

Regular Session, April 17, 2017, 7:00 p.m.
Catawba County Board of Commissioners

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Public Hearing – Economic Development Agreement with Prysmian Cables and Sys. 169 04/17/17

The Catawba County Board of Commissioners met in regular session on Monday, April 17, 2017, at 7:00 p.m., in the Robert E. Hibbitts Meeting Room of the 1924 Courthouse, 30 North College Avenue, Newton, North Carolina.

Present were Chair Randy Isenhower, Vice-Chair Barbara G. Beatty and Commissioners Katherine W. Barnes, Sherry E. Butler and Dan A. Hunsucker.

Also present were County Manager Mick Berry, Assistant County Managers Dewey Harris and Mary Furtado, County Attorney Debra Bechtel, Assistant County Attorney Jodi Stewart and County Clerk Barbara Morris.

1. Chair Randy Isenhower called the meeting to order at 7:00 p.m., noting a quorum was present.

2. Commissioner Dan Hunsucker led the Pledge of Allegiance to the Flag.
3. Vice-Chair Barbara E. Beatty offered the invocation.
4. Commissioner Hunsucker made a motion to approve the minutes of the Regular Meeting of April 3, 2017. The motion carried unanimously.
5. Recognition of Special Guests: Chair Isenhower welcomed everyone present.
6. Public Comments. None
7. Presentations:
 - a. Upon a motion by Commissioner Sherry E. Butler, which unanimously carried, the Board declared the badge and service weapon of retired Sheriff's Deputy Hugh Long as surplus and Sheriff Reid presented these items to him. The Sheriff and Board members thanked Deputy Long for his years of service to the County.
 - b. Commissioner Hunsucker presented a proclamation to Soil and Water Board Members and staff declaring the first week of May, 2017, as Soil and Water Stewardship Week and urged Catawba County citizens to manage the County's natural resources wisely to ensure a quality environment now and for the future.
8. Public Hearings.
 - a. Economic Development Corporation.

Catawba County Economic Development Corporation Existing Industry Coordinator Nathan Huret requested the Board hold a public hearing to receive citizen comments and consider approval of an Economic Development Agreement between the County and Prysmian Cables and Systems USA LLC. Prysmian Cables and Systems USA LLC intends to equip an existing manufacturing building located in the City of Claremont at 2512 Penny Road. The company plans to invest a minimum of \$20,000,000 and create 50 new jobs over the next three years. The average wage of the new jobs will exceed Catawba County's average wage of \$38,238.

Prysmian Group documented strong consideration to place this project in existing locations in Brazil and France. Prysmian's expansion in Catawba County will continue to restore fiber optical operations that were discontinued in 2003. The project builds from a pilot phase (\$2.5 million investment, 20 new jobs) that was successfully completed in 2015, with new state-of-the-art preform and fiber drawing operations reaching full capability within three years. The new equipment is expected to provide supply chain advantages and improved quality control for the Catawba County operation due to less reliance on external suppliers of preform assemblies.

Prysmian Cables and Systems USA LLC, is a division of Prysmian Group, a world leader in the energy and telecommunications cables and systems industry. Prysmian Group is a global manufacturer and has 91 facilities across 50 countries. Within the telecom sector, the Group manufactures cables and accessories for the voice, video and data transmission industry, offering a complete range of optical fiber, optical and copper cables and connectivity systems.

The incentive grant is based on a contract with obligations requiring satisfactory performance by the Company and adhering to all NC general statutes. The contract requires a minimum investment of \$20,000,000, the creation and maintenance of 50 new jobs, and the maintenance of 383 existing jobs currently at the facility. The new method of calculations matrix developed for the Board of Commissioners suggested a level 2 incentive or an amount equal to 50% of the new ad valorem tax receipts generated as a result of the project for five years. EDC staff proposed a shorter incentive period (50% of new ad valorem receipts for three years) than the matrix calculated. Subject to County contractual commitments, the amount will be a maximum of \$172,500, payable in annual maximum amounts of \$57,500 for three years. Should the company exceed their original commitments and invest a minimum \$30 million and create 65 new jobs by the end of 2019, two additional years of a 50% incentive grant will be added. The annual maximum would be \$57,500 for the two additional years and a cumulative maximum of \$287,500.

This investment will net a positive payback to the County immediately, similar to paybacks used to determine grant involvement in other county projects. Like all incentives provided by the County, these incentives will be based on an economic development agreement which requires Prysmian Cables and Systems USA LLC to meet minimum thresholds of investment (\$20,000,000 by 2019) and job creation and maintenance (50 by 2019), or to qualify for grant years 4 and 5, an investment of \$30,000,000 and the creation and maintenance of 65 jobs also by 2019. Clawbacks are included in the agreement requiring repayment should the investment and job creation amounts not be met or sustained.

