

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: February 5, 2024

SUBJECT: Modification of agreement

PRESENTER: Charles Russell Burrell

ATTACHMENT(S): Draft modification

SUMMARY OF REQUEST:

In February 2023, the County entered into an economic development incentives agreement with Meritor Heavy Vehicle Systems, LLC. Since the execution of that agreement, the company has been acquired by a third party, Cummins, Inc. In addition, the company has been unable to acquire certain equipment (due to materials shortages worldwide outside its control) in time to have it installed as required by the agreement.

The proposed modification would delay by one year both parties' performance of their respective obligations under the 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, and authorize the Chair to execute the same on behalf of the Board.

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

MODIFICATION OF AGREEMENT

This Modification of Agreement is made this the ____ day of February, 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