

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: December 4, 2023

SUBJECT: Modification of agreement with Meritor Heavy Vehicle Systems LLC

PRESENTER: Charles Russell Burrell

ATTACHMENT(S): Draft modification

SUMMARY OF REQUEST:

Meritor Heavy Vehicle Systems has been acquired by Cummins, Inc. While carrying out its requirements under the agreement Meritor signed with the County earlier this year, it has met delays in the installation of (already ordered) equipment. As a result, they seek a delay of the deadlines and effectiveness of the February agreement.

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Approval of the modification

If the Board is so inclined, the following motion is suggested:

I move that the Board approve the proposed Modification of Agreement with Meritor Heavy Vehicle Systems LLC.

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

MODIFICATION OF AGREEMENT

This Modification of Agreement is made this the ____ day of December, 2023, by and between the County of Henderson, a body corporate and politic of the State of North Carolina (the "County") and Meritor Heavy Vehicle Systems, LLC, a Delaware limited liability company (the "Company").

WITNESSETH:

WHEREAS the parties on or about February 9, 2023, entered into an Agreement (a copy of which is attached hereto as Exhibit 1, incorporated herein by reference and referred to herein as the "Project 40 Agreement"); and

WHEREAS, the Project 40 Agreement calls for the Company to reach certain investment and employment targets while the Project 40 Agreement is in effect; and

WHEREAS, since the execution of the Project 40 Agreement the Company has been acquired by a third party; and

WHEREAS, also since the execution of the Project 40 Agreement the Company has made reasonable attempts to made the expenditures required of it in the Project 40 Agreement, but due to circumstances outside its control will not be able to substantially complete the investment required by December 31, 2023; and

WHEREAS, the parties have agreed to extend the Project 40 Agreement by one year.

NOW, THEREFORE, the parties have agreed that all dates stated in the Project 40 Agreement for performance by either party are hereby extended by one (1) year. This extension expressly includes, but is not limited to, those dates stated or referred to in the following paragraphs of the Project 40 Agreement: 2, 3, 5, 7, 8 (and all sub-parts), 12, and Appendix A.

The parties have caused this Modification of Agreement to be approved and executed with full effect as of the date first written above.

COUNTY OF HENDERSON

MERITOR HEAVY VEHICLE SYSTEMS LLC

By: _____
Chair, Board of Commissioners

By: _____
Member/Manager

Attest:

Clerk to the Board of Commissioners

EXHIBIT 1

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

AGREEMENT

This Agreement is made and entered into this the 9th day of February, 2023, by and between the County of Henderson, a body politic and corporate (the "County"), and Meritor Heavy Vehicle Systems, LLC, a Delaware limited liability company (the "Company").

WITNESSETH:

WHEREAS, the County is a body politic and corporate having the capacity to contract under N.C.G.S. § 153A-11; and

WHEREAS, the Company is an Delaware limited liability company authorized to do business in North Carolina, having the capacity to contract; and

WHEREAS, the Company currently operates a plant in Henderson County on United States Highway 25 near Fletcher, North Carolina (the "Facility"); and

WHEREAS, there is currently in existence an agreement (the "2015 Agreement") between the parties, dated July 21, 2015 (which run through December 31, 2023), under the terms of which the Company agreed to invest Thirty Million Dollars (\$30,000,000.00) in equipment and other personal property in the Facility by December 31, 2018, and maintain its workforce at at least ninety-five percent (95%) its level as of the date of the agreement, which was four hundred forty-one (441) employees; and

WHEREAS, the Company has been considering further expanding its operations in Henderson County, which if it occurs is estimated by the Company to result in an additional capital investment of at Forty-One Million Four Hundred Thousand Dollars (\$41,400,000.00) made over five (5) years, and the creation over that time of not fewer than forty (40) new jobs, each paying in excess of (i) Fifty-Five Thousand Dollars (\$55,000.00) plus benefits, and (ii) the average weekly wage (including benefits) for jobs in Henderson County; and

WHEREAS, the Company requested assistance from the County in the form of Economic Incentives to offset the costs associated with expansion of operations in the Facility; and

