

Sponsor(s) : County Council
First Reading : March 14, 2023
Committee Referral : N/A
Committee Consideration Date : N/A
Committee Recommendation : N/A
Second Reading : April 4, 2023
Public Hearing : June 6, 2023
Third Reading : June 6, 2023
Effective Date : Immediately

I, Kaela Brinson, Council Clerk
certify that this Ordinance was
advertised for Public Hearing on
May 18, 2023.

ORDINANCE NO. 23-O-07

COUNCIL-ADMINISTRATOR FORM OF GOVERNMENT FOR COLLETON COUNTY

[AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN COLLETON COUNTY AND POMEGA ENERGY STORAGE TECHNOLOGIES, INC., INCLUDING ANY RELATED OR AFFILIATED ENTITIES AND ANY SPONSOR AFFILIATES, WHEREBY COLLETON COUNTY WILL ENTER INTO A FEE-IN-LIEU OF TAXES ARRANGEMENT WITH POMEGA ENERGY STORAGE TECHNOLOGIES, INC.; PROVIDING FOR PAYMENT BY POMEGA ENERGY STORAGE TECHNOLOGIES, INC. OF CERTAIN FEES IN LIEU OF *AD VALOREM* TAXES; PROVIDING FOR CERTAIN SPECIAL SOURCE REVENUE OR INFRASTRUCTURE CREDITS; TO FURTHER AMEND THE AGREEMENT FOR DEVELOPMENT OF A JOINT COUNTY INDUSTRIAL PARK BETWEEN COLLETON COUNTY, SOUTH CAROLINA AND HAMPTON COUNTY, SOUTH CAROLINA, PROVIDING FOR THE DEVELOPMENT OF A JOINTLY OWNED AND OPERATED INDUSTRIAL/BUSINESS PARK, SO AS TO INCLUDE ADDITIONAL PROPERTY IN COLLETON COUNTY AS PART OF THE PARK; PROVIDING FOR THE ALLOCATION OF FEE-IN-LIEU OF TAXES PAID BY POMEGA ENERGY STORAGE TECHNOLOGIES, INC., UNDER THE AGREEMENT FOR ESTABLISHMENT OF MULTI-COUNTY INDUSTRIAL/BUSINESS PARK; AND OTHER MATTERS RELATING THERETO.]

WHEREAS, Colleton County, South Carolina (the "County"), acting by and through its County Council (the "County Council") is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (the "FILOT Act"), to designate real and tangible personal property as "economic development property" and to enter into an arrangement which provides for payment in lieu of taxes ("Negotiated FILOT Payments") for a project qualifying under the FILOT Act; and

WHEREAS, the County, acting by and through the County Council, is authorized and empowered under and pursuant to the provisions of Title 4, Chapter 1 of the Code (the "MCIP Act"), to provide for payments in lieu of taxes ("PILOT Payments") with respect to property situated or having a situs in a multi-county business or industrial park created under the MCIP Act, and pursuant to Section 4-1-175 and 4-29-68 of the Code (the "SSRC Act"), to permit investors to claim infrastructure or special source revenue credits against their PILOT Payments (including any Negotiated FILOT Payments) to reimburse such investors for expenditures for infrastructure serving Colleton County and improved or unimproved real estate and personal property, including machinery and equipment, used or to be used in the operation of a

manufacturing or commercial enterprise in order to enhance the economic development of Colleton County (“Infrastructure Improvements”), to facilitate the grant of infrastructure or special source revenue credits, and to provide certain enhanced tax credits to such investors; and

WHEREAS, in order to promote the economic welfare of the citizens of Colleton County and Hampton County (collectively, the “the Counties”) by providing employment and other benefits to the citizens of the Counties, the Counties entered into an Agreement for the Development of a Joint County Industrial Park between Colleton County and Hampton County, South Carolina, executed on December 11, 2007 by Colleton County and on January 22, 2008 by Hampton County (the “Original Agreement”), to develop jointly an industrial and business park (the “Park”), as provided by Article VIII, Section 13 of the South Carolina Constitution and in accordance with Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended, (the “Act”); and

WHEREAS, the Original Agreement was initially approved by Colleton County Council Ordinance 07-O-29, adopted December 4, 2007; and was further amended from time-to-time to add or remove property to the Park; and

WHEREAS, the Original Agreement, as amended, is referred to herein as the “Park Agreement,” and

WHEREAS, the Park Agreement contemplates the inclusion and removal of additional parcels within the Park from time to time; and

