a chairman and a vice-chairman from its members who shall serve for one (1) year or until re-elected or until their successors are elected. The Board shall appoint a secretary, who may be a municipal officer or an employee of the City. The Board shall adopt rules of procedure in accordance with the provisions of this Ordinance and in Article 19, Chapter 160A of the General Statutes of North Carolina. Meetings of the Board shall be held once a month or at the call of the Chairman. The Chairman, or in his absence the Vice-Chairman, may administer oaths and compel the attendance of witnesses by subpoena. The Chairman shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this Section, the Board of Adjustment or the person seeking the

subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed pursuant to N.C.G.S. 160A-388(g). All meetings of the Board shall be open to the public.

9-3-264 Appeals, Hearings, Appeals and Notice

~~Appeals to the Board of Adjustment may be submitted by any person affected by any decision of the Zoning Enforcement Officer or other City official based on this Ordinance. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the Zoning Enforcement Officer and with the Board of Adjustment a written notice of appeal specifying the grounds thereof. All papers constituting the record upon which the action appealed from was taken shall forthwith be transmitted to the Board of Adjustment.~~

~~The Board of Adjustment shall fix a reasonable time for the hearing of appeals or other matters referred to it, and give due notice thereof to the parties in interest, and decide the same within a reasonable time. Upon a hearing, any party may appeal in person, or by agent, or by attorney.~~

All hearings under this Article, whether an appeal or otherwise, shall be conducted as follows:

1. Hearings

- a. All hearings of the board shall be open to the public.
- b. No final action shall be taken on any matter unless a quorum is present. A quorum shall consist of a majority of the total members of the board.
- c. A notice of the hearing shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine the owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.
- d. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, an indication of such fact. All decisions shall be made within a reasonable time and shall be based upon competent, material, and substantial evidence in the record. Each decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The decision is effective upon filing the written decision with the City Clerk. The final disposition of appeals shall be made by recorded resolution indicating the reason of the board therefore, all of which shall be a public record. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes

effective. The Chairman of the Board of Adjustment shall certify that proper notice of the decision has been made at the time of filing of the written decision with the Clerk.

2. Appeals: The board of adjustment shall hear and decide appeals decisions of administrative officials charged with enforcement of the zoning ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:
 - a. Any person who has standing under G.S. 160A-393(d) or the city may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the city clerk. The notice of appeal shall state the grounds for the appeal.
 - b. The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
 - c. The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
 - d. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.
 - e. The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
 - f. The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
 - g. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If

enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed.

Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

- h. The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.

9-3-265 Stay of Proceedings

An appeal stays all legal proceedings in furtherance of the action appealed from, unless the Zoning Enforcement Officer certifies to the Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application, on notice to the Zoning Enforcement Officer and on due cause shown.

9-3-266 Fees for Variances, Conditional Use Permits and Appeals

A fee, set by the City Council, shall be paid to the City Clerk of the City of Claremont, North Carolina for each application for a variance, conditional use permit, or appeal to cover the necessary administrative costs and advertising.

9-3-267 Powers and Duties of the Board of Adjustment

The Board of Adjustment shall have the following powers and duties enumerated below:

1. Administrative Review. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Enforcement Officer in the enforcement of this Ordinance. A majority vote of the Board of Adjustment members is required to decide any appeal.
2. Conditional Uses. To grant in particular cases and subject to the appropriate conditions and safeguards, permits for conditional uses as authorized by this Ordinance and set forth

as Conditional Uses under the various use districts. A majority vote of the Board of Adjustment members is required to grant any conditional use. The Board shall not grant a conditional use permit unless and until:

- a. A written application for a conditional use permit is submitted to the Zoning Enforcement Officer indicating the section of this Ordinance under which the conditional use permit is sought;
- b. A public hearing is held. In accordance with Section 9-3-264, Notice of such public hearing shall be mailed to *the person or entity whose appeal, application or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing;* ~~property owners~~ or within one hundred (100) feet of the property for which the conditional use permit is sought, ~~and advertised in a local newspaper the first time at least ten (10) days and not more than twenty five (25) days prior to the public hearing. This legal notice shall describe the request and appear at least once weekly for two (2) consecutive weeks prior to the public hearing.~~
- c. The Board of Adjustment finds that in the particular case in question the use for which the Conditional Use Permit is sought will not adversely affect the health, or safety of persons residing or working in the neighborhood of the proposed use, and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood. In granting such a permit, the Board of Adjustment may designate such conditions in connection therewith as will, in its opinion, assure that the proposed use will conform to the requirements and spirit of this Ordinance.
- d. Compliance with Other Codes. Granting a conditional use permit does not exempt the applicant from complying with all of the requirements of building codes or other ordinances.
- e. Revocation. If at any time after a Conditional Use Permit has been issued, the Board of Adjustment finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a Conditional Use Permit, the permit shall be terminated and the operation of such a use discontinued. If a conditional use permit is terminated for any reason, it may be reinstated only after a public hearing is held.
- f. Expiration. In any case where a conditional use permit has not been exercised within the time limit set by the Board of Adjustment, or within a period of one year if no specific time limit has been set, the without further action the permit shall be null and void. "Exercised" as set forth in this subsection shall mean that binding contracts for construction of the main building shall have been let; or in the absence of contracts, that the main building is under construction to a

substantial degree; or that prerequisite conditions involving substantial investment are contracted for, in substantial development, or completed (sewerage, drainage, etc). When construction is not a part of the use, "exercised" shall mean that the use is in operation in compliance with the conditions set forth in the permit.

- g. Careful record. A careful record of such application and plat, together with a record of the action taken thereon, shall be kept in the office of the zoning enforcement officer.
3. Variances. To authorize upon appeal in specific cases such variances from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the Ordinance will, in an individual case, result in practical difficulty or unnecessary hardship, so that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done. To vary any provisions of this ordinance a concurring four/fifths (4/5) vote of the members of the board is required. The existence of a non-conforming use of neighboring land, buildings, or structures in the same district or of permitted or non-conforming uses in other districts shall not constitute a reason for the requested variance. ~~Such variance may be granted in an individual case of unnecessary hardship upon a finding by the Board of Adjustment that the following conditions exist~~ When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment may vary any of the provisions of the ordinance upon a showing of the following:
- a. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that in the absence of the variance, no reasonable use can be made of the property. ~~There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district.~~
- b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood of the general public may not be the basis for granting a variance. ~~Granting the variance requested will not confer upon the applicant any special privileges denied to other residents in the district in which the property is located.~~
- e. The hardship did not result from the actions taken by the applicant or the property owner. The act of purchasing the property with knowledge that the circumstances exist that may justify the granting of a variance shall not be regarded as self-created hardship. ~~A literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.~~

- d. The requested variance is consistent with the spirit, purpose and intent of the ordinance, such that public safety, is secured and substantial justice is achieved.
The requested variance will be in harmony with the purpose and intent of this Ordinance and will not be injurious to the neighborhood or to the general welfare.
- e. Appropriate conditions may be imposed on any variance provided that the conditions are reasonable and related to the variance. The special circumstances are not the result of the actions of the applicant.
- f. ~~The variance requested is the minimum variance that will make possible the legal use of the land, building or structures.~~
- f. The variance is not a request to permit a use of land, building or structure which is not permitted by right or by special exception in the district involved.
- g. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

4. Decision of the Board of Adjustment

In exercising the above mentioned power, the Board of Adjustment may reverse or affirm, wholly or in part, or may modify any order, decision or determination and to that end shall have the power of the official from whom the appeal is taken.

9-3-268 Appeals from the Board of Adjustment

Any person or persons, jointly or severally, aggrieved by a decision of the Board, may within thirty (30) days after the filing of the decision in the office of the City Clerk, but not thereafter, present to the Superior Court of Catawba County a petition duly verified, setting forth that such decision is illegal in whole or in part, specifying the grounds of illegality, whereupon such decision of said Board shall be subject to review by certiorari as provided by law.

REQUEST FOR COUNCIL ACTION

Date of Meeting: March 3, 2014

To: Mayor and the City Council

From: Doug Barrick, City Manager

Action Requested: Approve Ordinance 08-13 Budget Amendment

This budget amendment appropriates funds for the following projects:

Fire Department Prevention Programs
Police Department Good Samaritan Fund
EDC Shell Building Expenses
Transitional Hold Harmless Funds

- Police Dept Architectural Services
- Fire Dept Salaries
- City Park Multipurpose Field
- Public Works Tire Equipment

FEMA Reimbursements
North WWTP Engineering Services

These projects will appropriate funding sources other than fund balance to achieve these projects.

Recommendation: Approve Ordinance 08-13

City Council of the City of Claremont

Catawba County, North Carolina

Ordinance No. 08-13

AN ORDINANCE OF THE CITY OF CLAREMONT AMENDING CLAREMONT
MUNICIPAL BUDGET FOR FISCAL YEAR 2014

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

General Fund

<u>Revenues</u>	<u>Increase</u>	<u>Decrease</u>
Miscellaneous Revenues 10.3350.0000	\$1,600	

<u>Expenditures</u>		
Fire Prevention Programs 10.5300.4400	\$1,600	

<u>Revenues</u>	<u>Increase</u>	<u>Decrease</u>
Miscellaneous Revenues 10.3350.0000	\$2,877	

<u>Expenditures</u>		
Samaritan Expenses 10.5100.9100	\$2,877	

<u>Revenues</u>	<u>Increase</u>	<u>Decrease</u>
EDC Fees 10.3483.0000	\$5,000	

<u>Expenditures</u>		
Miscellaneous Expenses 10.4200.5700	\$5,000	

<u>Revenues</u>	<u>Increase</u>	<u>Decrease</u>
Transitional Hold Harmless 10.3329.0000	\$38,578	

<u>Expenditures</u>		
Engineering 10.4200.0450	\$10,000	
Salaries 10.5300.0200	\$9,000	

Salaries/PT 10.5300.0300	\$3,000
Capital Outlay 10.6200.7400	\$11,378
Capital Outlay 10.5450.7400	\$5,200

Water & Sewer Fund

<u>Revenues</u>	<u>Increase</u>	<u>Decrease</u>
Miscellaneous Revenues 30.3350.0000	\$59,284.11	

<u>Expenditures</u>	
Maintenance of Equipment 30.8250.1600	\$10,023.75
Maintenance of Equipment 30.8250.1600	\$3,960.36
Capital Outlay 30.8250.7400	\$45,300.00

<u>Revenues</u>	<u>Increase</u>	<u>Decrease</u>
Miscellaneous Revenues 30.3350.0000	\$26,500	

<u>Expenditures</u>	
Engineering 30.8220.0450	\$26,500

INTRODUCED at the regular meeting of the City Council of the City of Claremont on March 3, 2014.

ADOPTED at the regular meeting of the City Council of the City of Claremont on March 3, 2014.

