



REQUEST FOR BOARD ACTION

ITEM NO. 18.

DATE OF REQUEST: March 9, 2009

REQUESTED BY: Rick Benton, County Manager and Jessie Miars, Administrative Assistant
Holland Consulting Planners, Inc., Consultants for Pender County CDBG-EI Project

SHORT TITLE: Public Hearing and Resolution Approving Program Amendment for CDBG
Entrepreneurial Incubator Grant Project

BACKGROUND: The County is amending its FY06 CDBG Entrepreneurial Incubator grant from NC Department of Commerce, Commerce Finance Center, to accommodate the change in location of the 8-county regional kitchen incubator to James Sprunt Community College (JSCC), Kenansville, NC. JSCC will provide space for kitchen incubator and business planning and marketing development training. Shared use kitchen incubator will create ten (10) new jobs. Pender County will assume lead agency role and will act as fiscal and reporting agent for project. Total project budget includes \$356,478 in CDBG funds, and \$40,000 in local (General Fund) funds.

Commerce Finance Center requires that a public hearing be held prior to submittal of program amendment; and this public hearing has been properly advertised.

SPECIFIC ACTION REQUESTED: 1) To hold the required public hearing; and 2) To adopt a resolution approving submittal of the program amendment to Commerce Finance Center in order to proceed with construction/renovation of regional shared use kitchen incubator.

COUNTY MANAGER'S RECOMMENDATION

Respectfully recommend approval.

Initial

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that

a program amendment is approved and shall be submitted to NC Department of Commerce, Commerce Finance Center to allow for the regional shared use kitchen incubator to be constructed at James Sprunt Community College, Kenansville, NC. The County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

YEA VOTES: Tate ___ Brown ___ Blanchard ___ Rivenbark ___ Williams ___

Jimmy T. Tate, Chairman

Date

ATTEST

Date

APPLICATION SUMMARY
NC SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM
ECONOMIC DEVELOPMENT- ENTREPRENEURIAL INCUBATOR PROJECTS

Applicant Name: Pender County
Address:
 Street/Post Office Box: P. O. Box 5
 City: Burgaw Zip: 28425
County: Pender
Contact Person: Rick Benton Fax: 910/259-1401
 Telephone: 910/259-1200 E-mail: bentonr@penders-county.com

Application Type: Original Application _____ Amended Application X

Program Funding Category: Economic Development SIC/NAICS code: N/A
 Project Name: Pender County Shared Use Commercial Kitchen
 Type of Application: Grant X

CDBG Funds Requested:	<u>\$356,478</u>
Other Funds and Sources:	_____

<u>Pender County General Fund</u>	<u>\$40,000</u>

Total Project	<u>\$396,478</u>

Certification by the Applicant's Chief Elected Official:
 I certify that, to the best of my knowledge and belief, that: the data in this application is true and correct; that opportunities have been provided for citizen participation and access to information concerning the proposed activities; that this document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached application certifications if the assistance is approved; and that, if funded, this application is a part of the Grant Agreement.

Typed Name of Elected Official: _____ Jimmy T. Tate

Typed Title: _____ Chairman, Board of Commissioners

Signature: _____ Date: _____

FOR STATE USE ONLY

Date Received: _____ Special Instructions: _____

Sub-Recipient Agreement

The following statements and provisions are acknowledged and agreed upon by and between JAMES SPRUNT COMMUNITY COLLEGE, as Sub-recipient of the Community Development Block Grant (CDBG) funds and PENDER COUNTY, North Carolina, the (Grantee), and provider of such funds pursuant to a CDBG award, grant number 06-E-1565, (the "Grant"), made by the North Carolina Department of Commerce, Commerce Finance Center under the provisions of Title I of the Housing and Community Development Act of 1974, as amended ("the Act"). It is mutually agreed that no funds will be disbursed prior to the date of the execution of this agreement. This Agreement will remain in effect as long as the Sub-recipient has control over CDBG funds, including program income, or assets including real property acquired with funds disbursed under this grant. Any modification or amendment to this Agreement must be approved by the Commerce Finance Center.

