

ORDINANCE NO. _____

AN ORDINANCE TO AUTHORIZE AND APPROVE THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO AN EXISTING FEE IN LIEU OF TAX AGREEMENT BETWEEN GREENVILLE COUNTY, SOUTH CAROLINA AND EPC POWER CORP. PROVIDING FOR CERTAIN MODIFICATIONS THERETO WITH RESPECT TO CERTAIN PROPERTY NOW OR TO BE HEREAFTER LOCATED IN IN GREENVILLE COUNTY.

By the power and authority granted to the Greenville County Council by the Constitution of the State of South Carolina, and the powers granted to the County by the General Assembly of the State, it is ordained and enacted that:

Section 1. Council finds and determines that:

(a) Greenville County, South Carolina (the “County”) acting by and through its County Council (the “Council”), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the “Code”), and specifically Title 12, Chapter 44 of the Code (the “FILOT Act”), and Sections 4-1-170, 4-1-172 and 4-1-175 of the Code and Article VIII, Section 13(D) of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve such projects through which the economic development of the State of South Carolina (the “State”) will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the workforce, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of ad valorem tax (“FILOT”) payments with respect to a project; (iii) to permit such investors to claim special source revenue credits against their FILOT payments to reimburse such investors for expenditures in connection with infrastructure serving the County or improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County; and (iv) to maintain, create or expand, in conjunction with one or more other counties, a multi-county industrial park; and

(b) Pursuant to an Ordinance duly enacted by the Council on November 15, 2022, the County and the Company entered into that certain Fee in Lieu of Tax Agreement (the “Fee Agreement”) dated as of November 15, 2022 (the “Fee Agreement Effective Date”) with EPC Power Corp., a corporation incorporated and existing under the laws of the State of Delaware (the “Company”), whereby the County agreed to provide, amongst other things, certain negotiated FILOT benefits with respect to certain facilities to be located in the County (as further defined in the Fee Agreement, the “Project”); and

(c) In consideration of the Company’s satisfaction of the Contract Minimum Investment Requirement (as defined in the Fee Agreement), as well as anticipated additional investment in the Project, the County has determined to (i) in accordance with Section 12-44-

30(13) of the FILOT Act, approve an extension of the Investment Period (as defined in the Fee Agreement), an (ii) approve the addition of an additional parcel of land to the Land (as defined in the Fee Agreement);

(d) The Company has caused to be prepared and presented, in accordance with Section 12-44-40(K) of the FILOT Act, the form of a First Amendment to Fee Agreement by and between the County and Company, evidencing, memorializing, ratifying, and detailing more particularly all such aforementioned modifications to the Fee Agreement (the “First Amendment”); and

(e) It appears that the First Amendment attached to this ordinance is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended.

Section 2. The First Amendment, attached to this ordinance as Exhibit A, is authorized, ratified and approved, and all the provisions, terms, and conditions thereof are authorized, ratified and approved and the First Amendment is incorporated herein by reference as if the First Amendment were set out in this ordinance in its entirety. The Chairman of County Council and/or the County Administrator are hereby authorized, empowered and directed to execute, acknowledge and deliver the First Amendment in the name of and on behalf of the County, and the Clerk to County Council is hereby authorized and directed to attest the same, and thereupon to cause the First Amendment to be delivered to the Company and cause a copy of the same to be delivered to the Greenville County Auditor, Assessor and Treasurer. The First Amendment is to be in substantially the form now before this meeting and hereby approved, or with such minor changes therein as shall be approved by the County Administrator, upon advice of counsel, his execution thereof to constitute conclusive evidence of his approval of any and all changes or revisions therein from the form of Fee Agreement now before this meeting.

Section 3. The Chairman of County Council, the County Administrator and the Clerk to County Council, for and on behalf of the County, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Fee Agreement and the performance of all obligations of the County thereunder.

Section 4. The provisions of this ordinance are hereby declared to be separable and if any section, phrase or provisions 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 5. All ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed. This ordinance shall take effect and be in full force from and after its passage by the County Council.

Section 6. This ordinance is effective upon third reading.

ENACTED in meeting duly assembled this __ day of _____, 20__.

GREENVILLE COUNTY, SOUTH CAROLINA

Chairman of County Council

County Administrator

Attest:

Clerk to County Council

First Reading: _____, 20__
Second Reading: _____, 20__
Third Reading: _____, 20__
Public Hearing: _____, 20__

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

I, the undersigned Clerk to County Council of Greenville County, South Carolina, do hereby certify that attached hereto is a true, accurate and complete copy of an ordinance which was given reading, and received approval, by the County Council at its meetings of _____, 20__, _____, 20__, and _____, 20__, at which meetings a quorum of members of County Council were present and voted, and an original of which ordinance is filed in the permanent records of the County Council.

