

**JULY 16, 2007**

Wabash County Council met in **Special Session** on Monday, July 16, 2007. Prayer was offered by Mike Ridenour. Chairman Bob Fuller called the meeting to order at 8:30 A.M. with five members present: Ted Little, Bob Fuller, Claude Markstahler, Gary Nose and Mike Ridenour.

Fuller welcomed Bill Konyha, Executive Director of EDG and Todd Samuelson of Umbaugh & Associates serving as the County's Financial advisor. Konyha presented an Ordinance to Establish Department of Economic Development for Wabash County and gave an overview of the Ordinance. Following discussion of the Ordinance, also Industrial, Solid Waste Bonds and Tax Increment Financing (TIF) Districts in general, Ridenour made a motion to suspend the rules and move to a second reading of the Ordinance. His motion was seconded by Markstahler and passed by a 5-0 vote. Following the second reading, Nose moved to approve the Ordinance as written; this motion was seconded by Little and passed by a 5-0 vote of the Council. The Ordinance was then signed by Chairman Fuller and attested by Wabash County Auditor Jane Ridgeway.

**ORDINANCE NO. 2007-85-5  
ORDINANCE ESTABLISHING DEPARTMENT OF ECONOMIC DEVELOPMENT AND  
AUTHORIZING RELATED MATTERS**

**WHEREAS, Indiana Code 36-7-11.9 and 36-7-12 (collectively, the "Act") provides that the financing of single, identified economic development or pollution control facilities (as defined in the Act) and the provision of a program to finance multiple, unidentified economic development or pollution control facilities that promote a substantial likelihood of:**

- (1) creating or retaining opportunities for gainful employment;**
- (2) creating business opportunities;**
- (3) providing reliable water services;**
- (4) the abatement, reduction or prevention of pollution; or**
- (5) the removal or treatment of substances in materials being processed that otherwise would cause pollution when used;**

**serve a public purpose and will be of benefit to the health or general welfare of the unit proposing to issue bonds for the financing or program or of the unit where the facilities that are to be financed are located; and**

**WHEREAS, the Act provides that, if the fiscal body of a unit finds it necessary to finance economic development or pollution control facilities under the Act, the fiscal body may establish a department of economic development, to be controlled by an economic development commission;**

**NOW, THEREFORE, BE IT ORDAINED by the County Council of the County of Wabash, Indiana, as follows:**

**Section 1. This County Council hereby finds it necessary to finance economic development or pollution control facilities under the Act.**

**Section 2. This County Council hereby establishes a department of economic development, to be controlled by a commission known as "Wabash County Economic Development Commission" (the "Commission").**

**Section 3. After the adoption of this ordinance, the Auditor of the County of Wabash, Indiana (the**

“County”) is hereby authorized and directed to promptly notify the County Commissioners of the County and the fiscal body of the most populous municipality located in the County in order to obtain nominations from such bodies to the Commission.

**Section 4.** Any officer of the County is hereby authorized and directed, for and on behalf of the County, to execute and deliver any instrument or take any other action as such officer determines to be necessary or desirable to accomplish the purposes of this ordinance, including the nomination by the County Council of a person to serve upon the Commission, and the forwarding of such nomination to the Board of Commissioners of the County, such determination to be conclusively evidenced by such officer’s having executed such instrument or having taken such action, and any such officer’s having executed and delivered any such instrument or having taken any such action is hereby ratified and approved.

**Section 5.** This ordinance shall be effective immediately upon its adoption.

Passed and adopted by the County Council of the County of Wabash, Indiana on this 16th day of July, 2007.

*SS/ T.F. (Bob) Fuller*  
Presiding Officer

Attest:

*SS/ Jane E. Ridgeway*

Auditor, Wabash County, Indiana

Ted Little nominated Kent Terrill to be the Council’s recommendation to the Commissioners to serve on the Wabash County Economic Development Commission. Markstahler seconded the nomination and this recommendation was also passed 5-0.