WHEREAS, in reliance upon the Company's representations to the County concerning the net capital investment to be made, the County set a public hearing for May 18, 2022, and in further reliance upon the Company's representations to the County, duly advertised in the *Hendersonville Lightning*, a newspaper having daily general circulation in Henderson County, on May 4, 2022, their intent to consider granting Economic Incentives to the Company consisting of assistance with the expenses associated with the startup of the investment, in a total amount not to exceed Nine Million Eight Hundred Eighty-Nine Thousand Three Hundred Eight Dollars (\$9,889,308.00), to be reimbursed to the Company over a period of seven (7) years from each annual investment; and

WHEREAS, the County has the authority under N.C.G.S. §158-7.1(a) to assist industries in the expenses associated with the expansion of operations where the assistance will stimulate the local economy, will boost employment, will promote business, and will benefit the public by generating additional tax revenue for the County; and

WHEREAS, the County has determined after a duly advertised public hearing held on May 18, 2022, that the investment as stated above by the Company would benefit the public in Henderson County; and

WHEREAS, the County has determined that a capital investment of Forty-One Million Four Hundred Thousand Dollars (\$41,400,000.00) made over five (5) years will benefit the county by generating additional taxable capital property, real or personal, and provide well-paid jobs with benefits for the County's citizens, thus stimulating the local economy; and

NOW, THEREFORE, in consideration of the mutual covenants and promises and obligations contained herein below, the parties agree as follows:

Capital Investment Requirement

1. The Company acquire the requisite equipment for its new operation in the Facility. The equipping of the Facility shall result in a capital investment by the Company personal property in an amount of not less than Forty-One Million Four Hundred Thousand Dollars (\$41,400,000.00) that will be taxable by the County pursuant to N.C.G.S. §105-274.
2. The investment in equipment and other personal property shall substantially occur on the following schedule:

<u>Amount of year's investment</u>	<u>Date by which to substantially occur</u>
\$8,900,000.00	December 31, 2023
\$8,500,000.00	December 31, 2024
\$8,000,000.00	December 31, 2025
\$8,000,000.00	December 31, 2026
\$8,000,000.00	December 31, 2027

3. Definitions and other matters:
 - a. Each year's equipping of the new operation and requisite taxable investment shown above are hereinafter referred to as the "Capital Investment" or, as is appropriate, the "Capital Investment Requirement."
 - b. As used herein, for an investment to "substantially occur" means, as demonstrated by the reports required hereunder to be supplied by the Company to the County, that for required investment in equipment or personal property, that ninety-five percent (95%) of the required equipment and personal property is installed on site and operational and reported to the Henderson County Assessor within thirty days of the date by which the investment is required.
 - c. It is understood and agreed by both parties to this Agreement that the Henderson County Assessor will make an independent valuation of all such property constituting the Capital Investment Requirement for *ad valorem* tax purposes at its true value in money (defined as fair market value in N.C. Gen. Stat. §105-382) as required by N.C. Gen. Stat. §105-382. In the event the Company disagrees with the independent valuation placed upon such real and personal property by the Henderson County Assessor, the Company shall have the right to appeal such valuation to the Henderson County Board of Equalization and Review and further to the North Carolina Property Tax Commission in accordance with the North Carolina General Statutes.

d. The time set out for each year's investment to substantially occur, as stated in paragraph 2, above, shall, for each investment hereinafter be referred to as the "Capital Investment Term."

e. "If the Company is unable to meet the annual investment amounts (noted in section 2) due to unforeseen business conditions, the Company has the right to request a proration of annual incentives earned based on the percentage of targeted investment"

5. Should the Company fail to cause any year's Capital Investment Requirement to substantially occur before the end of the applicable Capital Investment Term, the Company shall forfeit any right to any and all unpaid Economic Incentives (as defined in paragraph 10) under this agreement.

6. During such time as the Company is eligible for Economic Incentives (as defined in paragraph 10), the Company shall list each Capital Investment each year as required by the Henderson County Assessor's Office, and each Capital Investment shall be depreciated (if at all) for the purposes of this Agreement pursuant to the Henderson County Assessor's Office guidelines in existence at the time of listing. Company shall pay to the County directly (or possibly indirectly under certain lease terms if the Capital Investment constitutes leased property) the *ad valorem* property tax on the applicable portion of the Capital Investment by the due date as set forth in the County's annual property tax bill. The annual amount of *ad valorem* property taxes paid to the County for a particular *ad valorem* property tax year related to items comprising each Capital Investment shall constitute each such Capital Investment's annual "Capital Investment Taxes". Upon payment of each year's Capital Investment Taxes, Company shall be eligible for such year's installment of the Economic Incentives (as defined in Paragraph 10 and thereafter).

7. Not later than thirty (30) days after the date by which each Capital Investment is to substantially occur, the Company shall certify in writing by one authorized to execute contracts on behalf of Company to the County that each Capital Investment required hereunder has been completed (the "Capital Investment Certification"). The Company shall include with such Capital Investment Certification evidence that each Capital Investment required by the terms of this Agreement has substantially occurred. Such evidence shall consist of invoices, purchase orders, canceled checks, and other documents which will reasonably prove the same to the satisfaction of the County. As provided above, County's obligation to pay the Economic Incentives shall not begin until such Capital Investment Certification and supporting adequate documentation has been received by the County. In the event the Company fails to provide the Capital Investment Certification and evidence required by the terms of this Paragraph to the County within the time frame specified above, this Agreement shall be deemed terminated, and the County shall have no further obligation hereunder.

Employment Requirements

8. Not later than March 15, 2024, and annually thereafter during the term of this Agreement, the Company shall provide provides to the County a certification, attested to by one authorized to execute contracts on behalf of the Company, a certification of the following (collectively, "Employment Certification"):

a. That the Company created in or before calendar year 2023 at least forty (40) jobs paying an average of at least \$55,000.00 per year plus benefits as stated in the County's Incentives Guidelines, which would not exist in the absence of the Company's expenditure of the Capital Investment; and

b. As a part of the Employment Certification, the Company shall provide the County with a list of the positions created as a result of this Agreement, the average wage rate actually paid for such positions, and a summary of the other employment benefits received by the persons in those positions.

9. The Company agrees that any duly authorized representative of the County shall have access to and the right to reasonably inspect, copy, audit, and examine all of the books, records, and other documents relating to the fulfillment of this Agreement during the Term.

Economic Incentives

10. The Company shall be entirely responsible for completing the Facility and for paying all expenses associated with the Capital Investment Requirement. However, upon the Company's compliance with this Agreement (including the Employment Requirements listed in paragraphs 8 and 9, above), the County shall reimburse the Company for actual start-up costs incurred by the Company that are associated with the Capital Investment Requirement (including but not limited to transferring equipment, and training of personnel) up to an amount not to exceed one eighty percent (80%) of each year's Capital Investment Taxes on each Capital Investment (the "Economic Incentives"). The Economic Incentives are to be paid or credited (as stated herein) to the Company for a total of seven (7) years on each Capital Investment required hereunder. The first annual installment of Economic Incentives shall be due and payable on the December 31st first following the receipt of the first payment of Capital Investment Taxes, and after receipt of the Capital Investment Certification, and each annual Employment Certification (each such certification as defined hereinbelow) by the County. The County shall not pay any interest to the Company on any portion of the Economic Incentives paid to the Company by the County pursuant to the terms of this Agreement. Notwithstanding any other statement herein, in no event shall the total of all Economic Incentives paid hereunder exceed Seven Hundred Twenty-Nine Thousand Nine Hundred Forty-Two Dollars (\$729,941.00).

11. Calculation of Economic Incentives: As stated in paragraph 10, above, the Economic Incentives as earned under this Agreement shall not exceed eighty percent (80%) of each year's Capital Investment Taxes on each Capital Investment. If the company timely makes all the investments required in paragraph **Error! Reference source not found.**, above, timely makes payment of all Capital Investment Taxes, and timely makes the required Employment Certifications demonstrating timely creation and retention of all jobs required, then the Company will earn the Economic Incentives. By way of example, if the schedule of investments, employment creation and retention, and certifications thereof are down on the schedule shown in Appendix A, which is shown as an example of the best case that could be earned by the Company, then the Economic Incentives shown in Appendix A will be earned by the Company.

12. The Term of this Agreement shall run from the Effective Date through midnight, December 31, 2032.

13. If the Company announces a determination to cease operation of the Facility, or in fact ceases operation of the Facility, prior to earning and payment of all Economic Incentives hereunder, this Agreement shall be deemed immediately terminated, and Henderson County shall have no further obligations hereunder, including but not limited to the obligation to pay any further installments on the Economic Incentives (including those earned but unpaid) after the date of such determination to cease operation or actual cessation. If the Company announces a determination to cease operation of the Facility, or in fact ceases operation of the Facility, prior to earning and payment of the Advance Incentives, then the Company shall repay any unearned Advance Incentives to the County.

14. The Company may, at any time during the Term, refund the Economic Incentives, or portion thereof, paid to the Company by the County pursuant to the terms of this Agreement. Such refund shall end all obligations of the Company all obligations to complete the Capital Investment imposed by the terms of this Agreement.

15. No provision of this Agreement shall be construed or interpreted as creating a pledge of the faith and credit of the County within the meaning of any constitutional debt limitation. No provision of this Agreement shall be construed or interpreted as delegating governmental powers, nor as a donation or a lending of the credit of the County within the meaning of the State Constitution. This Agreement shall not directly or indirectly or contingently obligate the County to make any payments beyond those appropriated in the County's sole discretion for any fiscal year in which this Agreement shall be in effect. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the County's moneys, nor properties, nor shall any provision of the Agreement restrict to any extent prohibited by law, any action or right of action on the part of any future County governing body. To the extent of any conflict between this Paragraph and any other paragraph of this Agreement, this Paragraph shall take priority.

16. The Company shall have the duty to report to the County should any equipment or other personal property which is a part of the Capital Investment, be (a) removed from the Henderson County tax rolls, or (b) be removed from productive service. If such equipment or other personal property is removed from productive service but held by the Company (in which case such equipment or other personal property is accounted for by the Company as "construction work in progress" as that term is used in the North Carolina Machinery Act, and shown as a "new acquisition" and not depreciated for tax purposes), it shall not be counted a second time as a part of the Capital Investment, but any taxes paid upon it while a part of "construction work in progress" shall count for purposes of calculation of Economic Incentives.

17. The Company shall be entirely responsible for, and shall bear all risk of loss associated with the Expansion and with the creation of employees. Further, in the event that the assistance provided by the County hereunder, or any party thereof, is deemed by a court of competent jurisdiction to be *ultra vires* or not authorized by the laws or constitution of the State of North Carolina, the Company shall promptly refund all amounts paid hereunder by the County to the County. This Paragraph shall survive the expiration or termination of this Agreement.

18. This Agreement shall bind all successors and assigns of the Company; however, neither this Agreement, nor the right to payment under the terms of this Agreement, may be assigned by the Company, or otherwise used as collateral for any obligations of the Company, financial or otherwise without the expressed written consent of the Henderson County Board of Commissioners.

19. This Agreement shall be governed by the laws of the State of North Carolina.

20. The Company represents and warrants to the County that the Company will comply with all applicable local, State, and Federal laws in carrying out the obligations incurred by the Company under the terms of this Agreement.

21. The Company further represents, in accord with N.C. Gen. Stat. §143B-437.67(a)(9), that it has no citations under the Occupational Safety and Health Act that have become a final order within the past three years for willful serious violations or for failing to abate serious violations. In addition, the Company must, for the greater of 10 years or a time period not less than the sum of the full term of the grant plus five years, have no citations under the Occupational Safety and Health Act that have become a final order within the past three years for willful serious violations or for failing to abate serious

violations with respect to the project. For purposes of this subsection, "serious violation" has the same meaning as in N.C. Gen. Stat. § 95-127.

22. Any written notice or written certification or payment required by the terms of this Agreement shall be deemed given if delivered in person, or mailed certified mail, return receipt requested to the persons named below:

To the County: Charles Russell Burrell, County Attorney
Office of the County Attorney
1 Historic Courthouse Square, Suite 5
Hendersonville, NC 28792

To the Company: Meritor Heavy Vehicle Systems, LLC
1000 Rockwell Drive
Fletcher, North Carolina 28732
Attn: Director of Operations and Axles

with a copy to: Meritor, Inc.
2135 West Maple Road
Troy, Michigan 48084
Attn: Office of the General Counsel

20. In the event any term, covenant or condition of this Agreement is deemed invalid or unenforceable, the remainder of this Agreement, of the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

21. The provisions hereof shall inure to the benefit of and bind the parties hereto and their respective heirs, successor and assigns. This document shall be considered to have been prepared equally by the parties hereto and shall not be construed more strictly against either of them. The provision hereof shall be liberally construed to give effect to their apparent intent.

22. This Agreement constitutes the entire agreement of the parties hereto and may not be modified or canceled except pursuant to the terms hereof or an instrument in writing signed by the parties hereto.

