
PERFORMANCE AGREEMENT

Dated as of December 1, 2018

BY AND BETWEEN
SCHAEFFLER GROUP USA INC.

AND

CITY OF JOPLIN, MISSOURI

PERFORMANCE AGREEMENT

THIS PERFORMANCE AGREEMENT, dated as of December 1, 2018, as from time to time amended and supplemented in accordance with the provisions hereof (this “**Agreement**”), by and between the City of Joplin, Missouri, a municipal corporation duly organized and existing under the laws of the State of Missouri (the “**City**”), and Schaeffler Group USA Inc., a Delaware corporation (hereinafter, together with its wholly owned affiliates, referred to as the “**Company**”);

RECITALS:

WHEREAS, the City is authorized by Sections 100.010 to 100.210, RSMo, as amended, and Article VI Section 27(b) of the Missouri Constitution (the “**Act**”), to purchase, construct, extend and improve certain facilities for commercial, industrial, warehousing and manufacturing purposes, to enter into leases and lease-purchase agreements with any person, firm or corporation for said projects, and to issue revenue bonds for the purpose of paying the cost of any such facilities; and

WHEREAS, pursuant to the Act, the City Council of the City has passed an ordinance authorizing the City to issue its Taxable Industrial Revenue Bonds (Schaeffler Expansion Project), Series 2018 (the “**Bonds**”), in the principal amount of not to exceed \$67,215,000 for the purpose of equipping the Company’s facility located on certain real estate in Joplin, Missouri (the “**Project Site**”), by the acquisition and installation of certain machinery and equipment (the “**Project Equipment**”), and together with any additions, alterations, replacements, substitutions thereto now or hereafter acquired and installed within the facility located on the Project Site by the Company (the “**Project**”), and authorizing the City to lease the Project Equipment to the Company pursuant to a Lease Agreement to be entered into by and between the City, as lessor, and the Company, as lessee, at the time the Bonds are issued (the “**Lease**”); and

WHEREAS, pursuant to the foregoing, the City desires to enter into this Agreement with the Company in consideration of the Company’s desire to cause the acquisition and installation of the Project as more fully described in the Lease upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the City and the Company hereby represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. In addition to the word and terms defined in the Recitals, the following words and terms as used herein shall have the following meanings:

“**Agreement**” means this Performance Agreement between the City and the Company, as from time to time amended and supplemented in accordance with the provisions hereof.

“**Ambulance District**” means the Newton County Ambulance District.

“**Annual Jobs Report**” means the Annual Jobs Report required to be filed by the Company by **Section 4.4** hereof.

“Average Wage” means \$20.42 per hour calculated as follows: for a specified period, the sum of: (a) base wages paid, (b) the cost of fringe benefits provided, plus (c) incentive and bonuses awarded to those persons which are engaged in the Jobs hereunder, divided by the number of hours performed by such persons during such specified period.

“County” means Newton County, Missouri.

“Event of Default” means any Event of Default as provided in **Section 6.1** hereof.

“Grant” or **“Grants”** means payments in lieu of taxes made by the Company to the City pursuant to **Section 3.1** of this Agreement.

“Indenture” means the Trust Indenture dated as of December 1, 2018 relating to the issuance of the Bonds, as amended from time to time.

“Job” means a full-time position with the Company of not less than 30 hours per week at the Project. Positions filled by workers who are not directly employed by the Company do not qualify as “Jobs” for purposes of this definition; provided, however that workers who are employed by a third party company at the Project Site pursuant to a written agreement with the Company during an employee’s probationary period shall qualify as a “Job” for purposes of this definition; provided, further, that workers performing less than 30 hours per week but not less than 20 hours per week shall constitute one-half of a “Job” for purposes of this definition; provided, further, that such workers who are employed by a Related Taxpayer shall qualify as a “Job” for purposes of this definition.

“Lease” means the Lease Agreement to be entered into by and between the City and the Company at the time of issuance of the Bonds.

“Penalty Payments” means the penalty payments provided for in **Article III** hereof.

“Project” means the acquisition and installation of the Project Equipment at the Project Site.

“Project Costs” means all costs and expenses of every nature relating to the acquisition, purchase and installation of the Project Equipment.

“Project Equipment” has the meaning given in the Indenture.

“Project Site” means 3900 South Rangeline Road, Joplin, Missouri 64804.

