ORDINANCE NUMBER 4-2019

APPROVING AN AGREEMENT AMONG THE CITY AND BMW MANUFACTURING CO., LLC, BMW OF NORTH AMERICA, LLC, AND SB ACQUISITIONS, LLC (COLLECTIVELY, “BMW”) REGARDING THE CITY’S BUSINESS LICENSE FEE AND THE INCLUSION OF REAL PROPERTY IN A MULTI-COUNTY BUSINESS OR INDUSTRIAL PARK; AND OTHER RELATED MATTERS.

WHEREAS, South Carolina law authorizes municipalities to take actions not inconsistent with the Constitution and general laws of the State, regarding any subject the municipality finds necessary and proper for the general welfare and convenience of the municipality, including to execute and deliver contracts related to economic development;

WHEREAS, BMW has purchased or currently leases property inside the City;

WHEREAS, BMW may in the future purchase or lease other property inside the City;

WHEREAS, BMW’s developing the property is important to the area’s economic development;

WHEREAS, the City desires to promote BMW’s developing the property in a manner that benefits the City while maintaining a reasonable business environment for BMW;

WHEREAS, the City and BMW have memorialized each party’s respective commitments in an agreement, the substantially final form of which is attached as Exhibit A (“Agreement”).

NOW THEREFORE, CITY COUNCIL ORDAINS:

1. The Agreement is approved and is incorporated by reference in this Ordinance as if set forth fully in the Ordinance’s body. The Mayor and the City Administrator are each authorized to execute and delivery the Agreement in the name of and on behalf of the City.

2. This ordinance is effective after second reading.

CITY OF GREER, SOUTH CAROLINA

[SEAL]

Richard W. Danned Mayor

ATTEST:

Tammela Duncan, Municipal Clerk

Introduced by:  Councilmember Wayne Griffin
First Reading:  January 8, 2019
Second Reading / Final Approval:  January 22, 2019
APPROVED AS TO FORM:

Michael E. Kozlarek, Esq.
Kozlarek Law LLC
EXHIBIT A
FINAL FORM OF AGREEMENT

AGREEMENT

THIS AGREEMENT ("Agreement") is made as of January 22, 2019, among the City of Greer, South Carolina ("City"), BMW Manufacturing Co., LLC, BMW of North America, LLC, and SB Acquisitions, LLC (BMW Manufacturing Co., LLC, BMW of North America, LLC and SB Acquisitions, LLC are collectively referred to herein as "BMW") (the City and BMW are collectively referred to herein as the "Parties").

RECITALS

WHEREAS, BMW has purchased or currently leases certain parcels of land inside the City limits ("Present BMW City Parcels") as part of the land currently owned or leased by BMW in the County and reflected on Exhibit A hereto;

WHEREAS, BMW may in the future purchase or lease, including but not limited to leases from the South Carolina State Ports Authority or Spartanburg County ("County"), certain parcels of land inside the City limits at the time that BMW purchases or leases such parcels ("Future BMW City Parcels") (the Present BMW City Parcels and the Future BMW City Parcels are collectively referred to herein as "Parcels");

WHEREAS, the Parties believe that the use and development of the Parcels may be critical to the economic development of the area in which the Parcels are or may come to be located, particularly in relation to the automotive sector;

WHEREAS, the City desires to promote the use and development of the Parcels by BMW or other BMW affiliates for commercial and industrial purposes in a manner that benefits the City while maintaining a reasonable business environment for BMW;

WHEREAS, in 1993, the County, in order to promote economic development within the County and in particular to attract commercial and manufacturing enterprises and investments to the County, established, together with Union County, a multi-county industrial park ("MCIP"), pursuant to Article VIII, Section 13(D) of the State Constitution and Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended ("Code"); and

WHEREAS, the City invites BMW to rely upon the City's promises of cooperation and on this Agreement as an incentive for BMW to undertake and expand business activities on the Parcels.

