

HAYWOOD COUNTY
BUDGET ORDINANCE AMENDMENT
FISCAL YEAR 2013

PER: _____
JNL: _____

BE IT ORDAINED by the Board of Commissioners of Haywood County that the following amendment be made to the budget ordinance for the fiscal year ending June 30, 2013.

Section 1. To amend the General Fund, the expenditures are to be charged as follows:

Department	Account Number	Current Budget	Increase (Decrease)	Amended Budget
Community Development				
Aid to Other Local Gov't	11 4930 563000 13SON		175,000	175,000

which will result in a net increase of \$ 175,000 in the expenditures of the General Fund.

To provide the additional revenue for the above, the following revenues will be increased as the money has been received:

Revenue	Acct. No.	Current Budget	Increase (Decrease)	Amended Budget
Restricted Intergovernmental				-
Int Revenue- Non Federal	11 0050 449360 13SON	-	175,000	175,000

Section 2. Copies of this budget amendment shall be delivered to the Budget Officer and the Finance Officer for their direction.

Adopted this the 15th day of October, 2012.

Chairman
Haywood County Board of Commissioners

ATTEST:

Clerk to the Board

Explanation: To appropriate funding in FY 2013 from Rural Economic Development Center Inc. for expansion of the Sonoco Plastics Inc. building to expand its thermoforming manufacturing lines in the facility located at 288 Howell Mill Road. This expansion will create 35 new full time jobs.
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APR 24 2012



Valeria L. Lee
Chair

April 19, 2012

Billy Ray Hall
President

Mr. Mark Swanger, Chairman, Board of Commissioners
Haywood County
215 North Main Street
Waynesville, NC 28786-3869

Re: FY11/12 Building Reuse & Restoration Fund, Occupied Program
Contract Ref #: 2012-225-60501-107

Dear Mr. Swanger:

On behalf of our Board of Directors, I am pleased to announce that the Rural Economic Development Center, Inc. has selected Haywood County for funding under the Building Reuse Grants Fund. Funds have been awarded to you in the amount of \$175,000.00 for the project entitled, "Project Staples" in order to create 35 jobs.

Congratulations on this award. We extend our best wishes to you for continued success and look forward to working with you on this important project.

If you have any questions, please feel free to contact me at (919) 250-4314.

Sincerely,

A handwritten signature in cursive script that reads "Billy Ray Hall".

Billy Ray Hall

North Carolina

Rural Economic

Development Center, Inc.

4021 Carya Drive

Raleigh, NC 27610

Phone: (919) 250-4314

FAX: (919) 250-4325

cc: Melody Adams, Building Reuse Program Director

EXHIBIT A
SCOPE OF SERVICES

Project # 2012-225-60501-107

Haywood County
Project Staples

NC Economic Infrastructure Fund
Building Reuse and Restoration Occupied Grant

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

I. General Project Description

Haywood County requested \$175,000 to support the improvement of a 146,247 sq. ft. building located at 288 Howell Mill Road in Waynesville. The building was constructed in 1996 and the company has operated in the facility for 10 years. Sonoco Plastics, Inc. will expand its thermoforming manufacturing lines in the facility. The company will add-on to and reconfigure the existing building to accommodate the expansion. The company has a baseline employment of 774 in North Carolina and will create 35 new, full-time jobs with an average annual salary of \$35,265 (\$25,116-\$125,000). The company will provide benefits. The total project cost is \$11,724,285.

Recommendation: Fund with the following modification: establish the baseline employment at 774 as requested by Sonoco Plastics. Only improvements to real property are eligible. All costs associated with the purchase, disconnect, move, and/or reconnect of equipment is excluded.

Objective:

Applicants and their partners must engage in the activities necessary to make fit the project building to accommodate the business needs. All work should be completed according to the eligible costs provided in the application and contractor's cost estimates submitted. All activities must meet or exceed all applicable state and local building code requirements.

For the Vacant Properties Category: only eligible work completed within the existing building footprint can be included in costs eligible for reimbursement and the required match.

For the Occupied Properties Category: only eligible work completed within the existing building footprint and/or additions to the existing building can be included in costs eligible reimbursement and the required match.

For the Rural Hope/Rural Health Category: eligible work completed within the existing building footprint and/or additions to the existing building, and/or new construction can be included in costs eligible for reimbursement and the required match.

