

**Village Board of Trustees
Meeting Agenda**

**Village of Gilberts
87 GALLIGAN ROAD,
GILBERTS, ILLINOIS 60136**

**April 2, 2013
7:00 P.M.**

A G E N D A

ORDER OF BUSINESS

1. CALL TO ORDER / PLEDGE OF ALLEGIANCE

2. ROLL CALL / ESTABLISH QUORUM

3. PUBLIC COMMENT

4. CONSENT AGENDA

5. ITEMS FOR APPROVAL

A. A Motion to approve Bills and Salaries dated April 2, 2013

B. A Motion to approve Ordinance 09-2013, an Ordinance authorizing the Village of Gilberts to borrow funds from the Public Water Supply Loan Program

6. ITEMS FOR DISCUSSION

A. Prairie Business Park – Development Agreement review

B. FY 2013 Budget Adjustments / FY 2014 Budget

7. STAFF REPORTS

8. BOARD OF TRUSTEES REPORTS

9. VILLAGE PRESIDENT'S REPORT

10. EXECUTIVE SESSION

A portion of the meeting will be closed to the Public, effective immediately as Permitted by 5 ILCS 120/2 (c) (1) to discuss the appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the Village, and as permitted by 5 ILCS 102/2 (c) (11) to discuss litigation against, affecting, or on behalf of the Village which has been filed and is pending in a court or administrative tribunal of which is imminent and as permitted by 5 ILCS 120/2 (c) (21) to review and approve closed session minutes and as permitted by 5 ILCS 120/2 (c) 2 Collective negotiating matters.

11. ADJOURNMENT

AUDIENCE PARTICIPATION

Anyone indicating a desire to speak during Public Comments will be acknowledged by the Village President. Please state your name, address and topic when called upon to speak. All remarks are to be addressed to the Village President and Board of Trustees as a whole, not to any specific person(s). Interrogation of the Village Staff, Village President, Village Board or any of their comments will not be allowed at this time. Personal invectives against Village Staff or Elected Officials are not permitted.

To ensure that everyone who wishes to speak has the opportunity to do so, please limit your comments to five minutes. Additional time may be granted at the discretion of the Village President.

If you have written comments, please provide a copy to the Village President. If there are a number of individuals present to speak on the same topic, please designate a spokesperson that can summarize the issue.

During Public Comments, the Village President, Trustees and Staff will listen to comments and will not engage in discussion. The Village President or Trustees may ask questions to better understand your concern, suggestion or request. Please direct any personnel concerns to the Village Administrator before or after the meeting.


"The Village of Gilberts complies with the Americans with Disabilities Act (ADA). For accessibility Assistance, please contact the Village Clerk at the Village Hall, telephone number 874/428-2861." *Assistive services will be provided upon request.*

Village of Gilberts

Village Hall
87 Galligan Road, Gilberts, IL 60136
Ph. 847-428-2861 Fax: 847-428-2955
www.villageofgilberts.com

Village Administrator Memorandum 21-13

TO: President Rick Zirk
Board of Trustees

FROM: Ray Keller, Village Administrator 

DATE: March 29, 2013

RE: Village Board Meeting – April 2, 2013

The following summary discusses the agenda items for the Village Board meeting scheduled for April 2, 2013:

1. CALL TO ORDER

2. ROLL CALL / ESTABLISH QUORUM

3. PUBLIC COMMENT

4. CONSENT AGENDA

There are no items placed on the Consent Agenda.

5. ITEMS FOR APPROVAL

A. Motion to approve Bills & Salaries dated April 2, 2013

Please refer to the enclosed spreadsheet, which lists the bills to be approved. If you need additional information about any of these bills, please contact me or Finance Director Marlene Blocker prior to the meeting. Staff recommend approval.

B. Motion to approve Ordinance 09-2013, an Ordinance authorizing the Village of Gilberts to borrow funds from the Public Water Supply Loan Program

Approval of this ordinance authorizes the Village to participate in the IEPA's low-interest Public Water Supply Loan Program. The program would provide financing for the barium/radium removal improvements at the water treatment plant, which are to be installed later this year. The program offers a 20-year loan of up to \$600,000 to cover the construction and engineering inspections for the required improvements. The program's interest rate is currently 1.93%, corresponding to an annual debt service payment of \$36,466. The ordinance anticipates that the loan will be repaid with revenues from the water/wastewater enterprise fund.

