



## REQUEST FOR BOARD ACTION

ITEM NO. 11.

**DATE OF MEETING:** November 16, 2009

**REQUESTED BY:** Rick Benton, County Manager

**SHORT TITLE:** Resolution Accepting Rural Economic Development Center, Inc. Grant in the Amount of \$144,000 for PORT Human Services, Inc. Facility in Burgaw, NC

**BACKGROUND:** Pender County has been awarded a \$144,000 Rural Health Initiative Grant through the Rural Economic Development Center, Inc. to provide funds to assist PORT Human Services, Inc. in the construction a new mental health services facility in the Town of Burgaw. PORT Human Services, Inc. intends to construct a new facility with an investment of approximately \$1,007,000, and has committed to the creation of 12 professional jobs within a 24 month period. The grant agreement provides the company is responsible for reimbursing the County/Rural Center in the amount of \$12,000 for each job not created. The company is required to execute a loan performance agreement outlining the terms and conditions of the loan, and a promissory note defining the repayment terms in the event of default.

Pender County is required to provide a 3% match (\$4,320), which can be in the form of in-kind services or cash. Staff intends to document and use as much in-kind contributions as possible. A grant project ordinance is provided for adoption.

**SPECIFIC ACTION REQUESTED:** To consider a resolution accepting the Rural Economic Development Center, Inc. Rural Health Initiative Grant in the amount of \$144,000, adopting the grant project ordinance, and authorizing the Chairman/County Manager to execute the grant agreement documents.

**COUNTY MANAGER'S RECOMMENDATION**

Respectfully recommend approval.

    *RS*      
Initial

**RESOLUTION**

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

the Rural Economic Development Center, Inc. Rural Health Initiative Grant in collaboration with PORT Human Services, Inc., is hereby accepted, and the grant project ordinance providing for the \$144,000 grant and \$4,320 County match is hereby adopted. The Chairman/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



Received  
Oct. 21

October 16, 2009

Mr. Jimmy T. Tate  
Pender County  
PO Box 5  
825 S. Walker Street  
Burgaw, NC 28425

Contract: 2010-036-60701-107

Thomas W. Lambeth  
Chairman

Billy Ray Hall  
President

Dear Mr. Tate:

Enclosed for your review and signature are two complete sets of contract documents required to finalize the grant/loan award from the Rural Economic Development Center, Inc. Below is a description of the documents attached along with an explanation of the signatures required for each document.

1. Agreement—this document outlines the terms and conditions of the grant between the Rural Center and the Organization (Pender County). This document is pre-executed by the Rural Center and requires the signature of the highest elected official of the Organization (Pender County).
2. Loan Performance Agreement—this document outlines the terms and conditions of the loan from the Organization (Pender County) to the Responsible Party (Mr. Tom Savidge). This document must be signed by the highest elected official of the Organization (Pender County) and the Responsible Party (Mr. Tom Savidge).
3. Promissory Note—this document defines the repayment terms of the loan in the event of default by the Responsible Party (Mr. Tom Savidge). This document must be executed by the Responsible Party (Mr. Tom Savidge).
4. Waiver of Confidentiality—this document waives the job creating entity's right to confidentiality regarding employment information reported to the NC Employment Security Commission. This document must be executed by an authorized representative of the participating job creating entity.

Once executed, make one copy of the entire set of contract documents for the Responsible Party (Mr. Tom Savidge) and the Organization (Pender County) project manager; keep one original set for the Organization (Pender County) records; and mail one original set of contract documents to my attention at:

NC Rural Economic Development Center  
4021 Carya Drive  
Raleigh, NC 27610

North Carolina

Please note the acceptance clause outlined in Paragraph 19 which states that the grant may be withdrawn if a complete set of signed contracts are not returned to the Rural Center within 30 days.

Rural Economic

Also, please carefully review the specific conditions outlined in the Agreement: Exhibit A—Scope of Services, defines the scope of the renovation project; Exhibit B—Payment Schedule, explains the process required to request funds; Exhibit C—Reporting Schedule, explains the reporting requirements of the grant; and Exhibit D – Job Reporting Schedule, outlines the requirement for job reporting.

Development Center, Inc.

4021 Carya Drive

If you have any questions regarding this agreement, please contact me at the number below.

Raleigh, NC 27610

Sincerely,

Phone: (919) 250-4314

Kristen L. Rice  
Contract Manager

FAX: (919) 250-4325

Enclosures

AGREEMENT

THIS AGREEMENT, entered into this the 16<sup>th</sup> day of October, 2009, by and between the **Pender County** (hereinafter referred to as "GRANTEE") and the **Rural Economic Development Center, Inc.** (hereinafter referred to as "CENTER"), a North Carolina non-profit corporation.

WITNESSETH:

THAT, WHEREAS, the CENTER was organized for the purpose of stimulating economic development and job creation in distressed areas through the reuse of vacant buildings; and

WHEREAS, in its efforts to stimulate and encourage economic development and job creation, the CENTER contracts with local governments to conduct construction and development activities to solidify the location of a business or industry in vacant and/or abandoned buildings in its jurisdiction;

NOW, THEREFORE, in consideration of the mutual promises and such other valuable consideration as shall be set out herein, the parties hereto do mutually agree to the following terms and conditions:

1. Scope of Program/Other Agreements.

(a) The GRANTEE shall develop, perform and complete the work set out in Exhibit A (hereinafter referred to as the "Project") and said Project being that work described in a proposal entitled "**Pender County Port Facility**" as approved by the CENTER.