Any provisions contained herein which are found to be inconsistent with the Act, Federal or State laws, and implementing regulations, will be deleted or appropriately modified as directed by the Commerce Finance Center and in no case shall any such inconsistency, whether remediated or not impair the remainder.

Purpose: It is the purpose and intent of this Sub-recipient Agreement to enable the Grantee to pass the responsibility and CDBG funds to the Sub-recipient to carry out the project described in the application, which was approved and funded by the Commerce Finance Center as the Grant.

Under this Sub-recipient Agreement, it is the intent of the Grantee to limit its responsibilities associated with the Grant to those administrative duties related to providing the CDBG funds to the Sub-recipient. All responsibilities for the expenditure of CDBG funds and carrying out the project are to be assigned to the Sub-recipient by this Agreement.

Description of Work: (Be very specific)

James Sprunt Community College (JSCC), Kenansville, North Carolina, will provide space to be renovated as a kitchen incubator to serve an eight-county region (Pender, Duplin, Bladen, Brunswick, Columbus, Sampson, Onslow, and New Hanover Counties). The renovation will involve electrical, plumbing, HVAC, and flooring/ceiling improvements to accommodate shared use commercial kitchen operations. JSCC will also provide training resources for kitchen incubator users in business planning and marketing development, and with guidance on preparing applications for business loans. Pender County, as grant recipient, will serve as the fiscal agent and will pay all invoices relevant to the scope of this project as outlined in the grant application. Pender County will also provide all compliance and reporting documentation to Commerce Finance Center as necessary.

Schedule of Work:

Once release of funds is granted by the North Carolina Department of Commerce, Commerce Finance Center, the project is expected to be completed within eighteen (18) to twenty-four months.

Budget For Activities:

CDBG Funds:	\$356,478
Local (Pender County) Contribution:	\$40,000

Drawdown of Funds: The Sub-recipient will request a drawdown of needed funds by submitting a request for payment to the Grantee. The Sub-recipient will make this request at least two (2) weeks in advance of need. The recipient must disburse funds within three days of receipt.

Records and Reports: Records for nonexpendable real property purchased totally or partially by the Sub-recipient with CDBG funds must be retained for five (5) years after its final disposition. All other pertinent grant records, including the financial records, supporting documents, and statistical records shall be retained for a minimum of five (5) years after final close-out of the grant. If, however, any litigation, claim or audit is started before the expiration of the five (5) year period, then records must be retained for five (5) years after the litigation, claim or audit is resolved.

Unexpended Grant Funds: The Sub-recipient agrees that it will return to the recipient any unexpended grant funds provided by the Grantee under this Agreement.

Program Income: If applicable, briefly describe how the program income generated from CDBG funded activities will be handled. *Attach Program Income Plan.*

Not applicable.

Uniform Administrative Requirements: The Sub-recipient shall adhere to the following administrative requirements:

Financial: Guidelines for financial and compliance audits of federally assisted programs which are OMB Circular A-133 and OMB Circular A-87.

Procurement: The following provisions regarding “conflicts of interest” apply to the use and expenditure of CDBG funds by the unit of local government and its Sub-recipients:

Except for eligible administrative or personnel costs, the general rule is that no person who is an employee, agent, consultant, officer, or elected or appointed official of the State of North Carolina or a unit of general local government or any designated public agencies or Sub-recipient which are receiving CDBG funds who exercise or have exercised any function or responsibilities with respect to CDBG activities assisted herein or are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter. Exceptions may be granted by the Department of Commerce, Commerce Finance Center on a case-by-case basis as requested upon full disclosure in writing.

Should any governmental entity, recipient, Sub-recipient, employee or official know or perceive any breach or ethical standards or conflict of interest involving any other CDBG grant, they shall immediately notify the Department of

Commerce, Commerce Finance Center, 4318 Mail Service Center, Raleigh, North Carolina 27699-4318.

Personnel: All contractors and subcontractors engaged in the project shall be fully qualified and properly licensed under the state and local law to perform such services.

The Sub-recipient shall insure that all Prime Contractors/Subcontractors are bonded and insured in accordance with state and federal requirements.

Other Program Requirements: All activities by the Sub-recipient shall be carried out in compliance with all federal laws and regulations except for environmental responsibilities and review process under Executive Order 12372, which are the responsibility of the Grantee.

Suspension and Termination: In accordance with 24 CFR 85.43 suspension or termination may occur if the Sub-recipient materially fails to comply with any terms of this Agreement, and that the Agreement may be terminated for convenience in accordance with 24 CFR 85.44.

Debarment Certification: The Sub-recipient must verify that all contractors and subcontractors are not listed in the "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions," prior to receiving Federal Funds.

Use of Real Property and Reversion of Assets: Upon expiration or termination of this Agreement the Sub-recipient shall transfer on behalf of the Grantee, to the Commerce Finance Center, any unutilized CDBG funds on hand.

Any real property acquired or improved in whole or in part with CDBG funds must continue to be used for the purpose for which it was acquired or improved. Any changes in its use must be approved by the Commerce Finance Center in writing.

Amendments: Any changes in the scope of the project, as outlined in this Agreement, must be submitted in writing by the Sub-recipient to the Grantee. Any amendment granted by the Grantee shall be appended to this Agreement as an amendment. Copies of any changes must be submitted to the Commerce Finance Center for programmatic purposes.

Liability: The Sub-recipient understands and warrants that it will defend any liability arising from this Agreement and that the grantee accepts no liability, in so far as such funds are expended in accordance with this Agreement.

The Sub-recipient agrees to repay to the Commerce Finance Center funds equal to the amount of CDBG funds provided to the Sub-recipient by the Grantee which the Commerce Finance Center has determined that its agents or assigns have caused to have been advanced and/or expended in violation of this Agreement and/or any federal, state or local laws or policies governing the use of CDBG funds. This provision also applies to any Funds considered to be program income generated by this Agreement. The

Commerce Finance Center is the sole arbiter in all matters concerning the eligibility of costs and interpretation of the provisions of law, statute, and policy as well as terms and conditions of this Sub-recipient Agreement.

Special Provisions: The Sub-recipient Agreement Standard Provisions attached to this Agreement are considered to be an integral part of this Agreement. These provisions are subject to change from time to time as federal laws and regulations are promulgated. The Sub-recipient will be notified in writing if any changes occur.

President, James Sprunt Community College		
Title of the Sub-recipient Official	Signature of the Sub-recipient	Date
Chairman, Pender County Board of Commissioners		
Title of the Grantee Official	Signature of the Grantee	Date

Standard Provisions

1. **Limitation of Liability:** The Sub-recipient will not assert in any legal action by claim or defense, or take the position in any administrative or legal procedures that he is an agent or employee of the owner (unit of local government).
2. **Ownership:** Ownership of all real or personal property, acquired in whole or in part with CDBG funds for use on this project, shall be vested in the unit of local government. When the unit of local government determines that the property is no longer required for the purposes of this project, the unit of local government must notify the Department of Commerce, Commerce Finance Center and obtain approval for disposition of the property in accordance with applicable guidelines.
3. **Agreement/Contract:** If any provision in this agreement/contract shall be held to be invalid or unenforceable, the remaining portions shall remain in effect. In the event such invalid or unenforceable provision is considered an essential element of this agreement/contract, the parties shall promptly negotiate a replacement provision, which addresses the intent of such provision.

The failure of either party to insist upon strict performance of any terms, conditions and covenants herein set forth shall not be deemed a waiver of any rights or remedies that such party may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

Federal, State and local laws, ordinances and codes are subject to change from time to time as they are promulgated. The Sub-recipient shall be notified in writing of any such changes when they occur and they shall be incorporated in writing into this contract/agreement upon concurrence by both parties, unless such changes are considered to have an essential impact upon the intent of this agreement/contract and then they shall be incorporated upon notification to the Sub-recipient.

4. **Termination for Convenience:** This agreement may be terminated for convenience in accordance with 24 CFR 85.44.
5. **Amendments:** Any changes to this contract affecting the scope of work of the project must be approved, in writing, by the Grantee and Sub-recipient and shall be incorporated in writing into this contract.
6. **Copyright:** Except as otherwise provided in the terms and conditions of this contract, the Sub-recipient paid through this contract is free to copyright any books, publications or other copyrightable materials developed in the course of and under this contract. However, the U. S. Department of Housing and Urban Development and the Commerce Finance Center reserve a royalty-free, non-exclusive and irrevocable license to reproduce, publish and otherwise use and to authorize others to use, for Federal Government and State Funded Agencies (SFA) purposes:
 - A. The copyright in any work developed under this contract; and
 - B. Any rights of copyright to which a Sub-recipient purchases ownership with grant support.

The Federal Government's rights and the Commerce Finance Center's rights identified above must be conveyed to the publisher and the language of the publisher's release form must insure the preservation of these rights.

7. **Terms and Conditions**: The Commerce Finance Center reserves the right to add or delete terms and conditions of this Agreement as may be required by revisions and additions or changes in the requirements, regulations, and laws governing the CDBG Program.
8. **Reporting Requirements**: The Sub-recipient agrees to complete and submit all reports, in such form and according to such schedule, as may be required by the Commerce Finance Center.
9. **Sanctions**: If the Sub-recipient fails or refuses to comply with the provisions set forth herein, then the Commerce Finance Center or the Grantee may take any or all of the following sanctions: cancel, terminate or suspend in whole or in part this agreement, or refrain from extending any further funds to the Sub-recipient until such time as the Sub-recipient is in full compliance.
10. **Applicable Law**: In addition to the applicable Federal Laws and Regulations, this agreement is also made under and shall be construed in accordance with the laws of the State of North Carolina. By execution of this agreement, the Sub-recipient agrees to submit to the jurisdiction of the State of North Carolina for all matters arising or to arise hereunder, including but not limited to performance of said agreement and payment of all licenses and taxes of whatever kind or nature applicable hereto.
11. **Maintenance of Records**: Records for non-expendable property purchased totally or partially with Federal funds must be retained for five years after final close out. All other pertinent contract records including financial records, supporting documents and statistical records shall be retained for a minimum of five (5) years after the final close out report.

However, if any litigation, claim or audit is started before the expiration of the five-year period, then records must be retained for five years after the litigation, claim or audit is resolved.
12. **Subcontracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Areas**: It is national policy to award a fair share of contracts to small and minority and women owned businesses. Accordingly, affirmative steps must be taken to assure that small, minority and women owned businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:
 - a. Including qualified small and minority businesses on solicitation lists;
 - b. Assuring that small, minority and women owned businesses are solicited whenever they are potential sources.

- c. Whenever economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small, minority and women owned business' participation;
 - d. Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority businesses; and
 - e. Using the services and assistance of the Small Business Administration, the Governor's Office of Small and Minority Business Assistance, the U. S. Department of Commerce and the Community Services Administration as required.
13. **Access to Records**: Records with respect to all matters covered by this agreement shall be made available for audit and inspection by the Commerce Finance Center, HUD or their representatives.
14. **Prime Sub-recipient Responsibilities**: The Sub-recipient is required to assume sole responsibility for the complete effort and enforcement of laws and regulations under this agreement. The Grantee will consider the Sub-recipient to be the sole point of contact with regard to contractual matters.
15. **Subcontracting**: If any part of the work covered by this agreement is to be subcontracted, the Sub-recipient shall identify the subcontracting entity and the contractual arrangements made therewith to the grantee. All subcontracts must be approved by the Grantee to insure that the subcontractors are not debarred or suspended by the Federal or State Government and to insure the Grantee understands the arrangements.
16. **Legal Services**: No attorney-at-law shall be engaged through the use of any funds provided under this contract in suits against the State, Local Public Body or any political subdivision.
17. **Political Activities**: None of the funds, materials, property or services provided directly or indirectly under this contract shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office or otherwise in violation of the provisions of the "Hatch" Act.
18. **Reporting of Fraudulent Activity**: If at any time during the term of this agreement anyone has reason to believe by whatever means that, under this or any other program administered by the Commerce Finance Center, a recipient of funds has improperly or fraudulently applied for or received benefits, monies or services pursuant to this or any other contract, such information shall be immediately reported to the appropriate authorities.
19. **Age Discrimination**: In accordance with 45 CFR, parts 90 and 91, the Sub-recipient agrees there shall be no bias or age discrimination as to benefits and participation under this agreement.

