

## Economic Development Agreement

Buncombe County, a political subdivision of the State of North Carolina (“**County**”), and \_\_\_\_\_, a North Carolina corporation (“**Company**”), enter into this Economic Development Agreement (“**Agreement**”) as of \_\_\_\_\_, 2011 (“**Effective Date**”).

**Background.** The Company proposes to purchase from the County an existing facility located at 2169 Hendersonville Road, Asheville, North Carolina in order for the Company to locate a business there initially to manufacture components for customers in the commercial heavy-duty engine market and the large off-highway truck market. The Company proposes to acquire and install associated manufacturing equipment at that facility. As part of its purchase of the facility and the location of its business there, the Company expects to invest at least \$125 million in the facility and property that will be located at the facility, and to employ at least 400 persons, by December 31, 2020.

Pursuant to the authority of the Local Development Act of 1925, North Carolina General Statutes §158-7.1 *et seq.* (“**Act**”), the County has agreed, after having conducted a public hearing and having made all findings and determinations required by law, to provide certain incentives to the Company as more particularly described in this Agreement to induce the Company to purchase the facility, to locate equipment at the facility, and to facilitate the creation of jobs at the facility.

It is anticipated that the Company’s capital investment in the facility and its operations at the facility will generate significant *ad valorem* property tax revenues to the County. That additional revenue constitutes a material part of the financial basis for the County’s entering into this Agreement.

The development of the facility is expected to result in the creation of at least 400 new full-time jobs at the facility at an average compensation in excess of \$39,000 per year.

The Company acknowledges that but for the County’s providing the economic development grants and other incentives in this Agreement, it would not have agreed to locate its business in the County, to make the associated investments in the County, or to enter into this Agreement.

### **The parties agree as follows:**

1. Definitions. As used in this Agreement the following terms will have the following meanings:

“**Affiliate**” means any entity that the Company controls, that controls the Company, or that is under common control with the Company.

“**Company**” means \_\_\_\_\_ and its successors and assigns.

“**Deadline**” means December 31, 2020, or any extended date pursuant to **Section 4(b)**.

“**Facility**” means the approximately 65.21 acres and associated buildings and other improvements located at 2169 Hendersonville Road, Asheville, North Carolina, as more particularly described in the Purchase Contract.

“**Grant**” means a grant the County makes pursuant to **Section 3**.

“**Minimum Investment**” means the Company’s making aggregate Qualifying Expenditures of at least \$125 million.

“**Person**” means any individual, partnership, trust, estate, association, limited liability company, corporation, custodian, nominee, governmental instrumentality or agency, body politic or any other entity in its own or any representative capacity.

“**Personal Property**” means all personal property of the Company or an Affiliate located at the Facility, including all (a) machinery and equipment, (b) furniture, furnishings, and fixtures, (c) property that is capitalized for federal or state income tax purposes, and (d) additions to or replacements of, any of the foregoing. “**Personal Property**” also means all tools, dyes, molds and other machinery or equipment of customers of the Company or an Affiliate located at the Facility.

“**Purchase Contract**” means the Agreement for Purchase and Sale of Real Property (Commercial) between the County and Volvo Construction Equipment North America, LLC dated May 25, 2011.

“**Qualifying Expenditures**” means all expenditures the Company or an Affiliate makes for Real Property and/or Personal Property located at the Facility and which is subject to Tax in the County. “**Qualifying Expenditures**” also include all expenditures made by the Company’s customers on tools, dyes, molds and other machinery or equipment located at the Facility that are subject to Tax in the County.

“**Real Property**” means all of the following at the Facility and owned by the Company or an Affiliate: (a) real estate; and (b) buildings, building systems, and building improvements the Company or an Affiliate constructs or installs, or causes to be constructed or installed.

“**Start-up Expenses**” means current expenditures incurred with respect to the Facility during the Start-up Period, including salary, wages, employee benefits, set-up costs, maintenance costs, heat, electricity, insurance, overhead, management fees, supplies, office costs, training, Taxes, and other current expenditures. The “**Start-up Period**” commences on the Effective Date and ends on the Deadline.