**Public Works Facility
Finance & Building Departments
73 Industrial Drive, Gilberts, IL 60136
Ph. 847-428-4167 Fax: 847-551-3382**

**Police Department
86 Railroad St., Gilberts, IL 60136
Ph. 847-428-2954 Fax 847-428-4232**

The IEPA requires the Village to publish a notice for this ordinance, providing the public thirty days to object to the loan. If 10% or more of the Village's registered voters (i.e. 382 out of 3,823 voters) submit a petition objecting to the loan, the Village will be required to submit the loan authorization to referendum approval at the next regular election on November 5. Otherwise, the Village may then proceed with executing the loan agreement and proceed with the project.

Staff recommend approval of the ordinance, which will allow the Village to spread out the cost of the required barium/radium improvements over twenty years. Staff are also assembling other required financial and legal information that is being required by IEPA before the loan agreement can be executed. Please contact me prior to the meeting if more detailed documentation will be required.

6. ITEMS FOR DISCUSSION

A. Prairie Business Park – Development Agreement Review

Staff will review the current status of the development agreement for the Prairie Business Park and will discuss changes to and questions about the document. Village Attorney Julie Tappendorf has prepared a summary memo identifying changes to the development agreement, based on comments from the Village President and resulting from this week's meetings with the developer's representatives. The packet also includes the latest draft of the development agreement and the exhibits, including the draft CCRs (Exhibit K). Staff focused on the development agreement, which will then shape the terms of the PUD ordinance and subsequent approvals.

Staff noted several substantive questions that will require the Board's direction, which will need to be addressed by the development agreement and/or the PUD ordinance:

1. Interstate requests permission to submit landscaping plans 90 days after the submittal of the final PUD and engineering plans for each phase. Typically, the landscaping plans would accompany the engineering plans so Staff can review for any potential conflicts.
2. Interstate proposes to construct the "offsite" Sola Drive-Center Street water main following the construction of their third building, instead of in their initial development phase as required by the Village.
3. The proposed trail extending through the development will be located on private property, not public right of way. In response to Staff's request for a public use easement along the trail, Interstate decided to make it a "private" trail instead. References to the trail were struck from the development agreement (as the trail is no longer "public infrastructure"). The trail would then be managed and maintained by the management association; this would be reflected in an update to the CCRs.
4. The Village is requiring a two-year guarantee period after the acceptance of any public improvements. Interstate objects to that requirement and is offering a one-year guarantee instead.
5. Interstate struck the section of the development agreement regarding the funding of the escrow for reimbursement of Village costs related to the development. Staff did not remove this section from the development agreement, but it remains an issue for Interstate.

6. Interstate wants changes to the liability, indemnification and defense provisions, as well as the acknowledgement that the Village has followed the proper approval processes for the development, found in Section 11 of the document. Staff did not make these changes, but Interstate may argue for them.
7. The previous version of the development agreement had various cure periods from 5-30 days. Interstate wants 90 days to cure a breach to the agreement. During negotiations with Interstate's representatives, Staff offered a compromise of a standardized 30-day cure provision as found in Section 14A. This topic will require the Board's direction to resolve.
8. Interstate proposes eliminating language from Section 14 that protects the Village from damages lawsuits. Their changes would also inhibit the Village's ability to withhold permits if there are violations to the development agreement. Staff did not make these changes, but this language remains an issue for Interstate.
9. Interstate wants to change the PUD ordinance to "lock in" all codes and fees as of the date of approval, including specifying the 2003 IBC building code. As the PUD ordinance is currently written, Interstate would be subject to the building codes and fees in effect whenever a permit is applied for. "Locking in" the codes and fees would give the developer predictability moving forward, but he would then be exempt from any updates the Board may adopt in the future. Staff will need the Board's direction on how to address Interstate's request.

Following the meeting, Staff will update the development agreement to match the Board's direction. Staff will continue to review and modify the PUD ordinance, draft CCRs and related exhibits base on the board's comments to align them to the terms of the development agreement.