Eligible costs under the program include, but are not limited to: materials and labor to install HVAC, electrical, plumbing, fire alarm/suppression system, roofing, flooring, carpentry, drywall, paint, etc. This is not an exhaustive list, grantees should contact the Rural Center for questions regarding whether a specific expense is eligible under the program.

The following costs are specifically prohibited under the program and may not be submitted for reimbursement or the matching funds requirement: building purchase, architectural costs, engineering costs, permit fees, surveys, legal fees, machinery & equipment, telephone hardware and software, computer hardware and software, furnishings, paving, fencing, kitchen equipment, refrigeration equipment, etc. This is not an exhaustive list, grantees should contact the Rural Center for questions regarding whether a specific expense is eligible under the program.

No company or its employees, in which, any project partner has an ownership or management interest in, may be used as a contractor for the renovation/construction project unless that company holds a valid NC General Contractors license. Licensed contracting companies owned or operated by any project partner that are used in the renovation/construction will be required to submit original invoices from the provider for labor, materials and subcontracted work plus proof that those invoices have been paid in full.

II. Project Financing

Financing Source(s)		Amount
Haywood County	\$	\$96,166.00
Wayesville		72,520.00
1 NC Fund		\$140,000.00
Bldg Owner		\$740,000.00
Sonoco		\$10,500,599.00
NC Rural Center		\$175,000.00
Total Project Financing	\$	<u>\$11,724,285.00</u>

III. Project Reporting

Haywood County will adhere to the conditions and regulations outlined in the Contract Agreement and the Loan/Performance Agreement. Haywood 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 Haywood County a sum in the amount of \$175,000.00 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 eligible project cost. Building acquisition equipment or startup costs will not be considered for the match. The unit of local government must contribute 5% of the grant in cash or in in-kind services.

Eligible expenses:

Eligible costs under the program include, but are not limited to: materials and labor to install HVAC, electrical, plumbing, roofing, flooring, carpentry, drywall, paint, etc. This is not an exhaustive list, grantees should contact the Rural Center for questions regarding whether a specific expense is eligible under the program.

The following costs are specifically prohibited under the program and may not be submitted for reimbursement or the matching funds requirement: building purchase, architectural costs, engineering costs, permit fees, surveys, legal fees, machinery & equipment, telephone hardware and software, computer hardware and software, furnishings, paving, fencing, kitchen equipment, refrigeration equipment, etc. This is not an exhaustive list, grantees should contact the Rural Center for questions regarding whether a specific expense is eligible under the program.

The Rural Center will make all checks payable to the local government grantee. The Rural Center will reimburse 50% of the eligible expenditures submitted. (For example: If invoices for eligible expenses totaling \$20,000 with proof of payment are submitted, the Rural Center will reimburse \$10,000).

To request reimbursement, grantees must submit the following:

1. A completed financial request form,
2. Copies of project invoices that support the reimbursement request,
3. Proof of payment: applicants must provide copies of checks that have cleared the bank or electronic remittance information as evidence that the invoices requested for reimbursement have been paid in full, and
4. Progress reports must be up to date. See "Exhibit C" of the grant agreement for a reporting schedule specific to your project. Reimbursements will not be made if progress reports are not submitted according to the reporting schedule.

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 under the Grant Applications and Reporting Forms link on our website at www.ncruralcenter.org

EXHIBIT D
JOB REPORTING AND CLOSE OUT REQUIREMENTS

Building Reuse/Rural Health Care/Rural Hope loans will be forgiven once the project company creates the required number of jobs and maintains that required number for at least six consecutive months. The jobs must be full-time (at least 35 hours per week) and the number must be above the baseline employment level reported in the application.

Job verification requires the submission of the following:

1. **Letter Certifying Job Creation**—the grantee must submit a letter from the project company that attests to the creation of the number of jobs committed to receive the grant. The letter should include the number of baseline employees reported at the time of application; 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 company's chief operating officer or chief financial officer.
2. **NCUI101 Forms**—the grantee must submit copies of the company's Employment Security Commission *Employer's Quarterly Tax and Wage Report* (NCUI 101) forms as evidence of job creation and maintenance. The forms must correspond to the six-month date range that the required jobs were maintained. If the company has more than one location in North Carolina, the names of the employees working in the project building should be highlighted.
3. **Final Report**—grantees must submit a final report that describes the activities and outcomes of the project.

Loan Release

Once all progress reports, the final report and job verification information are received and approved by the Rural Center, the applicant will be notified that the terms of the grant/loan have been met.

