

RESOLUTION NO. 25738

A RESOLUTION TO MAKE CERTAIN FINDINGS RELATING TO THE VOLKSWAGEN GROUP OF AMERICA, INC. PROJECT, TO DELEGATE CERTAIN AUTHORITY TO THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF CHATTANOOGA, AND TO AUTHORIZE THE MAYOR TO ENTER INTO AND EXECUTE AN AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES.

WHEREAS, Pursuant to Tennessee Code Annotated, Section 7-53-305(b) the City of Chattanooga (the "City") is permitted to delegate to The Industrial Development Board of the City of Chattanooga (the "Board") the authority to negotiate and accept payments in lieu of ad valorem taxes from lessees of the Board upon a finding by the City that such payments are deemed to be in furtherance of the Board's public purposes; and,

WHEREAS, Volkswagen Group of America, Inc. (the "Company") is contemplating the construction and operation of automobile manufacturing facilities in the City, and, because of the substantial economic benefits to the City and Hamilton County resulting from the project, has asked the Board and the City Council to approve payments in lieu of ad valorem taxes; and

WHEREAS, The Council has determined that payments in lieu of ad valorem taxes from such a project would be in furtherance of the Board's public purposes as set forth within Chapter 53 of Title 7 of the Tennessee Code Annotated.

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That we do hereby find that the Volkswagen Group of America, Inc. project referenced above is in the best interest of the City, and that payments in lieu of ad valorem taxes derived therefrom would be in furtherance of the Board's public purposes.

~~BE IT FURTHER RESOLVED, That, having made such a finding in this instance, we do~~
hereby delegate to the Board the authority to negotiate and accept payments in lieu of ad valorem taxes from the Company, it being further noted that this delegation is for this purpose and this project only.

BE IT FURTHER RESOLVED, That the Mayor is hereby authorized to enter into an Agreement for Payments In Lieu Of Ad Valorem Taxes in the form attached hereto, with such changes thereto as he shall approve.

ADOPTED: November 25, 2008.

**AGREEMENT FOR PAYMENT IN LIEU
OF AD VALOREM TAXES**

THIS AGREEMENT FOR PAYMENT IN LIEU OF AD VALOREM TAXES (this "*Agreement*") is hereby made and entered into as of the 2nd day of January 2009, by and among _____, a _____ or its assignee (the "*Company*"), and HAMILTON COUNTY, TENNESSEE (the "*County*"), the CITY OF CHATTANOOGA, TENNESSEE (the "*City*"), and the INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF CHATTANOOGA (the "*Board*") and is joined in, for purposes of evidencing their acceptance of the agency relationship established herein, by _____ and his/her successors, acting in the capacity of HAMILTON COUNTY TRUSTEE ("*Trustee*"), and by _____ and his/her successors, acting in the capacity of HAMILTON COUNTY ASSESSOR OF PROPERTY ("*Assessor*").

WITNESSETH:

WHEREAS, the Company is engaged principally in the design, production and sale of automobiles; and

WHEREAS, the Company contemplates the establishment of a manufacturing and assembly facility for the production of automobiles (the "*Facility*") on a parcel of land of approximately one thousand three hundred forty (1,340) acres at the Enterprise South Industrial Park in the County (the "*Project*"), and has requested the Board's assistance in the financing of the Project; and

WHEREAS, the Project, if fully implemented, has the potential to eventually employ more than two thousand (2,000) employees and to require a capital investment by, or on behalf of, the Company of approximately One Billion Dollars (\$1,000,000,000.00) at full implementation and production; and

WHEREAS, substantial economic benefits to the City and County economies will be derived from the Project; and

WHEREAS, the Board has agreed to take title to certain real property constituting a part of the Project, as described in EXHIBIT "A" attached hereto (i) (the "*Project Site*"), (ii) all real property improvements to the Project Site (the "*Real Property Improvements*"), and (iii) certain personal property constituting a part of the Project, as described in EXHIBIT "B" attached hereto (the "*Personal Property*"), and together with the "*Project Site*" and "*Real Property Improvements*", the "*Property*"), which Property is to be owned by the Board and leased to the Company pursuant to that certain Lease Agreement made and entered into as of the 2nd day of January 2009 (the "*Lease Agreement*"); and