23. This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by all of the parties; each counterpart shall be deemed an original but all counterparts shall constitute a single instrument.

24. Any provision herein contained which by its nature and effect is required to be observed, kept, or performed after the execution of this Agreement shall survive said execution and remain binding upon and for the benefit of the parties until fully observed, kept, or performed. Provided however, that all provisions of this Agreement which by their terms survive any termination of this Agreement shall survive indefinitely.

25. This Agreement is intended to benefit the parties hereto only, and therefore no third party shall have any rights under this Agreement, or be deemed a third party beneficiary.

26. This Agreement shall be effective after it has been duly executed by the two parties, the effective date being the date above first written.

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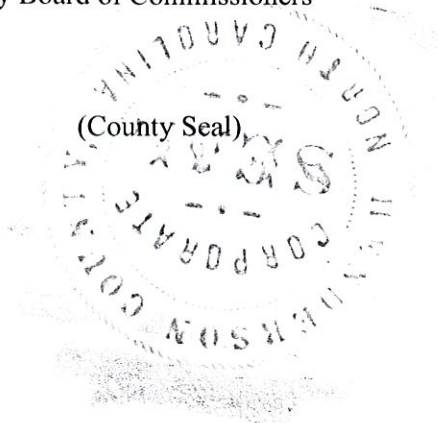
Now, therefore, the two parties have caused this Agreement to be duly approved and duly executed in triplicate, each to have the force and effect of an original as of the date and year above first written.

HENDERSON COUNTY

By: Rebecca McCall
REBECCA MCCALL, Chairperson
Henderson County Board of Commissioners

Attest:

Devin L. Gordon
Clerk to the Board



MERITOR HEAVY VEHICLE SYSTEMS, LLC

Attest: (Corporate Seal)

By: Richard L. Robinson
Richard L. Robinson

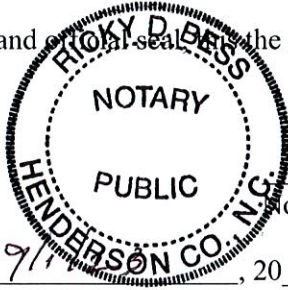
Secretary

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, Ricky D Bess, Notary Public for said County and State, certify that ~~Richard L. Robinson~~ personally came before me this day and acknowledged that he/she is a Sr. Director of Operations to Meritor Heavy Vehicle Systems, LLC, a Delaware limited liability company authorized to do business in North Carolina, that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____ President, sealed with its corporate Seal, and attested by him/herself as its _____ Secretary.

Witness my hand and official seal, this the 9 day of Feb, 2023.

(Official Seal)



[Signature]
Notary Public

My Commission expires 9/1/23, 20 .

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, Kathryn L. Finotti, Notary Public for said County and State, certify that Denisa Lauffer personally came before me this day and acknowledged that she is Clerk to the Board of Commissioners of Henderson County, a body politic and corporate and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Chairman of the Board of Commissioner, sealed with its corporate seal, and attested by herself as its Clerk.

Witness my hand and official seal, this the 7th day of March, 2023

(Official Seal)

[Signature]
Notary Public

My commission expires March 23, 2023.



APPENDIX A

Best case earnings of incentives possible under this agreement are based on the following assumptions:

Year	New Personal Property Investment	Total Employed by the Company	Annual Incentives Earned
2023	\$8,900,000.00	40*	\$39,943.20
2024	\$8,900,000.00	40	\$73,811.57
2025	\$8,000,000.00	40	\$101,348.66
2026	\$8,000,000.00	40	\$125,038.89
2027	\$8,000,000.00	40	\$144,882.26
2028		40	\$106,429.71
2029		40	\$73,090.29
2030		40	\$44,880.00
2031		40	\$20,516.57
TOTAL	\$41,400,000.00		\$729,941.14

Economic Incentives will be paid (or credited, as appropriate under this Agreement) on December 31 after payment of the Capital Investment Taxes due, such that for 2023 investments and employment, the listing for *ad valorem* property tax purposes would occur January 1, 2024, and the billing for such taxes would occur in or before September of 2024. Presuming the Capital Investment Taxes are paid by prior to December 31 of 2024, then the Economic Incentives from the County would be owed as of December 31, 2024.

* Employment in calendar 2023 is also subject to the 2015 Agreement.