



**NOTICE OF MEETING OF THE WOODBURY COUNTY BOARD OF SUPERVISORS
(DECEMBER 14 2021) (WEEK 50 OF 2021)**

Live streaming at:
<https://www.youtube.com/user/woodburycountyiowa>

Agenda and Minutes available at:
www.woodburycountyiowa.gov

Live telephonic access at: 712-224-6014

Rocky L. DeWitt 253-0421 rdewitt@woodburycountyiowa.gov	Keith W. Radig 560-6542 kradig@woodburycountyiowa.gov	Jeremy Taylor 259-7910 jtaylor@woodburycountyiowa.gov	Matthew A. Ung 490-7852 matthewung@woodburycountyiowa.gov	Justin Wright 899-9044 jwright@woodburycountyiowa.gov
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You are hereby notified a meeting of the Woodbury County Board of Supervisors will be held December 14, 2021 at **4:30 p.m.** in the Basement of the Courthouse, 620 Douglas Street, Sioux City, Iowa for the purpose of taking official action on the agenda items shown hereinafter and for such other business that may properly come before the Board.

This is a formal meeting during which the Board may take official action on various items of business. If you wish to speak on an item, please follow the seven participation guidelines adopted by the Board for speakers.

1. Anyone may address the Board on any agenda item after initial discussion by the Board.
2. Speakers will approach the microphone one at a time and be recognized by the Chair.
3. Speakers will give their name, their address, and then their statement.
4. Everyone will have an opportunity to speak. Therefore, please limit your remarks to **three minutes on any one item.**
5. At the beginning of the discussion on any item, the Chair may request statements in favor of an action be heard first followed by statements in opposition to the action.
6. Any concerns or questions you may have which do not relate directly to a scheduled item on the agenda will also be heard under the first or final agenda item "Citizen Concerns."
7. For the benefit of all in attendance, please turn off all cell phones and other devices while in the Board Chambers.

AGENDA

4:30 p.m. Call Meeting to Order – Pledge of Allegiance to the Flag – Moment of Silence

- | | |
|---------------------------|-------------|
| 1. Citizen Concerns | Information |
| 2. Approval of the agenda | Action |

Consent Agenda

Items 3 through 6 constitute a Consent Agenda of routine action items to be considered by one motion. Items pass unanimously unless a separate vote is requested by a Board Member.

3. Approval of the minutes of the December 7, 2021 meeting
4. Approval of claims
5. Human Resources – Melissa Thomas
Approval of Memorandum of Personnel Transactions

6. Board Administration – Dennis Butler
Approval of Farm Cash Rent Lease with Rick Bousquet, Bousquet Dairy, Inc.

End Consent Agenda

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|--------------------------------|--|------------------|
| | 7. County Attorney – PJ Jennings
Approval of resolution allowing release of claims associated with
Opioid Litigation settlement | Action |
| 4:40 p.m.
(Set time) | 8. Community & Economic Development – David Gleiser
a. Public hearing on an ordinance relating to the assessment of wind energy
conversion property as authorized by Iowa Code Chapter 427B.26
b. Conduct the second reading on the ordinance as proposed | Action
Action |
| | 9. Reports on Committee Meetings | Information |
| | 10. Citizen Concerns | Information |
| | 11. Board Concerns | Information |

ADJOURNMENT

Subject to Additions/Deletions

CALENDAR OF EVENTS

- WED., DEC. 15** **12:00 p.m.** Siouxland Economic Development Corporation Meeting, 617 Pierce St., Ste. 202
- 10:00 a.m.** Siouxland Center for Active Generations Board of Directors Meeting, 313 Cook St.
- THU., DEC. 16** **4:30 p.m.** Community Action Agency of Siouxland Board Meeting, 2700 Leech Avenue
- FRI., DEC. 17** **12:00 p.m.** Siouxland Human Investment Partnership Board Meeting Northwest AEA, Room G
- WED., DEC. 22** **2:30 p.m.** Rolling Hills Community Services Region Governance Board Meeting
- THU., DEC. 23** **11:00 a.m.** Siouxland Regional Transit Systems (SRTS) Board Meeting, SIMPCO Office, 1122 Pierce
- MON., DEC. 27** **6:00 p.m.** Zoning Commission Meeting, First Floor Boardroom
- TUE., DEC. 28** **2:00 p.m.** Decat Board Meeting, Western Hills AEA, Room F
- MON., JAN. 3** **6:00 p.m.** Board of Adjustment meeting, First Floor Boardroom
- WED., JAN. 5,** **3:45 p.m.** Veteran Affairs Meeting, Veteran Affairs Office, 1211 Tri-View Ave.
- THU., JAN. 6** **10:00 a.m.** COAD Meeting, The Security Institute
- WED., JAN. 12** **8:05 a.m.** Woodbury County Information Communication Commission, First Floor Boardroom
- 12:00 p.m.** District Board of Health Meeting, 1014 Nebraska St.
- 6:30 p.m.** 911 Service Board Meeting, Public Safety Center, Climbing Hill
- 8:00 p.m.** County's Mayor Association Meeting, Public Safety Center, Climbing Hill
- THU., JAN. 13** **12:00 p.m.** SIMPCO Board of Directors, 1122 Pierce St.
- 4:00 p.m.** Conservation Board Meeting, Dorothy Pecaut Nature Center, Stone Park

Woodbury County is an Equal Opportunity Employer. In compliance with the Americans with Disabilities Act, the County will consider reasonable accommodations for qualified individuals with disabilities and encourages prospective employees and incumbents to discuss potential accommodations with the Employer.

Federal and state laws prohibit employment and/or public accommodation discrimination on the basis of age, color, creed, disability, gender identity, national origin, pregnancy, race, religion, sex, sexual orientation or veteran's status. If you believe you have been discriminated against, please contact the Iowa Civil Rights Commission at 800-457-4416 or Iowa Department of Transportation's civil rights coordinator. If you need accommodations because of a disability to access the Iowa Department of Transportation's services, contact the agency's affirmative action officer at 800-262-0003.

DECEMBER 7 2021, FORTY-NINTH MEETING OF THE WOODBURY COUNTY BOARD OF SUPERVISORS

The Board of Supervisors met on Tuesday, December 7, 2021 at 4:00 p.m. Board members present were Taylor, Ung (by phone), De Witt and Radig; Wright was absent. Staff members present were Heather Satterwhite, Public Bidder, Dennis Butler, Budget Tax/Analyst, Joshua Widman, Assistant County Attorney, Melissa Thomas, Human Services Director, and Patrick Gill, Auditor/Clerk to the Board.

1. Motion by De Witt second by Radig to go into closed session per Iowa Code Section 21.5(1)(c). Carried 3-0 (Radig, Taylor and De Witt) on a roll-call vote.

Motion by De Witt second by Taylor to go out of closed session per Iowa Code Section 21.5(1)(c). Carried 3-0 (Radig, Taylor and De Witt) on a roll-call vote.

The regular meeting was called to order with the Pledge of Allegiance to the Flag and a Moment of Silence.

2. Tammy Mullenix, Sgt. Bluff, addressed the Board with concerns about proposed pipelines in Woodbury County.
11. A public hearing was held at 4:35 p.m. for the sale of parcel #894711177001, 3406 44th St. The Chairperson called on anyone wishing to be heard.

Motion by Taylor second by Radig to close the public hearing. Carried 4-0.