B. FY 2013 Budget Adjustments / FY 2014 Budget

This agenda item provides the board an opportunity to discuss the budgets further or provide direction on capital projects or new initiatives to include in either the FY 2013 adjustments or the FY 2014 budget. Staff continue to review both budgets and will report on any updates or refinements at the meeting. Please contact me or Finance Director Marlene Blocker if there are any specific projects or initiatives that should be considered for inclusion in either budget.

7. STAFF REPORTS

Staff will provide updates on current activities at the meeting.

8. BOARD OF TRUSTEES REPORTS

9. VILLAGE PRESIDENT'S REPORT

10. EXECUTIVE SESSION

Please contact me if you any questions about executive session topics.

11. ADJOURNMENT

5A

	VENDOR	TOTAL	GENERAL FUND	DEVELOPER DONATIONS	PERMIT PASS THRU	PERFORMANCE BONDS AND ESCROWS	WATER FUND
	GRAND TOTAL	35,577.57	10,792.73	-	-	11,616.00	13,168.84
	BILLS ADDED AFTER PACKETS:						
ADT001	ADT SECURITY SYSTEMS	58.00				58.00	
COM003	COMMONWEALTH EDISON	190.63	71.37				119.26
EMB00F	EMBASSY CANTEEN	213.60	213.60				
EXELON	CONSTELLATION	7,852.49					7,852.49
MEN002	MENARDS CARPENTERSVILLE	24.51	24.51				
MORTSALT	MORTON SALT, INC	2,483.80					2,483.80
NAPA01	DUNDEE NAPA AUTO PARTS	58.68	58.68				
NEX001	NEXUS OFFICE SYSTEMS	1,385.35	990.35				395.00
SECR01	SEC OF STATE / DEPT OF POLICE	101.00	101.00				
STATEAG	STATE OF ILL/DEPT OF AGRICULTURE	20.00	20.00				
SUSBLAB01	SUBURBAN LABORATORIES	130.00					130.00
VIKING01	VIKING CHEMICAL CO	647.00					647.00
B&W002	B&W CONTROL SYSTEMS INTEGRATIO	4,270.96	4,270.96				
CAN01	CANON FINANCIAL SERVICES, INC.	800.00	690.00				110.00
COM003	COMMONWEALTH EDISON	65.28	65.28				
EMB00F	EMBASSY CANTEEN	83.17	83.17				
EXELON	CONSTELLATION	170.80	170.80				
MANALY01	MCHENRY ANALYTICAL WATER	603.00					603.00
MEN002	MENARDS - CARPENTERSVILLE	428.74	428.74				
PHOENIX	PHOENIX & ASSOCIATES, INC.	11,500.00				11,500.00	
SCUFF01	RICHARD SPINKER	595.00	595.00				
STAPLES	STAPLES ADVANTAGE	48.23	47.17				1.06
SUSBLAB01	SUBURBAN LABORATORIES	250.00					250.00
0001565	JOE BERO PLUMBING, INC	58.00				58.00	
ULTRA01	ULTRA STROBE COMMUNICATIONS	2,771.95	2,771.95				
UNION02	UNION NATIONAL BANK FOR PETTY	210.78	190.15				20.63
WCOM01	COMMONWEALTH EDISON-WATER	556.60					556.60

5B

**THE VILLAGE OF GILBERTS
KANE COUNTY, ILLINOIS**

ORDINANCE 09-2013

**AN ORDINANCE AUTHORIZING THE VILLAGE OF GILBERTS TO BORROW
FUNDS FROM THE PUBLIC WATER SUPPLY LOAN PROGRAM**

**VILLAGE OF GILBERTS
ORDINANCE 09-2013**

**AN ORDINANCE AUTHORIZING THE VILLAGE OF GILBERTS TO BORROW
FUNDS FROM THE PUBLIC WATER SUPPLY LOAN PROGRAM**

WHEREAS, the Village of Gilberts, Kane County, Illinois operates its public water supply system (“the System”) and in accordance with the provisions of 65 ILCS 5/11-139-1, et. seq., and the Local Government Debt Reform Act, 30 ILCS 350/1 (collectively, “the Act”), and

