

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: 17 July 2013
SUBJECT: Revision of 2009 Continental Teves, Inc., agreement
PRESENTER: Charles Russell Burrell
ATTACHMENT(S): Draft revision

SUMMARY OF REQUEST:

In 2009 the County entered into an economic development incentives agreement with Continental Teves. The agreement as originally structured called for a total capital investment of \$30,157,000, with investment and new jobs created on the following schedule:

Year	Capital Investment	Jobs Created
2009	\$ 4,264,000	128 (by 2011)
2010	\$16,393,000	plus 104 additional (by 2012)
2011	\$ 9,500,000	plus 59 additional (by 2013)
2012	\$-0-	plus 47 additional (by 2014)

The incentives are based on a percentage of the *ad valorem* taxes paid on the new invested capital.

The Company in fact has invested the capital and created the jobs at a faster rate than agreed. The purpose of this amendment is to reflect that, and to provide for payment of the incentives based on the actual investment, rather than the original schedule. (NOTE: This agreement specifies that the total amount of the incentives will not exceed the amount specified in the 2009 agreement. Only the timing of the payments is affected.)

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

BOARD ACTION REQUESTED:

Approval of the amendment.

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

I move that the Board approve the amended agreement.

FIRST AMENDMENT TO AGREEMENT

THIS FIRST AMENDMENT TO AGREEMENT (“**Amendment**”) is effective as of March _____, 2013, and is entered into by Continental Automotive Systems, Inc., a Delaware Corporation (the “**Company**”), and the Henderson County, a body politic and corporate (the “**County**”).

RECITALS:

A. The County and Continental Teves, Inc., entered into a certain Agreement dated July 15, 2009, providing for Economic Incentives (“**2009 Agreement**”).

B. Continental Teves, Inc., merged with and into its affiliate, Temic Automotive of North America, Inc., as of December 31, 2009. Temic Automotive of North America, Inc., changed its name to Continental Automotive Systems, Inc., effective December 31, 2009. By operation of law, the Company has assumed the rights and obligations of Continental Teves, Inc.

C. The County and the Company desire to amend and clarify the provisions governing certification of the investment and timing of payment of incentives and certification of job creation and the definition of certain terms as more particularly set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and the Company agree to amend the Agreement as follows:

1. Certification. Section 10 of the Agreement is deleted and replaced with the following:

Not later than March 31, 2013, for the 2009 investment and 2010 investment and no later than July 15, 2013 for the 2012 investment (each a “**Certification Date**”), the company shall certify in writing by one authorized to execute contracts on behalf of Company to the County that such applicable Capital Investment has been completed (hereinafter “**Capital Investment Certification**”). Alternatively, the Company may provide evidence that the applicable Capital Investment required by the terms of this Agreement has been completed and paid for by the Company. The Company may provide any of the following as sufficient evidence of such Capital Investment: invoices, purchase orders, canceled checks, and other documents which will reasonably prove that each phases portion of the minimum \$30,157,000.00 in taxable capital investment has been met by the Company.

The County’s obligation to begin reimbursement for Start-up Costs shall not begin until the County receives such Capital Investment Certification and supporting adequate documentation, the Certification of Start-Up Costs, and the 2011 Employment Certification (“**Required Certification and Documentation**”). 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 anything to the contrary in paragraphs 5 or 6 of this Agreement, so long as the Company provides the Required Certification and Documentation on or before the applicable Certification Date, then the County shall tender the Economic Incentives for 2011 and 2012 (lines 1 and 2 of the chart included in Section 6) no later of July 15, 2013. In the event the Company is delayed in providing a Certification or other required documentation to the County, then the time period for the County to tender the applicable Economic Incentives shall be extended on a day to day basis.

Notwithstanding the above, the County and Company agree that Company has provided sufficient documentation for 2009 and 2010 Investment and job creation. Company acknowledges that it has received the full incentive payments due for Year 2011 and Year 2012 pursuant to Section 6.

2. Job Certification. The following schedule shall be added to Section 14 and shall be deemed the schedule referenced in the first clause of Section 14:

Certificate	On or Before the Date Specified
2011 Certification	March 31, 2013
2012 Certification	June 30, 2013
2013 Certification	June 30, 2014
2014 Certification	June 30, 2015

In lieu of the documentation and certifications provided in Section 14, the Company may provide the Annual Job Certification Form attached as Exhibit A.

The Company is required to report to the North Carolina Department of Commerce the number of Eligible Positions created pursuant to the Community Economic Development Agreement Grant No. 2009-09. Following receipt of that report, the North Carolina Department of Commerce will provide Company certification of the number of Eligible and Retained Positions. (“**JDIG Job Certification**”). Following its receipt of the JDIG Job Certification for the applicable year, the Company shall provide the County a copy of the certification as further evidence of the job creation.

3. Start Up Cost Certification. Start Up Costs shall include all capitalized costs related to the Expansion. The reference in Section 11 of the Agreement to adequate documentation of the amount spent for Start Up Costs shall include any of the following: invoices, purchase orders, canceled checks, and other documents which will reasonably show the amount of Start Up Costs incurred by the Company.

4. Investment. Subject to the limitations below, references in Section 6 to the “2009 investment,” “2010 investment,” and “2012 investment” is a reference to all investment made (or for the 2012 investment, committed to) within the applicable time frame specified by the Agreement, and is not limited to the minimum amounts specified in Section 2 of the Agreement.

(a) Maximum Payment of Economic Development Incentives. Notwithstanding any provision of the Agreement, the total of Economic Development Incentive to be paid pursuant to the 2009 Agreement shall not exceed the “Maximum Incentive Amount” based on a capital investment capped at \$30,157,000, the amount of which shall be calculated in accordance with the chart attached as Exhibit B to this Amendment. At such time as the County has tendered the Maximum Incentive Amount to the Company, then no further incentives shall be due under the 2009 Agreement.

5. Default. Company shall not be deemed to be in default or to have breached any of the terms of the Agreement unless Company is first provided written notice at the addresses in Section 6 below and 30 days to cure such potential default or breach. Provided however that in the event cure could not reasonably be completed in 30 days, then so long as Company commences such cure within 30 days and diligently pursues such cure to completion, then no default or breach shall be deemed to have occurred.

6. Notices: Any notice, demand, request, or other instrument which may be or is required to be given under this Agreement will be given only (a) by personal delivery; (b) by deposit in any depository regularly maintained by the United States Postal Service, postage pre-paid, certified mail, return receipt requested, addressed in accordance with this Section, in which event it will be deemed received on the 3rd business day after deposit; or (c) by nationally recognized courier service that provides written evidence of the date of delivery, in which event it will be deemed received on the day of delivery. All such notices will be sent to the addresses set forth below or to such other address as either party hereto may hereinafter designate in writing.

Company Notice Address:

Jeff Scott, Plant Manager
Continental Automotive Systems, Inc.,
1 Quality Way,
Fletcher, NC 28732

With Mandatory Copy to

George R. Jurch III, General Counsel and Secretary
Continental Automotive Systems US, Inc.
1830 MacMillan Park Drive
Fort Mill SC 29707

And

Grant Williams, Outside Counsel
Miller Canfield

Suite 200, 840 West Long Lake Rd
Troy, MI 48098

County Notice Address:

Office of County Attorney
1 Historic Court House Square
Suite 5 Hendersonville NC 28792

7. Ratification. Except as modified and amended as set forth in this Amendment, the Agreement is hereby ratified and confirmed by the County and the Company and is in full force and effect and enforceable in accordance with its terms. The Recitals above are acknowledged as true and accurate.

8. Conflict. In the event of a conflict between or ambiguity created by the terms of the Agreement and this Amendment, the terms of this Amendment shall control.

9. Defined Terms. Capitalized terms which are not defined herein shall have the meanings ascribed to them in the Agreement.

10. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one Agreement. The County and the Company agree to accept a digital image of this Amendment, as fully executed, as a true and correct original and admissible as best evidence to the extent permitted by a court with proper jurisdiction.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of July __, 2013 but effective as of the date first above written.

COUNTY: **Henderson County**

By: _____ (Seal)
Its:

Attest: (Town Seal)

Clerk to the Board

COMPANY: **Continental Automotive Systems, Inc.**

Attest:

By: _____
Its:

By: _____
Its:

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

I, _____, Notary Public for said County and State, certify that George R. Jurch personally came before me this day and acknowledged that he is Secretary to Continental Automotive Systems, Inc., a Delaware corporation authorized to do business in North Carolina, and that, by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by _____, and by _____, and attested by himself as its Secretary.

Witness my hand and official seal, this ___ day of July, 2013.

(Official Seal)

Notary Public

My Commission Expires: _____, 20__.

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, _____, Notary Public for said County and State, certify that _____ 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 Henderson County, the foregoing instrument was signed in its name by the Chairman of its Board of Commissioners, sealed with its corporate seal, and attested by herself as the Clerk to the Board of Commissioners.

Witness my hand and official seal, this ___ day of July, 2013.

Notary Public

My Commission Expires: _____, 20__.

EXHIBIT A

Annual Job Certification Form

Pursuant to that certain Agreement dated July 15, 2009 (“**2009 Incentive Agreement**”) currently between Continental Automotive Systems, Inc., as successor in interest to Continental Teves, Inc., (“**Company**”) and the Town of Fletcher (“**Town**”), Continental committed to create additional positions at its facility located within the Town of Fletcher (“**Facility**”).

1. Pursuant to Section 14 of the Agreement, Company hereby certifies to the Town of Fletcher that as of December 31, *[insert year]*:

- (a) The number of hourly positions created at the Facility in *[insert year]* was _____.
- (b) The total cumulative hourly positions created at the Facility after July 15, 2009 was _____.
- (c) The number of salaried positions created at the Facility in *[insert year]* was _____.
- (d) The total cumulative salaried positions created at the Facility after July 15, 2009 was _____.
- (e) The total number of new Eligible Positions for *[insert year]* reported to the State of North Carolina pursuant to that certain Community Economic Development Agreement Grant No. 2009-09 (“**JDIG Report**”) was _____.
- (f) The cumulative Eligible Positions reported on the JDIG Report for *[insert year]* was _____.
- (g) The number of Retained Positions reported on the JDIG Report for *[insert year]* was _____.

2. The Company further certifies that:

(a) The Company in *[insert year]* employed at least *[insert applicable number of required jobs]* jobs (paying at least the average way for Henderson County (as reported by the Employment Security Commission) plus benefits as stated in the Henderson County Incentive Guidelines Version 2007.1.01) which would not exist in the absence of the Company’s expenditure of the Capital Investment (as defined in the 2009 Incentive Agreement), and

(b) The total number of employees that the Company employed at that Facility in *[insert year]* was not less than the sum of (1) the total number of employees employed by the Company at the Facility as of July 15, 2009 and (2) the 128 jobs to be created pursuant to the Agreement in 2011 *[[insert the following as applicable: (3) the 104 jobs to be created pursuant to the Agreement in 2012, and (4) the 59 jobs to be created pursuant to the Agreement in 2013, and (5) the 47 jobs to be created pursuant to the Agreement in 2014]]*.

EXHIBIT B
Maximum Economic Incentive

The Maximum Incentive Amount shall be calculated based on Capital Investment Taxes that would have based on the following reduced investment schedule rather than the greater amount of capital investments actually made.

Investment	
2009	13,416,000
2010	10,653,000
2011	6,088,000
Total	30,157,000

For example, and by way of illustration only, if the applicable county millage rate remained 0.5136 and the applicable depreciation for the investment was reflected in *Schedule N* of the Cost Index & Depreciation Schedules published by the North Carolina Department of Revenue, then in that case, the Maximum Incentive Amount would be **\$622,031** as reflected in the calculations below.

-----Depreciated Values-----

Investment		2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total
2009	13,416,000	\$ 11,537,760	\$ 9,525,360	\$ 7,647,120	\$ 5,768,880	\$ 3,890,640	\$ 3,354,000	\$ 3,354,000				
2010	10,653,000		\$ 9,161,580	\$ 7,563,630	\$ 6,072,210	\$ 4,580,790	\$ 3,089,370	\$ 2,663,250	\$ 2,663,250			
2011	6,088,000			\$ 5,235,680	\$ 4,322,480	\$ 3,470,160	\$ 2,617,840	\$ 1,765,520	\$ 1,522,000	\$ 1,522,000	\$ 1,522,000	
Total	30,157,000	\$ 11,537,760	\$ 18,686,940	\$ 20,446,430	\$ 16,163,570	\$ 11,941,590	\$ 9,061,210	\$ 7,782,770	\$ 4,185,250	\$ 1,522,000	\$ 1,522,000	
<i>Millage Est = \$0.5136/\$100</i>	Tax Liability	\$ 59,258	\$ 95,976	\$ 105,013	\$ 83,016	\$ 61,332	\$ 46,538	\$ 39,972	\$ 21,495	\$ 7,817	\$ 7,817	\$ 528,235
	Eco Dev											
	Incentive	\$ 59,258	\$ 115,171	\$ 126,015	\$ 99,619	\$ 73,598	\$ 55,846	\$ 47,967	\$ 25,795	\$ 9,380	\$ 9,380	\$ 622,031

Schedule N	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Depreciation	0.86	0.71	0.57	0.43	0.29	0.25	0.25	0.25	0.25	0.25