PRIVATE OWNER LOAN/PERFORMANCE AGREEMENT

This Loan Performance Agreement (the "Agreement") is entered into this 15th day of AUGUST, 2012 by and between the Owner of the Property located at 288 HOWELL MILL ROAD (hereinafter referred to as the "Owner") and HAYWOOD COUNTY (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 and support economic development in the local geographic area by making the Property available to the 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 *Exhibits A, B, C, and D* (hereinafter referred to as the Project) and said Project being that work described in the proposal entitled **Project Staples** as approved by the Center.
2. **Loan.** Governmental Unit hereby loans to the Owner the sum of **175,000.00** 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 shall also be executed by any individual owning in the aggregate at least 75% owner, which is attached hereto and incorporated herein by reference.
3. **Job Creation.** The Owner agrees that the Business shall be required to create **35** number of Jobs (defined below) within twenty-four months of 4/18/2012, the date of the grant's approval by 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. The owner agrees that the Business reported the existence of **774** full-time jobs in North Carolina (Baseline Number) at the time the application of application to the Center AND the Owner hereby acknowledges that the Jobs created to satisfy the job creation objective must exist above the Baseline Number AND that the Business must maintain the full employment level required to meet the Job Creation objective for a period of six consecutive months.

4. Verification of Jobs. On the date that the required number of required new jobs have been created and maintained for six consecutive months 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 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 from the date of the grant's approval by the Center, the Owner shall repay to the Governmental Unit, for redistribution back to the Center, an amount equal to the product of (i) \$5,000 (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, minus the number of jobs created, above the baseline number reported, that have been in existence for 6 consecutive months. 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.

Termination of the Business prior to completion of the job creation requirements will constitute default and will cause the Local Government to suspend any further payments to the Property Owner and will require the Property Owner to repay to the Local Government any sums previously paid.

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, Local Government Finance Act-Annual Independent Audit; rules and regulations, or N.C.G.S. §143-6-23, State Grant Funds; Administration; oversight and reporting requirements; 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. Termination; Availability of Funds

- (a) If the Owner 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 Governmental Unit shall thereupon have the right to terminate this Agreement by giving written notice to the Owner of such termination and by specifying the effective date of termination. In such event, the Governmental Unit 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 Owner shall repay all unspent grant funds upon the demand of the Governmental Unit.
- (b) It is understood that the Governmental Unit'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 Governmental Unit may terminate this Agreement upon thirty (30) days written notice to the OWNER. All obligations of the Governmental Unit to make payments under this Agreement shall cease as of the Termination Date.

10. Liabilities and Loss. As between the Owner and the Governmental Unit, the Governmental Unit 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 Owner under this Agreement, whether with respect to persons or property of the Owner, or third parties. The Owner agrees to obtain insurance or otherwise protect itself or others as it may deem desirable. Further, the Owner agrees to indemnify, defend and save harmless the Governmental Unit and its officers, agents and employees against any liability, including costs and expenses and attorneys' fees, for the Owner'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 owner also further agrees to indemnify, defend, and save harmless Governmental Unit and its officers, agents and employees from any and all claims and losses accruing or resulting to any and all subcontractors, material men, 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 Owner or its agents in the performance of the Project and this Agreement.

11. 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: MARK SWANBER
HAYWOOD COUNTY
215 N. MAIN ST
WAYNESVILLE, NC 28786

If to the Owner: Attn: J. DAVID CAUDLE
DC PLUS LLC
PO BOX 1306
FLAT ROCK NC 28731

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: Haywood County

By: Mark Swager

Title: Chairman, Board of County Commissioners

OWNER NAME: DC Plus LLC

By: [Signature]

Title: MEMBER MANGER

PRIVATE OWNER PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned (which means all the undersigned, jointly and severally) (collectively, the "Borrower") promises to pay to Haywood County, or assigns (the "Holder"), the principal sum described below, not to exceed 175,000.00, 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 Business. 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) \$5,000 and (ii) number of jobs required to be created under the Agreement, minus the number of jobs created, above the baseline number reported, that have been in existence for 6 consecutive months. 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.

DCP 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. Any capitalized term not defined in the Promissory Note shall have the meanings ascribed in the Agreement.

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 August 15, 2012.

If By Individual: Borrower: DC Plus LLC (SEAL)
Borrower Printed Name: DC PLUS LLC