WHEREAS, Pomega Energy Storage Technologies, Inc., a Delaware corporation (the “Company”), intends to acquire, construct, renovate, furnish, and equip a 3GWh capacity lithium-ion battery manufacturing facility for battery energy storage systems in the County (the “Project”); the Project is to be located at 599 Joseph Flowers Place, Walterboro, South Carolina in the Colleton Industrial Campus in Colleton County, South Carolina (the “Project Site”); and

WHEREAS, the Project when completed will represent an anticipated “investment” (as defined in the FILOT Act) (the “Investment”) by the Company in the aggregate not less than \$279 million, of which \$75 million will be in real property (land and building) and \$204 million will be in tangible business personal property (new machinery and equipment) to be located at the Project Site; and

WHEREAS, pursuant to Section 4-29-67 of the Code of Laws of South Carolina, 1976, as amended, the Project is anticipated to qualify for a 4% assessment ratio; and

WHEREAS, the County has been advised that upon the completion of the Project, the Project is anticipated to employ approximately 575 full-time employees; and

WHEREAS, the County is authorized to include the site of the Project Site within a multi-county industrial and business park pursuant to the MCIP Act and to provide special source revenue or infrastructure credits pursuant to the SSRC Act; and

WHEREAS, the Project is located entirely within Colleton County and will be included in and subject to the multi-county park and fee-in-lieu of tax arrangements as described herein; and

WHEREAS, the County has made specific proposals, including proposals to offer certain economic development incentives set forth herein, for the purpose of inducing the Company to invest its funds to acquire, construct, renovate, furnish, and equip the Project (the “Incentives”); and

WHEREAS, it is in the public interest, for the public benefit, and in furtherance of the public purposes of the FILOT Act, the SSRC Act, and the MCIP Act for the County Council to provide final approval for qualifying the Project under the FILOT Act, the SSRC Act, and the MCIP Act for the Incentives;

NOW, THEREFORE, BE IT ORDAINED by the County Council as follows:

Section 1. Evaluation of the Project. County Council has evaluated the Project on the following criteria based upon any advice and assistance of the South Carolina Department of Revenue and the Revenue and Fiscal Affairs Office, as necessary:

- (a) the purposes to be accomplished by the Project are proper governmental and public purposes;
- (b) the anticipated dollar amount and nature of the investment to be made; and
- (c) the anticipated costs and benefits to the County.

Section 2. Findings by County Council. Based upon information provided by and representations of the Company, County Council’s investigation of the Project, including the criteria described in Section 1 above, and any advice and assistance of the South Carolina Department of Revenue and the Revenue and Fiscal Affairs Office, as necessary, County Council hereby find that:

- (a) the Project constitutes a “project” as that term is defined in the FILOT Act;
- (b) the Project will serve the purposes of the FILOT Act, the SSRC Act, and the MCIP Act;
- (c) the Investment by the Company in the Project will be approximately \$279 million, all to be invested within the “investment period” (as defined in the FILOT Act); and the Company will employ 575 new full-time employees at the Project within 5 years;
- (d) the Project will be located entirely within Colleton County and is anticipated to be located in the Park created pursuant to the MCIP Act;

- (e) the Infrastructure Improvements to be financed or reimbursed from the SSRCs consist of infrastructure serving Colleton County and improved or unimproved real estate and personal property, including machinery and equipment, used or to be used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of Colleton County; and
- (f) the Project is anticipated to benefit the general welfare of Colleton County by providing services, employment, or other public benefits not otherwise adequately provided locally;
- (g) the Project gives rise to neither a pecuniary liability of the County nor a charge against its general credit or taxing power;
- (h) the purposes to be accomplished by the Project are proper governmental and public purposes;
- (i) the inducement of the location of the Project is of paramount importance; and
- (j) the benefits of the Project to the public are greater than the cost to the public.

Section 3. Fee-in-Lieu of Taxes Arrangement. Pursuant to the authority of the FILOT Act, the Project is designated as “economic development property” under the FILOT Act and there is hereby authorized a fee-in-lieu of taxes arrangement with the Company which will provide Negotiated FILOT Payments to be made with respect to the Project based upon a 4% assessment ratio with the millage rate which is the lower of (a) the cumulative property tax millage rate levied on behalf of all taxing entities within which the Project is located on June 30 of the year preceding the calendar year in which the FILOT Agreement (as defined below) is executed or (b) the cumulative property tax millage rate levied on behalf of all taxing entities within which the Project is located on June 30 of the calendar year in which the FILOT Agreement is executed, such rate to be fixed for the entire 30-year term of the fee-in-lieu of taxes, all as more fully set forth in the Fee-in-lieu of Tax Agreement between the County and the Company (the “FILOT Agreement”). The FILOT Agreement shall be a “Fee Agreement” within the meaning of Section 12-44-30(10) of the FILOT Act.