“Related Taxpayer” means (i) a corporation, partnership, trust or association controlled by the Company; or (ii) a corporation, partnership, trust or association controlled by an individual, corporation, partnership, trust or association in control of the Company or Related Taxpayer. For the purposes of this definition, “control of a corporation” shall mean ownership, directly or indirectly, of stock possessing at least fifty percent of the total combined voting power of all classes of stock entitled to vote; “control of a partnership or association” shall mean ownership of at least fifty percent of the capital or profits interest in such partnership or association; and “control of a trust” shall mean ownership, directly or indirectly, of at least fifty percent of the beneficial interest in the principal or income of such trust; ownership shall be determined as provided in Section 318 of the U.S. Internal Revenue Code.

“Replacement Project Equipment” means personal property located on the Project Site which is purchased, acquired and installed by the Company to replace Project Equipment which has become, as

certified in writing by the Company to the City, inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary or otherwise no longer useful to the Company in its operations conducted on the Project Site.

“**Required Number of Jobs**” means 262 Jobs on September 30, 2019 and September 30, 2020; and 322 Jobs on September 30, 2021, and each Test Date thereafter.

“**Test Date**” means September 30 of each year, beginning on September 30, 2019, and ending on September 30, 2030.

ARTICLE II

ISSUANCE OF BONDS

Section 2.1. Issuance of the Bonds. The City intends to issue the Bonds under the Act for the purposes of paying the Project Costs. In connection with the issuance of the Bonds, the City shall acquire title to the Project Equipment.

ARTICLE III

PERSONAL PROPERTY TAX EXEMPTION; PENALTY PAYMENTS

Section 3.1. Personal Property Tax Exemption. So long as the City owns title to the Project Equipment, the City expects the Project to be exempt from ad valorem taxes on personal property. Each item of property that is a part of the Project Equipment shall be exempt from ad valorem taxes during the Abatement Period for such item of Project Equipment. The Replacement Project Equipment shall be exempt from ad valorem taxes on personal property for the remaining Abatement Period for the Project Equipment so replaced. Notwithstanding any other provision of this Agreement to the contrary, the last year of the final Abatement Period shall be 2030. The Company shall pay, or cause to be paid, to the City the Grants for the Project in the amounts, and on the dates set forth, on **Exhibit C** hereto. The Grants shall be distributed by the City to the Ambulance District.

Section 3.2. Penalty Payments Upon Non-Performance.

(a) The Company covenants to maintain the Required Number of Jobs at the Project Site for so long as this Agreement is in effect. The Company further covenants that the Required Number of Jobs shall have not less than the Average Wage for so long as this Agreement is in effect.

(b) In the event the Company fails to maintain the Required Number of Jobs at the Project Site measured by determining the highest actual number of Jobs during the 90-day period ending on each Test Date or the Company fails to maintain the Required Number of Jobs at not less than the Average Wage, the Company shall pay to the City Penalty Payments in an amount equal to a percentage of the personal property taxes that would otherwise be due on the Project Equipment if the Project Equipment were not exempt by reason of the City’s ownership, beginning at a Zero Percent (0%) Penalty Payment for compliance, in accordance with the following formula:

$$\frac{(a \times c)}{(b \times d)} \times 100 = \text{Percent of Deficiency}$$

100% minus the Percent of Deficiency = Pro Rata % of Increase in Penalty Payment from Zero Percent

- a = Actual Number of Jobs as of Test Date
- b = Projected Required Number of Jobs as of Test Date
- c = Actual Average Wage as of Test Date
- d = Projected Average Wage as of Test Date

(c) In the event Penalty Payments are required by **Section 3.2(b)** hereof, the Company covenants and agrees to make the Penalty Payments to the City on or before December 1 of the year in which the Company fails to maintain the Required Number of Jobs at the Average Wage, commencing December 1, 2019 and to and including December 1, 2030. All such Penalty Payments shall be made to the City which shall transfer and allocate the same to each of the taxing districts in which the Project is located proportionately based on their respective then current tax levies compared to the then current total tax levies of all such taxing districts pursuant to Section 100.050 of the Revised Statutes of Missouri, as amended (provided that any Grants payable to the Ambulance District for such year shall be deducted from any penalty payments that would otherwise be allocable to the Ambulance District). In no event will the total amount of the Grants and the Penalty Payments exceed the amount of property taxes payable for the Project Equipment assuming the Project Equipment were subject to ad valorem property taxes.

Section 3.3. Obligation to Effect Tax Abatement. The City shall take all actions within its control to obtain and/or maintain in effect the exemption referred to in **Section 3.1** above, including any filing required with any governmental authorities; provided, however, the City shall not be liable for any failure of any other governmental taxing authority to recognize the exemption provided herein.

Section 3.4. Other Property Taxes in Connection with the Project Equipment; Credits. The personal property tax exemption provided by the City's ownership of the Project Equipment is expected to apply to all interests in the Project Equipment during the period it is owned by the City. If any property taxes are levied by or on behalf of the City or any other taxing jurisdiction against any interest in the Project Equipment during the period the City owns the Project Equipment (including, without limitation, any taxes levied against the Company's rights in the Lease), the amount of tax payments related to such levy or levies which are paid by the Company and received by the City or any other taxing jurisdiction shall be credited against and reduce on a pro rata basis the amount of the Penalty Payments the Company is obligated to pay pursuant to this Agreement. The Company shall be responsible for any taxes related to any interest in the Project Equipment which the Company owns in its own name or granted to the Company other than pursuant to the Lease.

Section 3.5. Costs of the City. The Company agrees to make an annual payment to the City to reimburse the City for administrative costs connected with this Agreement; provided, however that such payments shall not exceed \$1,000 per year. Said payments will be made on or before December 1 of each year beginning in 2019 and continuing until the expiration or termination of this Agreement. The City shall give 30 days notice of the actual amount due at least 30 days prior to the payment due date.

Section 3.6. Sales Tax. The parties expect that the acquisition of the Project Equipment will be exempt from any sales taxes imposed by any governmental authority by virtue of the equipment being purchased for use in a manufacturing process; however, the Company shall be responsible for any taxes levied or assessed by the Missouri Department of Revenue in relation to the Project and any such sales

taxes paid by the Company shall not be offset against Grants or Penalty Payments that may be due under this Agreement.

Section 3.7. Company's Right To Protest Taxes. Notwithstanding any other provision of this Agreement to the contrary, nothing in this Agreement shall be construed to limit or in any way restrict the availability of any provision of Missouri law which confers upon the Company the right to appeal, protest or otherwise contest any property tax valuation, assessment, classification or similar action.

Section 3.8. Cessation of Operations at the Project. If for any reason the Company ceases operation at the Project Site during the term of this Agreement, the Company shall make a Penalty Payment to the City equal to 100% of the amounts that would otherwise be payable to each taxing jurisdiction if the Project were not otherwise exempt from taxation on or before December 31 in the year in which the Company ceases operation and on each December 31 thereafter for each year in which the Project is, on January 1 of such year, still titled in the name of the City, and the Company has ceased operations. Within 30 days of the date of receipt of such Penalty Payment and after reduction for administrative costs of the City as provided by **Section 3.5**, the City shall divide each Penalty Payment among the taxing jurisdictions within the City in proportion to the amount of the then current ad valorem tax levy of each taxing jurisdiction.

“Ceases operations” or “cessation of operations” means the failure of the Company to employ an average of at least 90 full-time equivalent employees at the Project for a period of 12 consecutive months; provided, however, that if such failure is due to a casualty at the Project, such failure shall not constitute the “cessation of operations” provided that the Company promptly commences the reconstruction of the Project and diligently pursues such reconstruction and such reconstruction is completed within 12 months of the casualty event. In the event of such a casualty, the period of time for calculating compliance with the requirements under **Section 3.1** and any amounts due under **Section 3.2** shall exclude the period from the date of the casualty until 6 months after the reconstruction of the Project is complete.

Section 3.9. No Abatement on Special Assessments. The City and the Company hereby agree that the property tax exemptions described in this Agreement shall not apply to special assessments. The Company hereby agrees to make a payment to the City or the County on or before each December 31 in an amount equal to 100% of the special assessment which would otherwise be due with respect to the Project if such Project were not exempt from taxation.

ARTICLE IV

COVENANTS, REPRESENTATIONS AND AGREEMENTS OF THE COMPANY

Section 4.1. Inspection. The Company agrees that the City and its duly authorized agents shall have the right at reasonable times (during business hours), subject to at least 48 hours advance written notice and to the Company's usual business proprietary, safety and security requirements, to enter upon the Project Site to examine and inspect the Project and the records of the Company which demonstrate compliance with this Agreement.

Section 4.2. Compliance with Laws. To the best of the Company's knowledge, the Project is and shall be in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Project, including all applicable building and zoning, health, environmental and safety ordinances and laws.

Section 4.3. Purchase, Construction, Improvement, Equipping and Operation. The Project will be acquired, constructed, improved, equipped and operated in a manner which is consistent with the

description of the Project herein and in the Lease. In the event the Project is completed in a manner which the City determines, in its reasonable discretion, is materially inconsistent with the description of the Project contained herein and in the Lease and in the presentation to the City Council of the City, the City reserves the right to declare an Event of Default in accordance with **Section 6.1** hereof.

