

**FEBRUARY 13, 2023**

**JOINT SESSION**

**PULASKI COUNTY COMMISSIONERS  
PULASKI COUNTY COUNCIL**

The Pulaski County Commissioners and Pulaski County Council met in joint session Monday February 13, 2023 6:00PM at the Pulaski County Highway Department training room. Commissioners present were Charles Mellon, Maurice Loehmer, Michael McClure and Councilmembers present were Kenneth Boswell, Adam Loehmer, Michael Tiede, Jerry Locke, Bradley Bonnell, Tim Overmyer, Jeffrey Richwine with County Auditor Laura Wheeler and County Attorney Kevin Tankersley.

Also present were Brandon Delorenzo, Wendy Rose, Kurt Dickey, Scott Rudd, Leeann Wright, Chris Schramm, Linda Webb, Sandra Lucas, Judge Mary Welker, Jeff Phillips, Gail Lambert, Connie Ehrlich, Jennifer Knebel, Kevin Wyatt, Dave Olds, Ronald Fox, Jason Stavedahl, Gary Kruger, Bo Disinger, Travis Wolford, Joe Hintz, Josh Kopka, Tim Shively, Rebecca Johnson, Jerry Johnson, Mike Spiegla, Lynn Spiegla, Wendy Rose, Scott Rudd, Kurt Dickey, Matt Muller, Jasko Sabatini, Marie Roth, Laura Scott, Matthew Scott, Aaron Zimmerman, Cody Foust, Katie Surma, Barney Rausch, Joshua Stamper, Gregg Malott, Karla Redweik, Kelly Gaumer.

President Mellon opened the meeting with the Pledge of Allegiance.

**IN RE: EMS**

Ambulance accessories discussed briefly and a claim is to be submitted prior to release of new ambulance most of which will be paid through ARPA funds.

A MALCON contract renewal for "Preparation of Medicaid Ambulance Cost Reports 2022-2023-2024" presented for approval and signature. Mike McClure motioned to approve as presented and Maurice Loehmer seconded, motion carried unanimously.

**IN RE: CDC**

The Broadband efforts of the CDC and Community Foundation explained. Kurt Dickey introduced as the chair of the Broadband Council and Taskforce. Scott Rudd, Indiana's first broadband director was hired as a consultant and the Taskforce needs \$15,000.00 to support fund Scott's continued work for the remainder of 2023. Grant availability and timing issues discussed. Another \$50,000.00 is needed to hire a qualified engineering firm to develop a countywide broadband plan. Maurice Loehmer made a motion to allocate up to \$50,000.00 in ARPA funds to hire the engineering firm, Chuck Mellon seconded and motion carried unanimously. Commissioners requested a budget be submitted for funding Scott Rudd.

More discussion on County farmland south and north of CR60S with the ground north of CR60S having a ditch and tile from Recycling Center which causes the area to be wet. Further investigation is required.

Internet at the CDC office also discussed briefly but no decision made.

**IN RE: OPIOID FUNDS**

Leeann Wright, Community Foundation director, also serves on the Pulaski County Drug Free Council. Opioid Lawsuit settlement money discussed. Areas of concentration are: Prevention, Treatment, Recovery and Community (workforce, employers). The FSSA has a state matching grant program with an application deadline of February 28, 2023. Maurice Loehmer made a motion for to approve and sign the FSSA form, Mike McClure seconded and motion carried unanimously. Jeffrey Richwine made a motion to advertise the opioid restricted fund as an additional, Adam Loehmer seconded and motion carried unanimously.

**IN RE: SOLAR CONTRACTS**

Connie Erhlich questioned solar company contracts and payments. Mammoth Solar committed to pay the County \$125,000.00 and Nextera \$105,000.00 after documents completed and permit issued. What is the process for invoicing and collecting these monies? Building Department will invoice Mammoth, with payment going to the Treasurer's Office (Auditor does NOT handle money). Connie was asked to email the questions prior to a meeting. A meeting with the Commissioners requested to avoid taking up time at the meetings but was told to contact County Attorney.

**IN RE: OTHER BUSINESS**

Maurice Loehmer motioned on behalf of the Commissioners to approve the December 12, 2022 Joint Session minutes as presented, Mike McClure seconded and motion carried unanimously.

Michael T. Tiede motioned on behalf of Council to approve the December 12, 2022 Joint Session minutes, Adam Loehmer seconded and motion carried unanimously.

An agreement with Bottle Brush Solar LLC presented for review and approval. The agreement reads as follows:

**ECONOMIC DEVELOPMENT EXPENSE REIMBURSEMENT AGREEMENT  
BOTTLEBRUSH SOLAR PROJECT**

THIS ECONOMIC DEVELOPMENT EXPENSE REIMBURSEMENT AGREEMENT (the "Agreement") is entered into as of this 13<sup>th</sup> day of February 2022 (the "Effective Date") by and between Pulaski County, Indiana (the "County") and Bottlebrush Solar Energy LLC, a Delaware limited liability company (the "Developer") (each a "Party," and collectively the "Parties").

**RECITALS**

WHEREAS, Developer is developing a solar electrical generation facility (the "Project") on a site located in the County; and

WHEREAS, in connection with the construction, operation, and maintenance of the Project, the County, acting through its Board of Commissioners, has requested that Developer address certain incentive, road use, and decommissioning issues through agreements (collectively, the "Project Agreements") intended to be executed between Developer and the County;

WHEREAS, the Parties wish to set forth their understanding and agreement related to the payment of reasonable expenses for legal, consultant, and accounting review of the Project Agreements incurred by the County for review and negotiation of the Project Agreements.

NOW, THEREFORE, in consideration of the mutual terms and conditions set forth in this Agreement, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

**Section 1.1.** Obligations of Developer. Developer, in accordance with the terms of the Agreement, agrees that it will be responsible to pay the cost of all reasonable out-of-pocket expenses and fees incurred by the County for legal, consulting, and accounting review and negotiation of the Project Agreements ("Review Costs"), provided that Developer's responsibility for Review Costs shall be limited to the County's costs incurred by Baker Tilly US LLP invoiced in reference to the Project only, and shall not exceed the aggregate sum of Fifty-Five Thousand Dollars (\$55,000), without approval of Developer, and a fixed sum of Seventy Five Thousand Dollars (\$75,000) payable to Kevin Tankersley Attorney at Law, (hereinafter referred to as the Attorney) to compensate for the legal work involved in representing Pulaski County in the drafting and implementation of the Economic Development Agreement, Road Use Agreement, and Decommissioning Agreement. Said fee is due and payable within 30 days of the completion of said agreements. If additional outside counsel is utilized for legal representation of the County on these matters the cost of said representation will be the responsibility of the Attorney.

**Section 1.2.** Obligations of County. The County, in accordance with the terms of the Agreement, agrees that it will act in good faith in negotiation of the Project Agreements.

**Section 1.3.** Payment of Review Costs. The County will provide written documentation of the Review Costs of Baker Tilly US LLP incurred no less frequently than monthly to Developer. Submission to Developer for review and approval will be due by the 10th of each month for Review Costs of the prior month. The Review Costs shall be paid by Developer by the 10th day of the next month. The first submission of Review Costs will be due January 10, 2023.

**ARTICLE 2.  
MISCELLANEOUS**

**Section 2.1.** Remedies and Enforcement. Each of the Parties hereto covenants and agrees that in the event of default of any of the terms, provisions or conditions of this Agreement by any Party (the "Defaulting Party"), which default is not caused by the Party seeking to enforce said provisions (the "Non-Defaulting Party"), and after notice and reasonable opportunity to cure has been provided to the Defaulting Party, then in such an event, the Non-Defaulting Party shall have the right to seek specific performance and/or injunctive relief to remedy or prevent any breach or threatened breach of this Agreement. The remedies of specific performance and/or injunctive relief shall be exclusive of any other remedy available at law or equity. The Defaulting Party shall also be responsible for the costs of enforcement, including reasonable attorney and paralegal fees, of the Non-Defaulting Party.

**Section 2.2.** Due Authorization. Developer hereby represents and warrants that this Agreement has been duly authorized, executed, and delivered on behalf of Developer. The County hereby represents and warrants that this Agreement has been duly authorized, executed, and delivered on behalf of the County.

**Section 2.3.** Severability. If any provision of this Agreement proves to be illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected by such finding, and in lieu of each provision of this Agreement that is illegal, invalid, or unenforceable, a provision shall be deemed added as may be possible to accurately reflect the intentions of the parties and so as to make the unenforceable provision legal, valid, and enforceable.

**Section 2.4.** Amendments. This Agreement constitutes the entire agreement and undertaking of the Parties with respect to the costs of review and negotiation of the Project Agreements and supersedes all offers, negotiations, and other agreements concerning the same. There are no representations or undertakings of any kind not set forth herein. No amendment or modification to this Agreement or waiver of a Party's rights hereunder shall be binding unless it shall be in writing and signed by both Parties to this Agreement.

**Section 2.5.** Notices. All notices required to be sent pursuant to this Agreement shall be made in writing (including for clarity email) and sent (including for clarity via email) to the Parties hereto at their respective addresses listed below, or to such other address as either such Party shall designate in writing to the other Party at any time.

If to Developer:	Bottlebrush Solar Energy LLC c/o Invenergy LLC One South Wacker Drive Suite 1800 Chicago, IL 60606 Attn: Matt Muller Email: <a href="mailto:mmuller@invenergy.com">mmuller@invenergy.com</a>
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With a copy to "General Counsel" at the same address.

[With a copy to:]	Bose McKinney and Evans c/o Nikki Shoultz 111 Monument Circle Suite 2700 Indianapolis, IN 46204 Email: <a href="mailto:NShoultz@boselaw.com">NShoultz@boselaw.com</a>
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If to the County:	c/o Nathan Origer 623 West Eleventh Street PO Box 315, Winamac, IN 46996 Email: <a href="mailto:nporiger@pulaskionline.org">nporiger@pulaskionline.org</a>
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[With a copy to:]	Kevin Tankersley 637 N US 35 Winamac, IN 46996 Email: <a href="mailto:kevin@tanklaw.com">kevin@tanklaw.com</a>
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**Section 2.6.** Assignment. Developer may wholly or partially assign its rights and obligations under this Agreement, including, without limitation, an assignment to a lender or tax credit investor, without the consent of the County, in which event Developer shall deliver written notice of such assignment to the County. Developer shall not assign this Agreement to an entity for any purpose other than the financing, ownership, development, construction, maintenance, or operation of a solar-powered electrical generating facility.

**Section 2.7.** Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the instrument. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be as effective as delivery of an originally signed counterpart to this Agreement.

**Section 2.8.** Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Indiana, irrespective of any conflict of laws' provisions. The Parties desire that the transactions contemplated hereby be effected and carried out in a manner that is in compliance with all laws.

**Section 2.9.** Successor and Assigns. This Agreement shall inure to the benefits of and shall be binding upon the Parties hereto, their respective successors, assignees, and legal.

**Section 2.10.** Headings and Section Names. The headings and section names used in this Agreement are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision herein.

**Section 2.11.** No Waiver. Failure of the County or Developer to insist on strict performance of any of the conditions or provisions of this Agreement, or to exercise any of their rights hereunder, shall not constitute a waiver of any such rights.

**Section 3.** No Obligation to Enter Project Agreements. The Parties understand and acknowledge that there is no obligation under this Agreement or otherwise to enter into any Project Agreements. Developer specifically understands and acknowledges that the approval of any Project Agreements by the County is subject to the formal approval at public meetings of the Board of Commissioners and County Council of the County which approvals cannot be committed to nor predicted in advance. The obligation of Developer to pay the Review Costs of the County is not conditional nor contingent upon the Project Agreements being approved and executed by the Parties.

Mike McClure made a motion to approve the agreement as presented, Maurice Loehmer seconded and motion carried unanimously.

The 2023 schedule for joint session meetings presented for review and approval. Maurice Loehmer made a motion on behalf of the Commissioners to approve the schedule as presented, Mike McClure seconded and motion carried unanimously. Michael T. Tiede motioned to approve 2023 Joint session meeting schedule as presented, Adam Loehmer seconded and motion carried unanimously.

**The Pulaski County Council and Pulaski Board of Commissioners will meet in  
 Joint session at the County Highway garage located at 1131 North U. S. 35, Winamac, Indiana  
 On the second (2<sup>nd</sup>) Monday of every other month at 6:00 pm EDST  
 Or the next work day after a County approved holiday for the year 2023.**

**Monday, February 13  
Monday, April 10**

**Monday, June 12  
Monday, August 14**

**Monday, October 9  
Monday, February 12, 2024**

With no other business to discuss, Maurice Loehmer made a motion on behalf of Commissioners to adjourn the meeting at 7:15PM, Mike McClure seconded and motion carried unanimously. Kenneth Boswell adjourned the meeting for Council.

Approved and signed this 10<sup>th</sup> day of April, 2023 by the **PULASKI COUNTY COMMISSIONERS** and **PULASKI COUNTY COUNCIL**.

**PULASKI COUNTY COMMISSIONERS**

\_\_\_\_\_  
CHARLES MELLON

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MAURICE LOEHMER

\_\_\_\_\_  
MIKE MCCLURE

**PULASKI COUNTY COUNCIL**

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KENNETH BOSWELL

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ADAM LOEHMER

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MICHAEL T. TIEDE

\_\_\_\_\_  
TIM OVERMYER

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JERRY LOCKE

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BRAD BONNELL

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JEFF RICHWINE

**ATTEST:** \_\_\_\_\_

LAURA WHEELER, AUDITOR, PULASKI COUNTY, IN