Section 4. Multi-County Park Incentive.

(A) The County will use its commercially reasonable efforts, in cooperation with Hampton County (the “Partner County”), to designate the Project Site as a multi-county business park pursuant to Article VIII, Section 13 of the South Carolina Constitution, the MCIP Act, and the terms of the Park Agreement, as amended to add the Project Site, and as further amended, supplemented, or replaced from time to time (the “MCIP Agreement”).

(B) The County will provide for 30 years that the annual allocation of the PILOT Payments generated by the Project will be distributed (after distribution of a portion of the PILOT Payments to the Partner County in accordance with the MCIP Agreement) as follows:

- (i) To the County, for providing the SSRCs (as defined in Section 5 hereof), an amount equal to the annual SSRC provided in Section 5 of this Ordinance and in the FILOT Agreement; and
- (ii) Except as may otherwise be provided by ordinance of the County Council from time to time, the balance of the PILOT Payments to the County and the other overlapping taxing entities, in the same relative percentages as the relative millage rates imposed by such taxing entities for the applicable tax year.

Section 5. Special Source Revenue Credits.

(A) After the identification of qualifying public infrastructure located solely within Colleton County and the costs thereof to the satisfaction of the County, the County will provide to the Company an infrastructure or special source revenue incentive (the “SSRCs”) as follows: an annual SSRC in the amount of 35% of the annual PILOT Payments and Negotiated FILOT payments due with respect to the Project in property tax year one (1); 50% of the annual PILOT Payments and Negotiated FILOT payments due with respect to the Project in property tax years two and three (2 and 3); 40% of the annual PILOT Payments and Negotiated FILOT payments due with respect to the Project in property tax year four (4); 30% of the annual PILOT Payments and Negotiated FILOT payments due with respect to the Project in property tax years five and six (5 and 6); and 20% of the annual PILOT Payments and Negotiated FILOT payments due with respect to the Project in property tax year seven (7).

(B) The documents providing for the SSRCs shall include customary terms providing: (i) for the recovery by the County, on a pro rata basis, of certain moneys if certain thresholds are not achieved (a “clawback” provision); (ii) that the Company will pay the County’s administrative expenses associated with the approval and administration of the SSRC; (iii) that under certain terms and conditions mutually agreeable to the Company and the County, the County will have access to certain information of the Company; and (iv) that, in a manner mutually agreeable to the Company and the County, the Company will indemnify and hold the County harmless for claims, losses, and damages with respect to the Project. All such terms and conditions are as more specifically set forth in the FILOT Agreement.

Section 6. Execution of the FILOT Agreement. The form, terms, and provisions of the FILOT Agreement presented to the meeting at which this Ordinance received third reading and filed with the Clerk of the County Council be and hereby are approved, and all of the terms, provisions, and conditions thereof are hereby incorporated herein by reference as if such FILOT Agreement were set out in this Ordinance in its entirety. The Chairman of the County Council and the Clerk of the County Council be and they are hereby authorized and directed to execute and deliver the FILOT Agreement in the name and on behalf of the County, and thereupon to cause the FILOT Agreement to be delivered to the Company. The FILOT Agreement is to be in substantially the form before the meeting of County Council at which this Ordinance received third reading and hereby approved, or with any changes therein as shall not materially adversely affect the rights of the County thereunder, upon the advice of legal counsel, by the officials of

the County executing the same, their execution thereof to constitute conclusive evidence of their approval of all changes therein from the form of FILOT Agreement presented to said meeting.

Section 7. Miscellaneous.

(a) The Chairman and all other appropriate officials of the County are hereby authorized to execute, deliver, and receive any other agreements and documents as may be required by the County in order to carry out, give effect to, and consummate the transactions authorized by this Ordinance.

(b) This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

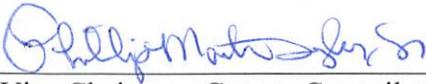
(c) This Ordinance shall become effective immediately upon approval following third reading by the County Council.

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

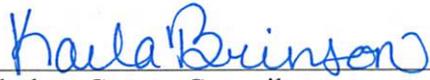
(e) All ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of the conflict, hereby repealed.

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COLLETON COUNTY, SOUTH CAROLINA

By: 
Vice Chairman, County Council of
Colleton County, South Carolina

ATTEST:


Clerk to County Council
Colleton County, South Carolina

First Reading: March 14, 2023
Second Reading: April 4, 2023
Public Hearing: June 6, 2023
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Approved as to Form
Sean P. Thornton, County Attorney

Council Vote: UNANIMOUS
Opposed: