

FORSYTH COUNTY
BOARD OF COMMISSIONERS

**BRIEFING
DRAFT**

MEETING DATE: March 13, 2017 AGENDA ITEM NUMBER: 10

SUBJECT:

RESOLUTION AUTHORIZING EXECUTION OF NECESSARY DOCUMENTS TO RECEIVE FUNDING FROM DUKE ENERGY CAROLINAS, LLC FOR REIMBURSEMENT OF COSTS FOR THE PURCHASE AND INSTALLATION OF ELECTRIC VEHICLE CHARGING STATIONS AT NEW BRANCH LIBRARIES (GENERAL SERVICES DEPARTMENT)

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:

SUMMARY OF INFORMATION:

Forsyth County has been awarded \$10,000 from Duke Energy Carolinas, LLC Electric Vehicle Charging Station Support Program for reimbursement of costs for the purchase and installation of electric vehicle charging stations.

These funds will be utilized in the design and construction of four (4) electric vehicle charging stations, two at each of the new branch libraries in Clemmons and Kernersville. The electric vehicle charging stations will include signage and educational materials available to patrons of the libraries to educate drivers and non-drivers about the benefits of electric vehicles.

ATTACHMENTS:- YES NO

SIGNATURE: _____ DATE: _____
COUNTY MANAGER

**RESOLUTION AUTHORIZING EXECUTION OF NECESSARY DOCUMENTS TO
RECEIVE FUNDING FROM DUKE ENERGY CAROLINAS, LLC FOR
REIMBURSEMENT OF COSTS FOR THE PURCHASE AND INSTALLATION OF
ELECTRIC VEHICLE CHARGING STATIONS AT NEW BRANCH LIBRARIES
(GENERAL SERVICES DEPARTMENT)**

WHEREAS, Forsyth County has been awarded \$10,000 from Duke Energy Carolinas, LLC for reimbursement of costs for the purchase and installation of electric vehicle charging stations; and

WHEREAS, these funds will be utilized in the design and construction of four electric vehicle charging stations, two at each of the new branch libraries in Clemmons and Kernersville; and

WHEREAS, the electric vehicle charging stations will include signage and educational materials available to the patrons of the libraries to educate drivers and non-drivers about the benefits of electric vehicles;

NOW, THEREFORE, BE IT RESOLVED that the Forsyth County Board of Commissioners hereby authorizes the Chairman or the County Manager and the Clerk to the Board to execute the necessary documents, on behalf of Forsyth County, to receive funds in the amount of \$10,000 from Duke Energy Carolinas, LLC for reimbursement of costs for the purchase and installation of electric vehicle charging stations at the Kernersville and Clemmons Branch Libraries, subject to a pre-audit certificate thereon by the County Chief Financial Officer, if applicable, and approval as to form and legality by the County Attorney.

Adopted this 13th day of March, 2017.

REIMBURSEMENT AGREEMENT
FOR
PLUG-IN ELECTRIC VEHICLE CHARGING STATION PROJECTS

This Reimbursement Agreement for Plug-In Electric Vehicle Charging Station Projects (this “**Agreement**”) is made and entered into as of this 9th day of December, 2016 (the “**Effective Date**”), by and between Duke Energy Carolinas, LLC (“**Duke Energy**”), and Forsyth County (“**Performing Party**”). Each of Duke Energy and Performing Party may be referred to herein as a “**Party**” and collectively as “**Parties**”.

RECITALS:

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

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

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

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

WHEREAS, Duke Energy has agreed to reimburse the Performing Party for the costs it incurs to procure, construct and install the Charging Stations in the manner set forth herein;

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

AGREEMENT

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

2. **Project Descriptions and Requirements**.

a. Project Descriptions. Exhibit A further describes each project to be completed by the Performing Party hereunder and specifically sets forth the general locations at which the Charging Stations are permitted to be installed, the aggregate number of charge ports to be installed at each such location, and the aggregate amount of funds reserved by Duke Energy for such project (collectively, a “Project”). Exhibit B contains a map detailing the approved locations for each Project. The Performing Party may only install the Charging Stations at an approved location and shall not change or modify the location of any Project (outside of the approved locations) or the aggregate number of charge ports to be installed at any Project without the prior written consent of Duke Energy.

b. Charging Station Requirements.

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

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

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

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

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

3. Term. This Agreement will commence on the Effective Date and continue until the third (3rd) anniversary of the date the last Reimbursement is made hereunder or until otherwise terminated earlier pursuant to this Agreement. The Performing Party hereby acknowledges that all Projects must be completed in their entirety by no later than December 31, 2017 and that all Reimbursement Requests (as defined below), together with all required supporting information, must be received by no later than March 31, 2018. Any Reimbursement Request received after such date shall not be eligible for reimbursement hereunder without the prior consent of Duke Energy.