MAYOR Shawn R. Brown

ATTEST:

Doug Barrick, City Clerk

APPROVED AS TO FORM:

Bob Grant, City Attorney

REQUEST FOR COUNCIL ACTION

Date of Meeting: March 3, 2014

To: Mayor and the City Council

From: Laurie LoCicero, City Planner

Action Requested: Approve Ordinance 09-13 Zoning Text

This text amendment reflects new state law concerning the proceedings of the Board of Adjustment. This Planning Board and staff worked with the City Attorney to draft this text amendment. New language is *italicized and underlined*, deleted text has strikethrough. The highlights of changes to the Board of Adjustment proceedings:

1. Hearings do not have to be advertised in the local newspaper but the property needs to have a notice of upcoming hearing posted and the neighboring property owners have to be notified with a first class letter.
2. Conditional Use Permits, appeals and administrative review can all be approved by a simple majority vote; a **variance still requires 4/5** of the voting members of the Board to concur for approval
3. Standardized notification of the Board's decision to any interested parties and the applicant
4. Standardized the process to appeal of a decision made by the zoning administrator
5. Revises and clarifies the standards for approving a variance, record keeping and issuing subpoenas

Recommendation: Approve Ordinance 09-13 Zoning Text Amendments

City Council of the City of Claremont

Catawba County, North Carolina

Ordinance No. 09-13

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF CLAREMONT TITLE 9 PLANNING AND COMMUNITY DEVELOPMENT ZONING REGULATIONS

WHEREAS, the City of Claremont proposes to amend the Zoning Ordinance to coincide with changes to the North Carolina General Statutes;

WHEREAS, the Planning Board of the City of Claremont has considered the proposed amendment and recommend said amendment for approval by the City Council; and

WHEREAS, the Claremont Land Development Plan does not address this specific amendment,

WHEREAS, City Council has conducted a public hearing to consider comments relative to the proposed amendment; and

WHEREAS, notification of the public hearing was duly published,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLAREMONT, That Chapter Nine (9) Sections 9-3-261 through 9-3-267 are hereby amended by changing the following:

**ARTICLE P
BOARD OF ADJUSTMENT**

9-3-261 Establishment of the Board of Adjustment

A Board of Adjustment is hereby established as provided in Section 160A-388 of the General Statutes of North Carolina. The Planning Board shall function as the Board of Adjustment as provided in Section 160A-388 of the General Statutes of North Carolina. *The Board of Adjustment shall hear and decide applications for special and conditional use permits, requests for variances, and appeals of decisions of administrative officials charged with enforcement of the Code of Ordinances. As used in this Article, the term "decision" includes any final and binding order, requirement or determination.*

9-3-262 Jurisdiction and Decision of the Board of Adjustment

The concurring vote of four-fifths (4/5) of the members of the Board of Adjustment – seven (7) of the eight (8) voting members – shall be necessary to approve any variance of the Ordinance. To reverse any order, requirement, decision, or determination of the Zoning Enforcement Officer of the City of Claremont, or to decide in favor of the applicant any matter upon which it is required to pass under the Ordinance or to effect any variation of such Ordinance a simple majority of the voting members is required. In accordance with NCGS 160A-388(e) no member of the Board of Adjustment shall participate or vote in any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection. Vacant positions and members who are disqualified from voting are not calculated for the concurring four-fifths vote or simple majority vote. Alternate members may serve temporarily (including voting) in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a regular member. Alternate members shall be eligible for appointment by the City Council as a regular member of the Board of Adjustment. ~~On all appeals, applications and other matters brought before the Board of Adjustment, said Board shall inform in writing all parties involved of its decision and the reasons therefore~~

9-3-263 Proceedings of the Board of Adjustment

The Board of Adjustment shall elect a chairman and a vice-chairman from its members who shall serve for one (1) year or until re-elected or until their successors are elected. The Board shall appoint a secretary, who may be a municipal officer or an employee of the City. The Board shall adopt rules of procedure in accordance with the provisions of this Ordinance and in Article 19, Chapter 160A of the General Statutes of North Carolina. Meetings of the Board shall be held once a month or at the call of the Chairman. The Chairman, or in his absence the Vice-Chairman, may administer oaths and compel the attendance of witnesses by subpoena. The Chairman shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this Section, the Board of Adjustment or the person seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed pursuant to N.C.G.S. 160A-388(g). All meetings of the Board shall be open to the public.

9-3-264 Appeals, Hearing, Appeals and Notice

~~Appeals to the Board of Adjustment may be submitted by any person affected by any decision of the Zoning Enforcement Officer or other City official based on this Ordinance. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the Zoning Enforcement Officer and with the Board of Adjustment a written notice of appeal specifying the grounds thereof. All papers constituting the record upon which the action appealed from was taken shall forthwith be transmitted to the Board of Adjustment.~~

~~The Board of Adjustment shall fix a reasonable time for the hearing of appeals or other matters referred to it, and give due notice thereof to the parties in interest, and decide the same within a reasonable time. Upon a hearing, any party may appeal in person, or by agent, or by attorney.~~

All hearings under this Article, whether an appeal or otherwise, shall be conducted as follows:

1. Hearings

- a. All hearings of the board shall be open to the public.
- b. No final action shall be taken on any matter unless a quorum is present. A quorum shall consist of a majority of the total members of the board.
- c. A notice of the hearing shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine the owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.
- d. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, an indication of such fact. All decisions shall be made within a reasonable time and shall be based upon competent, material, and substantial evidence in the record. Each decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The decision is effective upon filing the written decision with the City Clerk. The final disposition of appeals shall be made by recorded resolution indicating the reason of the board therefore, all of which shall be a public record. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The Chairman of the Board of Adjustment shall certify that proper notice of the decision has been made at the time of filing of the written decision with the Clerk.

2. Appeals: The board of adjustment shall hear and decide appeals decisions of administrative officials charged with enforcement of the zoning ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

- a. Any person who has standing under G.S. 160A-393(d) or the city may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the city clerk. The notice of appeal shall state the grounds for the appeal.
- b. The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

- c. The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
- d. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.
- e. The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- f. The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- g. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.
- h. The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.

9-3-265 Stay of Proceedings

An appeal stays all legal proceedings in furtherance of the action appealed from, unless the Zoning Enforcement Officer certifies to the Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application, on notice to the Zoning Enforcement Officer and on due cause shown.

9-3-266 Fees for Variances, Conditional Use Permits and Appeals

A fee, set by the City Council, shall be paid to the City Clerk of the City of Claremont, North Carolina for each application for a variance, conditional use permit, or appeal to cover the necessary administrative costs and advertising.

9-3-267 Powers and Duties of the Board of Adjustment

The Board of Adjustment shall have the following powers and *duties enumerated below*:

1. Administrative Review. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Enforcement Officer in the enforcement of this Ordinance. A majority vote of the Board of Adjustment members is required to decide any appeal.
2. Conditional Uses. To grant in particular cases and subject to the appropriate conditions and safeguards, permits for conditional uses as authorized by this Ordinance and set forth as Conditional Uses under the various use districts. A majority vote of the Board of Adjustment members is required to grant any conditional use. The Board shall not grant a conditional use permit unless and until:
 - a. A written application for a conditional use permit is submitted to the Zoning Enforcement Officer indicating the section of this Ordinance under which the conditional use permit is sought;
 - b. A public hearing is held. In accordance with Section 9-3-264, Notice of such public hearing shall be mailed to *the person or entity whose appeal, application or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; property owners or* within one hundred (100) feet of the property for which the conditional use permit is sought, and advertised in a local newspaper the first time at least ten (10) days and not more than twenty five (25) days prior to the public

~~hearing. This legal notice shall describe the request and appear at least once weekly for two (2) consecutive weeks prior to the public hearing.~~

- c. The Board of Adjustment finds that in the particular case in question the use for which the Conditional Use Permit is sought will not adversely affect the health, or safety of persons residing or working in the neighborhood of the proposed use, and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood. In granting such a permit, the Board of Adjustment may designate such conditions in connection therewith as will, in its opinion, assure that the proposed use will conform to the requirements and spirit of this Ordinance.
 - d. Compliance with Other Codes. *Granting a conditional use permit does not exempt the applicant from complying with all of the requirements of building codes or other ordinances.*
 - e. Revocation. If at any time after a Conditional Use Permit has been issued, the Board of Adjustment finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a Conditional Use Permit, the permit shall be terminated and the operation of such a use discontinued. If a conditional use permit is terminated for any reason, it may be reinstated only after a public hearing is held.
 - f. Expiration. *In any case where a conditional use permit has not been exercised within the time limit set by the Board of Adjustment, or within a period of one year if no specific time limit has been set, the without further action the permit shall be null and void. "Exercised" as set forth in this subsection shall mean that binding contracts for construction of the main building shall have been let; or in the absence of contracts, that the main building is under construction to a substantial degree; or that prerequisite conditions involving substantial investment are contracted for, in substantial development, or completed (sewerage, drainage, etc). When construction is not a part of the use, "exercised" shall mean that the use is in operation in compliance with the conditions set forth in the permit.*
 - g. Careful record. *A careful record of such application and plat, together with a record of the action taken thereon, shall be kept in the office of the zoning enforcement officer.*
3. Variances. To authorize upon appeal in specific cases such variances from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the Ordinance will, in an individual case, result in practical difficulty or unnecessary hardship, so that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done. To vary any provisions of this ordinance a concurring four/fifths (4/5) vote of the

members of the board is required. The existence of a non-conforming use of neighboring land, buildings, or structures in the same district or of permitted or non-conforming uses in other districts shall not constitute a reason for the requested variance. ~~Such variance may be granted in an individual case of unnecessary hardship upon a finding by the Board of Adjustment that the following conditions exist~~ When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment may vary any of the provisions of the ordinance upon a showing of the following:

- a. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that in the absence of the variance, no reasonable use can be made of the property. ~~There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district.~~
- b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood of the general public may not be the basis for granting a variance. ~~Granting the variance requested will not confer upon the applicant any special privileges denied to other residents in the district in which the property is located.~~
- c. The hardship did not result from the actions taken by the applicant or the property owner. The act of purchasing the property with knowledge that the circumstances exist that may justify the granting of a variance shall not be regarded as self-created hardship. ~~A literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.~~
- d. The requested variance is consistent with the spirit, purpose and intent of the ordinance, such that public safety, is secured and substantial justice is achieved. ~~The requested variance will be in harmony with the purpose and intent of this Ordinance and will not be injurious to the neighborhood or to the general welfare.~~
- e. Appropriate conditions may be imposed on any variance provided that the conditions are reasonable and related to the variance. ~~The special circumstances are not the result of the actions of the applicant.~~
- f. ~~The variance requested is the minimum variance that will make possible the legal use of the land, building or structures.~~
- f. The variance is not a request to permit a use of land, building or structure which is not permitted by right or by special exception in the district involved.

- g. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.
4. Decision of the Board of Adjustment
In exercising the above mentioned power, the Board of Adjustment may reverse or affirm, wholly or in part, or may modify any order, decision or determination and to that end shall have the power of the official from whom the appeal is taken.

INTRODUCED at a regular meeting of the City Council of the City of Claremont on March 3, 2014

ADOPTED at a regular meeting of the City Council of the City of Claremont on March 3, 2014

Shawn R. Brown, Mayor

ATTEST:

Doug Barrick, City Clerk

APPROVED AS TO FORM:

Bob Grant, City Attorney

REQUEST FOR COUNCIL ACTION

Date of Meeting:

To: Mayor and the City Council

From: Doug Barrick, City Manager

Action Requested: Approve Contract with Abee Architecture

This contract will develop the full set of plans needed to accomplish and addition to the Police Department. This renovation will add more space to the evidence room. Add two small rooms for interviewing suspects and victims with the proper recording devices for video and audio as needed per the State of North Carolina. Two restrooms, Male and Female both having showers with lockers for the ability to work officers in cases of emergency. Replacing the roll up garage doors with a more secured door for the last two garage bays. The plans will be used to send this project out for bids to establish a project budget.