“**State**” means the State of North Carolina.

“**Tax**” or “**Taxes**” means *ad valorem* property tax levied on real or personal property located in the County pursuant to Article 25, Chapter 105 of the North Carolina General Statutes or any successor statute relating to *ad valorem* property tax the County levies on property.

“**Term**” means the period beginning on the Effective Date and ending on the earlier of (a) the termination of this Agreement or (b) 150 days after the Deadline.

2. Investment and Job Creation.

a) On or before the Deadline, the Company will make the Minimum Investment at the Facility. If the Company does not make the Minimum Investment on or before the Deadline, it will refund a portion of the Grants to the County pursuant to **Section 4**.

b) On or before the Deadline, at least 400 full-time persons will be employed at the Facility as evidenced by one or more Quarterly Tax and Wage Reports (Form NCUI 101) filed with the N.C. Employment Security Commission (“**Jobs Minimum**”). If the Jobs Minimum has not been met on or before the Deadline, then the Company will refund a portion of the Grants to the County pursuant to **Section 4**.

c) Except as set forth in **Section 4** below, the Company’s failure to meet the commitments in this **Section 2** will not (i) constitute a breach of this Agreement or result in any obligation to refund any Grant or (ii) relieve the County of its obligation to make any Grant payment pursuant to this Agreement. The County’s sole and exclusive remedies for the Company’s breach of any provision in, or failure to meet any commitment in, this **Section 2** are those provided in **Section 4**.

3. Grants. To induce the Company to locate its business at the Facility, to make the Minimum Investment, and to achieve the Jobs Minimum at the Facility, the County will make the Grants to the Company pursuant to this **Section 3**.

a) The County will pay to the Company the Grants in the following amounts and on or before the following dates:

<b>Grant Amount</b>	<b>Payment Deadline</b>
\$3,000,000	September 30, 2011
\$1,250,000	March 31, 2012
\$1,250,000	June 30, 2012
\$1,250,000	September 30, 2012
\$1,250,000	December 31, 2012
\$1,000,000	September 30, 2013
\$1,000,000	September 30, 2014

b) First Grant Payment. The first Grant payment to the Company will be payable on the Effective Date, and the County will make that first Grant payment to the Company on or before September 30, 2011.

c) Subsequent Grant Payments. The County will make all subsequent Grant payments (“**Subsequent Grant Payments**”) to the Company on or before the payment deadline dates stated in the chart in **Section 3(a)** above. After it receives each Subsequent Grant Payment, at the County’s written request, the Company will (i) confirm to the County in writing that it has applied or will apply the Subsequent Grant Payment against Start-up Expenses that it has paid, for which it has been invoiced, which are due, or which it subsequently incurs and (ii) provide evidence of such payments, invoices or obligations to the County. All information the Company provides to the County under this **Section 3(c)** will be confidential trade secrets of the Company governed by **Section 15**.

d) If the Company is in default on its obligation to pay Taxes to the County, the County will not be required to make a Grant payment to the Company until the Company pays the amount of such Taxes it owes the County.

#### 4. Refund.

a) If the Company does not make the Minimum Investment and achieve the Jobs Minimum on or before the Deadline, then, as the County’s sole and exclusive remedy for any such failure (which failure will not constitute a breach of this Agreement), the Company will pay the County a refund in the amount set forth in this **Section 4**. The refund formulas described in this **Section 4** are weighted such that 50% is assigned to the Minimum Investment and 50% is assigned to the Jobs Minimum.

b) Notwithstanding anything to the contrary in this **Section 4**, if the Company has not achieved the Minimum Investment and the Jobs Minimum on or before the Deadline, but the Company has achieved at least 85% of the Minimum Investment and 85% of the Jobs Minimum on or before the Deadline, then the Deadline will automatically be extended for a period of 24 months such that the Company shall have through December 31, 2022 to achieve the Minimum Investment and the Jobs Minimum. Additionally, the County may elect at any time to extend the Deadline by up to an additional 12 months if it believes the Company is reasonably likely to achieve the Minimum Investment and the Jobs Minimum by that further extended Deadline.