Chair Isenhower opened the public hearing. No one came forward to speak. Chair Isenhower closed the public hearing. Commissioner Barnes made a motion to approve the economic development agreement and adopt the applicable resolution. The motion carried unanimously. The follow applies:

Resolution No. 2017-

Resolution Authorizing Economic Development Incentives for Prysmian Cables and Systems USA LLC

WHEREAS, Prysmian Cables and Systems USA LLC (herein referred to as "the Company") requested incentives to cause a minimum investment of \$20,000,000 in the Company's Claremont facility by December 31, 2019, and the creation and maintenance of a minimum of 50 new jobs by December 31, 2019, with a requirement to not hire anyone without a minimum of a high school diploma for anyone 25 years of age or below, and that the total average wage of the jobs will be above the average wage in Catawba County as determined annually by the North Carolina Department of Commerce.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Catawba County, North Carolina, as follows:

The Board of Commissioners approves a performance based grant, based on the minimum investment of \$20,000,000 and creation and maintenance of 50 new jobs within three years, with a maximum annual payment of \$57,500 (cumulative maximum incentive of \$172,500). Should the company exceed their original commitments and invest a minimum \$30,000,000 and creation and maintenance of 65 new jobs by the end of 2019, two additional years of a 50% incentive grant will be added. The annual maximum would be \$57,500 for the two additional years (a new cumulative maximum incentive of \$287,500). This grant will be used to reimburse the Company's expenditures as eligible under North Carolina General Statute 158-7.1. The Board of Commissioners also directs the County to execute a contract and any necessary resolutions or addenda between the Company and the County under these terms and conditions and authorizes the Chair to execute these documents.

This the 17th day of April, 2017.

Prepared by:

Debra Bechtel, Catawba County Attorney
PO Box 389, Newton, NC 28658

**STATE OF NORTH CAROLINACOUNTY OF CATAWBA AND PRYSMIAN
COUNTY OF CATAWBA CABLES AND SYSTEMS USA
ECONOMIC DEVELOPMENT AGREEMENT**

This **JOINT ECONOMIC DEVELOPMENT AGREEMENT** (this "Agreement") is made and entered into this ____ day of ____, 201__, by and between **Catawba County** (the "County"), a North Carolina body politic, having a mailing address of **Post Office Box 389, Newton, NC, 28658**, and **Prysmian Cables and Systems USA, LLC** (or "Company" or "Prysmian"), a Delaware limited liability corporation qualified to do business in the State of North Carolina, having a mailing address of **2512 Penny Road, Claremont, North Carolina 28610**.

WITNESSETH:

WHEREAS, North Carolina General Statute (NCGS) 158-7.1 authorizes County to make appropriations for the purpose of aiding and encouraging the location of business enterprises and industrial and commercial plants in or near its boundaries, and Prysmian is engaged in manufacturing fiber optic cable for the telecommunications industry within the meaning of NCGS 158-7.1; and

WHEREAS, Prysmian intends to construct, up-fit and/or equip existing manufacturing facilities (“Improvements”) at 2512 Penny Road, Claremont, NC, 28610 (Parcel ID # 376105075908) (the “Property”), at a cost of not less than Twenty Million Dollars (\$20,000,000) and up to Thirty Million Dollars (\$30,000,000) and intends to create a minimum of Fifty (50) and up to Sixty Five (65) new jobs at the facility and retain Three Hundred Eighty Three (383) permanent jobs currently at the facility, with the improvements to be made and new jobs to be created between January 1, 2017 and December 31, 2019 (the “Improvement Period”); and

WHEREAS, in an effort to encourage and maintain the highest educational attainment, Company will agree to require a minimum of a high school diploma or its equivalent (GED, Adult HS Diploma, etc.) for any permanent full-time employee 25 years of age or below; and

WHEREAS, Prysmian expects to be a community-oriented company and intends to participate in philanthropy, community events and programs intended to increase the health and happiness of their employees and the greater community as a whole; and to consider participation in the Catawba EDC’s corporate Committee of 100 501(c)(3) non-profit sponsorship; and

WHEREAS, Prysmian is encouraged, to the reasonable extent possible, to purchase local services and supplies, such as, but not limited to, locally produced products, local hotel, motel and hospitality services, local building and construction services, and other products and services;

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

SECTION I – PRYSMIAN

1. On or before May 31, 2017 Prysmian shall:

1.1 Deliver to County a certificate confirming that Prysmian owns or has the right to acquire the Property and that the installation of the Improvements will result in the creation, maintenance and availability of a minimum of 50 and up to 65 new jobs prior to December 31, 2019 and that the overall average weekly wage will equal or exceed the average weekly wage required under the North Carolina Department of Commerce’s contractual requirements for each year that County pays Prysmian the economic development incentive provided for herein. Prysmian affirms understanding of, and agrees to comply with, the Calendar of Responsibilities as outlined in Exhibit “A”. Such certificate shall be substantially in the form of the certificate attached to this Agreement as Exhibit “A”. It is understood and agreed the 50 new jobs referred to above means additional new jobs over and above the 383 existing jobs at Prysmian’s Property in Claremont on November 1, 2016.