(b) The parties acknowledge that the funds provided hereunder have been provided in order to facilitate the creation of jobs in the community, and are subject to return to the CENTER if such jobs are not created and maintained. Therefore, GRANTEE agrees to enter into a Loan/Performance Agreement (the "Performance Agreement") substantially in the form attached hereto as Exhibit D with the owner of any real estate on which the Project is located, and, if different, the business which will conduct business operations on the site of the Project. GRANTEE agrees to provide a copy of the same to the CENTER prior to execution for the CENTER'S review and approval, and an executed copy after signing. In the event any sums are repaid under the Performance Agreement, all such amounts will be paid to the CENTER.

(c) GRANTEE agrees to provide CENTER with any information obtained pursuant to the Performance Agreement, and to allow the CENTER to execute any rights of the GRANTEE thereunder, including any rights of access, review or monitoring.

(d) GRANTEE agrees to exercise all of its rights and duties under the Performance Agreement in a prudent manner to ensure the use of the funds for the intended purposes and objectives and to preserve the rights of the CENTER hereunder and thereunder.

2. Changes in the Project.

(a) If changes or extra work are requested and authorized in writing by the CENTER, the GRANTEE will be available to furnish, or obtain from others, the services required.

(b) Any work referred to in paragraph 2(a) above shall be the subject of a separate written agreement between the CENTER and the GRANTEE stating the costs and schedule for completing said extra work.

(c) The GRANTEE shall immediately notify the CENTER of any change in conditions or local law, or any other event, which may significantly affect its ability to perform the Project in accordance with the provisions of this paragraph.

3. Term of Agreement. The effective period of this Agreement shall commence on 8/26/2009 and shall terminate on 8/26/2011 unless sooner terminated under Paragraph 11 (the "Termination Date").

4. Funding.

(a) The CENTER grants to the GRANTEE an amount not to exceed \$144,000.00, for expenditures relating to the Project. The GRANTEE hereby represents and warrants that all such sums as may be awarded under this grant shall be utilized exclusively for the purpose of the Project.

(b) In the event the GRANTEE breaches any of the covenants or agreements contained in this Paragraph 4, or if any of the representations and warranties of Paragraph 14 are untrue as to a material fact, the GRANTEE agrees to repay to the CENTER the full amount of sums awarded under this Agreement.

5. Independent Status of the GRANTEE.

(a) It is agreed between the parties that neither this Agreement nor any provisions hereof shall be deemed to create a partnership or joint venture between the CENTER and the GRANTEE. It is further agreed that except for the rights expressly granted to the CENTER in this Agreement, it shall not have any proprietary rights in the Project.

(b) The parties acknowledge that the GRANTEE is an independent entity. The GRANTEE shall not represent itself as an employee of the CENTER nor is the Agreement intended to be construed so as to make the GRANTEE an employee of the CENTER. The GRANTEE shall not have the ability to bind the CENTER to any agreement for payment of goods or services, nor shall it represent to any person that it has such ability. The GRANTEE shall be responsible for payment of all its expenses, including rent, office expenses and all forms of compensation to employees. The GRANTEE shall provide worker's compensation insurance to the extent required for its operations and shall accept full responsibility for payments of unemployment compensation, social security, income taxes, and any other charges, taxes or payroll deductions required by law in connection with its operations, for itself and its employees who are performing work pursuant to this Agreement. All expenses incurred by the GRANTEE are its sole responsibility, and the CENTER shall not be liable for the payment of any obligations incurred in the performance of the Project.

6. Method of Payment. The sums awarded under this agreement shall be paid to the GRANTEE in accordance with the Schedule of Payments attached hereto as Exhibit B. Each payment set forth in Exhibit B will be paid within twenty (20) days after receipt of a written request for payment from the GRANTEE, which request shall certify that GRANTEE has performed the required work under this Agreement and that it is entitled to receive the amount so requested.

7. Obligation of Funds. Funds provided by the CENTER may not be obligated by the GRANTEE prior to the effective date or subsequent to the termination date of this Agreement.

All obligations outstanding as of the termination date shall be liquidated within thirty days. Prior approval shall not be required for changes, which affect the approved budget unless a budget category is exceeded by ten (10) percent or \$500.00, whichever is greater. Any changes in the approved budget, which would result in the addition or deletion of a budget category, shall require prior approval from the CENTER.

8. Reports.

(a) The GRANTEE will furnish the CENTER with detailed written progress reports on a quarterly basis or other periods specified in Exhibit C.

(b) The reports referred to in paragraph 8(a) above should describe the progress made by the GRANTEE toward achieving the purpose(s) for which the funds were awarded. This should include the successes and problems encountered during the reporting period.

(c) Failure to submit a required report by the scheduled submission date will result in the withholding of any forthcoming payment until the CENTER is in receipt of the delinquent report.

