

ORDINANCE #09-22

**AN ORDINANCE AUTHORIZING AMENDMENT OF 2007 FEE AGREEMENT,
BETWEEN DORCHESTER COUNTY, SOUTH CAROLINA, AND WEBER
AUTOMOTIVE CORPORATION, FOR PAYMENTS IN LIEU OF PROPERTY
TAXES**

WHEREAS, Dorchester County, South Carolina (the "County") adopted on December 10, 2007, an ordinance authorizing economic development incentives to Weber Automotive Corporation (the "Company"), in the form of a payments-in-lieu-of-property tax arrangement (the "FILOT Arrangement") in order to induce the Company to acquire, construct and equip additional facilities for production and distribution of vehicular parts and related products, and other lawful purposes (such facilities and other related capital improvements by the Company in the County during the applicable period being hereinafter defined collectively as the "Project"); and

WHEREAS, the ordinance anticipated that the Project would result in total investment by the Company of not less than Five Million Dollars (\$5,000,000); and

WHEREAS, the County and the Company subsequently entered into a fee agreement relating to the Project effective December 31, 2007 (the "Fee Agreement"); and

WHEREAS, Section 2.1 of the Fee Agreement defines the "*Project Period*" as "the five (5) year period beginning with the Commencement Date; provided, however, if the Company does not complete its investments in the Project during the initial five (5) year period, the Company may, by written notice to the County prior to the end of the initial five (5) year period, extend the Project Period for up to an additional five (5) years;" and

WHEREAS, Section 2.1 of the Fee Agreement defines the "*Commencement Date*" as "the last day of the property tax year during which the Project or a portion of the Project is first placed in service, pursuant to Section 12-44-30(2) of the Act (that is, December 31, 2007)"; and

WHEREAS, because of the current economic recession and, in particular, its significant negative impact on businesses related to the automotive industry, the Company has given written notice to the County prior to the end of the initial five (5) year period that it is unlikely that the Company can complete its investment in the Project during the initial five (5) year period, and, therefore, it elects to extend the Project Period for an additional five (5) years, or through December 31, 2012; and

WHEREAS, Section 6.2 of the Fee Agreement provides:

"6.2. Credits Against Fee Payments. For a period of three (3) years beginning in the first year that the Fee Payments are payable relating to the Project, the County shall grant a credit to the Company or its designated sponsor affiliate for the Fee Payment otherwise payable to the County under this Agreement, but not to exceed a cumulative amount of Three Hundred Thousand Dollars (\$300,000.00) (the "Credits"). The Credits shall not exceed the improvement costs of the Project, such as (i) the costs of designing, acquiring, constructing, improving or expanding the infrastructure serving the Project and (ii) the costs of improved or unimproved real property, buildings, and structural components of buildings used in the Project. Upon written request of the County, the Company shall provide such reasonable documentation as may be required to verify that such improvements costs were actually incurred."

and

WHEREAS, because the investment anticipated by the Fee Agreement will not occur during the initial three (3) years of the Project Period, the Company will be unable to utilize the Credits during that period of time, resulting in less incentive for the Company to make the anticipated additional investment in the Project during subsequent years of the Project Period.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED:

Section 1. Amendment to Fee Agreement

The Chairman of the County Council and the Clerk of the County Council are authorized to execute and deliver to the Company the First Amendment to Fee Agreement attached hereto as Appendix 1. In the absence or incapacity of the Chairman of the County Council or the Clerk of the County Council, any other officials who are authorized to execute such documents on behalf of the County shall be authorized to perform the acts of the Chairman and the Clerk of the County Council.

Section 2. Effective Date of Ordinance. This Ordinance shall take effect immediately upon third reading of the County Council and shall supersede any inconsistent ordinances.

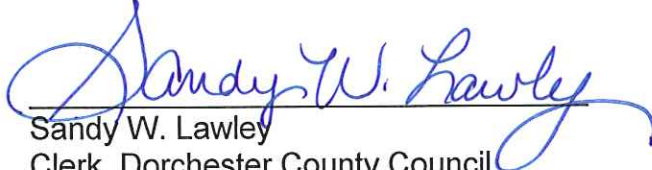
PASSED AND APPROVED this 16th day of November, 2009.