WHEREAS, the Village President and Board of Trustees of the Village of Gilberts (“the Corporate Authorities”) have determined that it is advisable, necessary and in the best interests of public health, safety and welfare to improve the System, including the following:

**Purchase and install a water softener waste pre-treatment facility at the Village of
Gilberts WTP in order to remove barium and radium.**

together with any land or rights in land and all electrical, mechanical or other services necessary, useful or advisable to the construction and installation (“the Project”), all in accordance with the plans and specifications prepared by consulting engineers of the Village of Gilberts; which Project has a useful life of at least twenty five years; and

WHEREAS, the estimated cost of construction and installation of the Project, including engineering, legal, financial and other related expenses is \$600,000, and there are insufficient funds on hand and lawfully available to pay these costs; and

WHEREAS, the loan shall bear an interest rate as defined by 35 Ill. Adm. Code 662, which does not exceed the maximum rate authorized by the Bond Authorization Act, as amended, 30 ILCS 305/0.01 et seq., at the time of the issuance of the loan; and

WHEREAS, the principal and interest payment shall be payable semi-annually, and the loan shall mature in 20 years, which is within the period of useful life of the Project; and

WHEREAS, the costs are expected to be paid for with a loan to the Village of Gilberts from the Public Water Supply Loan Program through the Illinois Environmental Protection Agency, the loan to be repaid from revenues of the System and the loan is authorized to be accepted at this time pursuant to the Act; and

WHEREAS, in accordance with the provisions of the Act, the Village of Gilberts is authorized to borrow funds from the Public Water Supply Loan Program in the aggregate principal amount of \$600,000 to provide funds to pay the costs of the Project;

WHEREAS, the loan to the Village of Gilberts shall be made pursuant to a Loan Agreement, including certain terms and conditions, between the Village of Gilberts and the Illinois Environmental Protection Agency;

NOW THEREFORE, be it ordained by the Corporate Authorities of the Village of Gilberts, Kane County, Illinois, as follows:

SECTION 1. INCORPORATION OF RECITALS

The Corporate Authorities hereby find that the recitals contained in the preamble are true and correct, and incorporate them into this Ordinance by this reference.

SECTION 2. DETERMINATION TO BORROW FUNDS

It is necessary and in the best interests of the Village of Gilberts to construct the Project for the public health, safety and welfare, in accordance with the plans and specifications, as described; that the System continues to be operated in accordance with the provision of the Act; and that for the purpose of constructing the Project, it is hereby authorized that funds be borrowed by the Village of Gilberts in an aggregate principal amount (which can include construction period interest financed over the term of the loan) not to exceed \$600,000.

SECTION 3. PUBLICATION

This Ordinance, together with a Notice in the statutory form (attached hereto as Exhibit A), shall be published once within ten days after passage in the Courier News, a newspaper published and of general circulation in the Village of Gilberts, and if no petition, signed by electors numbering 10% or more of the registered voters (the current number of registered voters in the Village is 3,823) in the Village of Gilberts (i.e. 382) asking that the question of improving the System as provided in this Ordinance and entering into the Loan Agreement therefore be submitted to the electors of the Village of Gilberts, is filed with the Village of Gilberts Clerk within 30 days after the date of publication of this Ordinance and notice, then this Ordinance shall be in full force and effect. A petition form shall be provided by the Village of Gilberts Clerk to any individual requesting one.

SECTION 4. ADDITIONAL ORDINANCES

If no petition meeting the requirements of the Act and other applicable laws is filed during the 30-day petition period, then the Corporate Authorities may adopt additional ordinances or proceedings supplementing or amending this Ordinance providing for entering into the Loan Agreement with the Illinois Environmental Protection Agency, prescribing all the details of the Loan Agreement, and providing for the collection, segregation and distribution of the revenues of the System, so long as the maximum amount of the Loan Agreement as set forth in this Ordinance is not exceeded and there is no material change in the Project or purposes described herein. Any additional ordinances or proceedings shall in all instances become effective in accordance with the Act or other applicable law. This Ordinance, together with such additional ordinances or proceedings, shall constitute complete authority for entering into the Loan Agreement under applicable law.