1.2 Provide an Opinion of Counsel for Prysmian, in form and substance reasonably satisfactory to County, that this Agreement has been duly authorized, executed and delivered by Prysmian; and

1.3 Provide an Opinion of Counsel for Prysmian, in form and substance reasonably satisfactory to County, stating that this Agreement is binding upon and enforceable against Prysmian, in North Carolina, in accordance with its terms.

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

2.1 Prysmian is qualified to do business in the State of North Carolina, has a place of business within the State of North Carolina, and is in good standing and authorized to do business in the State of North Carolina;

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

2.3 The undersigned representative of Prysmian has the right, authority and duty to execute this Agreement in the name and on behalf of Prysmian;

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

2.5 There is no suit, claim, action or litigation pending, or to the knowledge of Prysmian threatened, relating to the Improvements, the use of the Improvements for their intended purpose, or any other matter contained herein;

2.6 There is no impediment to the use of the Property for the purposes contemplated by this Agreement.

2.7 Prysmian is not engaged in a business that would be exempt from property taxes.

3. In order to induce Prysmian to enter into this Agreement and to appropriate and expend monies for payment of economic development incentives, County represents and warrants that, to the best of County's knowledge that, as of the execution date hereof:

3.1 County is a North Carolina body politic corporate in nature and existing under North Carolina law;

3.2 County has the power and authority to carry on its business as now being conducted and has the power and authority to execute and perform this Agreement;

3.3 The undersigned authorized representative of County has the right, authority and duty to execute this Agreement in the name and on behalf of County;

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

3.5 There is no suit, claim, action or litigation pending, or to the knowledge of County threatened, relating to the Improvements, the use of the Improvements for their intended purpose, or any other matter contained herein.

4. Prysmian shall make investments to the Property and Improvements during the Improvement Period. Cumulative expenditures will meet or exceed Twenty Million Dollars (\$20,000,000) up to Thirty Million Dollars (\$30,000,000) by December 31, 2019, all of which will qualify and result in additional value for ad valorem tax purposes as determined by the Catawba County Tax Office, and Prysmian further agrees to maintain in place, in good condition (ordinary wear and tear excepted), said Improvements for three years after the final incentive payment. "Investments and Improvements qualifying and resulting in additional value for ad valorem tax purposes" means investments and Improvements made after the date of this Agreement as certified by Prysmian by Certificate(s) in the form of Exhibit B.

5. In addition to the 383 existing jobs on November 1, 2016, Prysmian shall create a minimum of 50 new jobs with the potential to create 65 new jobs at the Property in Claremont by December 31, 2019 and agrees to maintain or make available these jobs in place for three years after the final incentive payment. A job is defined as employment that provides 1600 hours or more of work in any 12 month period.

SECTION II – COUNTY

6. On or before May 31, 2017 County shall deliver to Prysmian an Opinion of Counsel for County, in form and substance reasonably satisfactory to Prysmian, that this Agreement has been duly authorized, executed and delivered by County; and stating that this Agreement complies with the terms and requirements of NCGS 158-7.1 and is binding upon and enforceable against County with its terms; and evidence in the form of a Resolution or Resolutions, or official minutes, which County duly adopted authorizing the economic development incentives set forth in this Agreement.

7. Payment of economic development incentives for Real and Personal Investments and for Job Creation will be made as provided in this Paragraph 7. The County will provide annual payments equal to 50% of the ad valorem taxes associated with the additional value as paid to the County for either a three year or five year period depending on the level of investment and jobs created. The maximum payment by the County will not exceed One Hundred Seventy Two Thousand Five Hundred (\$172,500) Dollars or Two Hundred Eighty Seven Thousand Five Hundred (\$287,500) Dollars depending on the number of jobs maintained and level of investment made as outlined below.

a. Based on a minimum additional investment of \$20,000,000 but less than \$30,000,000 by December 31, 2019 through Improvements made during the Improvement Period and the minimum job creation of 50 new jobs and retention of 383 permanent jobs, the County will provide annual payments equal to 50% of the additional ad valorem taxes paid to the County resulting from the Improvements for a three year period commencing with the taxes payable for the tax values on January 1, 2018, and January 1 of the succeeding two (2) years. In no event, except as

allowed for in Paragraph 7b, will the cumulative payments by County exceed One Hundred Seventy Two Thousand Five Hundred (\$172,500) Dollars. Amounts shall be payable in three (3) annual installments, beginning in 2019 (Grant Year 1) and payable through 2021.

b. Should Prysmian's additional investment through Improvements be \$30,000,000 or more by December 31, 2019 **and** creation and maintenance of at least new 65 jobs by December 31, 2019, the incentive payment, equal to 50% of the additional ad valorem taxes paid to the County, will be extended for two additional years, making the incentive payment period a five (5) year period. In no event will the cumulative payments for Grant Years 4 and 5 by the County exceed One Hundred Fifteen Thousand (\$115,000) Dollars. Said amount shall be payable in two (2) additional annual installments, beginning in 2022 (Grant Year 4) and payable through 2023.