Recommendation: Approve Contract



Abee Architecture, PA

Dallas C. Abee, Jr., AIA

260 1st Avenue, NW, Hickory, NC 28601

www.abeearchitect.com

February 27, 2014

Mr. Doug Barrick
City Manager
City of Claremont
3288 East Main Street
Claremont, NC 28610

Re: Contract for Architectural/Engineering Services
Alterations and Additions to the City of Claremont Police Department
AIA Document B105-2007, latest edition

Dear Doug:

Enclosed you will find an original and copy of AIA Document B105-2007, Standard Form of Agreement Between Owner and Architect for a Small Commercial Project, for the Alterations and Additions to the City of Claremont Police Department.

Please look over carefully and if this Contract meets with approval, please sign both copies, retain the copy marked for "Owner," and return the copy marked "Architect" to me along with the initial fee of \$1,500.00.

Please do not hesitate to contact me if you have any questions or if there is anything you would like to discuss.

We look forward to starting on this right away and to working with you on this project.

Thank you.

Sincerely,


Dallas C. Abee, Jr., AIA
Architect

DCAjr/jm

Enclosures

 **AIA**® Document B105™ – 2007

Standard Form of Agreement Between Owner and Architect for a Residential or Small Commercial Project

AGREEMENT made as of the **Twenty-Seventh** day of **February**
in the year **2014**
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

City of Claremont
3288 East Main Street
Claremont, NC 28610

and the Architect:
(Name, legal status, address and other information)

Abee Architecture, PA
Dallas C. Abee, Jr., AIA
260 First Avenue, N.W., Suite 200
Hickory, NC 28603
828-322-1274

for the following Project:
(Name, location and detailed description)

Alterations and Additions
City of Claremont Police Department
3301 East Main Street
Claremont, NC 28610

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

State or local law may impose requirements on contracts for home improvements. If this document will be used for Work on the Owner's residence, the Owner should consult local authorities or an attorney to verify requirements applicable to this Agreement.

The Owner and Architect agree as follows.

Init.

ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

The Architect shall provide architectural services for the Project as described in this Agreement in a manner consistent with locally accepted standards for professional skill and care. The Architect shall assist the Owner in determining consulting services required for the Project. The Architect's services include the following consulting services, if any:

Please refer to the attached letter dated February 26, 2014, which details services and drawings. This letter is made a part of this Contract as "Attachment No. One."

During the Design Phase, the Architect shall review the Owner's scope of work, budget and schedule and reach an understanding with the Owner of the Project requirements. Based on the approved Project requirements, the Architect shall develop a design. Upon the Owner's approval of the design, the Architect shall prepare Construction Documents indicating requirements for construction of the Project and shall coordinate its services with any consulting services the Owner provides. The Architect shall assist the Owner in filing documents required for the approval of governmental authorities, in obtaining proposals and in awarding contracts for construction.

~~During the Construction Phase, the Architect shall act as the Owner's representative and provide administration of the Contract between the Owner and Contractor. The extent of the Architect's authority and responsibility during construction is described in AIA Document A105™ 2007, Standard Form of Agreement Between Owner and Contractor for a Residential or Small Commercial Project. Generally, the Architect's services during construction include interpreting the Contract Documents, reviewing the Contractor's submittals, visiting the site, reviewing and certifying payments, and rejecting nonconforming Work.~~

ARTICLE 2 OWNER'S RESPONSIBILITIES

The Owner shall provide full information about the objectives, schedule, constraints and existing conditions of the Project, and shall establish a budget that includes reasonable contingencies and meets the Project requirements. The Owner shall provide decisions and furnish required information as expeditiously as necessary for the orderly progress of the Project. The Architect shall be entitled to rely on the accuracy and completeness of the Owner's information. The Owner shall furnish consulting services not provided by the Architect, but required for the Project, such as surveying, which shall include property boundaries, topography, utilities, and wetlands information; geotechnical engineering; and environmental testing services. The Owner shall employ a Contractor, experienced in the type of Project to be constructed, to perform the construction Work and to provide price information.

ARTICLE 3 USE OF DOCUMENTS

Drawings, specifications and other documents prepared by the Architect are instruments of the Architect's service and are for the Owner's use solely with respect to this Project. The Architect shall retain all common law, statutory and other reserved rights, including the copyright. Upon completion of the Project or termination of this Agreement, the Owner's right to use the instruments of service shall cease. When transmitting copyright-protected information for use on the Project, the transmitting party represents that it is either the copyright owner of the information, or has permission from the copyright owner to transmit the information for its use on the Project.

ARTICLE 4 TERMINATION, SUSPENSION OR ABANDONMENT

In the event of termination, suspension or abandonment of the Project by the Owner, the Architect shall be compensated for services performed. The Owner's failure to make payments in accordance with this Agreement shall be considered substantial nonperformance and sufficient cause for the Architect to suspend or terminate services. Either the Architect or the Owner may terminate this Agreement after giving no less than seven days' written notice if the Project is suspended for more than 90 days, or if the other party substantially fails to perform in accordance with the terms of this Agreement.

ARTICLE 5 MISCELLANEOUS PROVISIONS

This Agreement shall be governed by the law of the place where the Project is located. Terms in this Agreement shall have the same meaning as those in AIA Document A105-2007, Standard Form of Agreement Between Owner and Contractor for a Residential or Small Commercial Project. Neither party to this Agreement shall assign the contract as a whole without written consent of the other.

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or the Architect.

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The Architect and Architect's consultants shall have no responsibility for the identification, discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials in any form at the Project site.

ARTICLE 6 PAYMENTS AND COMPENSATION TO THE ARCHITECT

The Architect's Compensation shall be:

A Lump Sum Fee of \$10,000.00.

The Owner shall pay the Architect an initial payment of **One Thousand Five Hundred Dollars.**

(\$1,500.00) as a minimum payment under this Agreement. The initial payment shall be credited to the final invoice.

The Owner shall reimburse the Architect for expenses incurred in the interest of the Project, plus
N/A percent (%).

Payments are due and payable upon receipt of the Architect's monthly invoice. Amounts unpaid
N/A () days after the invoice date shall bear interest from the date payment is due at
the rate of percent (%), or in the absence thereof, at the
legal rate prevailing at the principal place of business of the Architect.

At the request of the Owner, the Architect shall provide services not included in Article 1 for additional compensation. Such services may include providing or coordinating services of consultants not identified in Article 1; revisions due to changes in the scope, quality or budget; evaluating changes in the Work and Contractors' requests for substitutions of materials or systems; and services not completed within **two years** (**24**) months of the date of this Agreement through no fault of the Architect.

ARTICLE 7 OTHER PROVISIONS

(Insert descriptions of other services and modifications to the terms of this Agreement.)

Please refer to Attachment No. One: Letter dated February 26, 2014, which outlines the Scope of Work for the Project.

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

(Printed name and title)



ARCHITECT (Signature)
Dallas C. Abee, Jr., AIA
dallasabee@embarqmail.com

(Printed name and title)
cell: 310-1722 phone: 322-1274
fax: 322-7356

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

init.

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February 26, 2014

ATTACHMENT NO. ONE

To The Contract Dated February 27, 2014
AIA Document B105-2007

Mr. Doug Barrick, City Manager
Mr. Gary Bost, Chief of Police
City of Claremont
3288 East Main Street
Claremont, NC 28610

Re: Revised Architect's Proposal: Architectural and Engineering Services
Alterations and Addition: City of Claremont Police Department
3301 East Main Street, Claremont, NC 28610

Dear Mr. Barrick and Chief Bost:

As per our meeting- 1:30p.m. Tuesday, February 25, 2014. The following is a revised non-inclusive outline of architectural and engineering drawings and services for the previously approved Scope of Work for Alterations and Additions to the City of Claremont Police Department.

Preliminary Phase Services: Verifying As-Built Conditions from pervious construction, 2008 – 2009 with photographic documentation.

- Existing Floor Plan.
- All four existing elevations.
- Review of North Carolina Building Codes, Rehab Code (for existing buildings) Building and Zoning, Planning.
- Preliminary Floor Plan, Elevations, with Addenda.
 1. Replace existing front awning.
 2. New lighted sign at front of building.
 3. New secure back door with exterior lighting.
 4. Replace two existing overhead rollup doors with new secure fast operating doors.
- Critical Path Chart with projected time lines for all Phases of the project.
- Preliminary Construction Budgets for base bid and each of the four alternates.
- Reviews with City Manager Barrick and Chief Bost with their "sign-offs" approval of the Preliminary Design. Any Revisions if required.
- Color Presentation Drawings for City Council Review.
- City Council approval or recommendations.

Construction Documents:

- Research Codes for: Rehab, Energy, Building, and Fire Prevention.
- Drawings:
 1. Cover Page with Building Data Appendix B, Life Safety Plan
 2. Site Plan, Elevations, Details, and Specifications
 3. Floor Plan, Partitions Schedules and Details
 4. Schedules for Finishes, Doors, Toilet Fixtures, Accessible Details and Flame Spread.
 5. Enlarged Floor Plans for: Bathrooms, Locker Rooms, with Notes and Details.
 6. Delineated secure construction work areas to Police Dept. can stay in operation.
 7. New Ceiling Grid Plan.
 8. Interior Color Schedule, colors selections by owner.
 9. Plumbing Drawings: water lines, waste lines, plumbing riser diagram, cold water flow fixture schedules.
 10. Heating and Air Conditioning: Unit/ducts layout, schedules, notes, and details.
 11. Electrical: Lighting, power riser diagram, panel diagram, enclosed video circuits, telephone board, computer servers and outlets, Project Manual and Specification.
- Addenda:
 1. Replace existing front awning with Details and Specifications.
 2. New lighted sign in front of building with Site Plan, Elevations, Details, Specification.
 3. New secure backdoor with exterior lighting and new walkway with Elevations, Details and Specifications.
 4. Replace two existing overhead rollup doors. Energy efficient, secure, fast acting, with Elevations, Details, Specifications.
- Complete Project Manual with Specifications.
- Reviews with Mr. Barrick and Chief Bost with their "sign-off" approvals.
- Submittals to review agencies.
- Final Plots and Prints.

Bidding and Negotiation: One Contract Advertisements to newspapers and city website.
Public Bid Openings and Tabulation/
Reviews and checking of Bids.

Qualifying Bidders: Bid Bond, Payment and Performance Bond, Financial Statements, and References.

Abee Architecture, P.A.

Dallas C. Abee, Jr., AIA

Architect's Proposal
Claremont Police Dept.
Alterations & Additions
February 26, 2014

Optional Construction Administration:

- Draw up AIA Construction Contract.
- Weekly Construction Meetings with notes distributed.
- Shop Drawing Submittals and Reviews.
- Interior Color Schedule (colors selected by owner).
- Process Contractor's monthly Certificates of Payment.
- Issue AIA Substantial Completion Document.

Optional Close-Out:

- Punch Lists and final completion Punch List.
- As-Build Drawing.
- Maintenance and Operation Manuals.
- Warranty Documents.
- Final closeout meeting with all parties involved to turn project over to owner.

Lump Sum Costs for Architectural/Engineering Drawings and Services:

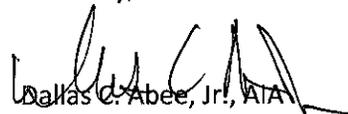
Architectural Preliminary Drawings	\$ 1,500.00
Architectural/Engineering Drawings:	<u>\$ 8,500.00</u>
Total:	\$ 10,000.00

Based on our last meeting we will draw up an AIA Owner-Architect Contract for the above listed drawings, services and fees.

It is our understanding that the owner has the option to request from Abee Architecture, P.A. services for Construction Administration (\$3,500.00) and Project Close Out (\$1,000.00).

We Thank You for this commission and we are pleased to be working with the City of Claremont again.

Sincerely,


Dallas C. Abee, Jr., AIA
Abee Architecture, P.A.

Cc: Doug Barrick-City Manager
Police Chief Gary Bost

Page Three of Three

REQUEST FOR COUNCIL ACTION

Date of Meeting: **March 3, 2014**

To: Mayor and the City Council

From: Doug Barrick, City Manager

Action Requested: Approve Contract with Davis & Floyd for North WWTP Engineering Services.

In conjunction with our long range sewer capacity planning the City of Claremont proposed to install a pump station at the current site of the North WWTP and replace a current NPDES discharge point with a pump station that would flow wastewater via 10,000 feet of force main to the McLin Creek WWTP. This project would double the treatment capacity of this basin and consolidate the City's Wastewater treatment to one treatment plant.

Recommendation: Approve Contract



Engineering
 Architecture
 Environmental & Laboratory Services

Davis & Floyd, Inc. (hereinafter referred to as "D&F")
 Proposal/Agreement

DATE: February 28, 2014	Agreement Number:	PROJECT NAME: North WWTP Pump Station & Force Main: <i>Design Services</i>
D&F JOB NUMBER:		PROJECT LOCATION: Claremont, North Carolina

CLIENT: City of Claremont

CLIENT CONTACT: Doug Barrick, City Manager
PHONE: 828-466-7255

FAX:

AGREEMENT TERMS

SCOPE OF SERVICES (ATTACH ADDITIONAL SHEETS IF NECESSARY):

See Attached Exhibit A

TIME OF PERFORMANCE:

See Attached Exhibit A.

COMPENSATION/TERMS OF PAYMENT (ATTACH ADDITIONAL SHEETS IF NECESSARY):

See Attached Exhibit A.

D&F ADDRESS FOR CORRESPONDENCE/NOTICES:

1073 13th Street SE
 Hickory, N.C. 28602

PHONE: 828-322-2290

FAX:

ATTACHMENTS ▾ (AS CHECKED)

SCOPE OF SERVICES COMPENSATION

OTHER (SPECIFY)

___ **TOTAL NO. OF ADD'L SHEETS ATTACHED**
 (Including General Conditions)

GENERAL CONDITIONS ATTACHED (AS CHECKED):

- PROFESSIONAL SERVICES
- ENVIRONMENTAL AUDITS AND SITE ASSESSMENTS
- ENVIRONMENTAL REMEDIATION SERVICES
- PETROLEUM FACILITY AND STORAGE TANK SERVICES
- CONSULTING SERVICES
- OTHER

ACCEPTED ON BEHALF OF CLIENT:

SUBMITTED BY DAVIS & FLOYD, INC.

SIGNATURE:

DATE:

SIGNATURE:

DATE: 2/28/2014

Danny M. Ware

PRINT NAME & TITLE: Doug Barrick, City Manager

PRINT NAME & TITLE: Danny Ware, Vice President

Exhibit A
Scope of Service
North WWTP Pump Station & Force Main
February 28, 2014

Section 1: Project Scope

The scope of the project is to provide for the decommissioning of the North WWTP and conveyance of wastewater received by the WWTP to the McLin Creek WWTP. The project is expected to consist of the following improvement.

- A. 600 gpm Pump Station appurtenances.
- B. 10,180 l.f. of 8 inch Force Main and appurtenances.
- C. Closeout of the North WWTP.

Section 2: Preliminary Phase Services by Davis & Floyd

- A. The ENGINEER shall consult with the OWNER to determine the requirements of the PROJECT.

Section 3: Design Phase Services

- A. Perform professional normal civil, sanitary, structural engineering services and other engineering services incidental to the project.
- B. Consult with the OWNER to determine the PROJECT'S requirements and review available project information.
- C. On the basis of the OWNER'S requirements, prepare Drawings, Specifications and Bidding Documents for the PROJECT as described above.
- D. Advise the OWNER as to the necessity of the ENGINEER providing or obtaining from others data or services and act as the OWNER'S representative in connection with any such services.
- E. Prepare for incorporation into the Contract Documents, final Drawings to show the character and scope of the work to be performed by the contractors on the PROJECT, and the Specifications as described in item C above.
- F. Furnish to OWNER such documents and design data as may be required for, and assist in, the preparation of the required submissions, so that the OWNER may obtain approvals of the governmental authorities as have jurisdiction over design criteria applicable to the PROJECT, and assist in obtaining such approvals by participating in submissions to and negotiations with appropriate authorities.
- G. Prepare documents necessary for obtaining county and state highway encroachment permits, if any.
- H. Based on the information contained in the Contract Documents, submit a revised opinion of probable cost for the PROJECT including construction costs and contingencies.
- I. Prepare bid forms, notice to bidders, instruction to bidders, general conditions and supplementary conditions, and assist in the preparation of other related documents.
- J. Furnish three (3) copies of all preliminary submittals of the Drawings, Specifications and Bidding Documents and five (5) copies of the approved Drawings, Specifications and Bidding Documents and review them in person with the OWNER.

Section 4: Bidding Phase Services by Davis & Floyd

- A. Assist the OWNER in obtaining bids and/or negotiating proposals for the contract for construction.
- B. Consult with and advise the OWNER as to acceptability of substitute materials and equipment proposed by contractors.
- C. Assist the OWNER in evaluating bids or proposals, in assembling and awarding contracts, and conducting a preconstruction conference.

Section 5: Additional Services by Davis & Floyd

If authorized by the OWNER, the ENGINEER will perform additional services of the following types which are not considered normal or customary Basic Services.

- A. Soils investigation including test boring
- B. Assistance to the OWNER in litigation
- C. Preparation of special documents or reports as may be required by state and federal agencies that may have jurisdiction over the project. This would include but not be limited to environmental assessments, wetland surveys, wildlife surveys, archeological surveys, and pilot studies.
- D. Revision or rebidding of the PROJECT
- E. Assistance in property survey or right of way acquisition
- F. Construction engineering and inspection services
- G. Furnish a resident construction observer to provide more extensive representation at the PROJECT site.
- H. Prepare Operation and Maintenance Manual for the PROJECT.

Section 6: Period of Service

- A. The ENGINEER's period of service shall begin upon the authorization of the OWNER for each phase of work and shall continue until the final phase is completed.
- B. If the OWNER request modifications of changes in the scope of the PROJECT, the time of performance, outlined in Paragraph C below, shall be appropriately adjusted.
- C. Time estimates:
 - 1. Preliminary Phase - 30 days
 - 2. Design Phase - 90 days
 - 3. Bidding Phase 60 days

Section 7: Payments to the Engineer

- A. The OWNER shall pay the ENGINEER for Basic Service of the ENGINEER a lump sum amount of Forty One Thousand Five Hundred Dollars (\$41,500) for the scope of work as described in Section 3 of this Agreement.
- B. The OWNER agrees to pay the ENGINEER for services under Section 5, Additional Services at direct labor cost incurred by the ENGINEER times a factor of 3.2 plus expenses.
- C. Progress payments shall be made to the ENGINEER in proportion to the services performed for each phase of the Basic Services.
- D. Payment shall be due to the ENGINEER for services and expenses upon receipt of invoice. A service charge of one percent per month will be added on accounts outstanding over 30 days of invoice.

DAVIS & FLOYD, INC.
GENERAL CONDITIONS for
Professional Services

PROPOSAL/AGREEMENT NO.: 1 (Feb. 28, 2014)
NAME OF CLIENT: City of Claremont, N.C.
PROJECT NAME: North WWTP Pump Sta. & Force
Main: Design Services & Bidding Services

These General Conditions are a part of each agreement between Davis & Floyd, Inc. and its client for the performance of professional services. In these General Conditions, Davis & Floyd, Inc. (hereinafter referred to as "D&F") is the party performing the services, the party for whom the services are performed is called "Client", and the written agreement between the parties, including these General Conditions, is called "this Agreement."

Section 1: Services by D&F

- 1.1 Scope of services; required standard of care.** D&F will perform the services described in this Agreement and in any work release documents or change orders which are issued under this Agreement and signed by both parties. D&F will not have any obligation to perform services unless expressly described in this Agreement. In performing the services, D&F will exercise the degree of care and skill ordinarily exercised by members of the same profession currently performing the same or similar services in the same geographic area. Upon notice to D&F and by mutual agreement between the parties, D&F will correct those services not meeting such a standard without additional compensation. Consistent with the standard of care, D&F will endeavor to perform its professional services in accordance with applicable federal, state, and local laws, regulations and ordinances which are in effect on the date of execution of this Agreement.
- 1.2 Estimates.** Any opinions of probable construction or implementation costs, financial evaluations, feasibility studies or economic analyses prepared by D&F will represent its professional judgment based on its experience and available information. However, Client recognizes that D&F has no control over costs of labor, materials, equipment or services furnished by others or over market conditions or contractors' methods of determining prices, and that any evaluation of a facility to be constructed or work to be performed is speculative. Accordingly, D&F does not guaranty that proposals, bids or actual costs will not vary from opinions, evaluations or studies submitted by D&F. If the Client wishes greater assurance as to probable construction costs, Client shall employ an independent cost estimator.
- 1.3 Hazardous materials.** D&F's services do not include directly or indirectly performing or arranging for the detection, monitoring, handling, storage, removal, transportation, disposal or treatment of petroleum or petroleum products (collectively called "Oil") or of any contaminated non-hazardous, hazardous, toxic, radioactive or infectious substances, including any substances regulated under RCRA or any other federal or state environmental laws (collectively called "Hazardous Materials"). Unless provisions have been incorporated into this Agreement to provide for the handling of Oil or Hazardous Materials, the discovery or reasonable suspicion of Oil or Hazardous Materials or hazardous conditions at a site where D&F is to perform services shall entitle D&F to suspend its services immediately, subject to mutual agreement of terms and conditions applicable to any further services, or to terminate its services and to be paid for services previously performed.
- 1.4 Other contractors.** D&F shall not have any duty or authority to direct, supervise or oversee any contractors of Client or their work or to provide the means, methods or sequence of their work or to stop their work. D&F's services and/or presence at a site shall not relieve others of their responsibility to Client or to others. D&F shall not be liable for the failure of Client's contractors or others to fulfill their responsibilities. Client shall notify all contractors in writing that D&F has no duty or authority and therefore no responsibility, as stated herein. The client agrees to include in all contracts with construction contractors an exclusion of the construction contractors' right to make a direct claim against D&F, in a form acceptable to D&F.