WHEREAS, the Board, the City and the County have agreed to grant an option to the Company for a period of eight (8) years from the date on which the Board, City, and/or the County take or takes title to the real property described on EXHIBIT "C" attached hereto (the "*Expansion Site*"), for the purchase of the Expansion Site from such party or parties; and

~~WHEREAS, upon the Company's exercise of the option for the purchase of the~~
Expansion Site the Board has agreed, at the request of the Company, to (i) take title to the Expansion Site, all real property improvements to the Expansion Site, and certain designated personal property located on the Expansion Site constituting part of an expansion to the Project (the "**Expansion Property**"), and (ii) lease the Expansion Site and Expansion Property to the Company pursuant to the terms of the Lease Agreement, including the remaining lease term; and

WHEREAS, the Expansion Site and any Expansion Property shall constitute Property for purposes of this Agreement and will be subject to the terms of the Agreement upon the Company's request to the Board to take title to the Expansion Site and Expansion Property and such Expansion Site and Expansion Property becoming owned by the Board; and

WHEREAS, because the Property is to be owned by the Board, which is a public corporation organized under the provisions of Tennessee Code Annotated, §7-53-101, et seq., all such property will be exempt from ad valorem property taxes ("**Property Taxes**") normally paid to the City and to the County, so long as the Property is owned by the Board, pursuant to the provisions of Tennessee Code Annotated, §7-53-305; and

WHEREAS, for the public benefit of the citizens of the City and the County, the Board has requested that the Company make certain payments to the Board in lieu of the payment of Property Taxes that would otherwise be payable on the Property; and

WHEREAS, the Company has agreed to make such payments to the Board in lieu of the Property Taxes otherwise payable on the Property (the "**In Lieu Payments**"), as more particularly set forth hereinafter; and

WHEREAS, the Board has been authorized to receive the In Lieu Payments in lieu of Property Taxes by resolutions adopted by the City and the County, acting through their duly elected Council and Commission, respectively, which resolutions delegate to the Board the authority to accept the In Lieu Payments upon compliance with certain terms and conditions, including, without limitation, the requirement that the Board collect and expend such payments in furtherance of the public purposes for which the Board was created; and

WHEREAS, the Company and the Board have agreed that all In Lieu Payments made to the Board by the Company shall be paid to the Trustee, who shall disburse such amounts to the general funds of the City and the County in accordance with the requirements specified herein; and

WHEREAS, the Board wishes to designate the Assessor as its agent to appraise the Property and assess a percentage of its value in the manner specified herein; and

WHEREAS, the Board wishes to designate the Trustee as its agent to receive the In Lieu Payments in accordance with the terms of this Agreement; and

WHEREAS, in consideration of the inducements, including the tax abatements provided herein, and other commitments made to the Company, the Company is subject to certain potential recapture fees in accordance with Section 5.2 of that certain Memorandum of Understanding dated as of July ____, 2008;

~~NOW, THEREFORE, upon and in consideration of the respective promises and covenants contained herein and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:~~

1. Designation of Assessor; Appraisal and Assessment of Property. The Board hereby designates the Assessor as its agent to appraise and assess the Property. The Assessor shall appraise and assess the Property in accordance with the United States Constitution and the Constitution and laws of the State of Tennessee as though the Property were fully taxable. Any real or tangible personal property that is exempt from Property Taxes notwithstanding this Agreement shall not be subject to the In Lieu Payments provided herein. Notwithstanding the foregoing, the Assessor hereby agrees that the fair market value of the Project Site shall initially be set at Ten Million Dollars (\$10,000,000.00). The Project Site will be subject to reassessment every four (4) years during the entire term of this Agreement; provided, however, that such reassessment shall not cause the fair market value of the Project Site to increase by a cumulative amount greater than ten percent (10%) of the above stated fair market value at the end of the first four-year reassessment period, nor more than a ten percent (10%) cumulative increase at the conclusion of any subsequent four-year reassessment period over the previously determined fair market value. In addition, the Assessor hereby agrees that the fair and reasonable market value of the Company's Real Property Improvements in the first full Property Tax year shall not exceed the Company's actual cost of said Real Property Improvements. The Assessor shall give the Trustee, the City Treasurer, the Board, and the Company written notice of any changes in appraisals of the Property in the same manner that notices are given to owners of taxable property. The Assessor shall make available to the Board and the Company all records relating to the appraisal and assessment of the Property.

