

ORDINANCE 13-06

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BETWEEN LEXINGTON COUNTY, SOUTH CAROLINA AND OWEN ELECTRIC STEEL COMPANY OF SOUTH CAROLINA D/B/A CMC STEEL SOUTH CAROLINA (FORMERLY D/B/A SMI STEEL SOUTH CAROLINA) AND ITS AFFILIATES AND PROJECT SPONSORS TO PROVIDE FOR AN ADDITIONAL INVESTMENT IN LEXINGTON COUNTY BY OWEN ELECTRIC STEEL COMPANY OF SOUTH CAROLINA D/B/A CMC STEEL SOUTH CAROLINA AND AFFILIATES AND PROJECT SPONSORS; AND MATTERS RELATED THERETO.

WHEREAS, Lexington County, South Carolina (the "County") entered into a fee-in-lieu of taxes arrangement pursuant to Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the "Act"), with Owen Electric Steel Company of South Carolina D/B/A CMC Steel South Carolina (formerly D/B/A SMI Steel South Carolina) and its affiliates and project sponsors (collectively, the "Company"), in connection with which the County and the Company entered into a Fee in Lieu of Tax and Incentive Agreement dated as of August 1, 2008 (the "2008 Fee Agreement") concerning the project (the "Expansion Project"); and

WHEREAS, the Company contemplates increasing its initial promised minimum investment of Twenty-Nine Million Five Hundred Thousand (\$29,500,000) Dollars under the 2008 Fee Agreement for the Expansion Project (as such term is defined in the 2008 Fee Agreement) by making an additional investment of at least Twenty Million (\$20,000,000) in the County thereby making a total investment in the Expansion Project in excess of Forty-Nine Million Five Hundred Thousand (\$49,500,000) Dollars; and

WHEREAS, the County Council, having found that the additional investment will serve the County and assist the County in its economic development efforts, has agreed to (i) amend the 2008 Fee Agreement to extend the Investment Period for the Expansion Project under the 2008 Fee Agreement by five (5) additional years from August 31, 2013, to August 31, 2018, and (ii) to extend the Term of the Expansion Project from twenty (20) years to thirty (30) years; and

WHEREAS, the County has caused to be prepared and presented to this meeting the form of the First Amendment to Fee in Lieu of Tax and Incentive Agreement between the County and the Company, which the County proposes to execute and deliver; and

WHEREAS, it appears that the document above referred to, which is now before this meeting, is in appropriate form and is an appropriate instrument to be executed and delivered or approved by the County for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED by Lexington County Council in meeting duly assembled as follows:

Section 1. The County finds that the form, terms and provisions of the First Amendment to Fee in Lieu of Tax and Incentive Agreement (“Amended Fee Agreement”) which is before this meeting and filed with the Clerk to County Council is hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Amended Fee Agreement was set out in this Ordinance in its entirety. The Chair of the County Council and the Clerk to County Council be and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the Amended Fee Agreement to the Company. The Amended Fee Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be approved by the officials of the County executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of Amended Fee Agreement now before this meeting.

Section 2. The Chair of County Council and the Clerk to County Council, for and on behalf of the County, are hereby each authorized and directed to do any and all things necessary to effect the execution and delivery of the Amended Fee Agreement and the performance of all obligations of the County under and pursuant to the Amended Fee Agreement.

Section 3. The consummation of all transactions contemplated by the Amended Fee Agreement is hereby approved.

Section 4. This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

Section 5. The provisions of this Ordinance are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder.

Section 6. All orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.

DONE, RATIFIED AND ADOPTED this _____ day of _____, 2013.

LEXINGTON COUNTY, SOUTH CAROLINA

William B. "Bill" Banning, Sr., Chairman of Lexington
County Council

ATTEST:

By: _____
Diana W. Burnett
Clerk to Lexington County Council

First Reading: _____, 2013
Second Reading: _____, 2013
Third Reading: _____, 2013
Public Reading: _____, 2013

**FIRST AMENDMENT
TO
FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT
DATED AUGUST 1, 2008, BETWEEN LEXINGTON
COUNTY AND OWEN ELECTRIC STEEL COMPANY OF
SOUTH CAROLINA D/B/A CMC STEEL SOUTH
CAROLINA (FORMERLY D/B/A SMI STEEL SOUTH
CAROLINA),**