- 1.5 Health and safety.** D&F shall not be responsible for health or safety programs or precautions related to Client's activities or operations, Client's other contractors, the work of any other person or entity, or Client's site conditions. D&F shall not be responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of Client or others at Client's site. So as not to discourage D&F from voluntarily addressing health or safety issues while at Client's site, in the event D&F does address such issues by making observations, reports, suggestions or otherwise, D&F shall nevertheless have no liability, responsibility, or affirmative duty under this Agreement or by law arising on account thereof.
- 1.6 Litigation support.** D&F will not be obligated to provide expert witness or other litigation support related to its services, unless expressly agreed in writing. In the event D&F is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a proceeding to which it is not a party, Client shall reimburse D&F for its costs and compensate D&F at its then standard rates for the time it incurs in gathering information and documents and attending depositions, hearings, and the like.
- 1.7 Confidential information.** Although D&F generally will not disclose without Client's consent information provided by Client or developed by D&F in the course of its services and designated by Client as confidential (but not including information which is publicly available, is already in D&F's possession, or is obtained from third parties), D&F shall not be liable for disclosing such information if it in good faith believes such disclosure is required by law or is necessary to protect the safety, health, property or welfare of the public. D&F shall notify Client (in advance, except in emergency) of any such disclosure.
- 1.8 No warranty.** NO WARRANTIES OR GUARANTIES, EXPRESS OR IMPLIED, ARE OR WILL BE MADE WITH RESPECT TO ANY GOODS OR SERVICES PROVIDED UNDER THIS AGREEMENT, AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.
- 1.9 Certifications.** Any certifications or representations which D&F may be required to make shall be limited to the existence of conditions which D&F could, within the scope of its services, reasonably ascertain, and shall be based on D&F's then-current knowledge, information, and belief.
- 1.10 No construction phase services.** If D&F's services under this Agreement do not include Project observation, or review of contractors' performances, or any other Construction Phase Services, and that such services will be provided by the Client or others then the Client assumes all responsibility for interpretation of Contract Documents used for the construction of the Project and for construction observation or review and waives any claims against D&F that may in any way be related thereto.

Section 2: Responsibilities of Client

- 2.1 Client requirements.** Client, without cost to D&F, shall:
- (a)** Designate to D&F in writing a person to act as Client's representative with respect to the services
 - (b)** Provide or arrange for access and make all provisions for D&F to enter any site where services are to be performed
 - (c)** Furnish D&F with all available information pertinent to the services
 - (d)** Furnish D&F with all relevant information about site conditions property descriptions, zoning, deed and other land use restrictions and with property, boundary, easement, right-of-way and other special surveys, including establishing relevant reference points
 - (e)** Furnish D&F data prepared by others including without limitation exploration and tests of subsurface conditions at or contiguous to the site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site or hydrographic surveys
 - (f)** Furnish D&F environmental assessments, audits, investigations and impact statement and other relevant environmental or cultural studies as to the site and adjacent areas
 - (g)** Furnish D&F with all approvals, permits and consents from government authorities and others as may be required for performance of the services

- (h) Notify D&F promptly in writing of all known or suspected Hazardous Materials at the site, of any contamination of the site by Oil or Hazardous Materials, and of any other conditions requiring special care, and provide D&F with any available documents describing the nature, location and extent of such materials, contamination or conditions
- (i) Comply with all laws and provide any notices required to be given to any government authorities in connection with the services, except for such notices D&F has expressly agreed in writing to give
- (j) Inform the owner of the site (if different from Client) of any contamination by or release of Oil or Hazardous Materials at the site.
- (k) Unless this Agreement expressly provides otherwise, D&F shall be entitled to rely on the accuracy and completeness of information given to it by the Client and/or others on behalf of Client pursuant to Paragraphs 2.1 (c), (d), (e), (f), (g), (h) and (j), immediately above.

2.2 **Hazards.** Client represents and warrants that it does not have any knowledge of Hazardous Materials or unusually hazardous conditions at the site or of contamination of the site by Oil or Hazardous Materials, except as expressly disclosed to D&F in writing.

2.3 **Confidentiality.** Client acknowledges that the technical and pricing information contained in this Agreement is confidential and proprietary to D&F and agrees not to disclose it or otherwise make it available to others without D&F's express written consent.

2.4 **Documents.**

- (a) All reports, notes, calculations, data, drawings, estimates specifications and other documents (collectively "Documents") and electronic files prepared by D&F are instruments of D&F's professional services and not products and shall remain D&F's property. Documents or electronic files provided to Client are for Client's use only for the purposes disclosed to D&F and Client shall not transfer them to others or use them or permit them to be used for any extension of the services or for any other project or purpose for which they were not prepared, without D&F's express written consent. Any reuse thereof without written consent shall be at the Client's or the user's sole risk and without liability or legal exposure to D&F or their independent contractors or consultants.
- (b) Copies of Documents that may be relied upon by Client are limited to the printed copies (also known as hard copies). Electronic files in electronic media format of text, data, graphics, or of other types that are furnished by D&F to Client are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- (c) Because electronic files can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 30 days after receipt thereof, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 30-day acceptance period will be corrected by the party delivering the electronic files. D&F shall not be responsible to maintain electronic files after acceptance by Client.
- (d) When transferring electronic files, D&F makes no representations as to long-term compatibility, usability, or readability of such files.

Section 3: Changes; Delays; Excused Performance

3.1 **Changes.**

- (a) Unless this Agreement expressly provides otherwise, D&F's compensation and time for rendering services represent its professional estimate, taking into account the costs, effort and time it expects to expend in performing the services as it currently understands them to be, based on its reasonable assumption of the

conditions and circumstances under which the services will be performed, and based on its anticipation of the orderly and continuous progress of the Work and of the Project through completion of the Work. Unless specific periods of time or specific dates for providing services are specified in this Agreement, D&F's obligation to render services hereunder will be for a period which may reasonably be required, using due and reasonable diligence consistent with sound professional practices, for the completion of said services.

- (b) As services are being performed, conditions may change or circumstances outside of D&F's reasonable control (including changes of laws and Client directed changes) may develop which would require D&F to expend additional costs, effort and time to complete the services, in which case D&F will notify Client and an equitable adjustment will be made to D&F's compensation and time for performance.
 - (c) If Client fails to give prompt written authorization to proceed with any task or phase of services after completion of the immediately preceding task or phase, or if D&F's services are delayed through no fault of D&F, in each case for a period of 90 days or longer, D&F may, after giving seven days written notice to Client, suspend services under this Agreement. An equitable adjustment to D&F's compensation and time for performance will be made upon Client's authorization or directive for D&F to resume performance of its services.
 - (d) If D&F's services are suspended or delayed in whole or in part by Client, or if D&F's services are extended by actions or inactions of Client or its contractors for more than 90 days through no fault of D&F, D&F shall be entitled to an equitable adjustment of rates and amounts of compensation to reflect reasonable costs incurred by D&F in connection with, among other things, such delay or suspension and reactivation, and the fact that the time for performance has been revised.
 - (e) In the event conditions or circumstances require the services to be suspended or terminated, D&F shall be compensated for services previously performed and for costs reasonably incurred in connection with the suspension or termination.
- 3.2 **Force majeure.** D&F shall not be responsible for any delay or failure of performance caused by fire or other casualty, labor dispute, government or military action, transportation delay, inclement weather, Act of God, act or omission of Client or its contractors, failure of Client or any government authority timely to review or to approve the services or to grant permits or approvals, or any other cause beyond D&F's reasonable control, and D&F's compensation and schedule shall be equitably adjusted to compensate it for any additional costs and delays it incurs due to any Force Majeure event.

Section 4: Compensation

- 4.1 **Rates.** Unless otherwise agreed in writing, D&F shall be compensated for its services at its standard rates and shall be reimbursed for costs and expenses (plus reasonable profit and overhead) reasonably incurred in its performance of the services.
- 4.2 **Invoices.** D&F may invoice Client on a monthly or other progress billing basis. Invoices are due and payable upon receipt by Client. On amounts not paid within 30 days of invoice date, Client shall pay interest from invoice date until payment is received at the rate of 1.0% per month or, if less, the maximum rate allowed by law. If Client disagrees with any portion of an invoice, it shall notify D&F in writing of the amount in dispute and the reason for its disagreement within 21 days of receipt of the invoice, and shall pay the portion not in dispute.
- 4.3 **Suspension, etc.** If payment is not received within 45 days of the invoice date, D&F may upon 7 days' notice suspend or terminate the services and receive compensation for services previously performed and for costs reasonably incurred in connection with the suspension or termination.

- 4.4 Collection.** Client shall reimburse D&F for its costs and expenses (including reasonable attorneys' and witnesses' fees) incurred in any litigation for collection under this Agreement in which D&F obtains a judgement in its favor.
- 4.5 Taxes, etc.** Unless expressly agreed in writing, D&F's fees do not include any taxes, excises, fees, duties or other government charges related to the goods or services provided under this Agreement, and Client shall pay such amounts or reimburse D&F for any amounts it pays. If Client claims that any goods or services are subject to a tax exemption, it shall provide D&F with a valid exemption certificate.

Section 5: Insurance; Dispute Resolution; Allocation of Risk

- 5.1 Insurance.** D&F will maintain workers compensation insurance as required by law; employers liability, commercial general liability and automobile liability insurance each with coverage of \$1 million per occurrence; and professional liability insurance with coverage of \$1 million per claim; and upon request will furnish insurance certificates to Client. D&F will include the Client as additional insured on the comprehensive general liability and automobile liability insurance. D&F will purchase additional insurance if requested by Client, provided the insurance is reasonably available from carriers acceptable to D&F and Client reimburses D&F for its cost.
- 5.2 Disputes.** If a claim or dispute arises out of this Agreement or its performance, the parties agree to endeavor in good faith to resolve under the authority of a principal from each party the claim or dispute equitably through negotiation within a period of time no longer than 60 days from the time the claim or dispute is presented in writing to the other party. If, after the 60 days, good faith negotiations fail to achieve a resolution, the parties shall seek resolution of the claim through nonbinding mediation under the rules and auspices of the American Arbitration Association. The parties shall a) limit the submission of evidence to the mediator to a period of no more than 30 days following the demand for mediation, and b) commence mediation no more than 30 days thereafter. If the parties cannot reach a settlement within 15 days following commencement of the mediation proceedings, or such other reasonable time frame as the parties may agree to, the parties may a) mutually agree to subject the claim to binding arbitration in accordance with the rules of the American Arbitration Association, or b) pursue any legal remedy then available. However, prior to or during negotiations, mediation, or arbitration, either party may initiate litigation that would otherwise be barred by a statute of limitations, and D&F may pursue any property liens or other rights it may have to obtain security for the payment of its invoices.
- 5.3 Suspension.** If the project is suspended for more than 30 calendar days in the aggregate, D&F shall be compensated for services performed and charges incurred prior to receipt of notice to suspend and, upon resumption, an equitable adjustment in fees to accommodate the resulting demobilization and remobilization costs. In addition, there shall be an equitable adjustment in the project schedule based on the delay caused by the suspension. If the project is suspended for more than 90 calendar days in the aggregate, D&F, at its option, may terminate this Agreement upon giving notice in writing to the Client.

If the Client fails to make payments when due or otherwise is in breach of this Agreement, D&F may suspend performance of services upon 7 calendar days' notice to the Client. D&F shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client.

- 5.4 Termination.** The Client may terminate this Agreement at any time with or without cause upon giving D&F 30 calendar days prior written notice. D&F may terminate this Agreement upon giving the Client 30 calendar days prior written notice for any of the following reasons:
- (a)** Breach by the Client of any material term of this Agreement, including but not limited to compensation provisions.

- (b) Transfer of ownership of the project by the Client to any other persons or entities not a party to this Agreement without the prior written agreement of D&F
- (c) Material changes in the conditions under which this Agreement was entered into, coupled with the failure of the parties hereto to reach accord on the fees and charges for any additional services required because of such changes.

The Client shall within 30 calendar days of termination pay D&F for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this Agreement.

- 5.5 Indemnification.** The Client and D&F agree to indemnify, hold harmless and defend each other from and against any and all liabilities, demands, claims, fines, penalties, damages, forfeitures and suits, together with reasonable attorneys' and witnesses' fees and other costs and expenses of defense and settlement, which the first party may incur, become responsible for or pay out as a result of death or bodily injury or threat thereof to any person, destruction or damage to any property, contamination of or adverse effect on natural resources or the environment, any violation of local, state or federal laws, regulations or orders, or any other damages claimed by third parties (collectively, "Damages") to the extent such Damages are caused directly by the negligence or willful misconduct of second party.

If the negligence or willful misconduct of both parties (or a person or entity for whom each is liable) is a cause for Damages, the loss, cost or expenses shall be shared between the parties in proportion to their relative degrees of negligence or willful misconduct and the right of indemnity shall apply for such proportion.

- 5.6 Indemnification regarding hazardous materials.** Client acknowledges that D&F does not have any responsibility for preexisting Oil and Hazardous Materials at the site, or for their previous detection, monitoring, handling, storage, transportation, disposal or treatment. Client agrees to indemnify, hold harmless and defend D&F against all Damages arising out of or related to any Oil or Hazardous Materials located at or removed from the site, including Damages such as costs of response or remediation arising out of the application of common law or statutes such as CERCLA or other "Superfund" laws imposing strict liability or Damages arising out of D&F's performance or non-performance of its obligations under this Agreement; provided, however, that Client shall not be required to indemnify, hold harmless or defend D&F to the extent such Damages are caused directly by D&F's sole negligence or willful misconduct.

- 5.7 Limitation of liability.** D&F's liability for any and all claims arising out of this Agreement or out of any goods or services furnished under this Agreement, whether based in contract, negligence, strict liability, agency, warranty, trespass, or any other theory of liability, shall be limited to \$100,000 or the total compensation received by D&F from Client under this Agreement, whichever is greater. In no event shall either party be liable for special, indirect, incidental or consequential damages including commercial loss, loss of use, or lost profits, even if advised of the possibility of such damages.

- 5.8 Employee injury.** Client agrees not to implead or to bring an action against D&F based on any claim of personal injury or death occurring in the course or scope of the injured or deceased person's employment with D&F and related to the services performed under this Agreement.

- 5.9 Defense.** Any defense of D&F required to be provided by Client under this Agreement shall be with counsel selected by D&F and reasonably acceptable to Client.

Section 6: Miscellaneous Provisions

- 6.1 Notices.** Notices between the parties shall be in writing and shall be hand delivered or sent by certified mail or acknowledged telefax.

- 6.2 **Assignment, etc.** Neither Client nor D&F shall assign or transfer any rights or obligations under this Agreement, except that D&F may assign this Agreement to its affiliates and may use subcontractors in the performance of its services. Nothing contained in this Agreement shall be construed to give any rights or benefits to anyone other than Client and D&F, without the express written consent of both parties. The relationship between Client and D&F is that of independent contracting parties, and nothing in this Agreement or the parties' conduct shall be construed to create a relationship of agency, partnership or joint venture.
- 6.3 **Governing law.** This Agreement shall be governed by and construed in accordance with the laws in effect at the Jobsite or as specified in the Supplemental Conditions (if applicable).
- 6.4 **Headings.** The headings in this Agreement are for convenience only and are not a part of the agreement between the parties.
- 6.5 **Entire agreement, etc.** The written document of which these General Conditions are a part is the entire agreement between the parties, and supersedes all prior agreements. Any amendments to this Agreement shall be in writing and signed by both parties. In no event will the printed terms on any purchase order, work order or other document provided by Client modify or amend this Agreement, even if it is signed by D&F, unless D&F signs a written statement expressly indicating that such terms supersede the terms of this Agreement. In the event of an inconsistency between these General Conditions and any other writings which comprise this Agreement, the order of precedence shall be as follows: (1) Proposal/Agreement, (2) Supplemental Conditions (if applicable), (3) these General Conditions, (4) Scope of Services, and (5) Other exhibits and attachments (if applicable).
- 6.6 **Severability.** Any provisions of this Agreement held in violation of any law or ordinance shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties. D&F and Client shall in good faith attempt to replace any invalid or unenforceable provisions of this Agreement with provisions that are valid and enforceable and that come as close as possible to expressing the intention of the original provisions.
- 6.7 **Waiver.** A waiver or failure to strictly enforce any breach or omission shall not constitute a waiver of any subsequent breach or omission unless specifically agreed to in writing by the parties.
- 6.8 **Survival.** All obligations arising prior to termination of this Agreement and all provisions of this Agreement allocating responsibility and liability between Client and D&F shall survive the completion of the services hereunder and the termination of this Agreement.
- 6.9 **Third party beneficiaries.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or D&F. D&F's services under this Agreement are being performed solely for the client's benefit, and no other entity shall have any claim against D&F because of this Agreement or the performance of services hereunder.
- 6.10 **Statute of limitations.** The statute of limitations would commence to run not later than the relevant date of substantial completion of the Work.

Section 7: Special Conditions

- 7.1 **Confidentiality.** The Client and D&F understand that there may be necessary contact with third parties about this project in preparation of the Engineering Report as described in Exhibit A to this Agreement. Such third parties with who contact and discussion is necessary in the preparation of the ER will be identified to the Client in advance of contact, and the Client shall provide written consent to D&F, its staff, and subconsultants, to discuss the project with such identified third parties; the written consent granted by the Client shall set forth the parameters and extent of discussion of the project with third parties.

REQUEST FOR COUNCIL ACTION

Date of Meeting: **March 3, 2014**

To: Mayor and the City Council

From: Doug Barrick, City Manager

Action Requested: Approve Contract with Davis & Floyd for North WWTP Survey Services.

In conjunction with our long range sewer capacity planning the City of Claremont proposed to install a pump station at the current site of the North WWTP and replace a current NPDES discharge point with a pump station that would flow wastewater via 10,000 feet of force main to the McLin Creek WWTP. This project would double the treatment capacity of this basin and consolidate the City's Wastewater treatment to one treatment plant.

Recommendation: Approve Contract



Engineering
 Architecture
 Environmental & Laboratory Services

Davis & Floyd, Inc. (hereinafter referred to as "D&F")
 Proposal/Agreement

DATE: February 27, 2014	Agreement Number:	PROJECT NAME: North WWTP Pump Station & Force Main: <i>Survey Services</i>
D&F JOB NUMBER:		PROJECT LOCATION: Claremont, North Carolina

CLIENT: City of Claremont

CLIENT CONTACT: Doug Barrick, City Manager
PHONE: 828-4667255

FAX:

AGREEMENT TERMS

SCOPE OF SERVICES (ATTACH ADDITIONAL SHEETS IF NECESSARY):

See Attached Exhibit A

TIME OF PERFORMANCE:

See Attached Exhibit A.

COMPENSATION/TERMS OF PAYMENT (ATTACH ADDITIONAL SHEETS IF NECESSARY):

See Attached Exhibit A.

D&F ADDRESS FOR CORRESPONDENCE/NOTICES:

1073 13th Street SE
 Hickory, N.C. 28602

PHONE: 828-322-2290

FAX:

ATTACHMENTS ▸ (AS CHECKED)

SCOPE OF SERVICES **COMPENSATION**

OTHER (SPECIFY)

___ **TOTAL NO. OF ADD'L SHEETS ATTACHED**
 (Including General Conditions)

GENERAL CONDITIONS ATTACHED (AS CHECKED):

- PROFESSIONAL SERVICES**
- ENVIRONMENTAL AUDITS AND SITE ASSESSMENTS**
- ENVIRONMENTAL REMEDIATION SERVICES**
- PETROLEUM FACILITY AND STORAGE TANK SERVICES**
- CONSULTING SERVICES**
- OTHER**

ACCEPTED ON BEHALF OF CLIENT:

SUBMITTED BY DAVIS & FLOYD, INC.

SIGNATURE:

DATE:

SIGNATURE:

DATE: 2/27/2014

Danny M. Ware

PRINT NAME & TITLE: Doug Barrick, City Manager

PRINT NAME & TITLE: Danny Ware, Vice President

Exhibit A
Scope of Service
North WWTP Pump Station & Force Main
February 27, 2014

Section 1: Project Scope

The scope of the project is to provide for the decommissioning of the North WWTP and conveyance of wastewater received by the WWTP to the McLin Creek WWTP. The project is expected to consist of the following improvement.

- A. 600 gpm Pump Station appurtenances.
- B. 10,180 l.f. of 8 inch Force Main and appurtenances.
- C. Closeout of the North WWTP.

Section 2: Preliminary Phase Services by Davis & Floyd

- A. The ENGINEER shall consult with the OWNER to determine the requirements of the PROJECT.

Section 3: Survey Phase Services

- A. Perform professional normal field survey services and other professional services incidental to the project.
- B. Consult with the OWNER to determine the PROJECT'S requirements and review available project information.
- C. On the basis of the OWNER'S requirements, perform field survey services for the PROJECT as described above.
- D. Advise the OWNER as to the necessity of the ENGINEER providing or obtaining from others data or services and act as the OWNER'S representative in connection with any such services.

Section 4: Additional Services by Davis & Floyd

If authorized by the OWNER, the ENGINEER will perform additional services of the following types which are not considered normal or customary Basic Services.

- A. Soils investigation including test boring
- B. Underground utility location
- C. Assistance to the OWNER in litigation
- D. Preparation of special documents or reports as may be required by state and federal agencies that may have jurisdiction over the project. This would include but not be limited to environmental assessments, wetland surveys, wildlife surveys, archeological surveys, and pilot studies.

Section 5: Period of Service

- A. The ENGINEER's period of service shall begin upon the authorization of the OWNER for each phase of work and shall continue until the final phase is completed.
- B. If the OWNER request modifications of changes in the scope of the PROJECT, the time of performance, outlined in Paragraph C below, shall be appropriately adjusted.
- C. Time estimates:
 - 1. Survey Phase - 45 days

Section 7: Payments to the Engineer

- A. The OWNER shall pay the ENGINEER for Basic Service of the ENGINEER a lump sum amount of Nineteen Thousand Five Hundred Dollars (\$19,500) for the scope of work as described in Section 3 of this Agreement.
- B. The OWNER agrees to pay the ENGINEER for services under Section 4, Additional Services at direct labor cost incurred by the ENGINEER times a factor of 3.2 plus expenses.
- C. Progress payments shall be made to the ENGINEER in proportion to the services performed for each phase of the Basic Services.
- D. Payment shall be due to the ENGINEER for services and expenses upon receipt of invoice. A service charge of one percent per month will be added on accounts outstanding over 30 days of invoice.

DAVIS & FLOYD, INC.
GENERAL CONDITIONS for
Professional Services

PROPOSAL/AGREEMENT NO.: 1 (Feb. 27, 2014)
NAME OF CLIENT: City of Claremont, N.C.
PROJECT NAME: North WWTP Pump Sta. & Force
Main: Survey Services

These General Conditions are a part of each agreement between Davis & Floyd, Inc. and its client for the performance of professional services. In these General Conditions, Davis & Floyd, Inc. (hereinafter referred to as "D&F") is the party performing the services, the party for whom the services are performed is called "Client", and the written agreement between the parties, including these General Conditions, is called "this Agreement."

Section 1: Services by D&F

- 1.1 Scope of services; required standard of care.** D&F will perform the services described in this Agreement and in any work release documents or change orders which are issued under this Agreement and signed by both parties. D&F will not have any obligation to perform services unless expressly described in this Agreement. In performing the services, D&F will exercise the degree of care and skill ordinarily exercised by members of the same profession currently performing the same or similar services in the same geographic area. Upon notice to D&F and by mutual agreement between the parties, D&F will correct those services not meeting such a standard without additional compensation. Consistent with the standard of care, D&F will endeavor to perform its professional services in accordance with applicable federal, state, and local laws, regulations and ordinances which are in effect on the date of execution of this Agreement.
- 1.2 Estimates.** Any opinions of probable construction or implementation costs, financial evaluations, feasibility studies or economic analyses prepared by D&F will represent its professional judgment based on its experience and available information. However, Client recognizes that D&F has no control over costs of labor, materials, equipment or services furnished by others or over market conditions or contractors' methods of determining prices, and that any evaluation of a facility to be constructed or work to be performed is speculative. Accordingly, D&F does not guaranty that proposals, bids or actual costs will not vary from opinions, evaluations or studies submitted by D&F. If the Client wishes greater assurance as to probable construction costs, Client shall employ an independent cost estimator.
- 1.3 Hazardous materials.** D&F's services do not include directly or indirectly performing or arranging for the detection, monitoring, handling, storage, removal, transportation, disposal or treatment of petroleum or petroleum products (collectively called "Oil") or of any contaminated non-hazardous, hazardous, toxic, radioactive or infectious substances, including any substances regulated under RCRA or any other federal or state environmental laws (collectively called "Hazardous Materials"). Unless provisions have been incorporated into this Agreement to provide for the handling of Oil or Hazardous Materials, the discovery or reasonable suspicion of Oil or Hazardous Materials or hazardous conditions at a site where D&F is to perform services shall entitle D&F to suspend its services immediately, subject to mutual agreement of terms and conditions applicable to any further services, or to terminate its services and to be paid for services previously performed.
- 1.4 Other contractors.** D&F shall not have any duty or authority to direct, supervise or oversee any contractors of Client or their work or to provide the means, methods or sequence of their work or to stop their work. D&F's services and/or presence at a site shall not relieve others of their responsibility to Client or to others. D&F shall not be liable for the failure of Client's contractors or others to fulfill their responsibilities. Client shall notify all contractors in writing that D&F has no duty or authority and therefore no responsibility, as stated herein. The client agrees to include in all contracts with construction contractors an exclusion of the construction contractors' right to make a direct claim against D&F, in a form acceptable to D&F.

- 1.5 Health and safety.** D&F shall not be responsible for health or safety programs or precautions related to Client's activities or operations, Client's other contractors, the work of any other person or entity, or Client's site conditions. D&F shall not be responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of Client or others at Client's site. So as not to discourage D&F from voluntarily addressing health or safety issues while at Client's site, in the event D&F does address such issues by making observations, reports, suggestions or otherwise, D&F shall nevertheless have no liability, responsibility, or affirmative duty under this Agreement or by law arising on account thereof.
- 1.6 Litigation support.** D&F will not be obligated to provide expert witness or other litigation support related to its services, unless expressly agreed in writing. In the event D&F is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a proceeding to which it is not a party, Client shall reimburse D&F for its costs and compensate D&F at its then standard rates for the time it incurs in gathering information and documents and attending depositions, hearings, and the like.
- 1.7 Confidential information.** Although D&F generally will not disclose without Client's consent information provided by Client or developed by D&F in the course of its services and designated by Client as confidential (but not including information which is publicly available, is already in D&F's possession, or is obtained from third parties), D&F shall not be liable for disclosing such information if it in good faith believes such disclosure is required by law or is necessary to protect the safety, health, property or welfare of the public. D&F shall notify Client (in advance, except in emergency) of any such disclosure.
- 1.8 No warranty.** NO WARRANTIES OR GUARANTIES, EXPRESS OR IMPLIED, ARE OR WILL BE MADE WITH RESPECT TO ANY GOODS OR SERVICES PROVIDED UNDER THIS AGREEMENT, AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.
- 1.9 Certifications.** Any certifications or representations which D&F may be required to make shall be limited to the existence of conditions which D&F could, within the scope of its services, reasonably ascertain, and shall be based on D&F's then-current knowledge, information, and belief.
- 1.10 No construction phase services.** If D&F's services under this Agreement do not include Project observation, or review of contractors' performances, or any other Construction Phase Services, and that such services will be provided by the Client or others then the Client assumes all responsibility for interpretation of Contract Documents used for the construction of the Project and for construction observation or review and waives any claims against D&F that may in any way be related thereto.

Section 2: Responsibilities of Client

- 2.1 Client requirements.** Client, without cost to D&F, shall:
- (a)** Designate to D&F in writing a person to act as Client's representative with respect to the services
 - (b)** Provide or arrange for access and make all provisions for D&F to enter any site where services are to be performed
 - (c)** Furnish D&F with all available information pertinent to the services
 - (d)** Furnish D&F with all relevant information about site conditions property descriptions, zoning, deed and other land use restrictions and with property, boundary, easement, right-of-way and other special surveys, including establishing relevant reference points
 - (e)** Furnish D&F data prepared by others including without limitation exploration and tests of subsurface conditions at or contiguous to the site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site or hydrographic surveys
 - (f)** Furnish D&F environmental assessments, audits, investigations and impact statement and other relevant environmental or cultural studies as to the site and adjacent areas
 - (g)** Furnish D&F with all approvals, permits and consents from government authorities and others as may be required for performance of the services

- (h) Notify D&F promptly in writing of all known or suspected Hazardous Materials at the site, of any contamination of the site by Oil or Hazardous Materials, and of any other conditions requiring special care, and provide D&F with any available documents describing the nature, location and extent of such materials, contamination or conditions
- (i) Comply with all laws and provide any notices required to be given to any government authorities in connection with the services, except for such notices D&F has expressly agreed in writing to give
- (j) Inform the owner of the site (if different from Client) of any contamination by or release of Oil or Hazardous Materials at the site.
- (k) Unless this Agreement expressly provides otherwise, D&F shall be entitled to rely on the accuracy and completeness of information given to it by the Client and/or others on behalf of Client pursuant to Paragraphs 2.1 (c), (d), (e), (f), (g), (h) and (j), immediately above.

2.2 **Hazards.** Client represents and warrants that it does not have any knowledge of Hazardous Materials or unusually hazardous conditions at the site or of contamination of the site by Oil or Hazardous Materials, except as expressly disclosed to D&F in writing.

2.3 **Confidentiality.** Client acknowledges that the technical and pricing information contained in this Agreement is confidential and proprietary to D&F and agrees not to disclose it or otherwise make it available to others without D&F's express written consent.

2.4 **Documents.**

- (a) All reports, notes, calculations, data, drawings, estimates specifications and other documents (collectively "Documents") and electronic files prepared by D&F are instruments of D&F's professional services and not products and shall remain D&F's property. Documents or electronic files provided to Client are for Client's use only for the purposes disclosed to D&F and Client shall not transfer them to others or use them or permit them to be used for any extension of the services or for any other project or purpose for which they were not prepared, without D&F's express written consent. Any reuse thereof without written consent shall be at the Client's or the user's sole risk and without liability or legal exposure to D&F or their independent contractors or consultants.
- (b) Copies of Documents that may be relied upon by Client are limited to the printed copies (also known as hard copies). Electronic files in electronic media format of text, data, graphics, or of other types that are furnished by D&F to Client are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- (c) Because electronic files can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 30 days after receipt thereof, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 30-day acceptance period will be corrected by the party delivering the electronic files. D&F shall not be responsible to maintain electronic files after acceptance by Client.
- (d) When transferring electronic files, D&F makes no representations as to long-term compatibility, usability, or readability of such files.

Section 3: Changes; Delays; Excused Performance

3.1 **Changes.**

- (a) Unless this Agreement expressly provides otherwise, D&F's compensation and time for rendering services represent its professional estimate, taking into account the costs, effort and time it expects to expend in performing the services as it currently understands them to be, based on its reasonable assumption of the

conditions and circumstances under which the services will be performed, and based on its anticipation of the orderly and continuous progress of the Work and of the Project through completion of the Work. Unless specific periods of time or specific dates for providing services are specified in this Agreement, D&F's obligation to render services hereunder will be for a period which may reasonably be required, using due and reasonable diligence consistent with sound professional practices, for the completion of said services.

- (b) As services are being performed, conditions may change or circumstances outside of D&F's reasonable control (including changes of laws and Client directed changes) may develop which would require D&F to expend additional costs, effort and time to complete the services, in which case D&F will notify Client and an equitable adjustment will be made to D&F's compensation and time for performance.
- (c) If Client fails to give prompt written authorization to proceed with any task or phase of services after completion of the immediately preceding task or phase, or if D&F's services are delayed through no fault of D&F, in each case for a period of 90 days or longer, D&F may, after giving seven days written notice to Client, suspend services under this Agreement. An equitable adjustment to D&F's compensation and time for performance will be made upon Client's authorization or directive for D&F to resume performance of its services.
- (d) If D&F's services are suspended or delayed in whole or in part by Client, or if D&F's services are extended by actions or inactions of Client or its contractors for more than 90 days through no fault of D&F, D&F shall be entitled to an equitable adjustment of rates and amounts of compensation to reflect reasonable costs incurred by D&F in connection with, among other things, such delay or suspension and reactivation, and the fact that the time for performance has been revised.
- (e) In the event conditions or circumstances require the services to be suspended or terminated, D&F shall be compensated for services previously performed and for costs reasonably incurred in connection with the suspension or termination.

3.2 Force majeure. D&F shall not be responsible for any delay or failure of performance caused by fire or other casualty, labor dispute, government or military action, transportation delay, inclement weather, Act of God, act or omission of Client or its contractors, failure of Client or any government authority timely to review or to approve the services or to grant permits or approvals, or any other cause beyond D&F's reasonable control, and D&F's compensation and schedule shall be equitably adjusted to compensate it for any additional costs and delays it incurs due to any Force Majeure event.

Section 4: Compensation

- 4.1 Rates.** Unless otherwise agreed in writing, D&F shall be compensated for its services at its standard rates and shall be reimbursed for costs and expenses (plus reasonable profit and overhead) reasonably incurred in its performance of the services.
- 4.2 Invoices.** D&F may invoice Client on a monthly or other progress billing basis. Invoices are due and payable upon receipt by Client. On amounts not paid within 30 days of invoice date, Client shall pay interest from invoice date until payment is received at the rate of 1.0% per month or, if less, the maximum rate allowed by law. If Client disagrees with any portion of an invoice, it shall notify D&F in writing of the amount in dispute and the reason for its disagreement within 21 days of receipt of the invoice, and shall pay the portion not in dispute.
- 4.3 Suspension, etc.** If payment is not received within 45 days of the invoice date, D&F may upon 7 days' notice suspend or terminate the services and receive compensation for services previously performed and for costs reasonably incurred in connection with the suspension or termination.

4.4 Collection. Client shall reimburse D&F for its costs and expenses (including reasonable attorneys' and witnesses' fees) incurred in any litigation for collection under this Agreement in which D&F obtains a judgement in its favor.

4.5 Taxes, etc. Unless expressly agreed in writing, D&F's fees do not include any taxes, excises, fees, duties or other government charges related to the goods or services provided under this Agreement, and Client shall pay such amounts or reimburse D&F for any amounts it pays. If Client claims that any goods or services are subject to a tax exemption, it shall provide D&F with a valid exemption certificate.

Section 5: Insurance; Dispute Resolution; Allocation of Risk

5.1 Insurance. D&F will maintain workers compensation insurance as required by law; employers liability, commercial general liability and automobile liability insurance each with coverage of \$1 million per occurrence; and professional liability insurance with coverage of \$1 million per claim; and upon request will furnish insurance certificates to Client. D&F will include the Client as additional insured on the comprehensive general liability and automobile liability insurance. D&F will purchase additional insurance if requested by Client, provided the insurance is reasonably available from carriers acceptable to D&F and Client reimburses D&F for its cost.

5.2 Disputes. If a claim or dispute arises out of this Agreement or its performance, the parties agree to endeavor in good faith to resolve under the authority of a principal from each party the claim or dispute equitably through negotiation within a period of time no longer than 60 days from the time the claim or dispute is presented in writing to the other party. If, after the 60 days, good faith negotiations fail to achieve a resolution, the parties shall seek resolution of the claim through nonbinding mediation under the rules and auspices of the American Arbitration Association. The parties shall a) limit the submission of evidence to the mediator to a period of no more than 30 days following the demand for mediation, and b) commence mediation no more than 30 days thereafter. If the parties cannot reach a settlement within 15 days following commencement of the mediation proceedings, or such other reasonable time frame as the parties may agree to, the parties may a) mutually agree to subject the claim to binding arbitration in accordance with the rules of the American Arbitration Association, or b) pursue any legal remedy then available. However, prior to or during negotiations, mediation, or arbitration, either party may initiate litigation that would otherwise be barred by a statute of limitations, and D&F may pursue any property liens or other rights it may have to obtain security for the payment of its invoices.

5.3 Suspension. If the project is suspended for more than 30 calendar days in the aggregate, D&F shall be compensated for services performed and charges incurred prior to receipt of notice to suspend and, upon resumption, an equitable adjustment in fees to accommodate the resulting demobilization and remobilization costs. In addition, there shall be an equitable adjustment in the project schedule based on the delay caused by the suspension. If the project is suspended for more than 90 calendar days in the aggregate, D&F, at its option, may terminate this Agreement upon giving notice in writing to the Client.

If the Client fails to make payments when due or otherwise is in breach of this Agreement, D&F may suspend performance of services upon 7 calendar days' notice to the Client. D&F shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client.

5.4 Termination. The Client may terminate this Agreement at any time with or without cause upon giving D&F 30 calendar days prior written notice. D&F may terminate this Agreement upon giving the Client 30 calendar days prior written notice for any of the following reasons:

(a) Breach by the Client of any material term of this Agreement, including but not limited to compensation provisions.

- (b) Transfer of ownership of the project by the Client to any other persons or entities not a party to this Agreement without the prior written agreement of D&F
- (c) Material changes in the conditions under which this Agreement was entered into, coupled with the failure of the parties hereto to reach accord on the fees and charges for any additional services required because of such changes.

The Client shall within 30 calendar days of termination pay D&F for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this Agreement.

- 5.5 Indemnification.** The Client and D&F agree to indemnify, hold harmless and defend each other from and against any and all liabilities, demands, claims, fines, penalties, damages, forfeitures and suits, together with reasonable attorneys' and witnesses' fees and other costs and expenses of defense and settlement, which the first party may incur, become responsible for or pay out as a result of death or bodily injury or threat thereof to any person, destruction or damage to any property, contamination of or adverse effect on natural resources or the environment, any violation of local, state or federal laws, regulations or orders, or any other damages claimed by third parties (collectively, "Damages") to the extent such Damages are caused directly by the negligence or willful misconduct of second party.

If the negligence or willful misconduct of both parties (or a person or entity for whom each is liable) is a cause for Damages, the loss, cost or expenses shall be shared between the parties in proportion to their relative degrees of negligence or willful misconduct and the right of indemnity shall apply for such proportion.

- 5.6 Indemnification regarding hazardous materials.** Client acknowledges that D&F does not have any responsibility for preexisting Oil and Hazardous Materials at the site, or for their previous detection, monitoring, handling, storage, transportation, disposal or treatment. Client agrees to indemnify, hold harmless and defend D&F against all Damages arising out of or related to any Oil or Hazardous Materials located at or removed from the site, including Damages such as costs of response or remediation arising out of the application of common law or statutes such as CERCLA or other "Superfund" laws imposing strict liability or Damages arising out of D&F's performance or non-performance of its obligations under this Agreement; provided, however, that Client shall not be required to indemnify, hold harmless or defend D&F to the extent such Damages are caused directly by D&F's sole negligence or willful misconduct.
- 5.7 Limitation of liability.** D&F's liability for any and all claims arising out of this Agreement or out of any goods or services furnished under this Agreement, whether based in contract, negligence, strict liability, agency, warranty, trespass, or any other theory of liability, shall be limited to \$100,000 or the total compensation received by D&F from Client under this Agreement, whichever is greater. In no event shall either party be liable for special, indirect, incidental or consequential damages including commercial loss, loss of use, or lost profits, even if advised of the possibility of such damages.
- 5.8 Employee injury.** Client agrees not to implead or to bring an action against D&F based on any claim of personal injury or death occurring in the course or scope of the injured or deceased person's employment with D&F and related to the services performed under this Agreement.
- 5.9 Defense.** Any defense of D&F required to be provided by Client under this Agreement shall be with counsel selected by D&F and reasonably acceptable to Client.

Section 6: Miscellaneous Provisions

- 6.1 Notices.** Notices between the parties shall be in writing and shall be hand delivered or sent by certified mail or acknowledged telefax.

- 6.2 Assignment, etc.** Neither Client nor D&F shall assign or transfer any rights or obligations under this Agreement, except that D&F may assign this Agreement to its affiliates and may use subcontractors in the performance of its services. Nothing contained in this Agreement shall be construed to give any rights or benefits to anyone other than Client and D&F, without the express written consent of both parties. The relationship between Client and D&F is that of independent contracting parties, and nothing in this Agreement or the parties' conduct shall be construed to create a relationship of agency, partnership or joint venture.
- 6.3 Governing law.** This Agreement shall be governed by and construed in accordance with the laws in effect at the Jobsite or as specified in the Supplemental Conditions (if applicable).
- 6.4 Headings.** The headings in this Agreement are for convenience only and are not a part of the agreement between the parties.
- 6.5 Entire agreement, etc.** The written document of which these General Conditions are a part is the entire agreement between the parties, and supersedes all prior agreements. Any amendments to this Agreement shall be in writing and signed by both parties. In no event will the printed terms on any purchase order, work order or other document provided by Client modify or amend this Agreement, even if it is signed by D&F, unless D&F signs a written statement expressly indicating that such terms supersede the terms of this Agreement. In the event of an inconsistency between these General Conditions and any other writings which comprise this Agreement, the order of precedence shall be as follows: (1) Proposal/Agreement, (2) Supplemental Conditions (if applicable), (3) these General Conditions, (4) Scope of Services, and (5) Other exhibits and attachments (if applicable).
- 6.6 Severability.** Any provisions of this Agreement held in violation of any law or ordinance shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties. D&F and Client shall in good faith attempt to replace any invalid or unenforceable provisions of this Agreement with provisions that are valid and enforceable and that come as close as possible to expressing the intention of the original provisions.
- 6.7 Waiver.** A waiver or failure to strictly enforce any breach or omission shall not constitute a waiver of any subsequent breach or omission unless specifically agreed to in writing by the parties.
- 6.8 Survival.** All obligations arising prior to termination of this Agreement and all provisions of this Agreement allocating responsibility and liability between Client and D&F shall survive the completion of the services hereunder and the termination of this Agreement.
- 6.9 Third party beneficiaries.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or D&F. D&F's services under this Agreement are being performed solely for the client's benefit, and no other entity shall have any claim against D&F because of this Agreement or the performance of services hereunder.
- 6.10 Statute of limitations.** The statute of limitations would commence to run not later than the relevant date of substantial completion of the Work.

Section 7: Special Conditions

- 7.1 Confidentiality.** The Client and D&F understand that there may be necessary contact with third parties about this project in preparation of the Engineering Report as described in Exhibit A to this Agreement. Such third parties with who contact and discussion is necessary in the preparation of the ER will be identified to the Client in advance of contact, and the Client shall provide written consent to D&F, its staff, and subconsultants, to discuss the project with such identified third parties; the written consent granted by the Client shall set forth the parameters and extent of discussion of the project with third parties.

Department, Committee & Manager Reports

Date of Meeting:

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
- B. Parks & Recreation Committee
- C. Monthly Department Dashboard Report

Item 11

City Managers Report

Recommendation: Take Reports

CLAREMONT FEBRUARY 2014 DASHBOARD REPORT

POLICE DEPT.			FIRE DEPT.			FINANCIALS		
	Month	YTD		Month	YTD		% In	% Out
Calls Answered	728	1423	Calls for Service	12	35	General Fund	77%	69%
Citations Served	89	154	Working Fires	1	7	Enterprise Fund	61%	57%
Warnings	13	66	Training Hours	74	180			
Number of Arrests	8	12	Prevention Programs	1	18	RESCUE SQUAD		
Accidents	14	18	False Alarms	0	5		Month	YTD
Warrants	4	10	EMS Calls	4	5	Calls for Service	55	147
Open Cases	5	9				Training Hours	44	92
Other Activities & Announcements			Other Activities & Announcements			Other Activities & Announcements		
Officers recovered three stolen vehicles and closed two B & E cases.			Storm Stand By: 45 positions for 648 hours Commercial Preplans 3			14th Annual Pig Pickin & Poker Run April 12th Members are taking part of in Confined Space Classes		
PUBLIC WORKS			UTILITY DEPT.			PLANNING & ZONING DEPT.		
	Month	YTD		Month	YTD		Month	YTD
Vehicles Serviced	5	19	Water Turned Off	7	16	Zoning Permits	3	6
Recycling Tonnage	5.5	11.3	Water Taps	1	2	Residential Permits	0	1
Solid Waste Tonnage	40.7	78.14	Water Purchased	6,269,000	12,632,500	Commercial Permits	1	1
Street Lights Replaced	6	18	Water Sold	5,464,082	10,471,974	Enforcement Cases	2	3
Work Orders	55	84	McLin WWTP Avg.	176,000	181,000	Planning Board Work	1	2
Sewer Line Jetted	1,760	3,454	North WWTP Avg.	77,000	77,000	Safety Permits	1	2
Other Activities & Announcements			Other Activities & Announcements			Other Activities & Announcements		
BGA Drive prep work for Shell Bldg.			Water leak on Peachtree 6" main 382 AMR Meters Installed To Date			Residential & Commercial Inquiries are on an uptick Major potential residential projects in the pipeline		