4. Award Amount. Subject to the terms and conditions set forth herein, Duke Energy will reimburse the Performing Party for the Eligible Costs (as defined herein) directly incurred by the Performing party to complete each Project; provided, however, that in no event shall the aggregate amount reimbursed by Duke Energy hereunder exceed the “Funds Reserved” amount contained in Exhibit A (such amount, the “**Maximum Reimbursement Amount**”). The payment made by Duke Energy to the Performing Party is sometimes referred to herein as the “**Reimbursement.**” The actual amount of the Reimbursement may be less than any component of the Maximum Reimbursement Amount.

5. Use of Funds. The Performing Party shall apply the Reimbursement solely and exclusively towards approved Eligible Costs.

6. Reimbursement Procedures. Subject to the terms and conditions of this Agreement, the Performing Party shall be reimbursed for work completed for each Project in the following manner.

a. Eligible Costs. The Reimbursement may be made to reimburse the Performing Party for Eligible Costs for each Project. For purposes of this Agreement, the term “Eligible Costs” shall mean only those costs associated with the procurement, construction, and installation of the Charging Stations, including, but not limited to, reasonable costs associated with placing the Charging Stations in service, including the charging station equipment, installation labor, related materials and supplies, permitting fees, and utility service extension costs, which costs the Performing Party has paid in full as evidenced by cancelled checks, payment confirmations or other similar documentation. For the avoidance of doubt, in no event shall any costs associated with network connectivity or data subscriptions be considered Eligible Costs hereunder and all such costs shall be deemed to be outside of the scope of this Agreement and not subject to reimbursement by Duke Energy. The Performing Party shall review all invoices and evidences of payment prior to requesting reimbursement from Duke Energy and shall ensure the accuracy thereof prior to providing such invoices and evidences of payment to Duke Energy. Duke Energy may reject the request for Reimbursement if it fails to demonstrate that all such costs are Eligible Costs or if it fails to conform to the requirements of this Agreement. The Reimbursement under this Agreement shall be payable only after Eligible Costs are approved by Duke Energy.

b. Reimbursement Request. Promptly, but no more than 90 days following completion of the purchase, installation, and commissioning of the Charging Infrastructure for any Project, the Performing Party shall submit to Duke Energy a reimbursement request with respect to all Eligible Costs incurred and paid by the Performing Party in connection with such Project (a “Reimbursement Request”). By submitting the Reimbursement Request, the Performing Party is certifying that the costs are accurate, eligible for reimbursement, have been paid in full by the Performing Party and are consistent with the terms and conditions of the Agreement. At the written request of Duke Energy, the Performing Party shall provide Duke Energy with such other information and materials as Duke Energy may reasonably require to substantiate the Performing Party’s right to the Reimbursement.

c. Payments. Subject in all respects to Section 6.d below, Duke Energy shall review and approve the Reimbursement as soon as practicable, but not later than forty-five (45) days after the complete Reimbursement Request has been received, provided that complete and accurate supporting documentation has been submitted to Duke Energy.

d. Maximum Reimbursement Amount. Under no circumstances shall the Reimbursement made by Duke Energy hereunder exceed any component of the Maximum Reimbursement Amount. All costs incurred by the Performing Party in excess of any component of the Maximum Reimbursement Amount shall not be subject to reimbursement hereunder.

7. Performing Party Obligations.

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

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

c. Audit Rights. Performing Party shall, for at least three (3) years after the completion of any Project, keep and maintain such records or accounts of the Performing Party as are necessary to verify and support any and all charges paid for with respect to such Project using the Reimbursement. This includes verification that any and all material, services, labor, and other expenses incurred for such Project have been paid. All books and records shall be maintained in accordance with generally accepted accounting principles. Such books and records shall be made available, on mutually agreeable dates and times, at the Performing Party's facility for verification, copying, audit and inspection by representatives of Duke Energy. Any such audit shall be at Duke Energy's expense and conducted during the Performing Party's normal working hours; provided, however, that the Performing Party shall provide reasonable assistance necessary to enable Duke Energy to conduct such audit and shall not be entitled to charge Duke Energy for any such assistance.