Clerk to County Council,
Greenville County, South Carolina

Dated: _____, 20__

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Exhibit A to Ordinance No. _____

**FIRST AMENDMENT TO FEE IN LIEU OF TAX AGREEMENT
BETWEEN
GREENVILLE COUNTY, SOUTH CAROLINA, AND EPC POWER CORP.**

See attached.

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**FIRST AMENDMENT TO
FEE IN LIEU OF TAX AGREEMENT**

by and between

GREENVILLE COUNTY, SOUTH CAROLINA

and

EPC POWER CORP.

Dated as of _____, 202__

This First Amendment pertains to that certain Fee in Lieu of Tax Agreement, dated as of November 15, 2022, by and between Greenville County, South Carolina and EPC Power Corp.

FIRST AMENDMENT TO FEE IN LIEU OF TAX AGREEMENT

THIS FIRST AMENDMENT TO FEE IN LIEU OF TAX AGREEMENT (the “First Amendment”), dated as of _____, 202__ by and between **GREENVILLE COUNTY, SOUTH CAROLINA** (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina, and **EPC POWER CORP.**, a corporation incorporated organized and existing under the laws of the State of Delaware (the “Company”).

WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the “Council”), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the “Code”), and specifically Title 12, Chapter 44 of the Code (the “FILOT Act”), and Sections 4-1-170, 4-1-172 and 4-1-175 of the Code and Article VIII, Section 13(D) of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve such projects through which the economic development of the State of South Carolina (the “State”) will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the workforce, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of ad valorem tax (“FILOT”) payments with respect to a project; (iii) to permit such investors to claim special source revenue credits against their FILOT payments to reimburse such investors for expenditures in connection with infrastructure serving the County or improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County; and (iv) to maintain, create or expand, in conjunction with one or more other counties, a multi-county industrial park; and

WHEREAS, pursuant to an Ordinance duly enacted by the Council on November 15, 2022, the County and the Company entered into that certain Fee in Lieu of Tax Agreement (the “Fee Agreement”) dated as of November 15, 2022 (the “Effective Date”), whereby the County agreed to provide, amongst other things, certain negotiated FILOT benefits with respect to certain facilities to be located in the County (as further defined in the Fee Agreement, the “Project”); and

WHEREAS, in consideration of the Company’s satisfaction of the Contract Minimum Investment Requirement (as defined in the Fee Agreement), as well as anticipated additional investment in the Project, the County has determined to (i) in accordance with Section 12-44-30(13) of the FILOT Act, approve an extension of the Investment Period (as defined in the Fee Agreement), and (ii) approve addition of an additional parcel of land to the Land (as defined in the Fee Agreement) as of the Effective Date, all such modifications to the Fee Agreement, in accordance with Section 12-44-40(K) of the FILOT Act, as evidenced, memorialized, ratified, and detailed more particularly herein; and

WHEREAS, the Council authorized such modifications to the Fee Agreement, as referenced above and as set forth in greater detail in this First Amendment, and authorized the execution and delivery of this First Amendment, pursuant to Ordinance No. _____ duly enacted by the Council on _____, 202__.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference and other lawful consideration, and respective representations and agreements hereinafter contained, the receipt and sufficiency of which are hereby acknowledged, the County and the Company agree as follows:

Section 1. Definitions. Defined terms utilized herein and not otherwise defined herein shall have the meanings ascribed to them in the Fee Agreement.

Section 2. Amendment of Fee Agreement. The Fee Agreement is hereby amended as follows:

(a) The summary of contents of the Fee Agreement set portion of page iii of the Fee Agreement is hereby deleted in its entirety and the following summary of the contents of the Fee in Lieu of Tax Agreement is hereby substituted in lieu thereof:

Company Name:	EPC Power Corp.	Project Name:	Project Graham
Projected Investment:	\$10,000,000	Projected Jobs:	N/A
Location (street):	1. 360 Old Laurens Road, Suite 800, Simpsonville, SC 29681 2. 111 Southchase Blvd., Suite _____, Fountain, Inn, SC 29644	Tax Map No.:	1. 0293000100705 2. 0335000100412
1. FILOT			
Required Investment:	\$10,000,000		
Investment Period:	10 years	Ordinance No./Date:	Ordinance No. 5459/November 15, 2022 and Ordinance No. _____/_____, 202
Assessment Ratio:	6%	Term (years):	30
Fixed Millage:	1. 311.8 mills (Old Laurens Road location) 2. 312.6 (Southchase Blvd. location)	Net Present Value (if yes, discount rate):	N/A
Clawback information:	If the Contract Minimum Investment Requirement is not made by the end of the Investment Period, the Fee Agreement will be terminated retroactively		
2. MCIP			
Included in an MCIP:	Yes		
If yes, Name & Date:	Greenville/Anderson (2010 Park)		
3. SSRC			
Total Amount:	[not applicable]		
No. of Years			
Yearly Increments:			
Clawback information:			
4. Other information			

(b) Section 1.101 of the Fee Agreement is hereby amended as follows:

(i) In the definition of “Contract Minimum Investment Requirement” the dollar amount “\$5,000,000” is hereby deleted and the dollar amount “\$10,000,000” is hereby substituted in lieu thereof.