Motion by De Witt second by Taylor to approve and authorize the Chairperson to sign a Resolution for the sale of real estate parcel #894711177001, 3406 44th St. to Moises Aragon, Amarilis Franco, Militza Aragon, and Jeremias Aragon, 4337 Van Buren St., Sioux City, for \$1,500.00 plus recording fees. Carried 4-0.

**RESOLUTION OF THE BOARD
OF SUPERVISORS OF WOODBURY COUNTY, IOWA
RESOLUTION #13,373**

BE IT RESOLVED by the Board of Supervisors of Woodbury County, Iowa, that the offer at public auction of:

By Moises Aragon, Amarilis Franco, Militza Aragon, Jeremias Aragon _____ in the sum of **One Thousand Five Hundred Dollars & 00/100 (\$1,500.00)**-----dollars.

For the following described real estate, To Wit:

Parcel #894711177001

Lots Twenty-one (21) to Twenty-four (24) inclusive Block Forty-four (44) Leeds 2nd Filing Addition to the City of Sioux City, Woodbury County Iowa (3406 44th Street)

Now and included in and forming a part of the City of Sioux City, Iowa, the same is hereby accepted: said Amount being a sum LESS than the amount of the general taxes, interests, costs and penalties against the said Real Estate.

BE IT RESOLVED that payment is due by close of business on the day of passage of this resolution or this sale is null and void and this resolution shall be rescinded.

BE IT RESOLVED that per Code of Iowa Section 569.8(3 & 4), a parcel the County holds by tax deed shall not be assessed or taxed until transferred and upon transfer of a parcel so acquired gives the purchaser free title as to previously levied or set taxes. Therefore, the County Treasurer is requested to abate any taxes previously levied or set on this parcel(s).

BE IT FURTHER RESOLVED that the Chairman of this Board be and he is hereby authorized to execute a Quit Claim Deed for the said premises to the said purchaser.

SO DATED this 7th Day of December, 2021.
WOODBURY COUNTY BOARD OF SUPERVISORS
Copy filed.

3. Motion by Radig second by De Witt to approve the agenda for December 7, 2021. Carried 4-0. Copy filed.

Motion by Radig second by Taylor to approve the following items by consent:

4. To approve minutes of the November 30, 2021 meeting. Copy filed.
5. To approve the claims totaling \$359,763.96. Copy filed.
6. To approve items to be auctioned per Personal Property Disposition Policy. Copy filed.
- 7a. To approve the appointment of Michael Trowbridge, P/T Youth Worker, Juvenile Detention Dept., effective 12-08-21, \$20.38/hour. Job Vacancy Posted 8-25-21. Entry Level Salary: \$20.38/hour.; the promotion of Katie Kistner, Senior Clerk, Human Resources Dept., effective 12-13-21, \$22.30/hour, 25%=\$4.52/hour. Promotion from Clerk II to Senior Clerk; the end of probation of Peter Dixon, Motor Grader Operator, Secondary Roads Dept., effective 12-13-21, \$25.61/hour, 3%=\$.76/hour. Per CWA Secondary Roads Contract agreement, End of Probation Salary Increase.; and the transfer of Brigid Delaney, Clerk III-Warrants, County Sheriff Dept., effective 01-10-22, \$26.54/hour, -6%=-\$1.62/hour. Position Transfer from Civilian Jailer to Clerk III-Warrants. Copy filed.
- 7b. To approve and authorize the Chairperson to sign the Authorization to initiate the hiring process for Civilian Jailer, County Sheriff Dept., CWA: \$21.02/hour. Copy filed.
- 7c. To approve the request of Debra Heath to remain on the county vision and dental insurance. Copy filed.
- 7d. To approve renewal paperwork for Woodbury County's medical plan. Copy filed.
8. To receive the 1st quarter report from SIMPCO for fiscal year FY21-22. Copy filed.
9. To approve the underground utility permit for Mid American Energy. Copy filed.
10. To approve the lifting tax suspensions for petitioners who failed to re-certify their income or income does not qualify for continues tax suspension. Copy filed.

Carried 4-0.

- 12c. A public hearing was held at 4:40 p.m. for the first reading of the ordinance relating to the assessment of wind energy conversion property as authorized by Iowa Code Chapter 427B.26. The Chairperson called on anyone wishing to be heard.
- Motion by Taylor second by Radig to close the public hearing. Carried 4-0.
- 12d. Motion by Radig second by De Witt to approve the 1st reading of the ordinance relating to the assessment of wind energy conversion property as authorized by Iowa Code Chapter 427B.26. Carried 4-0. Copy filed.
- 12a. Motion by Taylor second by Radig to receive the final staff report and Zoning Commission's recommendation from their 11/22/21 meeting. Carried.4-0 Copy filed.
- 12b. Motion by Radig second by De Witt to approve and authorize the Chairperson to sign a Resolution accepting and approving the final plat of Whiskey Creek 170th addition to Woodbury County, Iowa. Carried 4-0.

RESOLUTION #13,374
ACCEPTING WHISKEY CREEK 170TH ADDITION
INTO WOODBURY COUNTY

WHEREAS, THE OWNERS AND PROPRIETORS DID ON THE 22ND DAY OF NOVEMBER, 2021, FILE WITH THE WOODBURY COUNTY ZONING COMMISSION A CERTAIN PLAT DESIGNATED AS WHISKEY CREEK 170TH ADDITION, WOODBURY COUNTY, IOWA; AND

WHEREAS, IT APPEARS THAT SAID PLAT CONFORMS WITH ALL OF THE PROVISIONS OF THE CODE OF THE STATE OF IOWA AND ORDINANCES OF WOODBURY COUNTY, IOWA, WITH REFERENCE TO THE FILING OF SAME; AND

WHEREAS THE ZONING COMMISSION OF WOODBURY COUNTY, IOWA HAS RECOMMENDED THE ACCEPTANCE AND APPROVAL OF SAID PLAT; AND

WHEREAS, THE COUNTY ENGINEER OF WOODBURY COUTY, IOWA HAS RECOMMENDED THE ACCEPTANCE AND APPROVAL OF SAID PLAT.

NOW THEREFORE, BE, AND IT IS HEREBY RESOLVED BY THE WOODBURY COUNTY BOARD OF SUPERVISORS, WOODBURY COUNTY, STATE OF IOWA, THAT THE PLAT OF WHISKEY CREEK 170TH ADDITION, WOODBURY COUNTY, IOWA BE, AND THE SAME IS HEREBY ACCEPTED AND APPROVED, AND THE CHAIRMAN AND SECRETARY OF THE WOODBURY COUNTY BOARD OF SUPERVISORS, WOODBURY COUNTY, STATE OF IOWA, ARE HEREBY DIRECTED TO FURNISH TO THE OWNERS AND PROPRIETORS A CERTIFIED COPY OF THIS RESOLUTION AS REQUIRED BY LAW.

PASSED AND APPROVED THIS 7TH DAY OF DECEMBER, 2021
WOODBURY COUNTY BOARD OF SUPERVISORS
Copy filed.

13. Motion by De Witt second by Radig to authorize the chairman to sign letters of agreement with the City of Sioux City and Lawton for shared voting precincts. Carried 4-0. Copy filed.
14. Motion by Taylor second by De Witt to obligate \$429,900.00 of unallocated CIP funds for the purchase of Axon IN-CAR video system for 31 units of Woodbury County Sheriff Office vehicles. Carried 4-0. Copy filed.
15. The Board heard reports on committee meetings.
16. There were no citizen concerns.
17. Board concerns were heard.

The Board adjourned the regular meeting until December 14, 2021.

Meeting sign in sheet. Copy filed.

FARM LEASE CASH RENT

THIS LEASE ("Lease") is made between Woodbury County, Iowa, Board of Supervisors ("Landlord"), and Rick Bousquet, doing business as Bousquet Dairy, Inc. ("Tenant") whose address is 408 Dairy Lane, South Sioux City, NE 68776

THE PARTIES AGREE AS FOLLOWS:

1. PREMISES AND TERM. Landlord leases to Tenant the following real estate situated in Woodbury County, Iowa (the "Real Estate"):

Northwest Quarter Southwest Quarter (NW $\frac{1}{4}$ SW $\frac{1}{4}$) and Southwest Quarter Southwest Quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$), Section Fourteen (14), Township Eighty-eight (88), Range Forty-seven (47); Southwest Quarter Northwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$) Section Twenty-three (23), Township Eighty-eight (88), range Forty-seven (47); Southwest of road East Half Northwest Quarter (E $\frac{1}{2}$ NW $\frac{1}{4}$) Section Twenty-three (23) Township Eighty-eight (88), range Forty-seven (47), Woodbury County, Iowa, contains approximately 200 acres and also the Northwest Quarter Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$) Section Twenty-three (23), Township Eighty-eight (88), Range Forty-seven (47), Woodbury County, Iowa (approximately 40 acres total, however, excluding there from the County facility and grounds known as Prairie Hills); approximate 240 acres; of this 208.4 acres is being tilled; the rest is in roads, ditches, county facility, and sewage lagoon for county facility.

Said Real Estate containing 203.5 tillable acres, more or less, with possession by Tenant for a term of 1 crop years to commence on the 1st day of March, 2022, and end on the 1st day of December, 2022. At the expiration of this lease Tenant will yield possession to Landlord without further notice in as good condition as when the Real Estate was entered upon by the Tenant.

2. RENT. Tenant shall pay to Landlord as rent for the Real Estate (the "Rent"):

Annual cash Rent of \$71,448.85 payable as follows:

One-half (1/2) of the annual Rent equaling \$35,724.43 due on March 1 of each contract year, and the remaining One-half (1/2) equaling \$35,724.43 due on December 1 of each contract year. All Rent is to be paid in person or by mail to Landlord at the Woodbury County Board of Supervisors' Office at 620 Douglas St., Sioux City, IA 51101. Rent must be in Landlord's possession on or before the due date. All sums past due under this Lease shall draw interest at ten percent per annum, payable from the date they become due.

3. PROPER HUSBANDRY; HARVESTING OF CROPS; CARE OF SOIL, TREES, SHRUBS AND

GRASS. Tenant shall farm the Real Estate in a manner consistent with good husbandry, seek to obtain the best crop production that the soil and crop season will permit, properly care for all growing crops in a manner consistent with good husbandry, and harvest all crops on a timely basis. In the event Tenant fails to do so, Landlord reserves the right, personally or by designated agents, to enter upon the Real Estate and properly care for and harvest all growing crops, charging the cost of the care and harvest to the Tenant, as part of the Rent. Tenant shall timely control all weeds, including noxious weeds, weeds in the fence rows, along driveways and around buildings throughout the premises. Tenant shall comply with all terms of the conservation plan and any other required

environmental plans for the leased premises. Tenant shall do what is reasonably necessary to control soil erosion including, but not limited to, the maintenance of existing watercourses, waterways, ditches, drainage areas, terraces and tile drains, and abstain from any practice which will cause damage to the Real Estate.

Upon request from the Landlord, Tenant shall by August 15 of each lease year provide to the Landlord a written listing showing all crops planted, including the acres of each crop planted, fertilizers, herbicides and insecticides applied showing the place of application, the name and address of the applicator, the type of application and the quantity of such items applied on the lease premises during such year.

Tenant shall distribute upon the poorest tillable soil on the Real Estate, unless directed otherwise by Landlord, all of the manure and compost from the farming operation suitable to be used. Tenant shall not remove from the Real Estate, nor burn, any straw, stalks, stubble, or similar plant materials, all of which are recognized as the property of Landlord. Tenant may use these materials, however, upon the Real Estate for the farming operations. Tenant shall protect all trees, vines and shrubbery upon the Real Estate from injury by Tenant's cropping operation or livestock. Tenant shall not keep livestock on the property without Landlord's written consent. Landlord may withhold consent for any reason.

Tenant shall maintain accurate yield records for the real estate, and upon request, during or after lease term, shall disclose to Landlord, all yield base information required for participation in government programs, if applicable.

4. LANDLORD'S STORAGE SPACE. Tenant may elect to rent storage space in Landlord's grain bins. Tenant must notify Landlord by July 1, 2022 if Tenant desires to rent storage space. Rental of the storage space, if desired, will be accomplished by a separate agreement.

5. ENVIRONMENTAL. Tenant. Tenant shall comply with all applicable environmental laws concerning application, storage and handling of chemicals (including, without limitation, herbicides and insecticides) and fertilizers. Tenant shall apply any chemicals used for weed or insect control at levels not to exceed the manufacturer's recommendation for the soil types involved. Farm chemicals may not be stored on the premises for more than one year. Farm chemicals for use on other properties may not be stored on this property. Chemicals stored on the premises shall be stored in clearly marked, tightly closed containers. No chemicals or chemical containers will be disposed of on the premises. Application of chemicals for agricultural purposes per manufacturer's recommendation shall not be construed to constitute disposal.

Tenant shall employ all means appropriate to insure that well or ground water contamination does not occur, and shall be responsible to follow all applicator's licensing requirements. Tenant shall properly post all fields (when posting is required) whenever chemicals are applied by ground or air. Tenant shall haul and spread all manure on appropriate fields at times and in quantities consistent with environmental protection requirements. Tenant shall not dispose of waste oil, tires, batteries,

paint, other chemicals or containers anywhere on the premises. Solid waste may not be disposed of on the premises. Dead livestock may not be buried on the premises. Tenant shall not use waste oil as a means to suppress dust on any roads on or near the premises.

Tenant shall immediately notify Landlord of any chemical discharge, leak, or spill which occurs on premises. Tenant shall assume liability and shall indemnify and hold Landlord harmless for any claim or violation of standards which results from Tenant's use of the premises. Tenant shall assume defense of all claims, except claims resulting from Landlord's negligence, in which case each party shall be responsible for that party's defense of any claim. After termination, Tenant shall remain liable for violations which occurred during the term of this Lease.

6. TERMINATION OF LEASE. Landlord intends to terminate Lease at the expiration of its term. The tenancy shall not continue because of an absence of notice in the event there is a default in the performance of this Lease. All notices of termination of this Lease shall be as provided by law (Iowa Code § 562.7).

7. POSSESSION AND CONDITION AT END OF TERM. At the termination of this Lease, Tenant will relinquish possession of the Real Estate to the Landlord. If Tenant fails to do so Tenant agrees to pay Landlord \$150 per day, as liquidated damages until possession is delivered to Landlord. At the time of delivery of the Real Estate to Landlord, Tenant shall assure that the Real Estate is in good order and condition, and substantially the same as it was when received by Tenant at the commencement of this Lease, excusable or insurable loss by fire, unavoidable accidents and ordinary wear, excepted.

8. LANDLORD'S RIGHT OF ENTRY AND INSPECTION. In the event notice of termination of this Lease has been properly served, Landlord may enter upon the Real Estate or authorize someone else to enter upon the Real Estate to conduct any normal tillage or fertilizer operation after Tenant has completed the harvesting of crops even if this is prior to the date of termination of the lease. Landlord may enter upon the Real Estate at any reasonable time for the purpose of viewing or seeding or making repairs, or for other reasonable purposes.