Grant Year	MAXIMUM PAYMENT BY COUNTY - \$20M, 50 NEW JOBS	MAXIMUM PAYMENT BY COUNTY - \$30M, 65 NEW JOBS
1	\$57,500	\$57,500
2	\$57,500	\$57,500
3	\$57,500	\$57,500
4	\$0	\$57,500
5	\$0	\$57,500
Total	\$172,500	\$287,500

c. Upon payment of ad valorem taxes by Company to County for each of 2019 through 2021 or 2023, if the requirements are met, and certification by Company in the form or substantially in the form of the certificate attached hereto as Exhibit B, of Improvements made and proof of payment of taxes and verification that Company has created and maintained jobs as agreed herein, County will, within sixty (60) days, pay to Company an economic development incentive payment, the amount of which is calculated by multiplying by the appropriate grant percentage numeric value times the total ad valorem tax revenue received by County attributable to the value of the Improvements made by Company pursuant to this Agreement in excess of the assessed tax value on the site as of January 1, 2017. Regardless of the amount calculated, the maximum annual payment will be capped at \$57,500.

d. Company shall furnish to County on or before March 5th of each calendar year, following and corresponding to the previous July 1st when taxes are billed, the certification required by this Section 7 and proof of payment of all applicable taxes. If requested, Company shall provide County, at County's expense, independent certification as to such expenditures and number of existing jobs.

SECTION III - OTHER

8. Force Majeure. Notwithstanding the provisions of Paragraph 9, in the event Prysmian or Landlord is unable to meet the requirements of this Agreement as a result of (i) an event of force majeure, including but not limited to fires, explosions, acts of God, acts of public enemy, insurrections, riots, terrorism, embargoes, labor disputes, including strikes, lockouts and job actions, or boycotts; (ii) the inability to obtain the governmental permits or approvals (including zoning) necessary for the acquisition of the land or undertaking and operating the Improvements

after a good faith effort to obtain same has been made; (iii) shortages of materials or energy; (iv) changes in laws; or (v) other causes beyond the control of and arising without the fault or negligence of Prysmian; then, in such event, the Improvement Period shall be extended for a period equal to the delay caused by any of the foregoing events so long as Prysmian shall (a) have furnished County on a timely basis, upon the occurrence of such event, a notice thereof, and (b) take all commercially reasonable steps necessary to relieve the effect of such event and to resume completion of the Improvements. In accord with the foregoing, should the Prysmian be unable to meet the requirements as described above as a result of a force majeure, the obligation of the County to pay as provided in Section II above, shall be suspended until such time as the Prysmian is relieved from the effect of an event of force majeure and resumes completion of the Improvements.

9. It shall be an Event of Default if any one or more of the following events shall occur for any reason whatsoever (and whether such occurrence shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

a. If Prysmian, except in the event of force majeure, shall commit a material breach of a material obligation hereunder (including without limitation, the obligation to meet the investment goals and maintaining 383 permanent jobs at the facility as existed as of November 1, 2016 and, in addition, creation and maintenance of a minimum of 90% (45) of the number (50) of new jobs as set forth herein) and such breach shall continue for a period of sixty (60) or more days following receipt of written notice from County;

b. If Prysmian shall fail to qualify and/or maintain the requirements for eligibility and participation in agreements for State of North Carolina incentives applied for and awarded;

c. If Prysmian fails to timely file Exhibit A, or Exhibit B on or before March 5 of each year, following and corresponding to the previous July 1st when taxes are billed, and any qualifying incentive would be due to Prysmian, this shall be deemed a breach of the Agreement and notwithstanding paragraph 10 below, the sole remedy will be that County will not owe Prysmian any incentive that may have otherwise been due had those filings properly been made when due.