2. Upon or contemporaneously with the Company's exercise of the option for the purchase of the Expansion Site, the Company will have the following options:

(a) The Company may, at its discretion, require the Board at any time during the term of this Agreement to (i) promptly take title to the Expansion Site, and any Expansion Property, including all Personal Property designated by the Company, and (ii) lease the Expansion Site and Expansion Property to the Company pursuant to the terms of the Lease Agreement, including the remaining lease term. The Expansion Site and Expansion Property shall then constitute Property for purposes of this Agreement and will be subject to the terms of this Agreement upon the Company's request to the Board to take title to the Expansion Site and Expansion Property and such Expansion Site and Expansion Property becoming owned by the Board; or

(b) The Company may elect to negotiate a separate Agreement for Payment in lieu of Ad Valorem Taxes ("**PILOT Agreement**") with the Board, City, County, Trustee, and Assessor for the Expansion Site and Expansion Property and the Board, City, County, Trustee, and Assessor agree to negotiate in good faith to agree on the terms of such PILOT Agreement, which shall be substantially similar to the terms in this Agreement.

Upon the Company's exercise of the option to purchase the Expansion Site, the Assessor hereby agrees that the fair market value of the Expansion Site shall initially be set at the actual cost to the City and/or County in acquiring the Expansion Site. The Expansion Site will

be subject to reassessment every four (4) years; provided, however, that such reassessment shall not cause the fair market value of the Expansion Site to increase by a cumulative amount greater than ten percent (10%) of the above stated fair market value at the end of the first four-year reassessment period, nor more than a ten percent (10%) cumulative increase at the conclusion of any subsequent four-year reassessment period over the previously determined fair market value.

3. Designation of Trustee; Computation and Billing of Payments in Lieu of Taxes. The Board hereby designates the Trustee as its agent to compute the amounts of the In Lieu Payments, to receive such payments from the Company and to disburse such payments to the County. On or about October 1 of each year during the term of this Agreement, the Trustee shall compute the taxes which would be payable on the Property if it were subject to Property Taxes, in accordance with the Constitution and laws of the State of Tennessee and in accordance with the appraisal and assessment of the Assessor. Each year hereunder, the Trustee shall send the Board and the Company a bill for appropriate amounts of In Lieu Payments (the "**Tax Bill**").

4. Payments in Lieu of Taxes. After receipt of the Tax Bill, the Company shall pay to the Trustee the amounts indicated on the Tax Bill in accordance with the amount set forth below in Paragraph 5. The In Lieu Payments shall be made by the Company in lieu of the Property Taxes which would otherwise be payable on the Property if it were subject to Property Taxes.

5. Amount of Payments by the Company. Commencing with the ad valorem tax year beginning on January 1, 2010 and continuing for twenty-nine (29) ad valorem tax years thereafter, the Company shall make In Lieu Payments in an amount, as determined by the Assessor and the Trustee, equal to twenty-nine and twenty-three one hundredths percent (29.23%) of the amount of taxes that would have been payable on the Property constituting the Facility if it were subject to Property Taxes. These annual In Lieu Payments equate to the educational Property Taxes that would have been paid on the Property constituting the Facility if it were subject to Property Taxes. For any periods after such thirty (30) year period that the Property constituting the Facility is owned by the Board, the Company shall make In Lieu Payments in an amount, as determined by the Assessor and the Trustee, equal to one hundred percent (100%) of the amount of taxes that would have been payable on the Property constituting the Facility if it were subject to Property Taxes. Notwithstanding the above, any amounts assessed as ad valorem taxes against the Property shall be credited against any In Lieu Payments due under this Agreement.

