

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT AND RESTATEMENT OF THAT CERTAIN FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT DATED AS OF MAY 19, 2015 BY AND BETWEEN CHARLESTON COUNTY, SOUTH CAROLINA AND MERCEDES-BENZ VANS, LLC (F/K/A DAIMLER VANS MANUFACTURING, LLC); AND (2) OTHER MATTERS RELATING THERETO.

WHEREAS, Charleston County, South Carolina (the "County"), acting by and through its County Council (the "Council"), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the "Code"), and particularly Title 4, Chapter 12 of the Code (the "Streamlined FILOT Act"); Title 12, Chapter 44 of the Code (the "Negotiated FILOT Act"); and Title 4, Chapter 1 of the Code (the "Multi-County Park Act", or as to Section 4-1-175 thereof, and, by incorporation, Section 4-29-68 of the Code, the "Special Source Act") (collectively, the "Act") and by Article VIII, Section 13(D) of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to accept certain fee in lieu of ad valorem tax ("FILOT") payments with respect to a project, including, without limitation, negotiated FILOT payments; (iii) to permit investors to claim special source credits against their FILOT payments ("Special Source Credits") to reimburse such investors for expenditures in connection with infrastructure serving the County and improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County ("Infrastructure Improvements") or, in the alternative, to issue special source revenue bonds ("Special Source Revenue Bonds"), payable solely from special source revenues consisting of FILOT payments derived from a project or projects, to pay for such Infrastructure Improvements; and (iv) to create, in conjunction with one or more other counties, a multi-county industrial or business park ("Multi-County Park") in order to afford certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits or the issuance of Special Source Revenue Bonds; and

WHEREAS, pursuant to the Negotiated FILOT Act and Ordinance No. 1852 enacted by the County Council on May 19, 2015, the County and Mercedes-Benz Vans, LLC (f/k/a Daimler Vans Manufacturing, LLC), a limited liability company organized and existing under the State of Delaware, (the "Company") previously entered into that certain Fee in Lieu of Tax and Incentive Agreement dated as of May 19, 2015 (the "Original Fee Agreement") pursuant to which, among other things, the Company agreed to make, and the County agreed to accept, Negotiated FILOT Payments (as defined in the Original Fee Agreement) with respect to certain manufacturing and related facilities to be acquired or constructed by the Company within the County (as defined more fully in the Original Fee Agreement, the "Project"); and

WHEREAS, pursuant to Section 3.02 of the Original Fee Agreement, the County agreed to issue Special Source Revenue Bonds and/or to allow the Company to claim Special Source Credits to provide funding for Infrastructure Improvements constituting a portion of the Project, subject to the requirements of the Special Source Act; and

WHEREAS, the Company now anticipates investing approximately \$495,000,000 in taxable property as part of the Project (as defined more fully in the Restated Fee Agreement referenced below, the “Base Investment”), which is substantially more than originally anticipated and which will permit an increase in the amount of Special Source Revenue Bonds pertaining to such Base Investment (the “Base Investment Special Source Revenue Bonds”) over that anticipated at the time of the Original Fee Agreement; and

WHEREAS, in consideration of such additional Base Investment and to ease the burdens on the Company stemming from higher than anticipated construction costs, the County has agreed to amend the provisions of the Original Fee Agreement, including particularly the provisions pertaining to the Special Source Revenue Bonds and Special Source Credits as they apply to the Base Investment, all in accordance with the First Amended and Restated Fee In Lieu of Tax and Incentive Agreement (the “Restated Fee Agreement”) presented at this meeting; and

WHEREAS, pursuant to the Restated Fee Agreement, the Company affirms its commitment to make minimum FILOT Payments with respect to the Base Investment annually in amounts sufficient to pay: 1) debt service the Base Investment Special Source Revenue Bonds; 2) certain fixed amounts due to any partner county or counties pursuant to the applicable Multi-County Park agreement; 3) certain fixed deposits to the County’s Economic Development Fund; and 4) certain fixed amounts to be distributed to the taxing entities having jurisdiction over the Project (collectively, the “Base Investment Minimum FILOT Payments”);

WHEREAS, the Base Investment Minimum FILOT Payments include amounts to be deposited into the County’s Economic Development Fund and amounts to be distributed to the taxing entities which, in the aggregate, are sufficient to provide the County over the anticipated term of the Negotiated FILOT arrangement with the same aggregate amounts anticipated for such purposes at the time of the Original Fee Agreement; and

WHEREAS, in connection with the issuance of any Base Investment Special Source Revenue Bonds, the County and the Company will enter into a Supplemental Fee Agreement (the “Supplemental Fee Agreement”) substantially in the form attached to the Restated Fee Agreement, to incorporate the final pricing of such bonds and fix the final amount of the Base Investment Minimum FILOT Payments and the amount to be distributed to the Company from bond proceeds (as defined in greater detail in the Restated Fee Agreement, the “Distributable Bond Proceeds”); and