d. If any material representation, warranty or other statement of fact contained in this Agreement or in any final writing, certificate, report or statement furnished by Prysmian to County in connection with the transaction described in this Agreement, shall, to Prysmian's knowledge, be false or misleading in any material respect at the time given;

e. If Prysmian shall be unable to pay its debts generally as they become due; files a petition to take advantage of any insolvency statute; makes an assignment for the benefit of creditors; commences a proceeding for the appointment of a receiver, trustee, liquidator or conservator of themselves or of the whole or any substantial part of their property; files a petition or answer seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state;

f. If County, except in the event of force majeure, fails to pay Prysmian when such payment is due or is otherwise unable to pay its debts generally as they become due; files a petition to take advantage of any insolvency statute; makes an assignment for the benefit of creditors; commences a proceeding for the appointment of an emergency manager, receiver, trustee, liquidator or conservator or any similar entity; files a petition or answer seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute of the United States of America or North Carolina;

g. If a Court of competent jurisdiction shall enter an order, judgment, or decree appointing a custodian, receiver, trustee, liquidator, or conservator of Prysmian or of the whole or any substantial part of their properties, or approves a petition filed against Prysmian seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute; or if, under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction shall assume custody or control of Prysmian or of the whole or any substantial part of their properties;

h. If a Court of competent jurisdiction shall enter an order, judgment, or decree appointing an emergency manager, custodian, receiver, trustee, liquidator, or conservator or any similar entity for County, or approves a petition filed against County seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute; or if, under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction shall assume custody or control of County; or

i. If Prysmian shall allow its taxable assets, employment and average wage amounts to fall below the minimum values agreed upon in this Agreement, as each of the same pertain to the facility contemplated by this Agreement.

10. County Remedy: If Prysmian fails to cure an Event of Default for which it receives written notice from County, the obligation of County as set out herein shall terminate, and Prysmian shall immediately refund to County all economic development incentive payments paid to Prysmian prior to the date of the Event of Default plus interest at the rate of prime plus one percent (1%). The date the prime interest rate shall be determined shall be the date the Prysmian receives the notice of the Event of Default and prime will be the prime rate as published in the *Wall Street Journal (WSJ)*. Prysmian shall, as it relates to an Event of Default, have sixty (60) days after receipt of the notice required above, to cure the Event of Default.

11. Prysmian Remedy: If County fails to cure an Event of Default for which it receives written notice from Prysmian, the obligations of Prysmian as set out herein shall terminate. County shall, as it relates to an Event of Default, have sixty (60) days after receipt of the notice required above, to cure the Event of Default.

12. Prysmian and County acknowledge that any monies appropriated and expended by County for economic development incentives, as provided in this Agreement, are for a bona fide public purpose and are expended in good faith reliance on NCGS 158-7.1. In the event a Court of competent jurisdiction rules to which either Prysmian or County is a party, that all monies expended by County pursuant to this Agreement were not offered and accepted in good faith and in compliance with NCGS 158-7.1 and, further, that such monies must be repaid, Prysmian will make such repayment to County. In the event one or more lawsuits are brought against County or any County elected official, officer, agent or employee, or Prysmian, challenging the legality of this Agreement, then County and Prysmian shall exercise their best efforts to defend against any and all such lawsuits, at their own cost and expense.

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

County of Catawba: Catawba County
Attn: County Manager
PO Box 389
Newton, NC, 28658

Copy to: County Attorney
Attn: Debra Bechtel, County Attorney
PO Box 389
Newton, NC, 28658

Prysmian: Prysmian
Attn: Steve Linden, Industrial Director
2512 Penny Road
Claremont, NC, 28610

County or Prysmian may, by notice given to the other, designate any further or different addresses to which notices, certificates, requests or other communications shall be sent.

14. This Agreement shall inure to the benefit of, and is binding upon, County and Prysmian and their respective successors and assigns. However, neither this Agreement, nor any rights, privileges, nor claims created by this Agreement may be transferred by Prysmian without the prior, written approval of County, which approval will not be unreasonably withheld.

15. Except as otherwise provided in this Agreement, this Agreement may not be amended, changed, modified or altered except by written agreement of the parties.

16. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions of this Agreement.

17. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such fully-executed counterpart.

18. Controlling Law and Venue. This Agreement is governed by and shall be construed in accordance with the laws of the State of North Carolina; venue of any action shall be in the general courts of justice in Catawba County, or if in Federal court in the Western District of North Carolina.

19. The term of this Agreement shall commence on the date of execution and expire upon payment by County of all payments due to Prysmian and Prysmian fulfilling all of its requirements including real and personal property investments and the creation and maintenance of jobs, unless earlier terminated as provided herein.

20. Both Prysmian and County acknowledge and stipulate that this Agreement is the product of mutual negotiation and bargaining and that it has been drafted by Counsel for both Prysmian and County.

IN WITNESS WHEREOF the parties hereto have set their hands and seals as of the day and year first above written.

County of Catawba,
A North Carolina Body Politic
Attest:
(SEAL)

b. Planning and Parks.

Senior Planner Chris Timberlake requested the Board hold a public hearing to receive citizen comments and consider approval of the rezoning of two parcels totaling approximately 9.9 acres from Highway Commercial and Rural Commercial to Planned Development-Conditional Zoning for an 80-unit multi-family apartment development located at 6146 East NC Hwy 150.

Parcel A was zoned Rural Commercial. A residence exists on the parcel. Parcel B was split-zoned Highway Commercial and Rural Commercial. An off-premise sign (billboard) exists on the property that is otherwise undeveloped. Both properties are included in the Highway 150 Corridor Plan study area and Mountain Creek Township. Parcels to the north, south and west are zoned R-20 residential and are undeveloped and also have single family residences. Parcels to the east are zoned both Highway Commercial and Rural Commercial, with two buildings on the first and Steele Rubber Products on the second.

Wynnefield Properties proposes to develop Meridian Pointe Apartments, consisting of three buildings that will contain 80 residential units, a building for a residential computer center and multi-purpose room, and exercise room, a covered picnic area, playground, and outdoor sitting areas. Brick and hardboard siding and shakes will make up the predominant exterior material. The conceptual site plans indicate the majority of mature vegetation will remain and additional landscape buffers and parking area landscaping will be provided. Setbacks for the development must be a minimum of 50 feet when adjacent to other residential districts and 35 feet when adjacent to all other districts. The setbacks need to be adjusted on the plan but will not affect the proposed building locations. Combining the two parcels is required prior to development.

Parcels A and B are located within the Watershed Protection-Overlay (WP-O) WS-IV Protected Area and Mixed Use Corridor-Overlay district, which have specific regulations. In order to comply with the Watershed Protection Overlay, the project cannot exceed 24% (103,603 square feet, 2.37 acres) built-upon area. The site plan lists the built upon area at 23.4% (2.34 acres) meeting requirements. The developers must submit an Erosion and Sedimentation Control Plan to the County since the development will disturb more than one (1) acre. The Planned Development district allows for maximum square footage based on a floor area ratio of 1:2 (1 sq. ft. of floor area per 2 sq. ft. of land). This ratio provides for a maximum of 143,892 square feet of floor area. The applicant is proposing approximately 85,040 square feet under roof. Open space is required based on the number of residential units proposed (2,500 sq. ft. open space 80 = 4.59 acres). The project will provide approximately 7.53 acres of open space.

Public water and sewer are available along East NC 150 Highway. The applicant consulted with Catawba County Utilities and Engineering about existing utilities. Sufficient capacity is available to serve the project. It is the developer's intent to connect to the existing utilities.

The 2035 Greater Hickory Urban Area Long Range Transportation Plan lists East NC 150 Highway as a boulevard. Average daily traffic counts taken in 2015 taken east and west of the site measured 13,000 and 12,000 vehicles per day respectively. The estimated capacity of this particular span of NC 150 is approximately 15,000 vehicles per day (VPD) based upon the existing road width.

NCDOT has released preliminary plans (Project R2307-A) for widening East NC 150 Highway depicting a 4-lane superstreet design. Staff anticipates right-of-way acquisition beginning in 2027; however, the project is currently unfunded.

Wynnefield Properties discussed the project with NCDOT. Future road widening should not affect the proposed development.

The Highway 150 Corridor Plan, adopted on September 8, 2014, provides land use recommendations. The Future Land Use & Economic Opportunity chart recommends a future use of the property for mixed-use, commercial, or multi-family development. The request was consistent with the adopted land use plan.

Staff recommended the Planning Board submit a favorable recommendation to the Board of Commissioners to rezone the 9.91 acres from Highway Commercial and Rural Commercial to PD-CD Planned Development-Conditional Zoning District allowing for the multi-family development based upon: the request being consistent with the adopted land use plan (Highway 150 Corridor Plan); the proposed high-density residential development offering a transition between non-residential uses and lower density single-family residential uses; existing public utilities (water and sewer) are available to support higher density development of the site; and the proposed conceptual plans and elevation drawings submitted by Borum, Wade, and Associates and Martin Riley Associates but with modification to the setbacks as required by the Unified Development Ordinance.

The Planning Board held a public hearing on April 3, 2017 to consider the request. Mr. Craig Stone spoke on behalf of Wynnefield Properties, Inc., stated that they are interested in bringing a \$10 million investment to the community and are committed to quality, and continued upkeep. Ms. Laura Gargiulo, owner of MLM Distributing located to the east, felt the apartment complex would cause site line issues for trucks that pull out of their property. Ed Neill commented that the buildings should probably be farther from NC 150 Highway and may reduce some of the grading cut. Mr. Stone said his company is amenable to pushing the buildings back if necessary. There were no other questions or concerns from the board. The Planning Board voted 8 – 0 to submit a favorable recommendation to the Board of Commissioners to rezone approximately 9.9 acres (two parcels) from Highway Commercial (HC) and Rural Commercial (RC) to Planned Development-Conditional Zoning (PD-CD) for an 80-unit multi-family apartment development based upon the reasons stated above for staff recommends and the applicant's willingness to locate the structures further from the NC 150 Highway right-of-way.

Two adjacent property owners contacted the Planning Department and asked if a fence could be constructed on the proposed site that would deter residents from leaving the western and northern sides of the property where cattle is located off-site. The applicant is also amenable to constructing a fence in the approximate location shown on the site plan, as an additional condition.

Chair Isenhower opened the public hearing. Two people spoke at the public hearing; the developer in support of the project and a nearby property owner (Jeff Lowe) in opposition due to traffic concerns and the desire to keep the rural character of the area. Chair Isenhower closed the public hearing

After Board discussion which clarified this project would fall under the requirements necessary for tax credits from the NC Housing and Financing Agency for affordable housing, mature vegetation would be maintained to buffer apartments from the street and the additional requirement for a coated chain-link fence would be added on the location as requested by the adjacent property owner and now indicated on the site plan, Commissioner Barnes made a motion to approve the rezoning request. The motion carried unanimously.

The following consistency statement and ordinance applies:

ZONING MAP AMENDMENT CONSISTENCY STATEMENT

On April 17, 2017, the Catawba County Board of Commissioners conducted a public hearing for the purpose of considering a zoning map amendment to PINs 3696-05-19-8586 and 3696-05-19-7083 (Case #RZ2017-01). The applicant is Wynnefield Properties, Inc. and the owner is Joan Gardner.

Upon considering the matter, the Catawba County Board of Commissioners finds the request to be consistent with Map 6, titled "Future Land Use & Economic Opportunity" of the Highway 150 Corridor Plan. The board therefore finds the request reasonable for rezoning based upon:

- 1) The request being consistent with the adopted land use plan (Highway 150 Corridor Plan);
- 2) The proposed high-density residential development offering a transition between non-residential uses and lower density single-family residential uses;

- 3) Existing public utilities (water and sewer) are available to support higher density development of the site;
- 4) The proposed conceptual plans and elevation drawings submitted by Borum, Wade, and Associates and Martin Riley Associates but with modification to the setbacks as required by the Unified Development Ordinance; and
- 5) The applicant's willingness to locate the structures further from the NC 150 Highway right-of-way and install a fence on the property.

The Catawba County Board of Commissioners therefore approves the zoning map amendment. This approval was affirmed by a vote of ____-____ of the Catawba County Board of Commissioners.

Ordinance No. 2017-_____

AMENDMENT TO THE CATAWBA COUNTY ZONING MAP

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS, that the Catawba County Official Zoning Atlas is hereby amended by rezoning the following described properties from Highway Commercial (HC) and Rural Commercial (RC) to Planned Development-Conditional Zoning (PD-CD) for an 80-unit multi-family apartment development:

Two parcels totaling 9.9 acres identified by Parcel Identification Numbers 3696-05-19-8586 and 3696-05-19-7083 located in the Highway 150 Corridor Plan, Mountain Creek Township.

PLAN CONSISTENCY STATEMENT:

Pursuant to NCGS 153A-341, the Catawba County Board of Commissioners finds the request to be consistent with Map 6 titled "Future Land Use & Economic Opportunity" of the Highway 150 Corridor Plan. The board therefore finds the request reasonable for rezoning based upon:

- 6) The request being consistent with the adopted land use plan (Highway 150 Corridor Plan);
- 7) The proposed high-density residential development offering a transition between non-residential uses and lower density single-family residential uses;
- 8) Existing public utilities (water and sewer) are available to support higher density development of the site;
- 9) The proposed conceptual plans and elevation drawings submitted by Borum, Wade, and Associates and Martin Riley Associates but with modification to the setbacks as required by the Unified Development Ordinance; and
- 10) The applicant's willingness to locate the structures further from the NC 150 Highway right-of-way and install a fence on the property.

This, the 17th day of April 2017.

9. Appointments.

Chair Isenhower recommended the appointment of Mike Barnett of Patrick, Harper & Dixon to serve on the Partners Behavioral Health Management Board for a first term. This appointment will expire October 1, 2019. This recommendation came in the form of a motion, which carried unanimously.

10. Consent Agenda.

County Manager Mick Berry presented the following three items on the consent agenda:

- a. A request for the Board to issue a letter of intent for \$300,000 funding for Hickory Public Schools in the Fiscal Year 2017/18 budget to complete renovations and improvements needed to convert Southwest Elementary School to a Primary School for Kindergarten through second grade prior to the beginning of the

new school year,

Hickory Public Schools requested a letter of intent to fund planned renovations and improvements at Southwest Elementary School (\$300,000) in the Fiscal Year 2017/18 budget. The school system is attempting to address an identified deficit in basic literacy skills by making Southwest Elementary a primary school with heavy focus on reading to serve all Kindergarten through second grade students in the Southwest and Longview Elementary Schools feeder areas. Longview Elementary School will then serve all third through fifth grade students with a STEAM (science, technology, engineering, art, and math) focus.

To help facilitate this shift and make the school more appealing to parents and kids, the school system plans to do a beautification project at Southwest including a new electronic sign, new canopies to the bus and car drop-off to cover the sidewalks and ramps, new roofing at the entry tower, new fencing and parking lot signage, and new landscaping at the front of the building.

b. A request for the Board to grant easements to Duke Energy Carolinas, LLC (Duke) and Piedmont Natural Gas Co., Inc. (PNG). Duke requested the County grant an easement across the Workforce Solution Center property (Property) in order to provide electric service and communications services for the facility. PNG requested the County grant an easement across the Property for a gas line to serve the facility. The Property was conveyed by CVCC to the County in September of 2016 in connection with the construction financing, and the Property is leased to CVCC. The Property is located on the east side of Startown Road, south of the intersection with Catawba Valley Boulevard. The easement is for underground lines and associated above ground equipment. The Duke easement will be 10 feet on either side of the line as installed, and a 10 foot area surrounding any above ground equipment and fencing. The PNG easement will be 5 feet in width, centered on the installed location of the gas pipeline. CVCC reviewed the proposed locations and determined they are acceptable and will not interfere with the operation of the Workforce Solutions Center.

c. A request for the Board to grant an easement to Piedmont Natural Gas consisting of 0.205 acres for the 297 Line Replacement Project that will cross County property located at 3530 Graystone Place SW in Conover. Catawba County owns a 2.39 acre tract of land on Graystone Place SW located across from Catawba Valley Medical Center. Piedmont Natural Gas has requested a permanent easement across the corner of this property for their 297 Line Replacement Project. This project by Piedmont Natural Gas will expand the gas lines from 4" to 8" to increase the natural gas capacity in the area. The easement is located along the eastern edge of the property. The permanent easement contains 0.205 acres. Piedmont Natural Gas has offered the sum of \$16,025.00 for the easement, based on the land value of \$76,585/acre. Catawba County and Catawba Valley Medical Center staff have visited the site and have no concerns with the location of the easement.

Chair Isenhower asked if any commissioner wished for an item to be broken out of the consent agenda for individual consideration. None was requested. Chair Isenhower made the motion for approval of the consent agenda, which carried unanimously.

11. Other Items of Business: None.

12. Manager's Report.

The County Manager reported to the Board on budget transfers he authorized since his last report of transfers under his authority:

Budget Transfers: Pursuant to Board authority granted to the County Manager, the following budget transfers have been completed:

Special Contingency Transfer Approved 4-4-17

Transfer of Appropriations:

From:

115-150120-994200	Special Contingency	\$50,000
115-150120-691500	Special Contingency	\$50,000

To:

115-150120-995110	To General Fund	\$50,000
115-150120-680800	Insurance Settlements	\$50,000

Supplemental Appropriation:

Appropriation:

110-260150-984000	Motor Vehicles	\$50,000
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Revenue:

110-260150-695115	From Self Insurance Fund	\$50,000
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Replacement of EMS Vehicle from Self-Insurance Special Contingency: An accident occurred involving EMS Vehicle 27-510 on Feb 5, 2017, resulting in irreparable damage to the chassis. The ambulance box is still usable and can be remounted on a new chassis. The County has received an insurance settlement which needs to be allocated to Emergency Services budget to purchase the new chassis.

County Manager Contingency Transfer Approved 4-4-17

Transfer of Appropriations:

From:

110-190100-994000	Contingency	\$20,000
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To:

110-210050-988000	To General Fund	\$20,000
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Sheriff Contingency Transfer Request for Training Building - Sheriff Reid requested \$20,000 toward the costs of a "training building" to stage training exercises for STAR, Patrol, K-9, SOS, and CIT teams. Many areas in the community have been used for training, however it is difficult to get a place secluded enough to pull together the forces without alarm, and go through the training scenarios. Business and home owners are afraid to allow the training on site due to liability and insurance concerns. With a designated training structure CCSO could be more prepared and have a changeable environment, whether the practice includes using of a ram to break through a door, launching tear gas, deploying surveillance equipment, or observing with an infrared device. The building's total cost is \$40,000. The Sheriff's Office will use money from its Narcotic Seized Fund and the State USUB Substance Abuse Fund to provide the remaining \$20,000.

13. Attorneys' Report.

County Attorney Debra Bechtel requested the Board consider moving into Closed Session pursuant to North Carolina General Statute 143-318.11(a)(3) and (5) to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege and to establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease. She did not anticipate any action to be taken when the Board returned to Open Session. Commissioner Barnes made a motion to go into closed session at 7:50 p.m. The motion carried unanimously.

14. The Board returned to open session. No action was taken. Commissioner Hunsucker made a motion to adjourn at 8:10 p.m. The motion carried unanimously.

Randy Isenhower, Chair
Catawba County Board of Commissioners

Barbara E. Morris
County Clerk