

December 7th, 2021

MET IN REGULAR SESSION

The Board of Supervisors met in regular session at 10:00 A.M. All members present. Chairman Belt presiding.

PLEDGE OF ALLEGIANCE

1. CONSENT AGENDA

After discussion was held by the Board, a Motion was made by Wichman, and second by Shea, to approve:

- A. November 30, 2021, Minutes as read.
- B. November 2021 Vendor Publication Report
- C. Secondary Roads – Employment of Jeremy Wilber as Mechanic Technician III

UNANIMOUS VOTE. Motion Carried.

2. SCHEDULED SESSIONS

Motion by Wichman, second by Schultz, to move Item 2B, to first on the Agenda.

Motion by Schultz, second by Shea, to approve and authorize Chairman to sign 28 E Agreement with West Pottawattamie Soil and Water Conservation District and East Pottawattamie County Soil and Water Conservation District for the funding, administration, and implementation of the full-time Conservation Education Coordinator Position.

UNANIMOUS VOTE. Motion Carried.

Motion by Schultz, second by Shea, to open Public Hearing on First Consideration of Ordinance No. 2021-09, AN ORDINANCE to amend Chapter 1.45, “Voting Precinct Boundaries” of the Pottawattamie County, Iowa, Code by uncombining Boomer Township and Neola Township from Neola Precinct and naming it Boomer Precinct; By dissolving GLWCW Precinct; By uncombining Hardin Township from McClelland Precinct; By combining Hardin Township to Treynor Precinct; By combining Lincoln Township to the Walnut Precinct; By combining Center Township, Waveland Township and Wright Township to the Carson Precinct; By combining Grove Township to Macedonia Precinct

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea. Motion Carried.

Motion by Schultz, second by Shea, to close public hearing.

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea. Motion Carried.

Motion by Wichman, second by Schultz, to approve first consideration of Ordinance No. 2021-09, AN ORDINANCE to amend Chapter 1.45, “Voting Precinct Boundaries” of the Pottawattamie County, Iowa, Code by uncombining Boomer Township and Neola Township from Neola Precinct and naming it Boomer Precinct; By dissolving GLWCW Precinct; By uncombining Hardin Township from McClelland Precinct; By combining Hardin Township to Treynor Precinct; By combining Lincoln Township to the Walnut Precinct; By combining Center Township, Waveland Township and Wright Township to the Carson Precinct; By combining Grove Township to Macedonia Precinct; and set date of Second Consideration for December 9, 2021 at 10:00AM

UNANIMOUS VOTE. Motion Carried.

Motion by Shea, second by Schultz, approve and authorize Board to sign **Resolution No. 118-2021**, entitled Local Match for the Hazard Mitigation Grant Program.

RESOLUTION NO. 118-2021

LOCAL MATCH FOR THE HAZARD MITIGATION GRANT PROGRAM

WHEREAS, Pottawattamie County, Iowa (hereinafter called “the Subgrantee”), has made application through the Iowa Homeland Security and Emergency Management Division (HSEMD) to the Federal Emergency Management Agency (FEMA) for funding from the Hazard Mitigation Grant Program, in the amount of \$5,203,400 for the total project cost; and

WHEREAS, the Subgrantee recognizes the fact that this grant is based on a cost share basis with the federal share not exceeding 75%, the state share not exceeding 10%, and the local share being a minimum of 15% of the total project cost. The minimum 15% local share can be cash, in-kind match or other source provided that it is not federal funding.

THEREFORE, the Subgrantee agrees to provide and make available up to \$780,510 (seven hundred eighty thousand five hundred and ten dollars) of non-federal contribution to be used to meet the minimum 15% match requirement for this mitigation grant application.

Dated this 7th day of December, 2021.

ROLL CALL VOTE

	AYE	NAY	ABSTAIN	ABSENT
_____ Scott Belt, Chairman	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Tim Wichman	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Justin Schulz	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Brian Shea	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Lynn Grobe	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

ATTEST: _____
Melvyn Houser, County Auditor

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea. Motion Carried.

Motion by Wichman, second by Schultz, approve and authorize Board to sign Resolution No. 119-2021 entitled: RESOLUTION AUTHORIZING VACATION OF A SECTION OF POTTAWATTAMIE COUNTY ROAD.

RESOLUTION NO. 119-2021

RESOLUTION AUTHORIZING VACATION OF A SECTION OF POTTAWATTAMIE COUNTY ROAD

WHEREAS, a request has been filed with the Pottawattamie County Board of Supervisors to vacate and clear the record of a section of Pottawattamie County Road, described as follows,

WHEREAS, it is in the best interest of Pottawattamie County to vacate the Road Right of way.

NOW, THEREFORE BE IT RESOLVED by the Board of Supervisors of Pottawattamie County in session this 7th day of December, 2021, that the following described road easement be vacated:

A portion of Railroad Street South along the north line of Block 4 of Original Town Plat, between the north line of Charles Avenue and the west line of Bentley Lane (formerly Main Street), Original Town Plat of the unincorporated Town of Bentley per town plat filed for record in Section 13, Township 76, Range 43 West of the 5th P.M., Pottawattamie County, Iowa.

Note: Utilities are granted a permanent and perpetual easement for the continuance of maintaining existing facilities for such construction, reconstruction, replacement, and repair thereof as may be deemed necessary by the utilities in the future (Iowa Code 306.22, 479.17, 479.24).

Dated this 7th day of December, 2021.

ROLL CALL VOTE

	AYE	NAY	ABSTAIN	ABSENT
_____ Scott A. Belt, Chairman	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Tim Wichman	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Lynn Grobe	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Justin Schultz	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Brian Shea	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

ATTEST: _____
Melvyn Houser, County Auditor

RECOMMEND: _____
John Rasmussen, County Engineer

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea. Motion Carried.