DATED AS OF _____, 2013

This First Amendment to Fee in Lieu of Tax and Incentive Agreement amending the Fee in Lieu of Tax and Incentive Agreement dated as of August 1, 2008 ("First Amendment to 2008 Fee Agreement") between Lexington County, South Carolina (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, and Owen Electric Steel Company of South Carolina d/b/a CMC Steel South Carolina, a corporation organized and existing under the laws of the State of South Carolina (formerly d/b/a SMI Steel South Carolina), acting for itself, any affiliates or other project sponsors (collectively the "Company");

WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the "County Council"), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina, 1976, as amended through the date hereof (the "Code"), particularly Title 12, Chapter 44 (the "Act") and by Article VIII, Section 13 of the South Carolina Constitution to: (i) enter into agreements with certain investors to construct, operate, maintain, and improve industrial and commercial facilities through which the economic development of the State of South Carolina (the "State") will be promoted by inducing manufacturing and commercial enterprises to locate, remain, and expand in the State and thus utilize and employ the manpower, agricultural products and natural resources of the State; and (ii) covenant with such investors to accept certain Fee in Lieu of *ad valorem* tax ("FILOT") payments with respect to such properties; and

WHEREAS, the County and the Company entered into a Fee in Lieu of Tax and Incentive Agreement, dated August 1, 2008 ("2008 Fee Agreement") regarding an Expansion Project (as such term is defined in the 2008 Fee Agreement) in the County; and

WHEREAS, the 2008 Fee Agreement provided for a minimum investment by the Company of at least Twenty-Nine Million Five Hundred Thousand (\$29,500,000) Dollars by August 31, 2013, in connection with the Expansion Project; and

WHEREAS, it now appears that the initially contemplated Expansion Project investment will be significantly exceeded so that the total Expansion Project investment will be in excess of Forty-Nine Million Five Hundred Thousand (\$49,500,000) Dollars, so that an additional

investment of at least Twenty Million (\$20,000,000) Dollars will be made to the initially contemplated \$29,500,000 investment;

WHEREAS, the County is desirous of inducing the Company to invest an additional Twenty Million (\$20,000,000) Dollars (of which \$9,830,000 will be invested in real property and improvements and \$10,170,000 will be invested in personal property) in the County which will be made between September 1, 2013 and August 31, 2018; and

WHEREAS, the Company agrees to invest an additional Twenty Million (\$20,000,000) Dollars in the County between September 1, 2013 and August 31, 2018 (for a total investment in the County at the Expansion Project of at least Forty-Nine Million Five Hundred Thousand (\$49,500,000) Dollars; and

WHEREAS, the County has determined that the additional \$20 million investment at the Expansion Project will serve the purposes of the Act; and

WHEREAS, Section 12-44-40(K) (i) of the Act provides that a fee agreement may be amended by the parties; and

WHEREAS, Section 10.09 of the 2008 Fee Agreement states that said agreement may be amended by mutual action of the parties; and

WHEREAS, the parties desire, based on the Company's additional investment of \$20 million (of which \$9,830,000 will be in real property and improvements) between September 1, 2013 and August 31, 2018, to amend the 2008 Fee Agreement to extend the Expansion Project Investment Period to August 31, 2018, and to extend the FILOT Term as to the Expansion Project from twenty (20) years to thirty (30) years.

WHEREAS, the County has determined that it is in the best interest of the County to enter into this First Amendment to Fee in Lieu of Tax and Incentive Agreement with the Company subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises; the investment to be created by the Company which will contribute to the tax base and the economic welfare of the County; and the respective representations and agreements hereinafter contained, the County and the Company agree as follows:

1. The following definitions for "Agreement," "Co-Investor," "Expansion Project Contractual Requirement," "Expansion Project Investment Period," "First Amendment to 2008 Fee Agreement," "Sponsor and Sponsor Affiliate," and "Stage" under Section 1.01 of the 2008 Fee Agreement are added and/or replaced by the following definitions:

"*Agreement*" shall collectively mean the initial Fee in Lieu of Tax and Incentive Agreement dated as of August 1, 2008 and this First Amendment to Fee in Lieu of Tax and Incentive Agreement dated as of _____, 2013, which may be from time to time supplemented or amended as permitted herein.