Section 4.4. Annual Jobs Reports. The Company shall file with the City annually, commencing on November 15, 2010, and continuing on each November 15 thereafter while this Agreement remains in effect, a report stating the number of Jobs at the Project Site and Average Wages with respect to such jobs in such form reasonably satisfactory to the City.

Section 4.5. City Approvals. The City intends that the approval of the Project granted by the City pursuant to this Agreement shall not affect or constitute any approval required by any other City department or pursuant to any City ordinance, code, regulation or any other governmental approval required by law, nor does any approval by the City pursuant to this Agreement constitute approval of the quality, structural soundness or safety of any portion of the Project. The City will not unreasonably withhold any consent or approval required by any City ordinance, code, regulation or any other governmental approval required by law related to the Project; *provided that* nothing herein shall be construed to obligate the City, acting as a party hereto, to grant permits or other approvals the City would not be obligated to grant, acting as a political subdivision, absent this Agreement.

Section 4.6. General. The Company represents, warrants and covenants that as of the date of this Agreement and during the term of this Agreement, or such shorter period as may be expressly provided for below:

(a) The Company is a corporation duly organized, validly existing and in good standing in the State of Delaware and qualified to do business in Missouri;

(b) The Company has the right, power and authority to enter into, execute, deliver and perform this Agreement;

(c) There are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting the Company which would impair its ability to perform under this Agreement or its financial condition; and

(d) The Company has obtained (or will, prior to the commencement of construction or operation obtain) and shall maintain all required government permits, certificates and consents (including without limitation appropriate environmental approvals) necessary to conduct its business and to construct, complete and operate the Project.

Section 4.7. Survival of Covenants. All warranties, representations, covenants and agreements of the Company contained herein shall survive termination of this Agreement for any reason.

Section 4.8. Indemnification of City. The Company shall indemnify, defend and save the City and its officials, officers, employees and agents, including members of the City Council, harmless from and against all claims, demands, costs, liabilities, damages or reasonable expenses, including reasonable attorneys' fees, by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done in, on or about, the Project during the term of the Lease or this Agreement, and against and from all claims, demands, costs, liabilities, damages or reasonable expenses, including reasonable attorneys' fees, arising during the term of the Lease or this Agreement from (a) any condition of the Project, (b) any breach or default on the part of the Company in the performance of any of its obligations under this Agreement or the Lease, or any action requested of the

City by the Company pursuant to the Lease or this Agreement, (c) any contract entered into in connection with the acquisition, construction, furnishing and equipping of the Project, (d) any act of negligence of the Company or of any of its agents, contractors, servants, employees or licensees, and (e) any act of negligence of any permitted assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any permitted assignee or sublessee of the Company.

ARTICLE V

SALE AND ASSIGNMENT

The benefits granted by the City to the Company pursuant to this Agreement shall belong solely to the Company, and such benefits shall not be transferred (other than to an entity controlled by or under common control with or controlling the Company, so long as such entity has a net worth at the time of such assignment at least equal to the net worth of the Company at the date of such assignment), assigned, pledged or in any other manner hypothecated without the express written consent of the City; but nothing herein shall preclude the Company from assigning or pledging its interest in the Project so long as the Company continues to occupy the Project and otherwise remains responsible for its undertakings herein.

ARTICLE VI

DEFAULT AND REMEDIES

Section 6.1. Events of Default. If any one or more of the following events shall occur and be continuing, it is hereby defined as and declared to be and to constitute an Event of Default hereunder (certain performance standards defined in **Section 3.2** above which result in a penalty payment for failure to meet the defined standards shall not be declared to constitute an Event of Default so long as said penalty payments are made in accordance with the terms of this Agreement):

(a) the Company shall fail to perform any of its obligations hereunder for (i) a period of 30 days (or such longer period as the City and the Company may agree in writing) following written notice to the Company from the City of such failure which notice shall include a specific description of the Company's failure hereunder), or (ii) if such failure is not subject to cure within such 30 days, the Company shall have failed to initiate action to cure such default and shall pursue such action diligently;

(b) the Company shall breach any material covenant contained herein and continuance of such breach for a period of 30 days (or such longer period as the City and the Company may agree in writing) after there has been given to the Company by the City a written notice specifying such breach and requiring it to be remedied; provided, that if such breach cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied, such breach shall not constitute an event of default if the Company shall promptly upon receipt of such notice commence the curing of such breach and shall thereafter prosecute and complete the same with due diligence and dispatch; or

(c) any representation of the Company contained herein shall prove to be materially false or erroneous and shall not be corrected or brought into compliance within 30 days (or such longer period as the City and the Company may agree in writing) after there has been given to the Company by the City a written notice specifying such false or erroneous representation and requiring it to be remedied; provided, that if such default cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied, such default shall not constitute an event of default if the Company shall promptly upon receipt of such notice commence the curing of such default and shall thereafter prosecute and complete the same with due diligence and dispatch.