(d) All funds awarded to the GRANTEE under this Agreement are appropriated by the North Carolina General Assembly. Accordingly, the GRANTEE acknowledges and agrees that it will be subject to the audit and reporting requirements prescribed by N.C.G.S §159-34, The Local Government and Fiscal Control Act - Annual Independent Audit, Rules, and Regulations. Such audit and reporting requirements may vary depending upon the amount and source of funding received by GRANTEE, and are subject to change from time to time. Upon completion, the GRANTEE agrees to forward to the CENTER one copy of any audited financial statements and accompanying reports generated covering the period that the GRANTEE has an active award contract with the CENTER. In addition to the audit and reporting requirements mandated by the State of North Carolina, the GRANTEE agrees to comply with any requests made by the CENTER from time to time for other financial and organizational materials to permit the CENTER to comply with its fiscal monitoring responsibilities.

(e) The GRANTEE agrees that within thirty (30) days after the termination of this Agreement, a Final Report shall be submitted to the CENTER, which describes the activities and accomplishments of the Project. The Final Report will include a review of performance and activities over the entire project period and will include a one-page program summary, which the CENTER can use for future publication. In that brief summary, the GRANTEE should describe the project, how it is implemented, to what degree the established project objectives were met and the difficulties encountered, what the project changed, and its cost. In addition to accounting for the use of the Project funds during the current fiscal year, the GRANTEE will submit a detailed final financial report by category (i.e., salaries, materials, equipment, etc.) showing all expenditures during the entire Project period and reports the source and amount of all other funds used to support the Project.

(f) The CENTER may request from the GRANTEE certain information, which will assist the CENTER with evaluation of the short- and long-range impact of its programs. The GRANTEE recognizes that such request may occur after the termination of this Agreement and agrees, to the extent possible, to provide such information to the CENTER.

9. Project Records.

(a) The GRANTEE shall maintain full, accurate and verifiable financial records, supporting documents, and all other pertinent data for this Project in such a manner as to clearly identify and document the expenditure of the CENTER funds provided under this Agreement separate from accounts for other awards, monetary contributions, or other revenue sources for this Project.

(b) The GRANTEE shall retain all financial records, supporting documents, and all other pertinent records related to the Project for a period of five years from the date of termination of this Agreement. In the event such records are audited, all project records shall be retained beyond the three-year period until any and all audit findings have been resolved.

(c) The GRANTEE agrees to make available to the CENTER, or its designated representative, all of its records which relate to the Project, and agrees to allow the CENTER or said representative to audit, examine and copy any and all data, documents, proceedings, records and notes of activity relating in any way to the Project. Access to these records shall be allowed upon request at any time during normal business hours and as often as the CENTER or said representative may deem necessary.

#### 10 Publications.

(a) At the request of the CENTER, any reports, data, or other information given to, prepared or assembled by the GRANTEE under the Agreement must contain the following acknowledgment and disclaimer statement: "This material is based upon work supported in whole or part by the Rural Economic Development Center." All materials must also contain the following statement: "Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views and policies of the Rural Economic Development Center."

(b) Except as provided in paragraph 10a) above, the GRANTEE may publish or arrange for the publication of scientific and technical information resulting from work carried out under this Agreement.

(c) Upon publication of materials resulting from the work of the project, the GRANTEE shall furnish a minimum of two copies of reprints to the CENTER.

#### 11 Termination: Availability of Funds.

(a) If the GRANTEE shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or shall violate any of the covenants or stipulations of this Agreement, the CENTER shall thereupon have the right to terminate this Agreement by giving written notice to the GRANTEE of such termination and by specifying the effective date of termination. In such event, the CENTER shall have no responsibility to make additional payments under this contract after the date of termination. No further expenditures shall be made under this Agreement except for such work as shall have already been performed prior to the date of termination and the GRANTEE shall repay all unspent grant funds upon the demand of the CENTER.

(b) It is understood that the CENTER'S obligation to pay any amounts under this Agreement is contingent upon the availability and continuation of funds for such purpose. In the event that funds for this Project become unavailable, the CENTER may terminate this Agreement upon thirty (30) days written notice to the GRANTEE. All obligations of the CENTER to make payments under this Agreement shall cease as of the Termination Date.

12. Liabilities and Loss. The CENTER assumes no liability with respect to accidents, bodily injury, illness, breach of contract or any other damages or loss, or with respect to any claims arising out of any activities undertaken by the GRANTEE under this Agreement, whether with respect to persons or property of the GRANTEE, or third parties. The GRANTEE agrees to obtain insurance or otherwise protect itself or others as it may deem desirable. Further, the GRANTEE agrees to indemnify, defend and save harmless the CENTER and its officers, agents and employees against any liability, including costs and expenses and attorneys' fees, for the GRANTEE'S violation of any proprietary right or right of privacy arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any information published resulting from the work of the Project or based on any libelous or other unlawful matter contained in such information. The GRANTEE also further agrees to indemnify, defend and save harmless the CENTER and its officers, agents and employees from any and all claims and losses accruing or resulting to any and all subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project and the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the GRANTEE or its agents in the performance of the Project and this Agreement.

13. Entire Agreement. This agreement supersedes all prior agreements between the CENTER and the GRANTEE, and expresses their entire understanding with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to a writing signed by both the GRANTEE and the CENTER.

14. GRANTEE Representations and Warranties. The GRANTEE hereby represents and warrants that:

(a) The GRANTEE is a unit of local government located in one of the state's 85 rural counties or an economically distressed urban county designated as Tier 1, 2, or 3 by the North Carolina Department of Commerce.