However, notwithstanding the above, the Village of Gilberts may not adopt additional ordinances or amendments which provide for any substantive or material change in the scope and intent of this Ordinance, including but not limited to interest rate, preference, or priority of any other ordinance with this Ordinance, parity of any other ordinance with this Ordinance, or otherwise alter or impair the obligation of the Village of Gilberts to pay the principal and interest due to the Public Water Supply Loan Program without the written consent of the Illinois Environmental Protection Agency.

SECTION 5. LOAN NOT INDEBTEDNESS OF VILLAGE OF GILBERTS

Repayment of the loan to the Illinois Environmental Protection Agency by the Village of Gilberts pursuant to this Ordinance is to be solely from the revenue derived from revenues of the System, and the loan does not constitute an indebtedness of the Village of Gilberts within the meaning of any constitutional or statutory limitation.

SECTION 6. APPLICATION FOR LOAN

The Village President and Village Clerk are hereby authorized to make application to the Illinois Environmental Protection Agency for a loan through the Public Water Supply Loan Program, in accordance with the loan requirements set out in 35 Ill. Adm. Code 662.

SECTION 7. ACCEPTANCE OF LOAN AGREEMENT

The Corporate Authorities hereby authorize acceptance of the offer of a loan through the Public Water Supply Loan Program, including all terms and conditions of the Loan Agreement as well as all special conditions contained therein and made a part thereof by reference. The Corporate Authorities further agree that the loan funds awarded shall be used solely for the purposes of the project as approved by the Illinois Environmental Protection Agency in accordance with the terms and conditions of the Loan Agreement.

SECTION 8. RESERVE ACCOUNTS

The Village of Gilberts does not have any outstanding revenue bonds payable from the revenues of the Village's water/wastewater enterprise fund. Therefore, the Village will not be required to maintain a coverage and/or reserves account for this loan.

SECTION 9. AUTHORIZATION TO EXECUTE LOAN AGREEMENT

The Village President and Village Clerk are hereby authorized and directed to execute the Loan Agreement with the Illinois Environmental Protection Agency. The Corporate Authorities may authorize by resolution a person other than the Village President for the sole purpose of authorizing or executing any documents associated with payment requests or reimbursements from the Illinois Environmental Protection Agency in connection with this loan.

SECTION 10. SEVERABILITY

If any section, paragraph, clause or provision of this Ordinance is held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

SECTION 11. REPEALER

All ordinances, resolutions or orders, or parts thereof, which conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

PASSED BY ROLL CALL VOTE OF THE BOARD OF TRUSTEES of the Village of
 Gilberts, Kane County, Illinois, this ____ day of _____, 2013.

	<u>Ayes</u>	<u>Nays</u>	<u>Absent</u>	<u>Abstain</u>
Trustee Everett Clark	_____	_____	_____	_____
Trustee Dan Corbett	_____	_____	_____	_____
Trustee Nancy Farrell	_____	_____	_____	_____
Trustee Louis Hacker	_____	_____	_____	_____
Trustee Patricia Mierisch	_____	_____	_____	_____
Trustee Guy Zambetti	_____	_____	_____	_____
President Rick Zirk	_____	_____	_____	_____

APPROVED THIS ____ DAY OF _____, 2013

 Village President, Rick Zirk

(SEAL)

ATTEST: _____
 Village Clerk, Debra Meadows

EXHIBIT A

NOTICE OF INTENT TO BORROW FUNDS

AND RIGHT TO FILE PETITION

NOTICE IS HEREBY GIVEN that, pursuant to Ordinance Number 09-2013, adopted on April 2, 2013, the Village of Gilberts, Kane County, Illinois (the "ENTITY"), intends to enter into a Loan Agreement with the Illinois Environmental Protection Agency in an aggregate principal amount not to exceed \$600,000 and bearing annual interest at an amount not to exceed the maximum rate authorized by law at the time of execution of the Loan Agreement, for the purpose of paying the cost of certain improvement to the public water supply system of the Village of Gilberts. A complete copy of the Ordinance accompanies this notice.