"Co-Investor" shall mean any Sponsor or Sponsor Affiliate within the meaning of Sections 12-44-30(A)(18) and (19) of the Code, any Affiliate of the Company or of any such Sponsor or Sponsor Affiliate, any developer in a build-to-suit arrangement with respect to the Original Project or the Expansion Project, as the case may be, any lessor of equipment or other property comprising a part of the Original Project or the Expansion Project, as the case may be, any financing entity or other third party investing in or providing funds for the Original Project or the Expansion Project, as the case may be. The Company shall notify the County in writing of the identity of any other Co-Investor and shall to the extent the Company and any such Co-Investor intend to extend the benefits of the Negotiated FILOT to property owned by or leased to such Co-Investor pursuant to Section 7.02 hereof, qualify such Co-Investor as a Sponsor or Sponsor Affiliate pursuant to the Simplified FILOT Act. As of the date of original execution and delivery of this First Amendment to the 2008 Fee Agreement, the only Co-Investors with respect to the Expansion Project are: (1) CMC Steel Fabricators, Inc. d/b/a CMC Joist & Deck; (2) CMC Steel Fabricators, Inc. d/b/a CMC Steel Southern Post; (3) Owen Industrial Products, Inc. d/b/a CMC Metal Recycling; (4) Owen Electric Steel Company of South Carolina d/b/a Spray Forming International; (5) CMC Cometals Processing, Inc. d/b/a Cometals CMC South Carolina; (6) Owen Electric Steel Company of South Carolina d/b/a Owen Electric Steel Rolling Mill; (7) Owen Electric Steel Company of South Carolina d/b/a the Melt Shop; and (8) Owen Electric Steel Company of South Carolina d/b/a CMS Roll Mill. There are currently no Co-Investors with respect to the Original Project.

"Expansion Project Contractual Requirement" shall mean total investment by the Company on or before August 31, 2018 of not less than \$49,500,000 (without regard to depreciation or other diminution in value) in the aggregate by the Company and any Co-Investor in assets comprising the Expansion Project and consisting of property which is subject to either *ad valorem* taxes or FILOT Payments and the maintenance of at least \$49,500,000 of investment in such assets (without regard to depreciation or other diminution in value) for the balance of the Term. Such \$49,500,000 shall include an additional investment of \$20,000,000 (of which at least a \$9,830,000 investment of real property and improvements) to be made between September 1, 2013, and August 31, 2018. The Company initially agreed, under the 2008 Fee Agreement, to invest \$29.5 million. By this Amendment to 2008 Fee Agreement, such Expansion Project Contractual Requirement is increased from \$29.5 million to \$49.5 million.

"Expansion Project Investment Period" shall mean the period commencing September 1, 2007 and ending August 31, 2018, as extended pursuant to Section 12-44-30(13) of the Code.

"First Amendment to 2008 Fee Agreement" shall mean this First Amendment to the Fee in Lieu of Tax and Incentive Agreement dated as of August 1, 2008, and as amended as of _____, 2013, between the County and the Company.

"Sponsor" and *"Sponsor Affiliate"* shall mean an entity whose investment with respect to the Original Project or the Expansion Project, as the case may be, will qualify for the Negotiated FILOT pursuant to Section 7.02 hereof and Sections 12-44-30(A)(18) or (19) and Section 12-44-130 of the Code if the Statutory Investment Requirement is met by August 31, 2013. As of the date of original execution and delivery of this First Amendment to 2008 Fee Agreement, the only Sponsors or Sponsor Affiliates with respect to the Expansion Project are: (1) CMC Steel

Fabricators, Inc. d/b/a CMC Joist & Deck; (2) CMC Steel Fabricators, Inc. d/b/a CMC Steel Southern Post; (3) Owen Industrial Products, Inc. d/b/a CMC Metal Recycling; (4) Owen Electric Steel Company of South Carolina d/b/a Spray Forming International; (5) CMC Cometals Processing, Inc. d/b/a Cometals CMC South Carolina; (6) Owen Electric Steel Company of South Carolina d/b/a Owen Electric Steel Rolling Mill; (7) Owen Electric Steel Company of South Carolina d/b/a the Melt Shop; and (8) Owen Electric Steel Company of South Carolina d/b/a CMS Roll Mill. There are currently no Sponsors or Sponsor Affiliates with respect to the Original Project.

"Stage" with respect to the Project, shall mean the year within which Economic Development Property, if any, is placed in service during each of the Original Project Investment Period or the Expansion Project Investment Period, as applicable.

All other definitions and terms in the 2008 Fee Agreement are unchanged.

2. Section 5.05 of the 2008 Fee Agreement is deleted and replaced by the following:

Section 5.05. Failure to Comply with Expansion Project Contractual Requirement.

(i) If the Company fails to reach the level and type of investment specified by the Expansion Project Contractual Requirement on or before August 31, 2018, but has invested at least \$29.5 million by August 31, 2013, the Negotiated FILOT specified herein with respect to the Company's investment at the Expansion Project between September 1, 2013, and August 31, 2018, shall terminate retroactively, unless, at the request of the Company, the County agrees, in its sole discretion, to waive such termination or otherwise adjust such incentives. The Negotiated FILOT as to the Company's investment on or before August 31, 2013, shall remain in effect.

(ii) If the Company reaches the level of investment and type specified by the Expansion Project Contractual Requirement, but thereafter fails to *maintain* \$49.5 million of investment (of which, at least \$9,830,000 is real property or improvements invested) on or after September 1, 2013, as specified by the Expansion Project Contractual Requirement but maintains at least \$29.5 million of investment, the Negotiated FILOT with respect to the investment made at the Expansion Project between September 1, 2013, and August 31, 2018, shall terminate prospectively, unless, at the request of the Company, the County agrees, in its sole discretion, to waive such termination or otherwise adjust such incentives.

(iii) If the Company fails to *maintain* \$29.5 million of investment at the Expansion Project, the entire Negotiated FILOT, with respect to the Expansion Project, shall terminate prospectively, unless, at the request of the Company, the County agrees, in its sole discretion, to waive such termination or otherwise adjust such incentives.

3. Section 6.01(b)(i) of the 2008 Fee Agreement is deleted and replaced by the following:

(b) Subject to adjustment pursuant to the provisions of this Section 6.01, the Negotiated FILOT shall be calculated each year in accordance with the following provisions:

(i) For each Stage (annual increment) of investment in Economic Development Property during the Original Project Investment Period and the Expansion Project Investment Period, respectively, the annual Negotiated FILOT Payment with respect to the Original Project shall be payable for a period of 20 years for a total of 27 years for the Original Project and, with respect to the Expansion Project, shall be payable for a period of 30 years for a total of 40 years for the Expansion Project. Provided however, that in the event that the Expansion Project Contractual Requirement is not made between the dates of September 1, 2013 and August 31, 2018, then the Negotiated FILOT Payment with respect to the Expansion Project shall be payable for a period of 20 years for each stage of the Expansion Project Investment Period for a total of 25 years for the Expansion Project. In the event the Expansion Project Contractual Requirement is met but not thereafter maintained, the term for the Expansion Project shall revert to 20 years for each stage of the Expansion Project Investment Period for a total of 25 years or if already beyond the 20 years, shall terminate prospectively.

4. Section 6.01(b)(iii) of the 2008 Fee Agreement is deleted and replaced by the following:

(iii) The Negotiated FILOT applicable to the Expansion Project is for a Term of thirty (30) years as to each Stage of the Expansion Project Investment Period and shall be calculated using: (1) an assessment ratio of 6% for the entire Term; (2) a fixed millage rate of 318.9 mills through property tax year 2028, which is the millage rate applicable from July 1, 2007, through June 30, 2008, and for the remaining years of the Term beginning with property tax year 2029, such millage rate shall be fixed at the greater of 318.9 mills or the millage rate at the Project applicable from July 1, 2027, through June 30, 2028; and (3) the fair market value of such Economic Development Property determined as provided herein below. The Standard Fee Calculation shall apply to the Negotiated FILOT applicable to the Expansion Project.

5. Section 6.01(f)(iii) of the 2008 Fee Agreement is deleted and replaced by the following:

(iii) As noted in Section 5.01(a) above, the County acknowledges that the Company has met all contractual requirements under the Lease regarding investment and job creation at the Original Project. With respect to the Expansion Project, if the investment does not comply with the Expansion Project Contractual Requirement, then the County shall have the rights specified in Section 5.05 hereof. As noted in Section 5.05 hereof, if the Company reaches the level and type of investment specified by the Expansion Project Contractual Requirement, but thereafter fails to maintain the \$49.5 million of investment (of which, at least \$9,830,000 is real property or improvements invested on or after September 1, 2013) specified by the Expansion Project Contractual Requirement but maintains at least \$29.5 million, the Negotiated FILOT with respect to

the investment made at the Expansion Project between September 1, 2013, and August 31, 2018, shall terminate prospectively, unless, at the request of the Company, the County agrees, in its sole discretion, to waive such termination or otherwise adjust the Negotiated FILOT. If the Company fails to maintain \$29.5 million of investment at the Expansion Project, the entire Negotiated FILOT with respect to the Expansion Project, shall terminate prospectively, unless at the request of the Company, the County agrees, in its sole discretion, to waive such termination or otherwise adjust the Negotiated FILOT.