(b) The execution and delivery of this Agreement have been duly authorized by all necessary GRANTEE action and are not in contravention of law nor in contravention of the provisions of any indenture agreement or undertaking to which it is a party or by which it is bound.

(c) There is no action, suit proceeding, or investigation at law or in equity or before any court, public board or body pending, or to the GRANTEE'S knowledge, threatened against or affecting it, that could or might adversely affect the Project or any of the transactions contemplated by this Agreement or the validity or enforceability of this Agreement or the GRANTEE'S ability to discharge its obligations under this Agreement. If it is subsequently found that an action, suit, proceeding, or investigation did or could threaten or affect the development of the Project, the GRANTEE shall be liable to the CENTER for repayment of the entire amount of the grant and this Agreement may be terminated by the CENTER effective upon notice.

(d) No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Agreement by the GRANTEE or the performance of any of its obligations hereunder, or all such requisite governmental consents or approvals have been obtained. The GRANTEE shall provide the CENTER with evidence of the existence of any such necessary consents or approvals at the time of the execution of this Agreement.

(e) The GRANTEE is solvent.

15. Special Provisions and Conditions.

(a) Nondiscrimination. The GRANTEE agrees not to discriminate by reason of age, race, religion, color, sex, national origin, or handicap related to the activities of this Agreement.

(b) Conflict of Interest. The GRANTEE certifies that to the best of its knowledge no GRANTEE employee or officer of the GRANTEE has any pecuniary interest in the business of the CENTER or of the Agreement, and that no person associated with the GRANTEE has any interest that would conflict in any manner with the performance of the Agreement.

(c) Compliance with Laws. The GRANTEE shall at all times observe and comply with all laws, ordinances, and regulation of the State, Federal and Local governments which may in any manner affect the performance of the Agreement.

(d) Non-Assignability. The GRANTEE shall not assign any interest in the Agreement and shall not transfer any interest in the same without prior written consent of the CENTER; provided, however, that claims for money due to the GRANTEE from the CENTER under this Agreement may be assigned to any commercial bank or other financial institution without such approval.

(e) Personnel. The GRANTEE represents that it has, or will secure at its own expense, all personnel required to monitor, carry out and perform the scope of services of this Agreement. Such employees shall not be employees of the CENTER. Such personnel shall be fully qualified and shall be authorized under state and local law to perform such services.

16. Notice. All notices required or permitted to be delivered hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States mails, certified, return receipt requested, first class, postage prepaid and addressed as follows:

If to the CENTER, Attn: **Melody Adams**  
Rural Economic Development Center, Inc.  
4021 Carya Drive  
Raleigh, NC 27610

If to the GRANTEE: Attn: **Mr. Jimmy T. Tate**  
Pender County  
PO Box 5  
825 S. Walker Street  
Burgaw, NC 28425

or addressed to such other address or to the attention of such other individual as the CENTER or the GRANTEE shall have specified in a notice delivered pursuant to this subsection.

17. Execution. This Agreement may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and such counterparts, together, shall constitute one and the same Agreement which shall be sufficiently evidenced by one of such original counterparts.

18. Construction. This Agreement shall be construed and governed by the laws of the State of North Carolina.

19. Acceptance. If you agree to the grant conditions as stated, please return the original contract with your signature in the space provided. This grant may be withdrawn if your acceptance has not been received by the Rural Center within one month from the date the contract is received.

IN WITNESSETH WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

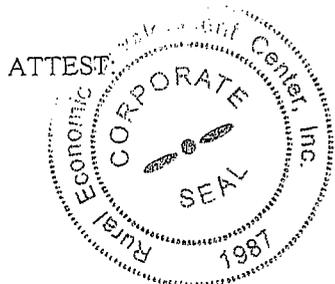
Pender County

ATTEST:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



*Dawn Zumbie*

Rural Economic Development Center, Inc.

By: *Susan Edmunds*

Title: Vice President, Finance & Administration

Date: 10/16/09

**EXHIBIT A**  
**SCOPE OF SERVICES**

Project # 2010-036-60701-107

Pender County  
Pender County Port Facility

NC Economic Infrastructure Fund  
Rural Healthcare Initiative

Pender County will carry out the terms of this contract as follows:

I. General Project Description

Pender County requested assistance to support PORT Human Services in the construction of a 9-bed Adolescent Treatment Facility. PORT Human Services will provide mental health and substance abuse services for adolescents who have not been successful with other interventions and need 24-hour care. PORT operates several care facilities in the region and is CARF Accredited. The company has a baseline employment of 250 jobs and will create 12 new, full-time jobs at the facility. The total project cost is \$1,007,000.

Objective:

Refurbish and up fit the interior and exterior of the building to accommodate the business needs. All work should be completed according to the application and contractor's cost estimates submitted and meet all applicable building code requirements. Project activities include:

The building will be constructed as single structures using wood framed construction with trussed roofs. The buildings will have double hung vinyl windows with insulated glass. The exterior finish material will be lapped siding for the walls and composition shingles for the roofing. The foundation will be a monolithic concrete slab with a turned down edge.