c) Minimum Investment. If the Company does not make the Minimum Investment on or before the Deadline, then the Company will refund to the County an amount equal to (i) 50%, multiplied by (ii) a pro rata percentage (specified below), multiplied by (iii) the sum of all Grant payments the County has actually made to the Company under this Agreement (up to a maximum of \$9,000,000). The pro rata percentage will be the percentage derived by subtracting the amount of the Qualifying Expenditures the Company has actually made on or before the Deadline from \$125 million and dividing the result by \$125 million. The pro rata percentage cannot be less than zero.

d) Job Creation. If the Company has not achieved the Jobs Minimum on or before the Deadline, then the Company will refund to the County an amount equal to (i) 50%, multiplied by (ii) a pro rata percentage (specified below), multiplied by (iii) the sum of all Grant payments the County has actually made to the Company under this Agreement (up to a maximum of \$9,000,000). The pro rata percentage will be the percentage derived by subtracting the greatest number of full-time persons employed at the Facility at any time between the

Effective Date and the Deadline from 400 and dividing the result by 400. The pro rata percentage cannot be less than zero.

e) Within 60 days after the Deadline, the County will calculate the amount of any refund payment(s) described above and will notify the Company in writing setting out in reasonable detail the County's calculations in arriving at the refund amount. The Company will pay the amount due pursuant to this **Section 4** within 60 days after receiving the County's written demand.

f) An example of the operation of this **Section 4** is on **Exhibit A**.

5. Reporting and Audit Rights.

a) Designated County officials charged with carrying out this Agreement and having a need to know will have the right, from time to time on reasonable notice at reasonable times and at a reasonable location the Company designates, to examine the Company's records relating to the Facility as may be necessary to verify the Company's compliance with **Section 2** of this Agreement. The Company will have the right, on reasonable notice and at reasonable times, to audit the County's Tax records relating to the County's compliance with this Agreement and calculations made in determining the amount of any Grant to which the Company is entitled or which the County pays or any refund which may be due under **Section 4**.

b) The Company will notify the County in writing once it has made the Minimum Investment and once the Jobs Minimum has been achieved and will provide copies of one or more Quarterly Tax and Wage Reports (Form NCUI 101) filed with the N.C. Employment Security Commission evidencing the Jobs Minimum.

c) The Company will give the County written notice of any tools, dyes, molds and other machinery or equipment of customers of the Company or its Affiliates which are located at the Facility, which are subject to Tax in the County, and which Company intends to claim as Qualifying Expenditures.

d) Any information the Company provides to the County under this **Section 5** will be confidential trade secrets of the Company governed by **Section 15**.

6. Other Incentives and Assistance.

a) The North Carolina Department of Transportation ("NCDOT") has committed to install, at no expense to the Company, two functioning traffic lights at the Facility and to do so by January 2012, as evidenced by the letter from the NCDOT attached to this Agreement as **Exhibit B**. One will be at the entrance to the Facility on Long Shoals Road, and the other will be at the entrance to the Facility on Hendersonville Road. The County commits to work with and to assist the NCDOT and the Company so that the NCDOT can complete this work timely.

b) The County (i) will provide expedited review and inspections required for the occupancy of the Facility (including for any required certificate of occupancy for the Facility) and any construction at or upfitting of the Facility, (ii) will expedite the approval process for site

and building plans, for applications for site work and building permits, and for any other needed approvals, and (iii) will waive all fees associated with (i) and (ii) above.

c) Each party will give the other party reasonable assistance in its present and future applications for incentives, grants and programs that may be or may become available at the Federal, State or local level with respect to the Company or the Facility.