6. Section 8.01 of the 2008 Fee Agreement shall be deleted and replaced with the following:

Section 8.01. Term. Unless sooner terminated pursuant to the terms and provisions contained herein, this Agreement shall be and remain in full force and effect for a term commencing on the date on which the Company executes this Agreement, and ending at midnight on the day the last Negotiated FILOT Payment is made hereunder as described in Section 6.01(b)(ii) and Section 6.01(b)(iii) hereof. The Original Project is for a term of twenty (20) years as to each Stage of the Original Project Investment Period. The Expansion Project is for a term of thirty (30) years as to each Stage of the Expansion Project Investment Period, which is ten (10) years. Provided however, that in the event that the Expansion Project Contractual Requirement is not made between the dates of September 1, 2013 and August 31, 2018, then the term of the Expansion Project is for a term of twenty (20) years as to each Stage of the Expansion Project Investment Period which is Five (5) years. In the event that the Expansion Project Contractual Requirement is met but not thereafter maintained, the term for the Expansion Project shall revert to Twenty (20) years as to each stage of the of the Expansion Project Investment Period or, if already beyond the Twenty (20) years, shall terminate prospectively.

7. Section 8.02 of the 2008 Fee Agreement is deleted and replaced by the following:

Section 8.02. Termination. The County and the Company may agree to terminate this Agreement at any time, or the Company, may, at its option, terminate this Agreement at any time, in which event the Project shall be subject to *ad valorem* taxes from the date of termination. As provided in Sections 5.05 and 6.01(f) of this Agreement, the County may terminate this Agreement if the Company fails to comply, or cause compliance with, the Expansion Project Contractual Requirement by August 31, 2018.

8. Section 10.03 of the 2008 Fee Agreement is deleted and replaced by the following:

Section 10.03. Notices; Demands; Requests. All notices, demands, and requests to be given or made hereunder to or by the County or the Company shall be in writing and shall be deemed to be properly given or made if sent by United States first class mail, postage prepaid, or via facsimile transmission or reputable courier service to the following persons and addresses or to such other persons and places as may be designated in writing by such party.

(a) As to the County:

Lexington County
Attn.: County Administrator
212 S. Lake Drive
Lexington, South Carolina 29072
Phone: 803-785-8100
Fax: 803-785-8101
Email: jmergo@lex-co.com

(b) With a copy (which shall not constitute notice) to:

Jeffrey M. Anderson, Esquire
Lexington County Attorney
P.O. Box 489
140 E. Main Street
Lexington, South Carolina 29071-0489
Phone: 803-359-2512
Fax: 803-359-7478
Email: jeff@oldcourthouse.com

(c) As to the Company:

Owen Electric Steel Company of South Carolina d/b/a
CMC Steel South
Attn: Wilma Murphree
Director of Transaction Taxes
Commercial Metals Company
6565 N. MacArthur Blvd.
Irving, Texas 75039
Phone: 972-409-4754
Fax: 971-409-4912
Email: wilma.murphree@cmc.com

(d) With a copies (which shall not constitute notice) to:

John C. von Lehe, Jr., Esquire or
Jennifer W. Davis, Esquire
Nelson Mullins Riley & Scarborough LLP
P.O. Box 1806
Charleston, SC 29402
Phone: 843-853-5200
Fax: 843-722-8700
Email: john.vonlehe@nelsonmullins.com
Email: jennifer.davis@nelsonmullins.com

9. The 2008 Fee Agreement shall in all other respects remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto, each after due authorization have executed this First Amendment to Fee in Lieu of Tax and Incentive Agreement to be effective as of the date first written above.

LEXINGTON COUNTY, SOUTH CAROLINA

By: _____
William B. Banning, Sr., Chairman
Lexington County Council

Attest:
By: _____
Diana W. Burnett, Clerk
Lexington County Council

**OWEN ELECTRIC STEEL COMPANY OF SOUTH
CAROLINA D/B/A CMC STEEL SOUTH CAROLINA**

By: _____
Name: _____
Title: _____