9. VIOLATION OF TERMS OF LEASE. If Tenant or Landlord violates the terms of this Lease, the other may pursue the legal and equitable remedies to which each is entitled. Tenant's failure to pay any Rent when due shall cause all unpaid Rent to become immediately due and payable, without any notice to or demand upon Tenant.

10. REPAIRS. Tenant shall maintain the fences on the leased premises in good and proper repair. Landlord shall furnish necessary materials for repairs that Landlord deems necessary within a reasonable time after being notified of the need for repairs. Tenant shall haul the materials to the repair site without charge to Landlord.

11. EXPENSES INCURRED WITHOUT CONSENT OF LANDLORD. No expense shall be incurred for or on account of the Landlord without first obtaining Landlord's written authorization. Tenant shall take no actions that might cause a mechanic's lien to be imposed upon the Real Estate.

12. NO AGENCY. Tenant is not an agent of the Landlord.

13. ATTORNEY FEES AND COURT COSTS. If Landlord prevails in a proceeding to enforce any of the terms of this Lease, Landlord shall be entitled to recover its court costs and reasonable attorneys' fees from the Tenant.

14. CHANGE IN LEASE TERMS. This Lease contains the entire agreement between the parties. The conduct of either party, by act or omission, shall not be construed as a material alteration of this Lease until such provision is reduced to writing and executed by both parties as addendum to this Lease.

15. CONSTRUCTION. Words and phrases herein, including the acknowledgment, are construed as in the singular or plural and as the appropriate gender, according to the context.

16. NOTICES. The notices contemplated in this Lease shall be made in writing and shall either be delivered in person, or be mailed in the U.S. mail, certified mail to the recipient's last known mailing address, except for the notice of termination set forth in Section 6, which shall be governed by the Code of Iowa.

17. ASSIGNMENT. Tenant shall not assign this Lease or sublet the Real Estate or any portion thereof without prior written authorization of Landlord.

DATED: _____, 2021.

TENANT:

LANDLORD:

Rick Bousquet, President
Bousquet Dairy, Inc.
South Sioux City, NE 68776
712-223-0557

Rocky De Witt, Chairman
Woodbury County Board of Supervisors

STATE OF IOWA: }
 }ss.
WOODBURY COUNTY}

This instrument was acknowledged before me on _____, 2021, by Rick Bousquet.

Notary Public for State of Iowa

This instrument was acknowledged before me on _____, 2021, by, Rocky De Witt,
Chairperson of Board of Supervisors, Woodbury County, Iowa.

_____,
Notary Public for Woodbury County,
State of Iowa

WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM

Date: December 9, 2021 Weekly Agenda Date: December 14, 2021

ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN: PJ Jennings

WORDING FOR AGENDA ITEM:

Approval of resolution allowing release of claims associated with Opioid Litigation settlement.

ACTION REQUIRED:

Approve Ordinance

Approve Resolution

Approve Motion

Public Hearing

Other: Informational

Attachments

EXECUTIVE SUMMARY:

BACKGROUND:

There has been ongoing national litigation regarding negligent distribution of opioid pharmaceuticals since 2018. The manufactures and distributors have entered into tentative settlement agreements. Iowa and its local municipalities are included in those settlement agreements.

FINANCIAL IMPACT:

No loss to Woodbury County financially at this time.

IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?

Yes No

RECOMMENDATION:

Approve the resolution allowing for release of any and all related claims in order to participate in the settlement agreements.

ACTION REQUIRED / PROPOSED MOTION:

Approval of resolution.

RESOLUTION NO. _____

Authorizing Woodbury County, Iowa to enter into Settlement Agreements with McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.; and agree to the terms of the Iowa Opioid Allocation Memorandum of Understanding.

WHEREAS, negotiations to settle claims against several of the Opioid Defendants, specifically McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (the “Settling Defendants”) have been ongoing for several years;

WHEREAS, negotiations with the Settling Defendants have resulted in proposed nationwide settlements of state and local government claims involved in the Litigation;

WHEREAS, copies of the proposed terms of those proposed nationwide settlements have been set forth in the Distributors Master Settlement Agreement and the J&J Master Settlement Agreement (collectively “Settlement Agreements”);

WHEREAS, copies of the Settlement Agreements as well as summary of the main terms of the Settlement Agreements, the deadlines for submitting the Participation Agreements to the Settlement Agreements and the MDL Court’s Order setting deadlines for any Plaintiff who declines to enter into the Settlement Agreements have been provided to the County prior to the execution of this Resolution;

WHEREAS, the Settlement Agreements provide, among other things, for the payment of a certain sum to settling government entities in Iowa including to the State of Iowa and Participating Subdivisions, as that term is defined in the Settlement Agreements, upon occurrence of certain events as defined in the Settlement Agreements (“Iowa Opioid Funds”);

WHEREAS, the Law Firms have engaged in extensive discussions with the State Attorney General’s Office (“AGO”) as to how the Iowa Opioid Funds will be allocated, which has resulted in the proposed Iowa Opioid Allocation Memorandum of Understanding (“Allocation MOU”), which is an agreement between all of the entities who are signatories to the Allocation MOU;

WHEREAS, a copy of the Allocation MOU and the Exhibits to that MOU has been provided with this Resolution;

WHEREAS, the Allocation MOU divides Iowa Opioid Funds as follows: (i) 50% to the State (“the Iowa Abatement Share”) and (ii) 50% to Participating Local Governments (“LG Share”), less fees and costs allocated to the Iowa Backstop Fund as set forth in Section D of the Allocation MOU and in this Resolution (“LG Abatement Share”).

WHEREAS, the LG Abatement Share shall be distributed in direct payments to the Counties that are Participating Local Governments according to the allocation model developed in connection with the proposed negotiating class in the National Prescription Opiate Litigation (MDL No. 2804) in the amounts set forth on Exhibit 2 to the Allocation MOU (“Direct Distribution Percentage”). The Direct Distribution Percentage will be multiplied by the total LG Abatement Share to arrive at the total allocation to the Participating Local Government (the “Direct Distribution Amount”).

WHEREAS, 100% of the Iowa Abatement Share and the LG Abatement Share, regardless of allocation, shall be utilized only for Opioid Related Expenditures incurred after the Effective Date of this MOU. The list of approved Opioid Related Expenditures are set forth in Exhibit 1 to this MOU.

WHEREAS at least 75% of the Iowa Abatement Share and 75% of the LG Abatement Share shall be utilized for only the “Core Strategies” listed in Schedule A of Exhibit 1 to this MOU.

WHEREAS, every Participating Local Government that receives a Direct Distribution Amount shall create a separate fund on its financial books and records that is designated for the receipt and expenditure of the entity’s Direct Distribution Amount, called the “LG Abatement Fund” or something similar. Funds in an LG Abatement Fund shall not be commingled with any other money or funds of the Participating Local Government. A Participating Local Government may invest LG Abatement Fund funds consistent with the investment of other funds of a Participating Local Government.

WHEREAS, Funds in a LG Abatement Fund may be expended by a Participating Local Government only for Opioid Related Expenditures. For avoidance of doubt, funds in a LG Abatement Fund may not be expended for costs, disbursements or payments made or incurred prior to the Settlement.

WHEREAS, each LG Abatement Fund shall be subject to audit in a manner consistent with Code of Iowa §§331.402(2)(i) and 11.6. Any such audit shall be a financial and performance audit to ensure that the LG Abatement Fund disbursements are consistent with the terms of this MOU. If any such audit reveals an expenditure inconsistent with the terms of this MOU, the Participating Local Government shall immediately redirect the funds associated with the inconsistent expenditure to an Opioid Related Expenditure.

WHEREAS, the Settlement Agreements provide for the payment of attorney’s fees and legal expenses owed by States and Participating Local Governments to outside counsel retained for Opioid Litigation. To effectuate this, the Court in the MDL Litigation has established a fund to compensate attorneys representing plaintiffs in the Litigation (the “National Attorney’s Fee Fund”).

WHEREAS, the Law Firms intend to make application to the National Attorney Fee Fund. However, because there is still uncertainty regarding what counsel for litigating local governments will recover as compensation for the large volume of work done and the large out of pocket expense of the Litigation, and whereas the Parties to the Allocation MOU desire to fairly

compensate outside counsel for the work done on behalf of the Participating Local Governments in Iowa, the Allocation MOU provides that a fund be created from 15 % of the LG Share attributable to the Participating Local Governments (“Iowa Backstop Fund”);

WHEREAS, the Iowa Backstop Fund is meant to compensate outside counsel for participating local governments only for amounts not recovered from the National Attorney’s Fee Fund attributable to their Iowa clients;

WHEREAS, to be eligible for the Iowa Backstop Fund, the Law Firms must first seek payment from the National Attorneys’ Fee Fund and may not recover amounts attributable to Counsel’s representation of the Litigating Counties received at the National Attorneys’ Fees Fund from the Iowa Backstop Fund;

WHEREAS, Woodbury County, by this Resolution, agrees to the creation of the Iowa Backstop Fund in the amount of 15% of the LG Share attributable to the Litigating Local Governments in order to fund a state-level “backstop” for payment of the fees, costs, and disbursements of the Law Firms;

WHEREAS, in no event shall the total of the amounts received by the Law Firms at the National Attorney’s Fee Fund related to the Litigating Counties and the amount received at the Iowa Backstop Fund exceed the amount the Law Firms would have been entitled to pursuant their fee contract with the Litigating Counties;

WHEREAS, Woodbury County, by this Resolution, shall establish an account for the receipt of the LG Abatement Share consistent with the terms of this Resolution (“the LG Abatement Fund”);

WHEREAS, Woodbury County’s LG Abatement Fund shall be separate from the County’s general fund, shall not be commingled with any other County funds, and shall be dedicated to funding opioid abatement measures as provided in the Settlement Agreements and the Allocation MOU;

WHEREAS, Woodbury County must comply annually with the reporting requirements in the Allocation MOU;

WHEREAS, if Woodbury County elects to become a Participating Subdivision in the Settlement Agreements it will receive the benefits associated with the Settlement Agreement and the Allocation MOU, provided the County (a) approves the Settlement Agreements; (b) executes the Participation Agreements stating the County intends to be bound by the Settlement Agreements; (3) approves the Allocation MOU; (4) executes the Acknowledgement and Agreement to be Bound to Memorandum of Understanding necessary to execute the Allocation MOU;

WHEREAS, the intent of this Resolution is to authorize Woodbury County to enter into the Settlement Agreements by executing the Participation Agreements and to enter into the

Allocation MOU by executing the Acknowledgement and Agreement to be Bound to Memorandum of Understanding necessary to execute the Allocation MOU;

NOW, THEREFORE, BE IT RESOLVED: the Woodbury County Board of Supervisors hereby approves and authorizes PJ Jennings, Woodbury County Attorney, to settle and release the County's claims against the Settling Defendants in exchange for the consideration set forth in the Settlement Agreements, Allocation MOU and all exhibits thereto, including taking the following measures:

1. The execution of the Participation Agreement to the Distributors Settlement Agreement and any and all documents ancillary thereto.
2. The execution of the Participation Agreement to the Janssen Settlement Agreement and any and all documents ancillary thereto.
3. The execution of the Allocation MOU by executing the Acknowledgement and Agreement to be Bound to Memorandum of Understanding.

BE IT FURTHER RESOLVED: Woodbury County will establish an account separate and distinct from the County's general fund which shall be titled "LG Abatement Fund", or something similar, to receive the LG Abatement Share from the Settlement Agreements.

BE IT FURTHER RESOLVED that all actions heretofore taken by the Woodbury County Board of Supervisors and any other appropriate public officers and agents of the County with respect to the matters contemplated under this Resolution are hereby ratified, confirmed and approved.

Adopted by the Woodbury County Board of Supervisors this 14th day of December, 2021.

Chair, Woodbury County Board of Supervisors

ATTEST:

Auditor

IOWA OPIOID ALLOCATION
MEMORANDUM OF UNDERSTANDING

A. Definitions

As used in this Memorandum of Understanding (“MOU” or “Agreement”):

1. “Local Government” shall mean all Iowa Counties (regardless of population) and cities, villages, and towns located within the geographic boundaries of the State of Iowa with a population exceeding 10,000.¹
2. “Opioid Funds” shall mean monetary amounts obtained through a Settlement as defined in this MOU, including amounts obtained under Sections IV and V of the Distributor Master Settlement Agreement and Sections V and VI of the J&J Master Settlement Agreement. Separate amounts allocated to the State as restitution pursuant to Sections IX of the Distributor Master Settlement Agreement and Sections X of the J&J Master Settlement Agreement and amounts for reimbursement of attorneys’ fees and costs as set forth in Sections X of the Distributor Master Settlement Agreement and Section XI of the J&J Master Settlement Agreement and from similar state specific or private attorneys’ fees funds created by other Settlements are not “Opioid Funds.” For avoidance of doubt, payments to the Iowa Backstop Fund will be paid out of Opioid Funds as more specifically set forth in Section D of this MOU.
3. “Opioid Related Expenditure” shall mean an expenditure consistent with the categories enumerated in Exhibit E to the Distributor Master Settlement Agreement and the J&J Master Settlement Agreement found at <https://nationalopioidsettlement.com/> and attached hereto as Exhibit 1.
4. “Parties” shall mean the State of Iowa and Participating Local Governments.
5. “Pharmaceutical Supply Chain Participant” shall mean any entity that engages in or has engaged in the manufacture, marketing, promotion, distribution or dispensing of an opioid analgesic, including but not limited to those persons or entities identified as Defendants in the matter captioned *In re: Opioid Litigation*, MDL 2804 pending in the United States District Court for the Northern District of Ohio.
6. “Participating Local Government” is any Local Government that agrees to be bound by a Settlement by Participation Agreement necessary to effectuate that Settlement or other similar document.
7. “Settlement” shall mean the negotiated resolution of legal or equitable claims regarding opioids against a Pharmaceutical Supply Chain Participant when that resolution has been

¹ The population figures contained in this MOU shall be derived from the published U.S. Census Bureau’s population estimates for July 1, 2019, released May 2020 as set for in the Distributor Master Settlement Agreement and the J&J Master Settlement Agreement.

jointly entered into by the Parties. For avoidance of doubt, a Settlement shall not include (i) any negotiated resolution of legal or equitable claims between the State and a Supply Chain Participant that is unrelated to the claims at issue in the matter captioned *In re: Opioid Litigation*, MDL 2804 pending in the United States District Court for the Northern District of Ohio or (ii) any negotiated resolution of legal or equitable claims between the State and a Supply Chain Participant that requires the Parties to allocate settlement proceeds in a specific manner or using specified allocation percentages inconsistent with this MOU

8. “Master Settlement Agreement” shall mean the agreements documenting a Settlement. For the purposes of this MOU the Distributor Master Settlement Agreement and the J&J Master Settlement Agreement found at <https://nationalopioidsettlement.com/> are Master Settlement Agreements under the meaning of this MOU.
9. “State” shall mean the State of Iowa.

B. Allocation of the Opioid Settlement Proceeds

1. Opioid Funds shall be allocated as follows: (i) 50% to the Iowa Abatement Fund (“Iowa Abatement Share”) and (ii) 50% to Participating Local Governments, less fees and costs allocated to the Iowa Backstop Fund as set forth in Section D (“LG Abatement Share”).
2. The Participating Local Governments may elect to use a Settlement Administrator (“Settlement Administrator”) to receive and distribute Opioid Funds allocated to the LG Abatement Share pursuant to this MOU.
3. Opioid Funds shall not be considered funds of the Iowa Abatement Fund or any Local Government unless and until such time as an allocation is made to the Iowa Abatement Fund or any Participating Local Government pursuant to this Section.
4. The LG Abatement Share shall be distributed in direct payments to the Counties that are Participating Local Governments according to the National Negotiation Class Formula, in the amounts set forth on Exhibit 2 (“Direct Distribution Amount”).
5. A County may elect to forego its Direct Distribution Amount by notifying the Settlement Administrator in writing of its decision. If a County makes an election to forego its Direct Distribution Amount, that amount reverts to the LG Abatement Share unless the County specifically designates that its share should revert to the Iowa Abatement Share.
6. Except as provided herein, nothing shall prohibit a County from sub-allocating any portion of its Direct Distribution Amount to the Iowa Abatement Fund or to a City that is a Participating Local Government within its jurisdiction provided, however, that the Iowa Abatement Fund or City must expend any such sub-allocation only on an Opioid Related Expenditure.

7. If a County sub-allocates Opioid Funds to a City within its jurisdiction, such suballocation shall be made according to an agreement between the County and the City requiring the use of the suballocated funds for an Opioid Related Expenditure and further providing that a use of funds inconsistent with an Opioid Related Expenditure shall make the funds subject to recoupment and otherwise disqualify the City from a future sub-allocation.
8. Except as provided herein, 100% of the Iowa Abatement Share and the LG Abatement Share, regardless of allocation, shall be utilized only for Opioid Related Expenditures incurred after the Effective Date of this MOU. The list of approved Opioid Related Expenditures are set forth in Exhibit 1 to this MOU . The Parties agree that at least 75% of the Iowa Abatement Share and the LG Abatement Share shall be utilized for only the “Core Strategies” listed in Schedule A of Exhibit 1 to this MOU.
9. The Parties may use up to 2.5% of the Iowa Abatement Share and the LG Abatement Share for administrative costs for Opioid Related Expenditures.

C. Compliance Reporting and Accountability

1. Every Participating Local Government that receives a Direct Distribution Amount shall create a separate fund on its financial books and records that is designated for the receipt and expenditure of the entity’s Direct Distribution Amount, called the “LG Abatement Fund.” Funds in an LG Abatement Fund shall not be commingled with any other money or funds of the Participating Local Government. A Participating Local Government may invest LG Abatement Fund funds consistent with the investment of other funds of a Participating Local Government.
2. Funds in a LG Abatement Fund may be expended by a Participating Local Government only for Opioid Related Expenditures. For avoidance of doubt, funds in a LG Abatement Fund may not be expended for costs, disbursements or payments made or incurred prior to the Settlement.
3. Each LG Abatement Fund shall be subject to audit in a manner consistent with Code of Iowa §§331.402(2)(i) and 11.6. Any such audit shall be a financial and performance audit to ensure that the LG Abatement Fund disbursements are consistent with the terms of this MOU. If any such audit reveals an expenditure inconsistent with the terms of this MOU, the Participating Local Government shall immediately redirect the funds associated with the inconsistent expenditure to an Opioid Related Expenditure.
4. Reporting
 - a. Each Participating Local Government that receives a Direct Distribution Amount must prepare and file a public annual report describing the expenditure of its Direct Distribution Amount. The report shall include, though is not limited to, a

narrative description of the funded programs; the dollar amount provided; and progress and/or outcomes of funded programs. Participating Local Governments may work together to prepare and file joint reports if they so choose.

- b. A Participating Local Government taking a suballocation of some amount of its Direct Distribution Amount pursuant to Section B(7) is responsible for including the expenditure of those funds and outcomes from those expenditures in the annual report required by Section C(4)(a), above.
 - c. The State may utilize the reports in order to report to the public on the use and effectiveness of the Opioid Funds in addressing the opioid crisis in Iowa.
5. Two or more Participating Local Governments may combine their respective Direct Distribution Amounts.
 6. Nothing shall prohibit Participating Local Governments from acting alone or together pursuant to Paragraph 5 or from entering into an agreement(s) relating to the securitization of Opioid Funds (and any allocation thereof) that are scheduled under a Settlement to be paid at a future date.
 7. Pursuant to Section B of this MOU the Iowa Abatement Fund and all Participating Local Governments shall use 100% of the Iowa Abatement Share and the LG Abatement Share for Opioid Related Expenditures.

D. Payment of Counsel and Opioid Litigation Expenses

1. Sixty-six of the Participating Local Governments (“Litigating Local Governments”) have contracted with outside counsel (“Counsel”) for representation in litigation against certain Pharmaceutical Supply Chain Participants and Counsel has been representing some of those entities since 2018. The Litigating Local Governments are set forth on Exhibit 2. In consideration for Counsel’s representation, each of the Litigating Local Governments entered into a contract with its Counsel for a 25% contingency fee applied to each Litigating Local Government’s recovery.
2. The Distributor Master Settlement Agreement and the J&J Master Settlement Agreement provide for the payment of attorneys’ fees and legal expenses owed by States and Participating Local Governments to outside counsel retained for litigation against the Defendants in those agreements. To effectuate this, the Court in the MDL Litigation has established a fund to compensate attorneys for services rendered and expenses incurred that have benefitted plaintiffs generally in the litigation (the “National Attorney Fee Fund”).
3. Counsel for the Litigating Local Governments intends to make application to the National Attorney Fee Fund. Because there is still uncertainty regarding what Counsel will recover as compensation for the large volume of work done and the large out of pocket expense of the Litigation, and whereas the Litigating Local Governments desire

to fairly compensate Counsel for the work done on behalf of Litigating Local Governments, the Parties agree that the Participating Local Governments will create an Iowa attorneys' fees and costs fund (the "Iowa Backstop Fund") to compensate Counsel only in the event Counsel does not recover from the National Attorney Fee Fund an amount equal to 15 % of the LG Abatement Share attributable to the Litigating Local Governments, less any amounts a Litigating Local Government suballocates to one or more Cities within its jurisdiction ("Net Direct Distribution Amount"). For the avoidance of doubt, collectively, Counsel are limited to being paid, at most, and assuming adequate funds are available under the National Attorney Fee Fund and the Iowa Backstop Fund, attorneys' fees totaling fifteen percent (15%) of the total Net Direct Distribution Amount for all Litigating Local Governments.

4. Counsel must first seek recovery at the National Attorney Fee Fund before applying to the Iowa Backstop Fund and may not recover from the Iowa Backstop Fund any amounts recovered at the National Attorney Fee Fund.
5. Counsel can seek payment from the Iowa Backstop Fund only for the difference between what they have collected from the National Attorney Fee Fund and the amount to which they are entitled under Paragraph D(3), above.
6. If Counsel receives fees/costs for common benefit work from the National Attorney Fee Fund, when determining "amounts recovered" for purposes of this Section D, those fees/costs received from the National Attorney Fee Fund for common benefit work will be allocated proportionately across all of their local governmental clients based on the Negotiation Class Model to allocate the appropriate portion to Iowa Litigating Local Governments.
7. The Iowa Backstop Fund shall be funded as follows: from the Opioid Funds Allocated to Participating Local Governments pursuant to this MOU, the Settlement Administrator shall deposit in the Iowa Backstop Fund an amount equal to 15% of the total Net Direct Distribution Amount for all Litigating Local Governments and distribute the remainder of the funds allocated to Participating Local Governments as set forth in Section B above. No funds from the Iowa Abatement Share shall be used to pay attorneys' fees and no funds from the Iowa Abatement Share shall be paid to the Iowa Backstop Fund.
8. Any funds remaining in the Iowa Backstop Fund in excess of the amounts needed to cover the deficiency in attorneys' fees as provided in this Section shall revert back to the LG Abatement Share and shall be allocated to the Participating Local Governments as provided in Section B.
9. The Settlement Administrator shall be responsible for receiving requests for and allocating payments to Counsel from the Iowa Backstop Fund. Counsel seeking payment from the Iowa Backstop Fund shall provide all documents and information required and/or sought by the Settlement Administrator.

10. The Settlement Administrator is authorized to provide information regarding requests for and payment from the Iowa Backstop Fund to the Attorney General, upon request.
11. The Iowa Backstop Fund will not be funded by proceeds from any resolution in the matter of *In re Purdue Pharma L.P., et. al.*, Docket No. 19-23649 in the Bankruptcy Court for the Southern District of New York.

E. Minimum Participation

1. This Agreement shall become effective at the time when Litigating Local Governments comprising 95% of the total Litigating Local Government population and Local Governments comprising 80% of the total population of eligible Primary Subdivisions as defined and described in in the Settlement Agreements with a population over 30,000 people sign this MOU (“MOU Effective Date”).
2. For avoidance of doubt, a list of the Litigating Local Governments and eligible Primary Subdivisions with a population over 30,000 people whose participation is required to achieve the MOU Effective Dates as set forth above is attached hereto as Exhibit 3.

F. Other Terms

1. The Parties agree to make such amendments as necessary to implement the intent of this agreement. After this Agreement becomes effective, amendments may only be made to this Agreement if approved in writing by the Attorney General and at least 51% of the Participating Local Governments.
2. This Agreement shall be governed by and construed under the laws of the State of Iowa using Iowa law. Any action related to the provisions of this Agreement, except as otherwise provided in the Master Settlement Agreements or Future Resolutions, must be adjudicated by the Iowa state courts of Polk County in the State of Iowa.
3. This Agreement does not supersede or alter the terms of the Master Settlement Agreements except to the extent those terms allow for a State-Subdivision Agreement to do so.
4. If any part of this Agreement is declared invalid or becomes inoperative for any reason, such invalidity or failure shall not affect the validity and enforceability of any other provision.
5. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same agreement. A signature transmitted by facsimile or electronic image shall be deemed an original signature for purposes of executing this Agreement.

6. Each person signing this Agreement represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement on behalf of the named governmental entity, and that all necessary.

IN WITNESS WHEREOF, the parties hereby execute this MOU as of the date set forth below.

ON BEHALF OF THE STATE OF IOWA:

_____ Date: _____
Attorney General Thomas J. Miller

ON BEHALF OF THE LOCAL GOVERNMENTS:

_____ Date: _____
Adair County
Printed: _____

_____ Date: _____
Adams County
Printed: _____

_____ Date: _____
Allamakee County
Printed: _____

_____ Date: _____
Altoona City
Printed: _____

_____ Date: _____
Ames City
Printed: _____

_____ Date: _____
Ankeny City
Printed: _____

_____ Date: _____
Winnebago County
Printed: _____

_____ Date: _____
Winneshiek County
Printed: _____

_____ Date: _____
Woodbury County
Printed: _____

_____ Date: _____
Worth County
Printed: _____

_____ Date: _____
Wright County
Printed: _____

Subdivision Janssen Settlement Participation Form

Governmental Entity: WOODBURY COUNTY	State: IA
Authorized Signatory:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above (“Governmental Entity”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated July 21, 2021 (“Janssen Settlement”), and acting through the undersigned authorized official, hereby elects to participate in the Janssen Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Janssen Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Janssen Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity’s election to participate is specifically conditioned on the Iowa Opioid Allocation Memorandum of Understanding (“MOU”) becoming effective by that MOU being executed both by the State, Litigating Local Governments comprising 95% of the total Litigating Local Government population and Local Governments comprising 80% of the total population of eligible Primary Subdivisions as defined and described in in the Settlement Agreements with a population over 30,000. Should the Iowa Allocation Memorandum of Understanding fail to become effective, this Election and Release shall be deemed void and no claims shall be released.
3. The Governmental Entity shall, within 14 days of the Reference Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed.
4. The Governmental Entity agrees to the terms of the Janssen Settlement pertaining to Subdivisions as defined therein.
5. By agreeing to the terms of the Janssen Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
6. The Governmental Entity agrees to use any monies it receives through the Janssen Settlement solely for the purposes provided therein.
7. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity’s state where the Consent Judgment is filed for purposes limited to that court’s role as provided in, and for resolving disputes to the extent provided in, the Janssen Settlement.



8. The Governmental Entity has the right to enforce the Janssen Settlement as provided therein.
9. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Janssen Settlement, including but not limited to all provisions of Section IV (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Janssen Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Janssen Settlement shall be a complete bar to any Released Claim.
10. In connection with the releases provided for in the Janssen Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Janssen Settlement.
11. Nothing herein is intended to modify in any way the terms of the Janssen Settlement, to which Governmental Entity hereby agrees. To the extent this Election and Release is interpreted differently from the Janssen Settlement in any respect, the Janssen Settlement controls.



I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____



WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM

Date: 12/9/21 Weekly Agenda Date: 12/14/21

ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN: David Gleiser, CED Director

WORDING FOR AGENDA ITEM:

Public Hearing and 2nd Reading: An Ordinance Relating to the Assessment of Wind Energy Conversion Property as Authorized by Iowa Code Chapter 427B.26

ACTION REQUIRED:

Approve Ordinance Approve Resolution Approve Motion
Public Hearing Other: Informational Attachments

EXECUTIVE SUMMARY:

The Board will consider adopting an ordinance to provide the special valuation of wind energy conversion property as provided by Iowa Code Section 427B.26.

BACKGROUND:

Pursuant to Iowa Code Section 427B.26, a special valuation of wind energy conversion property is allowed if a county adopts an ordinance. Wind energy conversion property first assessed on or after the effective date of the proposed ordinance shall be valued by the County Assessor for property tax purposes as follows:

- a. For the first assessment year, at zero (0%) of the net acquisition cost.
- b. For the second through sixth assessment years, at the percent of the net acquisition cost which rate increases by five (5%) each assessment year.
- c. For the seventh and succeeding assessment years, at thirty percent (30%) of the net acquisition cost.

FINANCIAL IMPACT:

The financial impact of the proposed ordinance will be the amount of taxes the county exempts and collects as provided by law under the 427B.26 exemption schedule.

IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?

Yes No

RECOMMENDATION:

Conduct the public hearing, then approve the 2nd reading.
The 3rd reading has been set for 12/21 at 4:40pm.
The Board of Supervisors will vote to approve or deny on 1/11/22 as a regular agenda item.

ACTION REQUIRED / PROPOSED MOTION:

Conduct the public hearing.
Motion to close the public hearing.
Motion to conduct the 2nd reading of the ordinance.

427B.26 Special valuation of wind energy conversion property.

1. *a.* A city council or county board of supervisors may provide by ordinance for the special valuation of wind energy conversion property as provided in [subsection 2](#). The ordinance may be enacted not less than thirty days after a public hearing on the ordinance is held. Notice of the hearing shall be published in accordance with [section 331.305](#) in the case of a county, or [section 362.3](#) in the case of a city. The ordinance shall only apply to property first assessed on or after the effective date of the ordinance.

b. If in the opinion of the city council or the county board of supervisors continuation of the special valuation provided under [this section](#) ceases to be of benefit to the city or county, the city council or the county board of supervisors may repeal the ordinance authorized by [this subsection](#). Property specially valued under [this section](#) prior to repeal of the ordinance shall continue to be valued under [this section](#) until the end of the nineteenth assessment year following the assessment year in which the property was first assessed.

2. In lieu of the valuation and assessment provisions in [section 441.21, subsection 8](#), paragraphs “*b*”, “*c*”, and “*d*”, and [sections 428.24 to 428.29](#), wind energy conversion property which is first assessed for property taxation on or after January 1, 1994, and on or after the effective date of the ordinance enacted pursuant to [subsection 1](#), shall be valued by the local assessor for property tax purposes as follows:

a. For the first assessment year, at zero percent of the net acquisition cost.

b. For the second through sixth assessment years, at a percent of the net acquisition cost which rate increases by five percentage points each assessment year.

c. For the seventh and succeeding assessment years, at thirty percent of the net acquisition cost.

3. The taxpayer shall file with the local assessor by February 1 of the assessment year in which the wind energy conversion property is first assessed for property tax purposes, a declaration of intent to have the property assessed at the value determined under [this section](#) in lieu of the valuation and assessment provisions in [section 441.21, subsection 8](#), paragraphs “*b*”, “*c*”, and “*d*”, and [sections 428.24 to 428.29](#).

4. For purposes of [this section](#):

a. “*Net acquisition cost*” means the acquired cost of the property including all foundations and installation cost less any excess cost adjustment.

b. “*Wind energy conversion property*” means the entire wind plant including, but not limited to, a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines, and substation.

93 Acts, ch 161, §2

Referred to in [§437A.6](#), [441.21](#), [476B.6](#)

WOODBURY COUNTY, IOWA
ORDINANCE NO. _____

**AN ORDINANCE RELATING TO THE ASSESSMENT OF WIND ENERGY
CONVERSION PROPERTY AS AUTHORIZED BY IOWA CODE CHAPTER 427B.26**

BE IT ENACTED BY THE BOARD OF SUPERVISORS OF WOODBURY COUNTY, IOWA:

SECTION 1. PURPOSE

The purpose of this Ordinance is to provide for the special valuation of wind energy conversion property pursuant to Iowa Code Section 427B.26.

SECTION 2. DEFINITIONS

For use in this Ordinance, certain terms and words used herein shall be interpreted or defined as follows:

- A.) "Net Acquisition Cost" means the acquired cost of the property including all foundations and installation cost less any excess cost adjustment.
- B.) "Wind Energy Conversion Property" means the entire windplant including, but not limited to, a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines and substation.

SECTION 3. AUTHORITY TO ESTABLISH

The Board of Supervisors is authorized, pursuant to Iowa Code Section 427B.26 to provide by ordinance for special valuation of wind energy conversion property as provided in Section 4.

SECTION 4. ESTABLISHMENT

Pursuant to Iowa Code Section 427B.26, a special valuation of wind energy conversion property is allowed in lieu of the valuation assessment provisions in Iowa Code Section 441.21(8)(b) and (c), and Iowa Code Sections 428.24 to 428.29. The special valuation shall only apply to wind energy conversion property first assessed on or after the effective date of this Ordinance.

SECTION 5. AMOUNT OF VALUATION

Wind energy conversion property first assessed on or after the effective date of the Ordinance shall be valued by the County Assessor for property tax purposes as follows:

- A.) For the first assessment year, at zero percent (0%) of the net acquisition cost.
- B.) For the second through sixth assessment years, at a percent of the net acquisition cost which rate increases by five percent (5%) each assessment year.
- C.) For the seventh and succeeding assessment years, at thirty percent (30%) of the net acquisition cost.

SECTION 6. DECLARATION OF SPECIAL VALUATION

The taxpayer shall file with the County Assessor by February 1 of the assessment year in which the wind energy conversion property is first assessed for property tax purposes, a declaration of intent to have the property assessed at the value determined under Section 5 in lieu of the valuation assessment provisions in Iowa Code Section 441.21(9)(b) and (c), and Iowa Code Sections 428.24 to 428.29.

If the taxpayer does not file with the County Assessor by February 1 of the assessment year for which the person files a declaration of intent to have the property assessed as provided above, then the declaration of intent shall be considered as a declaration filed for the following year.

SECTION 7. REPORTING REQUIREMENTS

The following reports shall be filed annually with the County Assessor by the taxpayer; in the first year, with the declaration of intent as prescribed in Section 6; and by Feb. 1 of each year thereafter.

- A.) Copy of Asset ledger sheet to IRS;
- B.) Engineering breakdown of component parts;
- C.) Tower numbering system;
- D.) Name of contact person, phone number, fax number and mailing address;
- E.) Report of all leased equipment, the name(s) of the company(s) it is leased from, and the agreement between the lessor and lessee regarding who is responsible for the property tax on the leased equipment.

SECTION 8. REPEAL OF SPECIAL VALUATION

If in the opinion of the Board of Supervisors, continuation of the special valuation provided under Sections 4 and 5 ceases to be of benefit to the County, the Board of Supervisors may repeal the Ordinance. Property specially valued in accordance with the above prior to the repeal of this Ordinance shall continue to be so valued until the end of the nineteenth (19th) assessment year following the assessment year in which the property was first assessed.

SECTION 9. REPEALER

All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 10. SEVERABILITY CLAUSE

If any section, provision, or other part of this Ordinance shall be adjudged invalid or unconstitutional, said adjudication shall not affect the validity of the Ordinance as a whole or any section, provision, or other part thereof not adjudged invalid or unconstitutional.

SECTION 11. PENALTY

Any person, firm or corporation violating any regulation in or any provision of this Ordinance or of any amendment or supplement thereto, shall be guilty of a simple misdemeanor which is punishable by a fine of not more than One Hundred Dollars (\$100) or by imprisonment of not more than thirty (30) days and shall be guilty of a county infraction punishable by a civil penalty of not more than One Hundred Dollars (\$100), or if the infraction is a repeat offense, by a civil penalty not to exceed Two Hundred Dollars (\$200). Each day that a violation occurs or is permitted by the Defendant to exist, constitutes a separate offense.

SECTION 11. EFFECTIVE DATE

This Ordinance shall become effective after final passage, approval, and publication as provided by law.

Passed and Approved this _____ day of January, 2022.

ATTEST:

WOODBURY COUNTY BOARD OF SUPERVISORS

Patrick Gill, Woodbury County Auditor

Rocky DeWitt, Chairman

First Reading: _____

Matthew Ung, Vice-Chairman

Second Reading: _____

Keith Radig, Member

Third Reading: _____

Jeremy Taylor, Member

Approved: _____

Justin Wright, Member

Published: _____

Effective: _____