7. Term and Termination.

a) The term of this Agreement will commence on the Effective Date and, unless sooner terminated pursuant to this **Section 7**, will continue in force during the Term.

b) The Company may terminate this Agreement at any time in its discretion. Such termination will not constitute an event of default and will be without penalty and without any obligation on the Company to refund any Grant Payments it has received except as set forth in **Section 7(c)**.

c) If the Company terminates this Agreement on or before the Deadline and the Company has not achieved the Minimum Investment or the Jobs Minimum, then it will be required to refund to the County a pro rata percentage (calculated under **Sections 4(c)** and **4(d)** as of the termination date rather than the Deadline) of all Grant payments the County has actually made to the Company through the date of that termination, and that payment will be the County's sole and exclusive remedy.

8. No Pledge of Faith and Credit; Purpose.

a) No provision of this Agreement will be construed or interpreted as creating a pledge of the faith and credit of the County within the meaning of any constitutional debt limitation. The parties acknowledge that the scope, term and duration of this Agreement are in all events reasonable. No provision of this Agreement will be construed or interpreted as delegating governmental powers or as a donation or a lending of the credit of the County within the meaning of the North Carolina Constitution. No provision of this Agreement will be construed to pledge or to create a lien on any class or source of the County's moneys, nor will any provision of the Agreement restrict to any extent prohibited by law any action or right of action on the part of any future County Board of Commissioners. To the extent of any conflict between this **Section 8(a)** and any other provision of this Agreement, this **Section 8(a)** will take priority.

b) The Company and the County acknowledge that all monies the County appropriates and expends for economic development incentives, as provided in this Agreement, are for a bona fide public purpose and are expended in good faith reliance on the Act. If this Agreement or the Grants are challenged or are threatened to be challenged, (i) the County will promptly notify the Company in writing, (ii) the Company will have the right to participate in the defense of any challenge at its own expense and with counsel of its choosing, and (iii) the County will defend this Agreement and the Grants from those challenges. The Company will provide reasonable assistance (excluding financial assistance) the County requests in connection with any such defense.

c) If the Grants, or any portion of the Grants, are deemed by a court of competent jurisdiction to be *ultra vires* or not authorized by the laws or Constitution of the State of North Carolina, then the County will use reasonable efforts to provide equivalent incentives to the Company as allowed by law.

9. Assignment; Estoppel.

a) The Company shall have the right to assign this Agreement, and any rights, privileges, or claims under this Agreement, without the consent of the County. If the assignee agrees in writing to assume the Company's obligations under this Agreement, then the Company will be relieved of its obligations under this Agreement. The Company will give the County written notice of any such assignment and assumption.

b) The Company may, without the consent of the County, pledge, mortgage, grant a security interest in, and collaterally assign this Agreement, and any rights, privileges or claims under this Agreement, to any Person, including a collateral agent acting on behalf of lenders providing financing for the Facility (collectively, "**Financing Parties**"). The County will cooperate with the Company, its Affiliates, any assignee of this Agreement, and any Financing Parties from time to time, including by entering into a consent to assignment or other agreements in connection with any collateral assignment on such terms as may be customary under the circumstances and shall be reasonably required by such Financing Parties.

10. Disclaimers.

a) The Company acknowledges that the County has not designed the Facility, that the County has not created any plans or specifications with respect to the Facility, and that the County (i) is not a manufacturer of, or dealer in, any of the component parts of the Facility or similar facilities, (ii) has not made any recommendation, given any advice or taken any other action with respect to (A) the choice of any contractor, supplier, vendor or designer of, or any other contractor with respect to, the Facility or any component part of the Facility or any property or rights relating to the Facility, or (B) any action taken or to be taken with respect to the Facility or any component part of the Facility or any property or rights relating to the Facility at any stage of the construction of the Facility, and (iii) except as otherwise provided in the Purchase Contract or any other written agreement between the County and the Company or its Affiliates, has not made any warranty or other representation, express or implied, that the Facility or any component part of the Facility or any property or rights relating to the Facility (A) will not result in or cause injury or damage to persons or property, (B) has been or will be properly designed, or will accomplish the results which the Company intends, or (C) is safe in any manner or respect.

b) EXCEPT AS OTHERWISE PROVIDED IN THE PURCHASE CONTRACT OR ANY OTHER WRITTEN AGREEMENT BETWEEN THE COUNTY AND THE COMPANY OR ITS AFFILIATES, THE COUNTY MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE FACILITY OR ANY COMPONENT PART OF THE FACILITY, INCLUDING WITH RESPECT TO THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY OF THE FACILITY FOR ANY PURPOSE. THE COMPANY WAIVES THE BENEFITS OF ALL

IMPLIED WARRANTIES AND REPRESENTATIONS OF THE COUNTY AS THEY MAY RELATE TO THE FOREGOING.

11. Representations and Warranties.

a) The Company represents and warrants to the County that as of the Effective Date: (i) it is a corporation duly organized and existing under the laws of the State of North Carolina; (ii) it has the power and authority to own its properties and assets and to carry on its business as now being conducted and has the power and authority to execute and perform this Agreement; (iii) this Agreement (A) is the legal, valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, (B) does not violate any order of any court or other agency of government binding on the Company or the charter documents of the Company, and (C) does not conflict with, result in a breach of, or constitute an event of default under any material indenture, agreement or other instrument to which the Company is a party; and (iv) the Company has not received written notice of any action or proceeding that challenges the validity of this Agreement or the Company's right and power to enter into and perform this Agreement.

b) The County represents and warrants to the Company that: (i) the County is a political subdivision and body politic of the State of North Carolina with power and authority to enter into and perform this Agreement; (ii) the County has taken all action necessary to authorize the execution, delivery and performance of this Agreement; (iii) this Agreement is a legal, valid, and binding obligation of the County, enforceable against the County in accordance with its terms; and (iv) the County has not received written notice of any action or proceeding that challenges the validity of this Agreement or the County's right and power to enter into and perform this Agreement.

12. Defaults and Remedies.

a) If the Company fails to pay any amount due to the County pursuant to **Section 4(c)**, **Section 4(d)** or **Section 7(c)**, and such amount continues to be unpaid for a period of 30 or more days after the County gives the Company written notice of default, then the County's sole and exclusive remedies will be (i) to recover from the Company the amounts due under those three sections, and (ii) either terminate this Agreement or suspend making any further Grant payments until the Company pays the amounts due under those three sections, to the County.

b) If any warranty or representation of a party in **Section 11** shall have been false or inaccurate in any material respect when made and is not remedied within 30 days following the defaulting party's receiving written notice from the non-defaulting party (or in the case where it is capable of being remedied, but is incapable of being remedied within a period of 30 days, such further period as is reasonable in the circumstances), then the non-defaulting party will have such rights and remedies as may be available in law.

c) If the County defaults in the performance of its obligations under this Agreement, and such default continues for a period of 30 or more days after the Company gives the County written notice of such default, then the Company will have such rights and remedies as are available in law.



13. Controlling Law. This Agreement will be governed by, and construed in accordance with, the laws of the State of North Carolina, excluding its conflict of law principles. Any action or proceeding relating to this Agreement or its enforcement will be adjudicated in the General Courts of Justice for Buncombe County, North Carolina or the United States District Court for the Western District of North Carolina. The Company and the County consent and submit to the jurisdiction and venue of those courts.

14. Severability. Each provision in this Agreement is severable. If any provision of this Agreement will be determined to be invalid or unenforceable by a court of competent jurisdiction, then: (a) such determination will not invalidate or render unenforceable any other provision of this Agreement; (b) such provision will be construed as closely as possible to the parties' original intent in order to render such provision valid or enforceable, as applicable; and (c) the remaining terms of this Agreement, together with such reconstructed provision, will constitute the parties' entire agreement

15. Confidentiality. The County will keep confidential and will not disclose or publish any of the Company's trade secrets as defined in Section 132-1.2(1) of the North Carolina General Statutes, will keep all records evidencing such trade secrets marked as "confidential trade secrets", and will keep all such records segregated in the County's files. If the County receives a request, subpoena or court order to disclose any information or records the Company or its representatives have provided or provide in the future relating to this Agreement, the Facility or the project described in this Agreement, the County will give the Company prompt written notice of the request, subpoena or court order and will discuss any proposed disclosure of such information or records with the Company (and, to the extent possible, give the Company the opportunity to contest any disclosure of information or records the Company believes should not be disclosed) before making any such disclosure.

16. Notices. Any notice permitted or required under this Agreement from one party to the other must be in writing and will be effective (a) on the date it was actually delivered to the addressee if delivered personally, or sent by a nationally recognized courier (such as FedEx or United Parcel Service) or sent by facsimile, or (b) three days after having been deposited in the United States mail, if sent by certified mail, return receipt request, in each case to the respective addresses of the Company and the County listed below, or those other addresses of which either party gives the other party written notice:

**If to the Company, to**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**With a copy to**

Stephen R. Hunting  
Parker Poe Adams & Bernstein LLP  
Three Wells Fargo Center  
401 South Tryon Street, Suite 3000  
Charlotte, NC 28202

**If to the County, to**  
Wanda S. Greene  
Buncombe County Manager  
205 College Street, Suite 300  
Asheville, North Carolina 28801

**With a copy to**  
Michael C. Frue  
Buncombe County Attorney  
205 College Street  
Asheville, North Carolina 28801

17. Binding Effect and Certification. Subject to the specific provisions of this Agreement, this Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and assigns, notwithstanding changes in corporate or other governance. This Agreement is conditioned upon it being stamp-certified as having been pre-audited in order to comply with the budgetary accounting requirements (if any) that apply, under the Local Government Budget and Fiscal Control Act or otherwise. Such certification is set forth at the end of this Agreement, and the Finance Officer for the County must sign it.

18. Liability of Officers and Agents. No official, officer, agent or employee of the County or the Company will be subject to any personal liability or accountability by reason of the execution or performance of this Agreement or any other documents related to the transactions contemplated by this Agreement. Such officials, officers, agents, or employees will be deemed to execute such documents in their official capacities only, and not in their individual capacities. This **Section 18** will not relieve any such official, officer, agent or employee from the performance of any official duty provided by law.

19. Publicity. Except as required by law, the County will make no public announcement of the parties' entering into this Agreement or the terms and conditions of this Agreement without the prior written consent of the Company.

20. Miscellaneous. This Agreement may be executed in counterparts, each of which will be deemed an original and all of which, when taken together, will constitute one and the same instrument. Except as expressly provided in this Agreement, there are no third party beneficiaries of this Agreement. All **Exhibits** attached to this Agreement are incorporated into this Agreement by reference. The term "including" in this Agreement will not be construed to be limiting. **Sections 4, 7(c), 10 and 15** will survive the termination of this Agreement for any reason. This Agreement may not be amended except by a written amendment both parties sign. This Agreement is the entire agreement of the parties regarding the subject matter and supersedes all prior and contemporaneous understandings.

*(Signatures on next page)*

The parties execute this Economic Development Agreement as of the Effective Date.

ATTEST:

**Buncombe County**

\_\_\_\_\_  
Kathy Hughes, Clerk  
The Board of County  
Commissioners

By: \_\_\_\_\_  
David Gantt  
Chairman, Board of County  
Commissioners

Date \_\_\_\_\_

[Insert Company Name]  
a North Carolina \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date \_\_\_\_\_

This Economic Development Agreement has been pre-audited to the extent, and in the manner, required by the **Local Government Budget and Fiscal Control Act**.

\_\_\_\_\_  
Buncombe County Finance Officer, on  
behalf of the County

\_\_\_\_\_  
Buncombe County Attorney

The Buncombe County Board of Commissioners approved this Agreement at its meeting held the \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Chairman, Board of Commissioners

**Exhibit A**  
Refund Example

Minimum Investment:

- If the Company makes aggregate Qualifying Expenditures of only \$103 million by the Deadline, then it will be obligated to pay a refund to the County calculated as follows:
- The Company will refund to the County an amount equal to (i) 50%, multiplied by (ii) a pro rata percentage, multiplied by (iii) the sum of all Grant payments the County actually made to the Company under the Agreement (up to \$9,000,000).
  - The pro rata percentage is 17.6% ( $\$22 \text{ million shortfall} \div \$125 \text{ million} = 17.6\%$ ).
  - Assume that the Company received the total \$10 million in Grant payments under **Section 3**.
- The refund the Company owes to the County associated with the Minimum Investment shortfall is \$792,000 ( $50\% \times 17.6\% \times \$9,000,000 = \$792,000$ ).

Jobs Minimum:

- If the Company only achieved 391 full-time employees at the Facility by the Deadline, then it will be obligated to pay a refund to the County calculated as follows:
- The Company will refund to the County an amount equal to (i) 50%, multiplied by (ii) a pro rata percentage, multiplied by (iii) the sum of all Grant payments the County actually made to the Company under the Agreement (up to \$9,000,000).
  - The pro rata percentage is 2.25% ( $\text{nine-employee shortfall} \div 400 = 2.25\%$ ).
  - Assume that the Company received the total \$10 million in Grant payments under **Section 3**.
- The refund the Company owes to the County associated with the Jobs Minimum shortfall is \$101,250 ( $50\% \times 2.25\% \times \$9,000,000 = \$101,250$ ).

Exhibit B  
NCDOT Letter



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE  
GOVERNOR

EUGENE A. CONTI, JR.  
SECRETARY

June 20, 2011

The Honorable David Gantt, Chairman  
Buncombe County Board of Commissioners  
205 College Street, Suite 200  
Asheville, North Carolina 28801

Subject: Volvo Building  
Project Ice  
US Highway 25

Dear Chairman Gantt:

We have been advised that Buncombe County is involved in negotiations regarding the redevelopment of the former Volvo manufacturing plant on US Highway 25. We further understand that part of these negotiations involve whether traffic signals that had served the plant on US 25 and NC Highway 146 (Long Shoals Road) could be reactivated. The purpose of this letter is to offer our assistance with this project and provide you with information regarding the reinstallation of the traffic signals.

Regarding the traffic signal on US 25 at the plant; we can commit to reinstalling this signal and having it operational by January 2012 if an employer commits to locating there and will generate the equivalent trips of 100 employees within a reasonable time frame. As you probably know, traffic signals are installed when traffic volumes exceed certain thresholds and we are charged with ensuring these warrants are met. Based upon the current client's potential employment of 400, we would expect that a minimum of 100 employees would reasonably be expected within the year 2012.

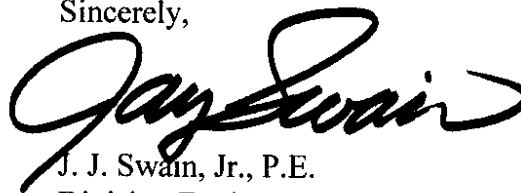
The traffic signal on NC 146 was installed in the last four years based upon Volvo needing to access the road with oversized loads. The signal was only used upon activation when an oversized load was exiting. This signal could be reactivated upon receipt of data indicating a similar need to move large or very frequent loads. Assuming appropriate data is supplied soon, that signal could be reinstalled by January 2012 as well.

The Honorable David Gantt  
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Both of these traffic signals would be reactivated at the Department's expense under the aforementioned criteria. In order to meet the January 2012 time frame, we would need to have a commitment from the client by the end of the summer.

We appreciate the opportunity to assist Buncombe County with this exciting employment opportunity and trust that this letter meets your requirements. If you need further information or if other accommodations are necessary, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Jay Swain". The signature is written in a cursive, flowing style.

J. J. Swain, Jr., P.E.  
Division Engineer

JJS/pl

cc: Ms. Wanda Proffitt, Board of Transportation Member  
Mr. Roberto Canales, Secretary's Coordinator of Strategic Initiatives  
Ms. Margie L. Bukowski, Senior Economic Developer, NC Department of Commerce