## II. Renovation Project Financing

Financing Source(s)		Amount
PORT Human Svcs	\$	\$859,385.00
Pender Co		\$4,320.00
NC Rural Center		\$144,000.00
Total Project Financing	\$	<u>\$1,007,705.00</u>

## III. Project Reporting

Pender County will adhere to the conditions and regulations outlined in the Contract Agreement and the Loan/Performance Agreement. Pender County will also file reports on the dates set forth in Exhibit C of this contract.

**EXHIBIT B  
PAYMENT SCHEDULE**

The Rural Economic Development Center, Inc. shall make payable to Pender County a sum in the amount of \$144,000.00 as outlined below. The grant requires a cash match equal to the amount of Rural Center funding, which may come from either public or private sources or a combination of both. Funds provided for the match must contribute to the renovation cost. Building acquisition equipment or startup costs will not be considered for the match. The unit of local government must contribute 3% of the grant in cash or in in-kind services.

**Eligible expenses:**

Eligible expenses are limited to those expenses associated with the renovation, rehabilitation and/or unfit of the subject building. Eligible costs include, but are not limited to, HVAC, electrical, plumbing, roofing, flooring, carpentry, drywall, paint, etc.

Building acquisition, machinery and equipment, furniture and other costs not directly related to the building renovation are not eligible.

**Requesting Funds:**

*All checks from the Rural Center are payable to the local government who is responsible for disbursing payments to the company or property owner. Payments are available upon submission of the following:*

1. Completed Financial Request Form.
2. Copies of project invoices that support the request. The Rural Center will pay 50% of the eligible invoices submitted. For example: If invoices for eligible expenses totaling \$20,000 are submitted, the Rural Center will pay \$10,000.
3. Progress reports must be up to date. See "Exhibit C" of the grant agreement for a reporting schedule specific to your project.

All payment requests must be received by the Rural Center within 30 days of the end of the contract period. Payments are subject to the availability of funds. Payment Request forms can be found on our website at [www.ncruralcenter.org/reuse/index](http://www.ncruralcenter.org/reuse/index)

EXHIBIT C  
REPORTING SCHEDULE

In accordance with the contractual agreement between Pender County and the Rural Economic Development Center, Inc., progress and final reports should be submitted according to the following guidelines:

**Progress and Final Reports:**

Progress reports should be submitted to the Rural Center at least every six months. Refer to "Exhibit C" Reporting Schedule in the grant agreement for a reporting schedule specific to your project.

Submit a Final Report to the Rural Center when all aspects of the project are complete, including job creation and the 6-month verification period is complete.

Due Date:	Report Due:	Reporting Period:
3/26/10	Progress Report	8/26/09 to 2/26/10
9/26/10	Progress Report	2/27/10 to 8/26/10
3/26/11	Progress Report	8/27/10 to 2/26/11
9/26/11	Final Report	2/27/11 to 8/26/11

Progress/Final Reporting forms can be found on our website at [www.ncruralcenter.org/reuse/index](http://www.ncruralcenter.org/reuse/index)

EXHIBIT D  
JOB REPORTING AND 6-MONTH VERIFICATION PERIOD

In order for the Building Reuse loan to be forgiven, the project company must create and maintain the number of jobs committed for at least six months. The jobs must be full-time (at least 35 hours per week) and the number must be above and beyond the baseline employment level reported on the application form. To report job creation the following information must be submitted.

1. Letter Certifying Job Creation—the project company should submit a letter attesting to the creation of the number of jobs committed. The letter should include the number of employees the company had on the date of the grant submission or award; the total number of current employees; and the six-month date range that the jobs were created and maintained. The letter should be printed on company letterhead and signed by the Chief Operating Officer or the Chief Financial Officer.
2. NCUI101 Forms—The Company should provide redacted copies of two consecutive quarters of the company's Employment Security Commission NCUI 101 forms that correspond with the date range submitted in the above letter as evidence of the company's total employment. If more than one company location exists in North Carolina, the names of the employees working in the project building should be highlighted
3. Final Report—the final report should describe the activities and outcomes of the project. The Final Report form can be found at [www.ncruralcenter.org/reuse](http://www.ncruralcenter.org/reuse).

Once the above items are received and verified by the Rural Center, the applicant will be notified that the terms of the grant/loan have been met. The applicant can then forgive the loan and release the promissory note.

## LOAN/PERFORMANCE AGREEMENT

This Loan Performance Agreement (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between the Owner of the Property located at \_\_\_\_\_ (hereinafter referred to as the "Owner") and \_\_\_\_\_ (hereinafter referred to as the "Governmental Unit"), who hereby agree as follows:

## WITNESSETH:

WHEREAS, Governmental Unit has provided loan support to or for the benefit of the Owner in order to stimulate reuse of the Property and support economic development in the local geographic area by making the Property available to a business to create new jobs (the "Business"); and

WHEREAS, a portion of such support has come from the Rural Economic Development Center, Inc. (the "Center") pursuant to its mission to stimulate and support economic development in the rural areas of North Carolina; and

WHEREAS, the Center requires the Owner to enter into this Loan/Performance Agreement as a condition of providing the support to the Governmental Unit for this project;

NOW, THEREFORE, in consideration of the mutual promises and other valuable considerations as shall be set out herein, the parties hereto do mutually agree to the following terms and conditions:

1. Program. The parties have agreed to develop, perform, and complete the work set out in *Exhibit A* (hereinafter referred to as the "Scope of Work") and said Project being that work described in the proposal entitled **Pender County Port Facility** as approved by the Center.
2. Loan. Governmental Unit hereby loans to the Owner the sum of **\$144,000.00** to fund the Project. The parties acknowledge that this Loan will be repayable only in the event the Business fails to achieve certain job creation goals described in paragraph 3 below. In the event such job creation goals are not achieved, the Owner agrees to pay to the Governmental Unit for redistribution back to the Center, the amount set forth in paragraph 5 below. As evidence of the obligation of the Owner hereunder, the Owner shall execute the promissory note, which is attached hereto and incorporated herein by reference.
3. Job Creation. The Owner agrees that the Business shall be required to create **12** number of Jobs (defined below) within twenty-four months of **8/26/2009**, the date of the Governmental Unit's agreement with the Center. The Owner hereby acknowledges that the funding by the Center and the Governmental Unit is predicated upon the satisfaction of this objective by the Business, that failure to achieve this objective will constitute a material default under the terms of this Agreement, and that any such failure shall require the Owner to repay all or a portion of the Loan pursuant to the provisions of paragraph 5 below. For purposes of this Agreement, a "Job" shall mean a full-time job (consisting of at least 35 hours per week of employment and eligibility for all benefits generally available for full-time employees of the Business) with the Business, at a wage at least equal to minimum wage, and located in North Carolina.
4. Verification of Jobs. The Business's baseline job numbers will be verified at the award date (**8/26/2009**) of the Governmental Unit's agreement with the Center. On the date that the specified number of minimum jobs is obtained (the "Job Commitment Date"), the Owner shall cause the Business to notify the Governmental Unit so that the Governmental Unit and the Center can verify satisfaction of the conditions. The Job numbers shall be verified again at the date that is six months following the Job Commitment Date. The Owner shall cause the Business to provide to the Governmental Unit and the Center, or their respective designees, full and complete access to all records of the Business that would be reasonably necessary to verify the number and

types of jobs created, and the wages paid to employees. Failure to provide such access upon reasonable request shall constitute a default under the terms of this Agreement.

5. Repayment. If the Business fails to create the required number of Jobs within twenty-four months of the award date of the Governmental Unit's agreement with the Center, or if the Business has created such Jobs by such date, but has not maintained that total number of Jobs until the date that is 6 months following the Job Commitment Date, the Owner shall repay to the Governmental Unit, for redistribution back to the Center, an amount equal to the product of (i) \$12,000.00 (the amount of loan funds divided by the number of Jobs in paragraph 3) and (ii) the number of Jobs required to be created under paragraph 3. above, minus the lesser of (A) the number of Jobs in existence on the Job Commitment Date and (B) the number of Jobs in existence on the date that is 6 months following the Job Commitment Date. If a requirement exists to repay any sums hereunder, the Governmental Unit shall notify the Owner in writing of the amount to be repaid, and shall direct it to pay such amount directly to the Center. All such amounts due hereunder shall be due upon demand by the Governmental Unit or the Center. If not paid within 30 days following demand hereunder, the unpaid amount due hereunder or any instrument securing this obligation, shall bear interest at the rate of 10 % per annum after demand until paid. Upon default in such payment, the Governmental Unit or the Center may employ an attorney to enforce their rights and remedies, and the Owner hereby agrees to pay the reasonable attorney's fees or the Governmental Unit or the Center, not exceeding a sum of 15% of the outstanding balance owing hereunder, plus all other reasonable expenses incurred by such party in exercising any of the its rights and remedies upon such defaults.
6. Records. The Owner agrees to maintain, and to cause the Business to maintain, full, accurate and verifiable records, supporting documents, and all other pertinent data for this Project to enable the verification of the requirements contained in this Agreement. All such financial records, supporting documents, and other pertinent records related to the Project shall be maintained for a period of at least 3 years from the Job Commitment Date. In the event any such records are audited, all such records shall be retained beyond the 3-year period until any and all audit findings have been resolved. The Owner agreed to make available, and to cause the Business to make available, to the Governmental Unit, the Center, or their designated representatives, all of its records which relate to the Project and the creation of Jobs, and agree to allow the Governmental Unit or the Center or their representatives to audit, examine, and copy any and all data, documents, proceedings, records and notes of activity related in any way to the Project or such Job creation. Access to these records shall be allowed upon request at any time during normal business hours, and as often as the Governmental Unit or the Center or said representatives may deem necessary.
7. Reports. The parties acknowledge that a portion of the funds which are the subject of this Agreement are appropriated by the North Carolina General Assembly. Accordingly, the Owner acknowledges and agrees that it may be subject to the audit and reporting requirements prescribed by N.C.G.S. §159-34, the Local Government and Fiscal Control Act-Annual Independent Audit, Rules and Regulations, or N.C.G.S. §143-6.2, Nonprofit State Funds Accountability Act – Reports On Use Of State Funds By Non-State Entities; as applicable. The Owner agrees to comply with any reasonable requests made from time to time by the Center for other financial and organizational materials to permit the Center to comply with its fiscal monitoring responsibilities.
8. Representations and Warranties. The Owner hereby represents and warrants that:
  - (a) It is duly organized and existing, and, if a corporation, is duly incorporated under the laws of the state of North Carolina.
  - (b) The execution and delivery of this Agreement has been duly authorized by all necessary action, and are not in contravention of law nor in contravention of any certificate of authority, bylaws, or other applicable organizational documents of such party, nor the provisions of any indenture, agreement, or undertaking to which it is a party or by which it is bound.
  - (c) There is no action, suit, proceeding, or investigation at law or in equity for any court, public board, or body pending, or to such party's knowledge, threatened against or affecting it, that could or might