NOW, THEREFORE, for and in consideration of the respective agreements hereinafter contained and other value, the Parties agree as follows:

1. Multi-County Industrial Park (MCIP).

   (a) Present BMW City Parcels. The City hereby provides its consent, pursuant to Section 4-1-170(C) of the Code, to the placement, to the extent not already the case as of the date of this Agreement, of the Present BMW City Parcels in the MCIP. The City further agrees, if and as needed, to communicate this consent to the County in whatever manner may be necessary to officially provide such consent to the County.

   (b) Future BMW City Parcels. The City agrees to work in good faith with the other Parties and the County so that, in the future, City consent will be provided to the placement of Future BMW City Parcels in the MCIP or in such other multi-county industrial park in which the County is or may become a party.
2. **City Business License Tax.** The City agrees that activities by (a) BMW Manufacturing Co., LLC, (b) SB Acquisitions, LLC, (c) BMW of North America, LLC, or (d) any member of their group of affiliated businesses (as defined in Section 18-32 of the Ordinance, as defined below) (collectively, "BMW Entities"), which activities are conducted in the City’s jurisdictional limits but are not directly related to generating revenue in the City’s jurisdictional limits, do not subject any of the BMW Entities to any business license tax or other payment ("Business License Tax") under the City’s Business License Ordinance, Greer City Code §18-31 (2013), as such Ordinance may be amended from time to time ("Ordinance"). The City also agrees that if and to the extent that any of the BMW Entities generates revenues directly from its activities in the City’s jurisdictional limits and such generation of revenues or related activities subject such entity to the Business License Tax, or if such entity otherwise becomes subject to the Business License Tax, then such tax may be applied to such entity only with respect to that revenue generated directly from such entity’s activities conducted in the City’s jurisdictional limits. The City intends to interpret and enforce the Ordinance with respect to the BMW Entities consistently with how the City interprets and enforces the Ordinance with respect to each other entity the City thinks is or is not subject to the Ordinance.

The City hereby agrees to keep in place without material modification (directly or indirectly) the following provisions of the current version of the Ordinance:

- Section 18-32, defining “group of affiliated businesses.”
- Section 18-34(c), providing a $1 million cap on Business License Tax to be paid during any calendar year by a business, or group of affiliated businesses collectively.
- Section 18-52, Appendices A, B, and C, providing graduated rate scales for manufacturing, wholesale trade, truck transportation and warehouse and storage facilities.

The current version of the above-referenced provisions of the Ordinance is attached hereto as Exhibit B. The City hereby agrees to continue these provisions of the Business License Tax Ordinance, as they relate to the BMW Entities, without material amendment for the term of this Agreement as set forth in Section 5 hereof. The City recognizes that BMW will rely upon this commitment in making future decisions about whether and the extent to which to conduct business inside the City.

3. **Cooperation.** The Parties recognize the need for cooperation among the Parties with respect to this Agreement. The Parties agree to cooperate and take any additional actions or execute additional documents as may be necessary or convenient to cause this Agreement to be effectuated.

4. **Limitation.** The City’s commitments, as contained in this Agreement, are provided to BMW to the extent the City is permitted by law to make such commitments.

5. **Default.** In the event of a breach of this Agreement or failure by a Party to meet the commitments set forth herein, each Party shall have the right to pursue such remedies and damages as may be available at law or in equity.

6. **Term.** The term of this Agreement shall commence as of the date first written above and shall continue in effect for 20 years from the date first written above, with an option by BMW to extend such term for an additional 20 years.

7. **Notices.** All notices, approvals, consents, requests and other communications hereunder shall be in writing and may be delivered personally, or may be sent by certified mail, return receipt requested, to the following addresses, unless the Parties are subsequently notified of any change of address in accordance with this Section:

   [REMAINDER OF PAGE INTENTIONALLY BLANK]
If to the City:
City of Greer, South Carolina
Attention: City Administrator
301 East Poinsett Street
Greer, South Carolina 29651

With a copy to:
Michael E. Kozlarek, Esq.
Kozlarek Law LLC
Post Office Box 565
Greenville, South Carolina 29602-0565

If to BMW Manufacturing Co., LLC:
Chief Financial Officer
BMW Manufacturing Co., LLC
1400 Highway 101 South
Greer, South Carolina 29651

With a copy to:
Office of Corporate Counsel
BMW Manufacturing Co., LLC
1400 Highway 101 South
Greer, South Carolina 29651

If to BMW of North America, LLC:
c/o BMW Manufacturing Co., LLC
1400 Highway 101 South
Greer, SC 29651
Attention: Chief Financial Officer

With a copy to:
Office of Corporate Counsel
BMW Manufacturing Co., LLC
1400 Highway 101 South
Greer, South Carolina 29651

and

Office of General Counsel
BMW of North America, LLC
300 Chestnut Ridge Road
Woodcliff Lake, New Jersey 07675-1227

If to SB Acquisitions, LLC:
c/o BMW Manufacturing Co., LLC
1400 Highway 101 South
Greer, SC 29651
Attention: Chief Financial Officer

With a copy to:
Office of Corporate Counsel
BMW Manufacturing Co., LLC
1400 Highway 101 South
Greer, South Carolina 29651
Any notice shall be deemed to have been received as follows: (1) by personal delivery, upon receipt; or (2) by certified mail, 3 business days after delivery to the U.S. Postal authorities by the Party serving notice.

8. **Applicable Law.** The interpretation and enforcement of this Agreement shall be governed by the laws of the State of South Carolina without regard to conflict of laws or choice of law rules.

9. **No Implied Waiver.** Any waiver of enforcement of any provisions of this Agreement or any waiver of any breach of this Agreement, whether or not recurring, shall not be construed as a waiver of any subsequent enforcement of any provision or breach of this Agreement.

10. **Severability.** The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision.

11. **Assignability.** This Agreement is not assignable by any Party without the prior written consent of the other Parties.

12. **Entire Agreement.** This Agreement shall constitute the entire agreement between the Parties with respect to the subject matter hereof and shall supersede all previous oral and written negotiations, commitments, and understandings with respect to the subject matter of this Agreement.

13. **Amendments.** This Agreement may be amended at any time by mutual consent of the Parties, with any such amendment to be invalid unless in writing, signed by each of the Parties.

14. **Headings.** The paragraph titles used herein are for convenience only and do not limit the contents of this Agreement.

15. **Further Action.** Each Party agrees to enter into further agreements or perform further reasonable actions necessary to fully implement this Agreement.

16. **Successors and Assigns.** The representations and agreements made pursuant to the terms of this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

17. **Execution of Counterparts.** This Agreement may be executed in several counterparts, each of which shall constitute an original instrument.

[ONE SIGNATURE PAGE AND TWO EXHIBITS FOLLOW]
[REMAINDER OF PAGE INTENTIONALLY BLANK]
IN WITNESS WHEREOF, THE CITY OF GREER, SOUTH CAROLINA, BMW MANUFACTURING CO., LLC, BMW OF NORTH AMERICA, LLC, and SB ACQUISITIONS, LLC, each pursuant to due authority, have duly executed this Agreement, all as of the date first above written.

CITY OF GREER, SOUTH CAROLINA

By: ________________________________

BMW MANUFACTURING CO., LLC

By: ________________________________

BMW OF NORTH AMERICA, LLC

By: ________________________________

SB ACQUISITIONS, LLC

By: ________________________________
EXHIBIT A
DESCRIPTION OF LAND OWNED BY OR LEASED TO
BMW IN SPARTANBURG COUNTY

I. Land Owned by The South Carolina State Ports Authority

All or a portion of Spartanburg County Tax Map Nos.:
5-23-00-037.00
5-23-00-038.00
5-23-00-039.00
5-23-00-041.00
5-23-00-041.01
5-23-00-043.00
5-23-00-044.00 (portion of)
5-23-00-048.01
5-23-00-049.02
5-23-00-049.03
5-23-00-049.06
5-23-00-049.09 (portion of)
5-23-00-058.00
5-23-00-059.00
5-24-00-043.01
5-24-00-081.02
5-24-00-081.03
5-24-00-081.04
5-24-00-104.00
5-24-00-122.00
5-24-00-122.01
5-24-00-124.00
5-24-00-124.01
5-24-00-130.02
5-28-00-004.00
5-28-00-004.01
5-28-00-010.00
5-29-00-002.00 (portion of)
5-29-00-002.01
5-29-00-002.02
5-29-00-018.02