20. **Section 109 of the Housing and Community Development Act of 1974**: No person in the United States shall on the grounds of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part pursuant to this agreement.
21. **Section 3, Compliance and Provision of Training, Employment and Business Opportunities**: The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this said contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

The contractor will certify that any vacant employment positions including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

The contractor agrees to submit such reports as required to document compliance with Part 135. Noncompliance with the regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

22. **Section 504 of the Rehabilitation Act of 1973:** The Sub-recipient agrees that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, in any program or activity that receives the benefits from the federal financial assistance.
23. **Debarment Certification:** The Sub-recipient must comply with Federal Debarment and Suspension regulations prior to entering into a financial agreement for any transaction as outline below:
- a. Any procurement contract for goods and services, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold (which is \$25,000 and is cumulative amount from all federal funding sources).
 - b. Any procurement contract for goods and services, regardless of amount, under which the Sub-recipient will have a critical influence on or substantive control over the transaction.
24. **Equal Employment Opportunity:** In carrying out the program, the Sub-recipient shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Sub-recipient must take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Sub-recipient shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this non-discrimination clause. The Sub-recipient shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin. The Sub-recipient shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for project or program.

The Sub-recipient will, in all solicitations or advertisements for employees by or on behalf of the Sub-recipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The Sub-recipient will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State advising the said labor union or workers' representatives of the Sub-recipient's commitment under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Sub-recipient will comply with all provisions of Executive Order 11246 or September 24, 1965, and of the rules, regulations, and relevant orders of the State.

The Sub-recipient will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the State, or pursuant thereto, and will permit access to its books, records, and accounts by HUD and the State for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the Sub-recipient's noncompliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Sub-recipient may be declared ineligible for further Government contracts or federally assisted construction contract procedures authorized in Executive Order 11246 of September 24, 1965, or by rules, regulations, or orders of the State, or as otherwise provided by law.

The Sub-recipient will include the above provisions in every subcontract or purchase order unless exempted by rules, regulations, or orders of the State issued pursuant to section 204 of Executive Order 11246 of September 25, 1965, so that such provisions will be binding upon each Sub-recipient or vendor. The Sub-recipient will take such action with respect to any subcontract or purchase order as the Commerce Finance Center may direct as a means of enforcing such provisions, including sanctions for noncompliance.

The Sub-recipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work.

25. **Conflicts of Interest:** The following provisions regarding "conflicts of interest" apply to the use and expenditure of CDBG funds by the unit of local government and its Sub-recipients.

Except for eligible administrative or personnel costs, the general rule is that no person who is an employee, agent, consultant, officer, or elected or appointed official of the State of North Carolina or a unit of general local government or any designated public agencies or Sub-recipient which are receiving CDBG funds who exercise or have exercised any function or responsibilities with respect to CDBG activities assisted herein or are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter. Exceptions may be granted by the Department of Commerce, Commerce Finance Center on a case-by-case basis as requested upon full disclosure in writing.

Should any governmental entity, recipient, Sub-recipient, employee or official know or perceive any breach or ethical standards or conflict of interest involving any other CDBG grant, they shall immediately notify the Department of Commerce, Commerce Finance Center, 4318 Mail Service Center, Raleigh, North Carolina 27699-4318.