WHEREAS, Daimler North America Corporation, a Delaware corporation which is a member of the same corporate group as the Company, (the “Guarantor”) has agreed, in the event the County issues its Base Investment Special Source Revenue Bonds, to execute a Guaranty Agreement substantially in the form attached to the Restated Fee Agreement, pursuant to which it will guaranty to the County payment of amounts equal to that portion of the annual Base Investment Minimum FILOT Payments attributable to any such Base Investment Special Source Revenue Bonds or, in lieu of or in replacement of such Guaranty Agreement, to provide or to coordinate with the Company for the provision of Alternative Security (as described in the Restated Fee Agreement); and

WHEREAS, in connection with any Alternative Security consisting of the deposit of cash or Government Obligations (as defined in the Restated Fee Agreement), the County and the Company and/or the Guarantor, as the case may be, will enter into an Escrow Deposit

Agreement substantially in the form attached to the Restated Fee Agreement (the "Escrow Agreement"); and

WHEREAS, in connection with any Alternative Security consisting of a letter of credit, the Company or the Guarantor shall deliver to the County a Letter of Credit substantially in the form attached to the Restated Fee Agreement (the "Letter of Credit"); and

WHEREAS, it appears that the Restated Fee Agreement, the Supplemental Fee Agreement, the Guaranty, the Escrow Agreement and the Letter of Credit (collectively, except for the Restated Fee Agreement, the "Ancillary Documents") now before this meeting are in appropriate form and are appropriate instruments to be executed and delivered by the County for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED by the County Council in meeting duly assembled:

Section 1. Based upon information provided to the County by the Company, the County hereby ratifies and affirms the findings and determinations previously made with respect to Project pursuant to Section 1 of Ordinance No. 1852 enacted by the County Council on May 19, 2015 and, additionally, finds and determines that the increase in investment in the Project by the Company as described in the recitals hereto does not change the findings and determinations heretofore made pursuant to said Ordinance No. 1852.

Section 2. The form, provisions, terms, and conditions of the Restated Fee Agreement presented to this meeting and filed with the Clerk to Council are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if the Restated Fee Agreement were set out in this Ordinance in their entirety. The Chairman of the Council is hereby authorized, empowered, and directed to execute the Restated Fee Agreement in the name and on behalf of the County; the Clerk to Council is hereby authorized, empowered and directed to attest the same; and the County Administrator is further authorized, empowered, and directed to deliver the Restated Fee Agreement to the Company. The Restated Fee Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the official or officials of the County executing the same, upon the advice of legal counsel, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the forms of the Restated Fee Agreement now before this meeting.

Section 3. The form, provisions, terms, and conditions of the Ancillary Documents presented to this meeting and filed with the Clerk to Council are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if such Ancillary Documents were set out in this Ordinance in their entirety. The Chairman of the Council is hereby authorized, empowered, and directed to execute the Ancillary Documents to be executed by the County in accordance with the provisions of the Restated Fee Agreement in the name and on behalf of the County; the Clerk to Council is hereby authorized, empowered and directed to attest the same; and the County Administrator is further authorized, empowered, and directed to deliver the Ancillary Documents so executed by the County to the Company and/or the Guarantor in accordance with the provisions of the Restated Fee Agreement. The Ancillary Documents are to be in substantially the forms now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the official or officials of the County executing the same, upon the advice of legal counsel, their execution thereof to constitute conclusive

evidence of their approval of any and all changes or revisions therein from the forms of the Ancillary Documents now before this meeting.

Section 4. The Chairman of the Council and the County Administrator are hereby authorized to approve the final sizing and pricing of any Base Investment Special Source Revenue Bonds and the final amount of any Distributable Bond Proceeds and, based upon such final pricing, the final schedules of Base Investment Minimum FILOT Payments and Guaranteed Obligations to be incorporated into the Ancillary Documents. The Chairman of the Council, the County Administrator, the Executive Director of Economic Development for the County and the Clerk to Council, for and on behalf of the County, are hereby each authorized, empowered, and directed to do any and all things necessary or proper to effectuate the performance of all obligations of the County under and pursuant to the Restated Fee Agreement and the Ancillary Documents; including, without limitation, execution and delivery of the certifications, estimates, approvals, draw requests, documents and instruments described in the Restated Fee Agreement and the Ancillary Documents.

Section 5. The provisions of this Ordinance are hereby declared to be separable and if any section, phase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phases, and provisions hereunder.

Section 6. All orders, ordinances, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed. This Ordinance shall take effect and be in full force from and after its passage and approval.

Section 7. This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

Enacted and approved, in meeting duly assembled, this 26th day of September, 2017.

CHARLESTON COUNTY, SOUTH CAROLINA

By: _____
A. Victor Rawl, Chairman
Charleston County, South Carolina

ATTEST:

By: _____
Kristen Salisbury, Clerk to County Council,
Charleston County, South Carolina

First Reading: August 17, 2017
Second Reading: September 19, 2017
Public Hearing: October 10, 2017
Third Reading: October 10, 2017

Exhibit A

First Amended and restated fee in lieu of tax and incentive Agreement