



## REQUEST FOR BOARD ACTION

ITEM NO. 6.

**DATE OF MEETING:** June 17, 2013

**REQUESTED BY:** Mickey Duvall, County Manager

**SHORT TITLE:** Resolution Authorizing Approval of Pender Commerce Park Access Agreement for Rail Feasibility Study until December 31, 2013.

**BACKGROUND:** The Pender County Board of Commissioners has previously approved the Rail Feasibility Study for the Pender Commerce Park. This resolution will authorize approval of an agreement between Pender County and the Cameron Management Company and will allow engineers conducting the study to access specifically identified contiguous properties (if needed as part of this study) surrounding the Pender Commerce Park, which are currently being managed by the Cameron Company.

**SPECIFIC ACTION REQUESTED:** To consider a resolution authorizing approval of the Pender Commerce Park Access Agreement between Pender County and Cameron Management through December 31, 2013.

**COUNTY MANAGER'S RECOMMENDATION**

Respectfully recommend approval.

  
Initial

**RESOLUTION**

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

the Pender County Commerce Park Access Agreement pertaining to the Rail Feasibility Study is hereby approved (as presented or as amended at the meeting). The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

**AMENDMENTS:**

MOVED \_\_\_\_\_ SECONDED \_\_\_\_\_

APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_ UNANIMOUS

YEA VOTES: Brown \_\_\_ McCoy \_\_\_ Tate \_\_\_ Ward \_\_\_ Williams \_\_\_

\_\_\_\_\_  
George R. Brown, Chairman      06/17/13  
Date

\_\_\_\_\_  
ATTEST      06/17/13  
Date

## ACCESS AGREEMENT

This Access Agreement ("Agreement") is entered into as of \_\_\_\_\_, 2013, between Cameron Management (the "Company"), having an address of PO Box 3649, Wilmington, North Carolina and Pender County (the "County"), a political subdivision of the State of North Carolina, having address at 805 South Walker Street, Burgaw, North Carolina 28425.

WHEREAS the Company owns approximately 342 acres of undeveloped land located on US 421 in New Hanover County, North Carolina and identified as "New Hanover County Tax Parcel ID RO1500-001-002-000 (the Property); and

WHEREAS the County has secured funding from the US Economic Development Administration to conduct a feasibility study for extending rail service north along US 421 to the Pender Commerce Park; and

WHEREAS the feasibility study would include conducting an assessment of environmental and physical features and characteristics of the subject property; and

WHEREAS the Company desires to facilitate such feasibility study by the County;

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and the County (collectively, the Parties" and individually, a "Party") hereby agree as follows:

1. **Access.** The Company hereby grants to the County, including its affiliates, subsidiaries, divisions, officers, employees, agents, representatives, and contractors ("County Parties") access to the Property at reasonable times during normal business hours solely for purposes of conducting a feasibility study for the potential extension of rail service north along US 421 in New Hanover and Pender counties (the work). The County shall not perform any intrusive sampling, testing, or other activities on the Property hereunder.

2. **Term.** Unless extended in writing by mutual agreement of the Parties, this Agreement shall end on the earliest of (1) December 31, 2013 or (2) the date of any material uncured breach by the County of the provisions of this Agreement.

3. **Prior Notice.** The County shall provide five (5) days' prior written notice of its intent to enter onto the Property pursuant to this Agreement.

4. **Compliance by the County.** The County and/or County Parties shall conduct the Work in such a manner that it shall not in any way damage the Property, create a hazardous or dangerous condition, necessitate a repair or clean-up, and/or deposit or release any hazardous or toxic substance or material, at, on or under the Property.

5. **The County's Risk.** The Work performed by the County and/or County Parties shall be at the County's sole risk, cost, and expense.

6. **Marking of Utilities.** The County shall be solely responsible for locating any utilities on the Property and marking same.

7. **No Liens.** In connection with any Work, the County will not permit the attachment of any mechanic's lien, materialman's lien, or any other lien, claim or encumbrance ("Encumbrance") against the Property.

8. **Insurance.** The County shall, at its sole cost and expense, maintain or cause its contractors to maintain during the term of this Agreement (a) comprehensive public liability insurance, including contractual liability insurance and property damage insurance, with limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) combined aggregate for bodily injury or death and damage to or destruction of property (including the loss of use thereof); (b) workers' compensation at statutory limits; and (c) automobile liability insurance for all owned, non-owned, leased, or hired vehicles with not less than Two Million Dollars (\$2,000,000.00) combined single limit. Such insurance shall be maintained under policies issued by insurers licensed to conduct business in North Carolina and shall name the Company and its servants and employees as additional insureds.

9. **Release.** In order to induce the Company to permit the County to access the Property and conduct the Work thereon, the County, on behalf of itself and County Parties (collectively "County Releasers"), hereby expressly **Releases and Forever Discharges** the Company and its affiliates, subsidiaries, divisions, officers, employees, agents, representatives, and contractors (collectively, "Company Releasees") from any and all costs, expenses, losses, liabilities, claims, causes of action, demands, and damages for injury or death to the County Releasers or any of them, or damage to or loss of the property of the County Releasers or any of them, arising out of or in connection with the County's presence, activities, or performance of Work on the Property.

10. **Indemnification.** The County indemnifies and holds the Company harmless from and against any and all liens, claims, causes of action, damages, losses, liabilities, costs, and expenses, including reasonable attorneys' fees, to the extent arising out of the County's presence, activities, or performance of Work on the Property or any act or omission of the County, County Parties, or anyone acting on behalf of the County; provided, however, the indemnity shall not extend to protect the Company from any pre-existing liabilities for matters merely discovered by the County so long as the actions of the County, County Parties, or anyone acting on behalf of the County do not aggravate any pre-existing liability of the Company.

11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

12. **Severability.** In the event that one or more of the covenants, terms, or provisions contained in this Agreement shall be held invalid, illegal, or unenforceable in any regard, the validity of the remaining covenants, terms, and provisions contained herein shall be in no way affected, prejudiced, or disturbed, and the remaining covenants, terms, and provisions shall remain in full force and effect.

13. **Binding Effect; Modification.** The provisions of this Agreement shall inure to the benefit of and be binding upon the Parties and their successors and assigns. This Agreement may not be modified or amended in any respect whatsoever unless such modification is reduced to writing and signed by each of the Parties.

14. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

15. **Signing Authority.** The County represents and warrants to the Company that the County has the authority to enter into this Agreement and provide the indemnifications herein.

**(Signatures appear on the next page)**

ACCESS AGREEMENT ACCEPTED AND AGREED TO:

PENDER COUNTY:

CAMERON MANAGEMENT

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

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

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

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

**EXHIBIT A**  
**DRAWING OF PROPERTY**  
**[ATTACHED]**



**Legend**

-  BASF Property
-  Flood Zone
-  AE
-  SHADED X

BASF Property Calculatons	
Total Acreage	700.123055
Parcel	574.271523
Flood Zones	125.851532
Acreage Outside Flood Zone	
West of US 421 N Acreage	
Parcel	586.802998
Flood Zones	500.471656
Acreage Outside Flood Zone	86.331342
East of US 421 N Acreage	
Parcel	113.320057
Flood Zones	73.799867
Acreage Outside Flood Zone	39.52019