adversely affect the Project, the creation of the Jobs, or any of the transactions contemplated by this Agreement, or the validity or enforceability of this Agreement or such party's ability to discharge its obligations under this Agreement. If it is subsequently found that an act, suit, proceeding or investigation did or could threaten the development of the Project or the creation of such Jobs, such party shall be liable to the Governmental Unit and to the Center for repayment of the entire amount of the Loan.

- (d) Such party shall at all times preserve its legal existence, except that it may merge or consolidate with or into or sell all or substantially all of its assets to any entity that expressly undertakes, assumes for itself, and agrees in writing to be bound by all of the obligations and undertakings of such party contained in this Agreement. If such party so merges, consolidates, or sells its assets without such an undertaking being provided, such party agrees to repay to the Governmental Unit and the Center the full amount of sums loaned under this Agreement.
- (e) No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Agreement by such party or the performance of any of its obligations hereunder, or all such requisite governmental consents or approvals have been obtained. Such party shall provide the Governmental Unit or the Center with evidence of the existence of any such necessary consents or approvals at the time of the execution of this Agreement.
- (f) Such party is solvent.

9. Special Provisions and Conditions.

- (a) Nondiscrimination. The Owner agrees that it will not, and will ensure that the Business will not, discriminate by reason of age, race, religion, colors, sex, national origin, or handicap related to the activities of this Agreement.
- (b) Compliance with Laws. The Owner shall at all times comply, and to cause the Business to comply, with all laws, ordinances, and regulations of the State, Federal and Local Governments which may in any manner affect the performance of the Agreement.
- (c) Non-Assignability. The Owner shall not assign any interest in the Agreement, nor should they transfer any interest in the same, without the written consent of the Governmental Unit; provided however, that claims for money due to the Owner from the Governmental Unit under this Agreement may be assigned to any commercial bank or other financial institution without such approval.
- (d) Notice. All notices required or permitted hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States Mail, certified, return receipt requested, postage prepaid, and addressed as follows:

To the Governmental Unit: Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to the Owner: Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or addressed to such other address or to the attention of such other individual as either party above shall specify in a notice pursuant to this subsection.

- (e) Execution. This Agreement may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and all such counterparts, together, shall constitute one and the same Agreement which shall be sufficiently evidenced by one of such original counterparts.
- (f) Construction. This Agreement shall be construed and governed by the laws of the state of North Carolina.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

GOVERNMENTAL UNIT NAME: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest: \_\_\_\_\_

OWNER NAME: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest: \_\_\_\_\_

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned (which means all the undersigned, jointly and severally) (collectively, the "Borrower") promises to pay to Pender County, or assigns (the "Holder"), the principal sum described below, not to exceed \$144,000.00, together with interest after default as described below.

The Borrower acknowledges that the Holder has agreed to advance up to the dollar amount indicated above pursuant to a Loan/Performance Agreement of even date by and among the Borrower and the Holder (the "Agreement"), which requires the creation of certain full-time jobs by the Borrower. In the event all or a portion of the required number of jobs are not created within the time periods indicated in the Agreement, all or a portion of the amount indicated above shall be subject to repayment to the Holder. The Borrower hereby agrees to repay to the Holder, in accordance with the Agreement, an amount equal to the product of (i) \$12,000.00 and (ii) number of jobs required to be created under the Agreement, minus the lesser of (A) the number of jobs in existence on the Job Commitment Date, and (B) the number of jobs in existence on the date that is 6 months following the Job Commitment Date. All such amounts due hereunder shall be due upon demand by the Holder, and shall be paid directly to the Rural Economic Development Center. Holder shall have the right to assign this Note at any time to the Rural Economic Development Center. If not paid within 30 days following demand hereunder, the unpaid principal of this Note, and all other sums due under this Note or any instrument securing this Note, shall bear interest at the rate of 10 % per annum after demand until paid.

Upon default, the Holder may employ an attorney to enforce the Holder's rights and remedies, and the maker, principal, surety, guarantor, and endorsers of this Note hereby agree to pay the Holder reasonable attorney's fees not exceeding a sum of 15% of the outstanding balance owing on the Note, plus all other reasonable expenses incurred by the Holder in exercising any of the Holder's rights and remedies upon defaults. The rights and remedies of the Holder as described in this Note and any instrument securing this Note shall be cumulative and may be pursued singly, successively, or together against the property described in any such security instrument, or any other funds, property, or security held by the Holder for payment or security, in the sole discretion of the Holder. The failure to exercise any such right or remedy shall not be a waiver or release of such rights or remedies or the right to exercise any of them at another time.

All parties to this Note, including the Borrower and any sureties, endorsers, or guarantors hereby waive protest, presentment, notice of dishonor, and notice of acceleration and maturity and agree to remain bound for the payment of principal, interest, and all other sums due under this Note or the Agreement and any instrument securing this Note or the Agreement notwithstanding any change or changes by way of release, surrender, exchange, modification, or substitution of any security for this Note, or by way of any extension or extensions of time for the payment of principal and interest; and all such parties waive all and every kind of notice of such change or changes and agree that the same may be made without notice or consent of any of them.

Holder shall not, by any act, delay, omission, or otherwise, be deemed to have waived any of its rights under this Note or the Agreement. No waiver by the Holder of any of its rights under this Note or the Agreement shall be valid unless in writing, and then only to the extent therein set forth. Waiver by the Holder of any right or remedy under the terms of this Note or the Agreement on any one occasion shall not be construed as a bar to the Holder exercising any right or remedy on any future occasion. This Note may not be amended, changed, or altered except in writing executed by the Holder and the Borrower.

This Note evidences a debt payable by the Borrower.

\_\_\_\_\_ If initialed by the Borrower, this Note is secured by a deed of trust on certain property owned by the Borrower.

The law governing this transaction shall be that of the State of North Carolina, excluding its conflict of laws provisions.

IN WITNESS WHEREOF, the undersigned has (have) caused these presents to be executed under seal, pursuant to authority duly given, the day and year first above written.

Dated as of \_\_\_\_\_, 20\_\_\_\_.

Borrower: \_\_\_\_\_ (SEAL)

Borrower: \_\_\_\_\_ (SEAL)

LIMITED WAIVER OF CONFIDENTIALITY  
UNEMPLOYMENT TAX AND WAGE RECORDS

Name of Taxpayer \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Federal Tax Identification Number \_\_\_\_\_

NC Unemployment Insurance Account Number \_\_\_\_\_

I hereby waive the right to confidentiality, as found in N.C.G.S. 96-4(t), for the limited purpose of authorizing disclosure of certain information contained in the above company's quarterly unemployment insurance tax records filed with the North Carolina Employment Security Commission (the "NC ESC") to the North Carolina Rural Economic Development Center and program administrators (collectively, the "Rural Center") for the limited purpose of administering a Building Reuse and Restoration Grant, Rural Health Care Initiative Grant, Economic Infrastructure Water/Sewer Grant, Economic Innovations Grant, or any other program administered by the Rural Center from which the above-referenced company has sought assistance.

NC ESC is hereby authorized to disclose information contained in the above company's quarterly unemployment insurance tax records to the Rural Center for this purpose.

Unemployment insurance tax information provided in the aggregate to the NC ESC and disclosed to the Rural Center, and the company's aggregated tax and wage information provided to or otherwise in possession of the Rural Center, may be treated as public information. This waiver is not intended to release the Rural Center from any obligation it may have under North Carolina law to maintain the confidentiality of any and all information which could reveal or permit someone to ascertain the identity of any individual employee or that employee's line item unemployment insurance tax or other tax or wage information.

\_\_\_\_\_  
**Signature Chief Financial Officer or Other Authorized Company Official**

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**GRANT PROJECT ORDINANCE**  
**RURAL ECONOMIC DEVELOPMENT CENTER-PORT HUMAN SERVICES, INC.**

**WHEREAS**, Pender County has received a grant from the Rural Economic Development Center, Inc. for the purpose of assisting in the construction of a new facility for PORT Human Services, Inc. in the Town of Burgaw; and

**WHEREAS**, the Pender County Board of Commissioners desires to adopt a grant project ordinance pursuant to and as provided by NCGS 159-13.2 to appropriate the grant funds;

**NOW, THEREFORE, BE IT ORDAINED**, by the Pender County Board of Commissioners, as follows:

SECTION 1: The amounts herein set forth are hereby appropriated for the expenses related to the project:

Grant Payments to PORT Human Services	\$ 144,000.00
Pender County In-kind or Cash Match (3%)	\$ <u>4,320.00</u>
Total Expenses:	\$ 148,320.00

SECTION 2: The amounts herein set forth are hereby designated as the revenues to be made available for the project to meet the foregoing appropriations:

Rural Economic Development Center Grant	\$ 144,000.00
Pender County In-kind or Cash Match (3%)	\$ <u>4,320.00</u>
Total Revenues:	\$ 148,320.00

SECTION 3: Authorized funding purposes for the project are set forth in the grant agreement documents executed between Pender County, the Rural Economic Development Center, Inc. and PORT Human Services, Inc. The officials of Pender County are authorized to proceed with the project within the terms of the grant documents and the budget contained herein,

SECTION 4: The Finance Director is hereby directed to maintain within the Grant fund sufficient detailed accounting records to provide the accounting of the grantor agency required by the Grant Agreement, and federal, state and local regulations.

SECTION 5: Funds may be advanced from the general fund for the purpose of making payments as due. Reimbursement requests should be made to the appropriate grantor agency in an orderly and timely manner.

SECTION 6: The Finance Director is hereby directed to report quarterly on the financial status of each project element and on the total grant revenues received or claimed. The Finance Director is further directed to include a detailed analysis of past and future costs and revenues on this grant project in every budget submission to the Board of Commissioners.

SECTION 7: Copies of this ordinance shall be filed with the Finance Director and the Clerk to the Board of Commissioners to be kept by them for their direction in carrying out this project.

This the 16th day of November, 2009.

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Jimmy T. Tate, Chairman

ATTEST:

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Rick Benton, Clerk to the Board