Next the Council reviewed a Development Agreement between the Wabash County and North Manchester Ethanol, LLC, d/b/a POET Biorefining-North Manchester. Samuelson and Konyha explained the agreement and answered questions from the Council. “With this agreement for the use of TIF funds only certain property taxes will be captured for improvements to Real and Personal Business Property – Not to exceed twenty (20) years. They discussed that legal fees and administrative costs can be paid from the TIF funds captured by the new assessed values; it should not cost the County General Fund anything although it does put a new burden on the County Auditor.” They also discussed that “infrastructure development expenses are still to be negotiated with POET but Wabash County will not have a liability”. It was the consensus that this development should be a “win-win” for North Manchester. Following the discussion, Little moved to approve the agreement, seconded by Nose and approved by a 5-0 vote of the Council. The Agreement was then signed by the Council members present and passed to the Commissioners for consideration at their meeting to follow.

#### **DEVELOPMENT AGREEMENT**

This Development Agreement is made this 16th day of July, 2007, by and between the Wabash County, Indiana (the “County”), and North Manchester Ethanol, LLC, d/b/a POET Biorefining - North Manchester, an Indiana limited liability company (“POET”), with offices located at 4615 North Lewis Avenue, Sioux Falls, South Dakota 57104.

#### **RECITALS**

A. POET desires to construct and operate an ethanol production facility (the “Plant”) in the State of Indiana on certain property described in Exhibit A hereto (the “POET Property”), and the County desires that POET construct and operate the Plant on the POET Property.

B. POET desires to close on the purchase the POET Property in order to move forward with the development and construction of the Plant, but, before doing so, requires a commitment from the County to take action to obtain tax increment financing for the infrastructure improvements necessary to construct and operate the Plant.

NOW, THEREFORE, in consideration of the understandings and agreements set forth herein and other good and valuable consideration, it is agreed as follows:

1. **Tax Increment Financing.** The County agrees to use its best efforts, and to take all actions reasonably required or advisable, to obtain tax increment financing (“TIF”) to pay for the infrastructure required for the construction and operation of the Plant (which infrastructure is described below as the “On-Site Infrastructure” and the “Off-Site Infrastructure”), in an amount equal to the lesser of: (a) an amount sufficient to pay in full the costs of the On-Site Infrastructure and the Off-Site Infrastructure, or (b) the maximum amount of TIF available resulting from 100% tax increment financing for a term of twenty years. Without limiting the generality of the foregoing, the County shall use its best efforts to cause the Wabash County Redevelopment Commission to create a TIF allocation area that encompasses the POET Property and approve an economic development plan for the TIF area, arrange for the issuance and sale of bonds payable from TIF revenues and issued by the County, the Redevelopment Commission and/or the Town of North Manchester, publicly promote the TIF and Plant, and take all other actions required or advisable to obtain TIF for the infrastructure. The TIF plan shall provide for the issuance and sale of TIF revenue bonds to make funds immediately available for use in paying for the On-Site Infrastructure and Off-Site Infrastructure. The term of the TIF revenue bonds shall be sufficiently long to permit repayment thereof with revenues generated from the TIF, but not to exceed twenty years. The TIF revenue bonds shall not be backed by any general tax or other general revenue source of the County or the Redevelopment Commission.

2. **Use of TIF Funds.** The funds obtained through the TIF shall be used to pay for: (a) infrastructure improvements located on the POET Property, including, without limitation, rail improvements, roadway improvements, water lines, stormwater drainage lines, sanitary sewer lines, natural gas lines, electrical lines, and all infrastructure and improvements related to any of the foregoing which are located on the POET Property (the “On-Site Infrastructure”); (b) infrastructure improvements located on property other than the POET Property but which will service the POET Property or the Plant, including, without limitation, rail improvements, roadway improvements, water lines, stormwater drainage lines, sanitary sewer lines, natural gas lines, electrical lines, and all infrastructure and improvements related to any of the foregoing which are not located on the POET Property but which will service the POET Property or the Plant (the “Off-Site Infrastructure”); and (c) capitalized interest on the TIF revenue bonds, any required reserve funds for the bonds, and the costs of issuing the bonds.

3. **Representations of the County.** The County represents and warrants to POET that: (a) the County is a duly organized and validly existing political subdivision of the State of Indiana and has all necessary power and authority to take the actions described in this Agreement; (b) this Agreement is a valid and legally binding obligation of the County and is enforceable against the County in accordance with its terms, subject only to the formal adoption of this Agreement by the Wabash County Council and Board of Commissioners of Wabash County; and (c) neither the execution and delivery of this Agreement nor the fulfillment of its terms and provisions will violate, conflict with, or result in a breach of the terms, conditions, or provisions of, or constitute a default under, (i) any contract, agreement, or other instrument or obligation to which the County is a party or by which any of them is bound; or (ii) any applicable law or regulation or any order, decree, writ or injunction of any court or governmental body.

4. **Representations of POET.** POET represents and warrants to the County that: (a) POET is duly organized, validly existing, and in good standing under the applicable laws of the state of its organization and has all necessary power and authority to take the actions set forth in this Agreement; (b) this Agreement is a valid and legally binding obligation of POET and is enforceable against POET in accordance with its terms; and (c) neither the execution and delivery of this Agreement nor the fulfillment of or compliance with its terms and provisions will violate, conflict with, or result in a breach of the terms, conditions, or provisions

of, or constitute a default under, (i) POET's articles of organization or operating agreement; (ii) any contract, agreement, mortgage, deed of trust, or other instrument or obligation to which POET is a party or by which any of them is bound; or (iii) any applicable law or regulation or any order, decree, writ or injunction of any court or governmental body.

5. **Timeliness.** Time is of the essence of all aspects of this Agreement. The County shall proceed with its obligations under this Agreement in an expeditious and active manner to facilitate the timely procurement of TIF funds.

6. **Entire Agreement; Amendments.** This Agreement comprises the entire agreement between the parties with respect to the subject matter hereof. Any amendment to this Agreement shall be in writing only, and shall be signed by the parties.

7. **Governing Law.** The laws of the State of Indiana (without giving effect to its conflicts of laws principles) govern all matters arising out of or relating to this Agreement and the transaction it contemplates, including without limitation, its interpretation, construction, performance and enforcement.

8. **Cooperation.** The parties agree to cooperate with one another in the performance of their respective obligations and responsibilities set forth in this Agreement. The parties further agree to execute and deliver such other and additional documents and instruments as may be reasonably necessary to accomplish the purposes of this Agreement.

9. **Relationship.** The parties agree that they will be independent contractors in performing their respective obligations under this Agreement. This Agreement is not intended to create, nor does it create, a relationship of partners or joint venturers between the parties hereto.

IN WITNESS WHEREOF, each party to this Agreement has caused this Development Agreement to be executed on the date first above stated.

WABASH COUNTY, INDIANA  
By WABASH COUNTY COUNCIL

SS/Mike Ridenour

SS/Gary Nose

SS/Claude Markstahler

SS/T.F.(Bob) Fuller

SS/Ted A. Little

NORTH MANCHESTER ETHANOL, LLC, d/b/a  
POET BIOREFINING – NORTH MANCHESTER

By SS/  
Its Chairman

Konyha distributed a tentative schedule for the Wabash Agriproducts, Inc. Project for TIF funding through Economic Development Commission to the Council and Commissioners present.

Council Chairman Fuller signed the 2008 County Council Budget requests as set out in the last meeting.

Ridenour then moved to adjourn, seconded by Little and the meeting adjourned on a 5-0 vote. The next meeting will be held July 23, 2007 in the Commissioner's Meeting Room at the Wabash County Courthouse at 8:00 A.M.