6. Penalties and Late Charges. The Company shall make the In Lieu Payments for each year before March 1 of the following year. All In Lieu Payments shall be subject to penalties, late charges, fees and interest charges as follows:

(a) If the Company fails to make any In Lieu Payments when due, and such failure to pay shall continue and not be fully paid within thirty (30) days after written notice of such non-payment has been provided, then a late charge shall be charged and shall also be immediately due and payable. The late charge shall be in the amount of one and one-half percent (1.5%) of the owed amount, for each month that each payment has been unpaid. Such one and one-half percent (1.5%) per month late charge amount shall accumulate each month, be payable

~~so long as there remains any outstanding unpaid amount and shall be the exclusive charge, fee or penalty for such late payment.~~

(b) If the Company should fail to pay all amounts and late charges due as provided hereinabove, then the Board, the City or the County may bring suit in the Chancery Court of Hamilton County to seek to recover the In Lieu Payments due, the penalties and late charges set forth in this Section 6, and reasonable attorneys' fees.

7. Disbursements by Trustee. All sums received by the Trustee pursuant to Paragraph 3 shall be disbursed to the general funds the County in accordance with this paragraph and in accordance with the normal requirements of law governing the settlement and paying over of taxes to counties and municipalities. All sums received shall be deposited into an account for the educational use and benefit of the County. Such account shall be funded with the amount to which the In Lieu Payments are attributable to Property Taxes which would otherwise be owed to the County. All disbursements to the educational funds of the County shall be made by the Trustee only in furtherance of the public purposes of the Board, as described in Tennessee Code Annotated §7-53-102.

8. Contest by the Company. The Company shall have the right to contest the appraisal or assessment of the Property by the Assessor and the computation by the Trustee of the amount of the In Lieu Payment. If the Company contests any such appraisal or assessment, then it shall present evidence to the Assessor in favor of its position. Likewise, if the Company contests any such computation, it shall present evidence to the Trustee in favor of its position. If the In Lieu Payments being contested shall be or become due and payable, the Company shall make such payments under protest, the Company and the Assessor or the Trustee, as the case may be, shall negotiate in good faith to resolve any disputes as to appraisal, assessment or computation. If the Company and the Assessor or the Trustee are unable to resolve a dispute, the Company may file suit in the Chancery Court of Hamilton County to ask that the provisions of this Agreement, including those covering appraisal, assessment and computation, be construed or applied to the relevant facts by the Chancery Court in order to resolve such dispute.

9. Lien on Property. Any amounts which remain payable under this Agreement shall become a lien on the Property, and such lien shall be enforceable against the Property in the event that any payment owing hereunder is not timely made in accordance with this Agreement.

10. Term. This Agreement shall become effective on January 2, 2009 and shall continue for so long as the Board holds title to any of the Property or the Company has made all payments required hereunder, whichever shall later occur.

11. Leasehold Taxation. The Board, the City, the County, the Trustee, and the Assessor covenant and agree that the Company's personal property leasehold interest in the Project shall not be subject to ad valorem taxation. The Board, the City, the County, the Trustee, and the Assessor further covenant and agree that the Company's real property leasehold interest in the Project shall have no assessed value for ad valorem tax purposes as all amounts paid by the Company or on behalf of the Company by the Board, the City, the County, the State of Tennessee, and certain agencies of or within the State of Tennessee for the Project, including without limitation, costs for maintenance, insurance, utilities, infrastructure, site preparation,

~~acquisition, construction, equipment, and furnishing costs for the Project and Project Site shall be considered as rent payable under the Lease Agreement for purposes of determining the value of the leasehold interest. As a result, the actual or imputed rent for the leased real property shall equal or exceed the fair market rent for the leased premises for purposes of Tennessee Code Ann. § 67-5-605 (2006). In the event that there is valid determination that the real property leasehold interest is taxable for ad valorem tax purposes, any amounts assessed as ad valorem taxes on the taxable leasehold interest shall be credited against any In Lieu Payments due under this Agreement.~~

12. Stormwater Fees. The Company shall not be responsible for any stormwater fees assessed by the City of Chattanooga against the Property.