Discussion was held by the Board on whether to reject, approve, or modify the Leisure Avenue Secondary Roads Assessment District Proposal.

Motion by Schultz, second by Shea, to open Final Public Hearing for the Leisure Avenue Secondary Roads Assessment District.

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea. Motion Carried.

Motion by Wichman, second by Shea, to close Final Public Hearing.

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea. Motion Carried.

Motion by Shea, second by Grobe, to approve creation of the Leisure Avenue Secondary Roads Assessment District.

UNANIMOUS VOTE. Motion Carried.

Motion by Wichman, second by Shea, to approve County contribution rate of 30% for Leisure Ave Secondary Roads Assessment District, set interest rate at 0%; and set date and time of final apportionment and determination for Tuesday, December 14th at 10:00A.M.

UNANIMOUS VOTE. Motion Carried.

Motion by Shea, second by Schultz, to approve Change Order #2 – Elections Building Parking Lot.

UNANIMOUS VOTE. Motion Carried.

3. OTHER BUSINESS

Motion by Schultz, second by Shea, to approve Jail Captain and Detention Administrative Manager job descriptions. UNANIMOUS VOTE. Motion Carried.

Motion by Schultz, second by Shea, to approve quote from ArcaSearch for Digital Archival of Board of Supervisor’s Minute Books for \$20,899 to be paid from the American Rescue Plan Acts Fund.

UNANIMOUS VOTE. Motion Carried.

Motion by Shea, second by Schultz, to approve payment of NACO membership dues for 2022 in the amount of \$1863.00. UNANIMOUS VOTE. Motion Carried.

Motion by Wichman, second by Schultz, to approve and authorize Board to sign **Resolution No. 120-2021** entitled: Authorizing Pottawattamie 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., Agree to the Terms of the Iowa Opioid Allocation Memorandum of Understanding and Authorize Entry Into that Memorandum of Understanding.

RESOLUTION NO. 120-2021

Authorizing Pottawattamie 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., Agree to the Terms of the Iowa Opioid Allocation Memorandum of Understanding and Authorize Entry Into that Memorandum of Understanding

WHEREAS, in 2018, the County Board of Supervisors authorized Pottawattamie County (the “County”) to enter into an engagement agreement with Crueger Dickinson LLC, Simmons Hanly Conroy LLC and von Briesen & Roper, s.c. (the “Law Firms”) to pursue litigation against certain manufacturers, distributors, and retailers of opioid pharmaceuticals (the “Opioid Defendants”) in an effort to hold the Opioid Defendants financially responsible for the impact on of the Opioid Epidemic on the County and resources necessary to combat the opioid epidemic;

WHEREAS, on behalf of the County, the Law Firms filed a lawsuit against the Opioid Defendants in 2018 and have been litigating against the Opioid Defendants since that time;

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.” 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, County has contracted with the Law Firms for representation in the Litigation and the Law Firms have been representing those entities since 2018 and in consideration for the Law Firms’ representation, the County entered into a contract with the Law Firms for a 25% contingency fee applied to County’s total recovery from any settlement.

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 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 Litigating Local Governments, less any amounts a Litigating Local Government (“Iowa Backstop Fund”)

WHEREAS, the Iowa Backstop Fund is meant to compensate outside counsel for participating local governments only for amounts not recovered at the National 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’ Fees Fund and may not recover amounts attributable to Counsel’s representation of the County received at the National Attorneys’ Fees Fund from the Iowa Backstop Fund;

WHEREAS, the 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 Fees Fund related to the County 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 County;

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

WHEREAS, the if the 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’s intention 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 the 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 County Board of Supervisors hereby approves and authorizes Mitchell A. Kay 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: the County hereby establishes an account separate and distinct from the County’s general fund which shall be titled “LG Abatement Fund” to receive the LG Abatement Share from the Settlement Agreements.

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

Dated this 7th day of December, 2021.

ROLL CALL VOTE

	AYE	NAY	ABSTAIN	ABSENT
_____ Scott A. Belt, Chairman	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Tim Wichman	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Lynn Grobe	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Justin Schultz	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Brian Shea

ATTEST: _____
Melvyn Houser, County Auditor

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea. Motion Carried.

4. CLOSED SESSION

Motion by Shea, second by Schultz, to go into Closed Session pursuant to Iowa Code 20.17(3), for discussion and/or decision on labor negotiations / collective bargaining matters.

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea. Motion Carried.

Motion by Shea, second by Grobe, to go out of Closed Session.

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea. Motion Carried.

Motion by Wichman, second by Shea, to go into Closed Session pursuant to Iowa Code §21.5(1)(i) for discussion and/or decision on personnel matters.

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea. Motion Carried.

Motion by Wichman, second by Shea, to go out of Closed Session.

Roll Call Vote: AYES: Belt, Wichman, Grobe, Schultz, Shea. Motion Carried.

5. RECEIVED/FILED

A. Salary Actions

- 1) Communications – Payroll Status Change for Logan Brown
- 2) Juvenile Detention – Employment of Jaxon Boro as Part-Time Youth Corrections Worker
- 3) Conservation – Payroll Status Change for Bennett Amdor
- 4) WIC – Employment of Ariel Quinn and Elizabeth Serrato as Part-Time Breastfeeding Peer Counselors

6. ADJOURN

Motion by Shea, second by Wichman, to adjourn meeting.

UNANIMOUS VOTE. Motion Carried.

THE BOARD ADJOURNED SUBJECT TO CALL AT 1:55 P.M.

Scott A. Belt, Chairman

ATTEST: _____
Melvyn Houser, Pottawattamie County Auditor

APPROVED: December 14, 2021

PUBLISH: X