II. Land Owned by Spartanburg County, South Carolina

All or a portion of Spartanburg County Tax Map Nos.:
5-24-00-024.00
5-24-00-081.00
5-24-00-094.00
5-24-00-099.00
5-28-00-010.01
EXHIBIT B

Ordinance Number 2-2018

An Ordinance Amending Chapter 18 Business License, Article II Licensing, Sections 18-32, 18-34 and 18-52, Appendix A, Appendix B, and Appendix C to Add Definitions, Clarify the Applicability of Minimum and Maximum Tax, and To Reflect Changes in Business License Tax Rates and the Reclassification of Various Industry Sectors

Whereas, the City of Greer City Council at various times reviews the city ordinances to make necessary improvements and/or changes; and,

Whereas, the City of Greer City Council recognizes the impact of local businesses to the business climate in the region and the local economy of the City of Greer; and,

Whereas, the City of Greer City Council desires to create and continue a business friendly culture;

Now, Therefore, Be It Ordained by the Mayor and Council of the City of Greer, South Carolina that the Greer City Code of Ordinances Chapter 18 Business License, Article II Licensing, Sections 18-32, 18-34, and 18-52, Appendix A, Appendix B and Appendix C be amended as follows:

Article II – Licensing

Sec. 18-32 – Definitions. (adds the following definition to the list)

Group of affiliated businesses means all business entities that control, are controlled by, or are under common control with, another business entity.

Sec. 18-34 – License Tax.

(b) A separate license shall be required for each place of business and for each classification or business conducted at one place. If gross income cannot be separated for classifications at one location, the license tax shall be computed on the combined gross income for the classification requiring the highest rate. A license tax based on gross income shall be computed on the gross income for the preceding calendar or fiscal year. The tax for a new
business shall be the base tax. The initial tax for an annexed business shall be the base tax. No refund shall be made for a business which is discontinued.

(c) No business, or group of affiliated businesses collectively, shall be required to pay more than $1,000,000.00 in license tax during any calendar year.

Sec. 18-52. - Classification and rates.

APPENDIX A
CLASS B RATES

(8.3) NAICS 31 – 33 – Manufacturing (all types);
NAICS 42 - Wholesale Trade;
NAICS 484 – Truck Transportation;
NAICS 493 – Warehousing and storage facilities:

<table>
<thead>
<tr>
<th>Minimum on first $2,000.00</th>
<th>$250.00</th>
<th>Plus</th>
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<tbody>
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<td>Per $1,000.00, or fraction over:</td>
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</tr>
<tr>
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BUSINESS LICENSE CLASS BY NAICS CODE

APPENDIX B
NAICS NUMERICAL INDEX (2013 DATA)

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<th>RATE</th>
<th>CLASS</th>
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<tr>
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<tr>
<td>42</td>
<td>8</td>
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<tr>
<td>48-49</td>
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<td></td>
<td>Transportation and warehousing</td>
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<tr>
<td>484</td>
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<td></td>
<td>Truck transportation</td>
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<tr>
<td>493</td>
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<td>Warehousing and storage facilities</td>
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BUSINESS LICENSE CLASS SCHEDULE BY RATE CLASS

APPENDIX C
RATE CLASS INDEX (2013 DATA)

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<tbody>
<tr>
<td>48-49</td>
<td>Transportation and Warehousing</td>
</tr>
</tbody>
</table>

Rate Class 8

| 31-33| Manufacturing                     |
| 42   | Wholesale trade                   |
| 484  | Truck Transportation              |
| 493  | Warehousing and storage facilities|

All ordinances in conflict with this ordinance are hereby repealed.

This ordinance shall be effective on the date of final reading.

CITY OF GREER, SOUTH CAROLINA

[Signature]
Richard W. Dunner, Mayor

ATTEST:

[Signature]
Elizabeth Adams, Executive Administrative Assistant

Introduced by: Councilwoman Judy Albert
First Reading: January 9, 2018
Second and Final Reading: January 23, 2018

Ordinance Number 2-2018
Amend Business License Ordinance
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