(ii) The definition of “Standard Investment Period” is deleted in its entirety and the following is substituted therefor:

“Standard Investment Period” shall mean the period beginning with the first day of any purchase of Economic Development Property and ending and ending ten (10) years after the Commencement Date.

(c) Section 2.01(d) of the Fee Agreement is deleted in its entirety and the following is substituted in therefor:

“(d) The millage rate set forth in Step 3 of Section 4.01 hereof is (i) 311.8 mills, which is the millage rate in effect with respect to the 350 Old Laurens Road, Suite 800, Simpsonville, SC location of the Project as of June 30, 2022, as permitted under Section 12-44-50(A)(1)(d) of the FILOT Act and (ii) 312.6 mills, which is the millage rate in effect with respect to the 111 Southchase Blvd., Suite ____, Fountain Inn, SC location of the Project as of June 30, 2024, as permitted under Section 12-44-50(A)(1)(d) of the FILOT Act.”

(d) Step 3 of Section 4.01 of the Fee Agreement is deleted in its entirety and the following is substituted therefor:

“**Step 3:** Use a millage rate of 311.8 mills with respect to the 350 Old Laurens Road, Suite 800, Simpsonville, SC location of the Project and use a millage rate of 312.6 mills with respect to the 111 Southchase Blvd, Suite ____ Fountain Inn, SC location of the Project during the Exemption Period against the taxable value to determine the amount of the FILOT Payments due during the Exemption Period on the applicable payment dates.”

(e) Exhibit A to the Fee Agreement is hereby deleted in its entirety and Exhibit A attached to this First Amendment is substituted in lieu thereof.

Section 3. Remaining Terms and Provisions. Except as expressly amended hereby, the terms and provisions of the Fee Agreement shall remain unchanged and in full force and effect.

Section 4. Entire Understanding. The Fee Agreement, as amended by this First Amendment, expresses the entire understanding and all agreements of the parties hereto pertaining to the matters set forth herein and therein and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in the Fee Agreement, as amended by this First Amendment, or in certificates delivered in connection with the execution and delivery hereof.

Section 5. Severability. In the event that any clause or provision of this First Amendment shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 6. Multiple Counterparts. This First Amendment may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this First Amendment to Fee in Lieu of Tax Agreement to be executed in its name and behalf by the Chairman of County Council and the County Administrator and to be attested by the Clerk of the County Council; and the Company has caused this First Amendment to Fee in Lieu of Tax Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

GREENVILLE COUNTY, SOUTH CAROLINA

(SEAL)

By: _____
Chairman of County Council

By: _____
County Administrator

ATTEST:

Clerk to County Council of
Greenville County, South Carolina

EPC POWER CORP., a
Delaware corporation

By: _____
Its: _____

[Signature Page to First Amendment to Fee in Lieu of Tax Agreement]

EXHIBIT A

LAND DESCRIPTION

PARCEL A:

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Greenville, designated as Lot 2, containing 12.31 acres, more or less, and shown more fully on Survey for Access 100, LLC, dated December 18, 2019, prepared by 3D Land Surveying, Inc. and recorded in the Office of the Greenville county Register of Deeds in Plat Book 1356 at Page 15. Reference is hereby made to said plat for a complete metes and bounds description.

Tax Map No. 0293000100705

Street Location: 360 Old Laurens Road, Suite 800, Simpsonville, SC 29681

PARCEL B:

All that certain piece, parcel or lot of land, containing 11.94 acres, more or less, situate, lying and being on the southern side of Southchase Blvd. in the County of Greenville, State of South Carolina, as shown on a plat entitled "ALTA/ACSM Land Title Survey for Southchase Development Corporation to MFM Realty Limited Partnership," dated April 6, 1990, revised December 12, 1996, prepared by the Piedmont Group and recorded in the Office of the Greenville County Register of Deeds (f/k/a the RMC Office for Greenville County, South Carolina) in Plat Book 35-C at Pages 80 A & B and on a more recent survey entitled "ALTA/ACSM Land Title Survey for Wells Real Estate, LLC – SC 1," dated May 11, 1999, prepared by Arcadis Geraghty & Miller and recorded in the Office of the Greenville County Register of Deeds (f/k/a the RMC Office for Greenville County, South Carolina) in Plat Book 40-B at Page 4, reference to which plat is hereby made for a more complete metes and bounds description thereof.

Tax Map No. 0335000100412

Street Location: 111 Southchase Blvd., Suite _____, Fountain Inn, SC 29644