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

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

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

b. it has all requisite legal power and authority to carry on its business and to execute this Agreement and to perform the terms, conditions and provisions hereof, as evidenced pursuant to N.C. Gen. Stat. 153A-11;

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

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

e. there is no action, suit, proceeding or order now pending or, to its knowledge, threatened against it before any government authority that could reasonably be expected to

materially and adversely affect the ability of the Performing Party to perform its obligations hereunder; and

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

9. Performing Party Certifications.

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

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

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

11. Insurance.

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

Employer's Commercial General and Auto Liability insurance, and provide at least the same scope of coverages thereunder.

b. All insurance policies provided and maintained by the Performing Party and each subcontractor shall: (i) be underwritten by insurers which are rated A.M. Best "A- VII" or higher; (ii) specifically include Duke Energy and its directors, officers, employees, affiliates, and subcontractors as additional insureds, with respect to Performing Party's or its subcontractors' acts, omissions, services, products or operations, whether in whole or in part, excluding, however, for Worker's Compensation/Employer's Liability and E&O; (iii) be endorsed to provide, where permitted by law, waiver of any rights of subrogation against Duke Energy and its directors, officers, employees, affiliates and subcontractors; (iv) provide that such policies and additional insured provisions are primary with respect to the acts, omissions, services, products or operations of Performing Party or its subcontractors, whether in whole or in part, and without right of contribution from any other insurance, self-insurance or coverage available to Duke Energy and its affiliates; and (v) contain a standard cross liability clause and separation of insured and severability of interest provisions except with respect to the limits of the insurer's liability. Evidence of such coverage shall be provided via Performing Party's certificate of insurance furnished to Duke Energy prior to the start of any work, upon any policy replacement or renewal and upon Duke Energy's request. All insurance policies shall provide that the insurer will provide at least thirty (30) days' written notice to the Performing Party, who in turn shall provide at least thirty (30) days' written notice to Duke Energy prior to cancellation or non-renewal of any policy (or ten (10) days' notice in the case of non-payment of premium). Performing Party's compliance with these provisions and the limits of insurance specified herein shall not constitute a limitation of Performing Party's liability or otherwise affect Performing Party's indemnification obligations pursuant to this Agreement.

12. Default and Termination.

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

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

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

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

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

13. Miscellaneous.

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

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

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

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

If to Duke Energy:

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

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

Duke Energy Carolinas, LLC
550 S. Tryon Street
45th Floor
Charlotte, NC 28202
Attn: Andre Rose, Deputy General Counsel
Email: andre.rose@duke-energy.com

If to the Performing Party:

Forsyth County
201 North Chestnut Street
Winston-Salem, NC 27101
Attn: Sara Warmuth
Email: warmuts2@forsyth.cc

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

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

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

g. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of

this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

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

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

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

[Signatures on following page]

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

Forsyth County

Duke Energy Carolinas, LLC

By: _____
Name: _____
Title: _____

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

Exhibit A

Project Descriptions

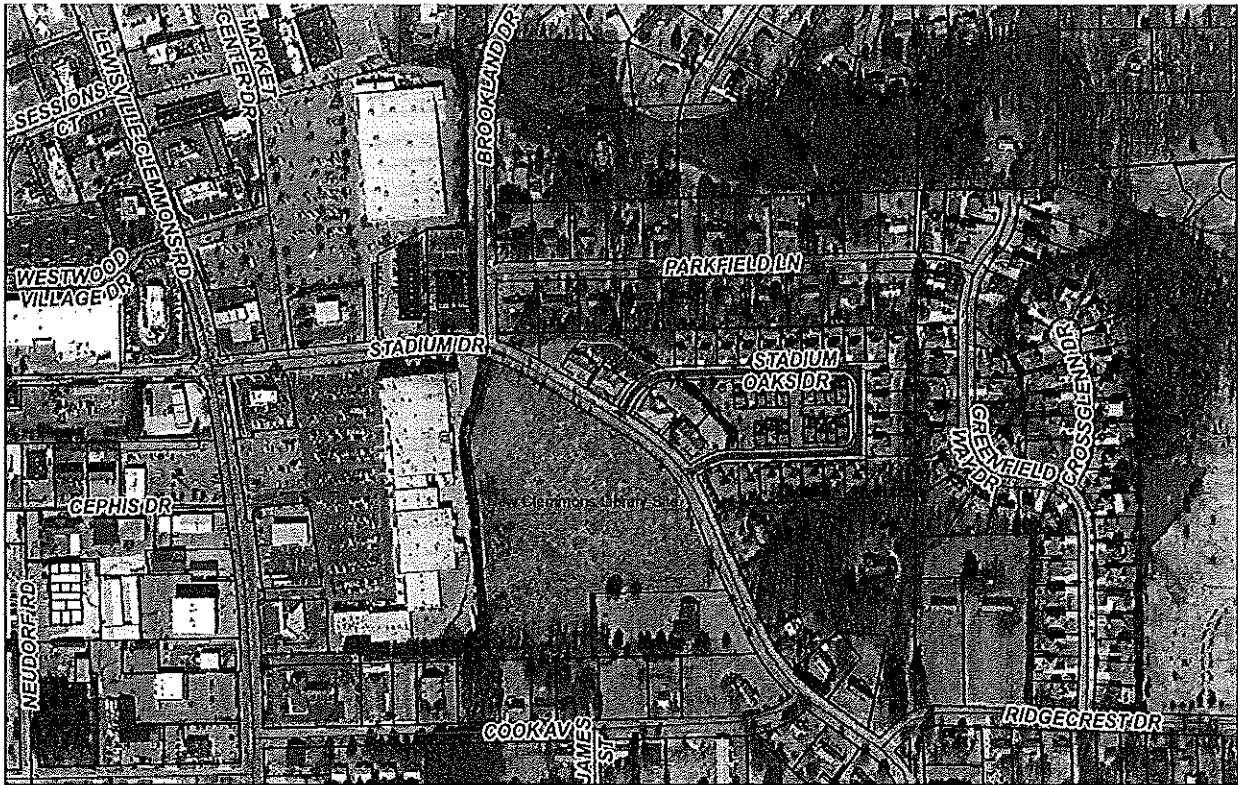
Locations Approved by Duke Energy for Installation of Ports: Kernersville Library and Clemmons Library