DORCHESTER COUNTY, SOUTH CAROLINA

By: 

Jamie Feltner
Chairman, Dorchester County Council

ATTEST:



Sandy W. Lawley
Clerk, Dorchester County Council

First Reading: October 19, 2009
Second Reading: November 02, 2009
Public Hearing: November 16, 2009
Third Reading: November 16, 2009

**FIRST AMENDMENT TO FEE AGREEMENT
BETWEEN
WEBER AUTOMOTIVE CORPORATION
AND
DORCHESTER COUNTY, SOUTH CAROLINA**

THIS FIRST AMENDMENT TO FEE AGREEMENT (the "First Amendment") is made and entered between **DORCHESTER COUNTY, SOUTH CAROLINA**, a body politic and corporate and a political subdivision of the State of South Carolina (the "**County**"), and **WEBER AUTOMOTIVE CORPORATION**, a Delaware corporation (the "**Company**"). County and Company are sometimes jointly referred to in this First Amendment as the "parties", or severally referred to as a "party".

WITNESSETH:

WHEREAS, the parties entered into a fee agreement effective December 31, 2007 (the "Fee Agreement"); and

WHEREAS, Section 2.1 of the Fee Agreement defines the "*Project Period*" as "the five (5) year period beginning with the Commencement Date; provided, however, if the Company does not complete its investments in the Project during the initial five (5) year period, the Company may, by written notice to the County prior to the end of the initial five (5) year period, extend the Project Period for up to an additional five (5) years;" and

WHEREAS, Section 2.1 of the Fee Agreement defines the "*Commencement Date*" as "the last day of the property tax year during which the Project or a portion of the Project is first placed in service, pursuant to Section 12-44-30(2) of the Act (that is, December 31, 2007)"; and

WHEREAS, because of the current economic recession and, in particular, its significant negative impact on businesses related to the automotive industry, the Company has given written notice to the County prior to the end of the initial five (5) year period that it is unlikely that the Company can complete its investment in the Project during the initial five (5) year period ending December 31, 2012, and, therefore, it elects to extend the Project Period for an additional five (5) years, or through December 31, 2017; and

WHEREAS, Section 6.2 of the Fee Agreement provides:

"6.2. Credits Against Fee Payments. For a period of three (3) years beginning in the first year that the Fee Payments are payable relating to the Project, the

County shall grant a credit to the Company or its designated sponsor affiliate for the Fee Payment otherwise payable to the County under this Agreement, but not to exceed a cumulative amount of Three Hundred Thousand Dollars (\$300,000.00) (the "Credits"). The Credits shall not exceed the improvement costs of the Project, such as (i) the costs of designing, acquiring, constructing, improving or expanding the infrastructure serving the Project and (ii) the costs of improved or unimproved real property, buildings, and structural components of buildings used in the Project. Upon written request of the County, the Company shall provide such reasonable documentation as may be required to verify that such improvements costs were actually incurred."

and

WHEREAS, because the investment anticipated by the Fee Agreement will not occur during the initial three (3) years of the Project Period, the Company will be unable to utilize the Credits during that period of time, resulting in less incentive for the Company to make the anticipated additional investment in the Project during subsequent years of the Project Period.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained and the mutual benefits to be derived by the parties, the receipt and adequacy of which are acknowledged by the parties, the parties agree as follows:

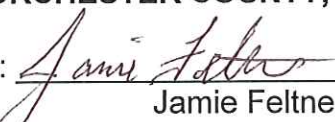
Section 1. Project Period. The "Project Period" is amended to extend for an additional five (5) years, or through December 31, 2017.

Section 2. Credits Against Fee Payments.
Section 6.2 is amended to read as follows:

"6.2. Credits Against Fee Payments. During the ten (10) year Project Period, the County shall grant a credit to the Company or its designated sponsor affiliate for the Fee Payments otherwise payable to the County under this Agreement, but not to exceed a cumulative amount during such Project Period of Three Hundred Thousand Dollars (\$300,000.00) (the "Credits"). The Credits shall not exceed the improvement costs of the Project, such as the costs of designing, acquiring, constructing, improving or expanding (i) the infrastructure serving the Project and (ii) improved or unimproved real property, buildings, and structural components of buildings used in the Project. Upon written request of the County, the Company shall provide such reasonable documentation as may be required to verify that such improvements costs were actually incurred."

IN WITNESS WHEREOF, the parties have executed and sealed this Agreement effective as of the Commencement Date.

DORCHESTER COUNTY, SOUTH CAROLINA

By: 
Jamie Feltner
Chairman, Dorchester County Council

ATTEST:


Sandy Lawley
Clerk, Dorchester County Council

WEBER AUTOMOTIVE CORPORATION

By: _____

Name: _____

Title: _____