13. Notices, etc. All notices and other communications provided for hereunder shall be written (including facsimile transmission and telex), and mailed or sent via facsimile transmission or delivered to the following addresses and recipients:

STATE OF TENNESSEE

Governor's Office
Tennessee State Capitol
Nashville, Tennessee 37243-0001
Telephone: 615-741-2001
Facsimile: 615-532-9711
Attention: Honorable Phil Bredesen

CITY OF CHATTANOOGA

City of Chattanooga
100 East 11th Street
Chattanooga, Tennessee 37402
Telephone: 423-425-7800
Attention: Mayor Ron Littlefield

HAMILTON COUNTY

Hamilton County
Hamilton County Court House, Suite 209
Chattanooga, Tennessee 37402
Telephone: 423-209-6105
Attention: County Mayor Claude Ramsey

HAMILTON COUNTY TRUSTEE

Carl E. Levi

Telephone: _____
Attention: _____

HAMILTON COUNTY
ASSESSOR OF PROPERTY

William C. Bennett

Telephone: _____
Attention: _____

INDUSTRIAL DEVELOPMENT
BOARD OF THE CITY OF
CHATTANOOGA

2200 Ferdinand Porsche Drive
Herndon, VA 20171
Telephone:
Facsimile:
Attention: David Geanacopoulos

With a copy to:

Balch & Bingham LLP
1901 Sixth Avenue North, Suite 1500
Birmingham, Alabama 35203-4642
Telephone: 205-226-3445
Facsimile: 205-488-5852
Attention: Alex B. Leath, III

and:

Jones Lang LaSalle
15601 Dallas Parkway, Suite 400
Addison, Texas 75001
Telephone: 972-361-5000
Facsimile: 972-361-5902
Attention: Keith A. Scott

or, as to each party, at such other address as shall be designated by such party in a written notice to the other party. All such notices and communications shall, when mailed by registered and certified mail, return receipt requested, Express Mail, or facsimile, be effective when deposited in the mails or if sent upon facsimile transmission, confirmed electronically, respectively, addressed as aforesaid.

14. No Waiver; Remedies. No failure on the part of any party hereto, and no delay in exercising any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in this Agreement are cumulative and are not exclusive of any remedies provided by law.

15. Severability. In the event that any clause or provision of this Agreement shall be held to be invalid by any court or jurisdiction, the invalidity of any such clause or provision shall not affect any of the remaining provisions of this Agreement.

16. No Liability of Board's Officers. No recourse under or upon any obligation, covenant or agreement contained in this Agreement shall be had against any incorporator, member, director or officer, as such, of the Board, whether past, present or future, either directly or through the Board. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director or officer, as such, is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

17. Binding Effect. This Agreement shall be binding upon and inure to the benefit of each of the parties and signatories hereto and to their respective successors and assigns.

18. Governing Law. The Agreement shall be governed by, and construed in accordance with, the laws of the State of Tennessee.

19. Amendments. This Agreement may be amended only in writing, signed by each of the parties hereto, except that the Trustee and the Assessor shall not be required to join in amendments unless such amendments affect their respective duties hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and date first above written.

By: _____
Name:
Title:

HAMILTON COUNTY

By: _____
Name:
Title:

CITY OF CHATTANOOGA

By: _____
Name:
Title:

INDUSTRIAL DEVELOPMENT BOARD OF
THE CITY OF CHATTANOOGA

ATTEST:

By: _____
Name:
Title:

By: _____
Name:
Title:

CARL E. LEVI

By: _____
Hamilton County Trustee

WILLIAM C. BENNETT

By: _____
Hamilton County Assessor of Property

EXHIBIT "A"
TO PILOT AGREEMENT FOR
VOLKSWAGEN GROUP OF AMERICA, INC.

PROJECT SITE

[INSERT]

EXHIBIT "B"
TO PILOT AGREEMENT FOR
VOLKSWAGEN GROUP OF AMERICA, INC.

PERSONAL PROPERTY

All tangible personal property necessary or desirable in connection with the acquisition, construction, and equipping of the Project, including, without limitation, machinery, equipment, tooling, dies, molds, furniture and fixtures, office equipment, computers, and raw materials designated by the Company, together with all additions thereto, replacements thereof and substitutions therefore during the term of this Agreement. Such personal property shall include personal property owned by the Company but situated at a supplier located on the Project Site or within the jurisdiction of the Board.

EXHIBIT "C"
TO PILOT AGREEMENT FOR
VOLKSWAGEN GROUP OF AMERICA, INC.
EXPANSION SITE

[INSERT]