Quantity of Ports Awarded: 2

Funds Reserved: \$10,000

Exhibit B

Project Location Maps



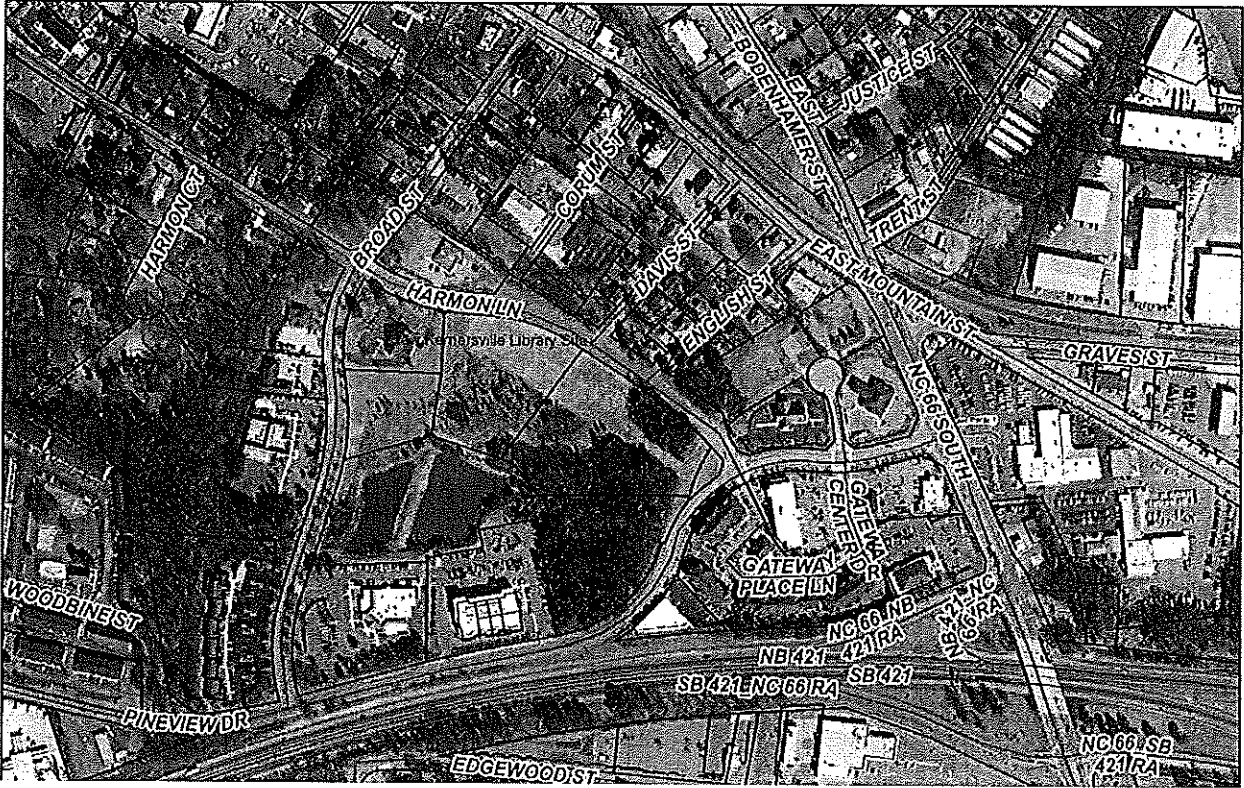


Exhibit C

Accessibility Requirements

(See Attached)