Section 6.2. Remedies on Default. Except as otherwise provided in this Agreement, upon an Event of Default hereunder, this Agreement may be terminated by written notice to the Company from the City. Upon such termination, the Company shall make Penalty Payments (i) to the payees set forth in **Section 3.2(b)** equal to the pro rata amount of Penalty Payments payable pursuant to such **Section 3.2(b)** hereof from January 1 through the effective date of termination, and (ii) to the City the pro rata amount of taxes that would be due for the remaining portion of the year assuming the Project was placed on the tax rolls effective on the date of termination through December 31 which, within 30 days of the date of receipt by the City and after reduction for administrative costs of the City as provided by **Section 3.5**, the City shall divide among the taxing jurisdictions levying ad valorem taxes within the City in proportion to the amount of the then current ad valorem tax levy of each taxing jurisdiction.

Section 6.3. Interest on Late Payments. Any amounts due hereunder which are not paid when due shall bear interest at the interest rate of 10% per annum from the date such payment was first due.

Section 6.4. Failure of the City to Perform its Obligations. In the event the City shall fail to perform any of its obligations hereunder for (i) a period of 30 days (or such longer period as the Company and the City may agree in writing) following written notice to the City from the Company of such failure which notice shall include a specific description of the City's failure hereunder), or (ii) if such failure is not subject to cure within such 30 days, the City shall have failed to initiate action to cure such default and shall pursue such action diligently; the Company may declare that the City is in default under this Agreement and may pursue any legal remedy available to it to enforce this Agreement.

ARTICLE VII

TERM OF AGREEMENT

This Agreement shall become effective upon execution, and subject to earlier termination pursuant to the provisions of this Agreement (including particularly the following paragraph and **Article VI** hereof), shall have an initial term commencing as of the date of this Agreement and terminating on **December 31, 2030** (the "Stated Expiration Date"). This Agreement shall automatically terminate prior to the Stated Expiration Date in the event the Bonds (or any bonds issued to refund the Bonds) are no longer outstanding.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.1. Mutual Assistance. The City and the Company agree to take such actions as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent. In addition, if legislation is proposed by or in any governmental body having jurisdiction over the Project which would have the effect of limiting the ability of the City to issue the Bonds to finance the Project, the City agrees to use its best efforts to issue the Bonds prior to the effective date of any such legislation.

Section 8.2. Severability. If for any reason any provision of this Agreement shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 8.3. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Missouri.

Section 8.4. Execution in Counterparts. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 8.5. Waiver. The City and the Company acknowledge and agree that the amounts payable hereunder shall constitute payments due the City under the Lease executed in connection with the Bonds. The Company shall not be entitled to any extension of payment of such amounts as a result of a filing by or against either or both Company in any bankruptcy court.

Section 8.6. Entire Agreement. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between the City and the Company with respect to the subject matter hereof.

Section 8.7. Notices. Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses and in the manner set forth in the Indenture.

Section 8.8. Electronic Storage. The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[remainder of page intentionally left blank]

THIS PERFORMANCE AGREEMENT is dated the date first above written.

CITY OF JOPLIN, MISSOURI

By: _____
Mayor

(SEAL)

ATTEST:

By: _____
City Clerk

Approved as to form:

City Attorney

THIS PERFORMANCE AGREEMENT is dated the date first above written.

SCHAEFFLER GROUP USA INC.

By: _____
Name:
Title:

EXHIBIT A

Description of the Project Site

3900 South Rangeline Road, Joplin, Missouri

EXHIBIT B

Description of the Project Equipment

All equipment financed with the proceeds of the Bonds located on the Project Site in Joplin, Newton County, Missouri, to and until the end of the Abatement Period for each such item of equipment. No Project Equipment shall be acquired with Bond proceeds after December 31, 2023.

EXHIBIT C

Grant Payments

During each year in which this Agreement is in effect and during which Missouri law so requires, and provided that the Ambulance District then imposes *ad valorem* property taxes on personal property located in the area of the Project Site, the Company shall pay to the City for distribution to the Ambulance District, an amount calculated by the City to be equal to one hundred percent of the amount of *ad valorem* property tax revenues that the Ambulance District would have received in such year (based on the estimated assessed value in such year of the Project Equipment) in the absence of the tax exemption provided by virtue of ownership of the Project Equipment by the City; provided that the Ambulance District may set the rate of reimbursement at less than one hundred percent by a written instrument filed with the City.