NOTICE IS HEREBY FURTHER GIVEN that if a petition signed by 382 or more electors of the Village of Gilberts (being equal to 10% of the registered voters in the Village of Gilberts), requesting that the question of improving the public water supply system and entering into the Loan Agreement is submitted to the Village of Gilberts Clerk within 30 days after the publication of this Notice, the question of improving the public water supply system of the Village of Gilberts as provided in the Ordinance and Loan Agreement shall be submitted to the electors of the Village of Gilberts at the next election to be held under general election law on November 5, 2013. A petition form is available from the office of the Village of Gilberts Clerk.

Debra Meadows
Village of Gilberts Clerk
Village of Gilberts
Kane County, Illinois

CERTIFICATION

I, Debra Meadows, do hereby certify that I am the duly elected, qualified and acting Clerk of the Village of Gilberts. I do further certify that the above and foregoing, identified as Ordinance Number 09-2013, is a true, complete and correct copy of an ordinance otherwise identified as AN ORDINANCE AUTHORIZING THE VILLAGE OF GILBERTS TO BORROW FUNDS FROM THE PUBLIC WATER SUPPLY LOAN PROGRAM, passed by the Board of Trustees of the Village of Gilberts on the 2nd day of April, 2013, and approved by the Village President of the Village of Gilberts on the same said date, the original of which is part of the books and records within my control as Clerk of the Village of Gilberts.

Dated this ____ day of _____, 2013.

NO REFERENDUM CERTIFICATE

I, the undersigned, do hereby certify that I am the duly qualified, and acting Village of Gilberts Clerk of the Village of Gilberts, Kane County, Illinois (the "ENTITY"), and as such officer I am the keeper of the books, records, files and journal of proceedings of the Village of Gilberts and of the VILLAGE President and Board of Trustees of the Village of Gilberts.

I do further certify that Ordinance Number 09-2013, being the Ordinance entitled: AN ORDINANCE AUTHORIZING THE VILLAGE OF GILBERTS TO BORROW FUNDS FROM THE PUBLIC WATER SUPPLY LOAN PROGRAM was presented to and passed by the Village President and Board of Trustees of the Village of Gilberts at its legally convened meeting held on the 2nd day of April, 2013 and signed by the Village President of the Village of Gilberts on said day.

I do further certify that the Ordinance was duly and properly published in the Courier News, a newspaper published and of general circulation within the Village of Gilberts, on the ____ day of _____, 2013, being a date within ten days from the date of passage of the Ordinance.

I do further certify that publication of the Ordinance was accompanied by a separate publication of notice of (1) the specific number of voters required to sign the petition requesting the question of constructing improvements to the public water supply system as provided in the Ordinance; (2) the time in which such petition must have been filed; and (3) the date of the prospective referendum.

I do further certify that I did make available and provide to any individual so requesting a petition form, which petition form provided for submission to the electors of the Village of Gilberts of the question as set forth therein. Such petition forms were available from me continuously from _____, _____, 2013, up to and including _____, _____, 2013.

I do further certify that no Petition has been filed in my office within ____ days after publication of the Ordinance or as of the time of the signing hereof as provided by statute asking that the question of improving the public water supply system as provided in the Ordinance and the Loan Agreement therefore be submitted to the electors of the Village of Gilberts.

IN WITNESS WHEREOF I have hereunto affixed my official signature and the corporate seal of the Village of Gilberts, Kane County, Illinois, this ____ day of _____ 2013.

Village Clerk

Village of Gilberts

Kane County, Illinois

(SEAL)

6A

MEMORANDUM

To: Ray Keller
From: Julie A. Tappendorf
Subject: Prairie Business Park – Revised DA 3/28/13 Version
Date: March 28, 2013

Last year, we prepared a Development Agreement (“*DA*”) and zoning approval ordinance (“*Ordinance*”) for the proposed Prairie Business Park development at the southwest corner of Illinois Route 72 and Tyrell Road (“*Property*”). Over the past year, we had been negotiating the DA and Ordinance with two attorneys retained by Interstate. We sent our revised versions of the DA and Ordinance to Interstate on February 4, 2013, which reflected negotiations regarding the TIF Note, as well as changes to reflect approval of the TIF and the rezoning. Shortly after we sent the 2/4/13 versions of these two documents, work stopped on the project due to the outstanding escrow. The escrow was recently made current, and we received revised versions of the DA and Zoning Ordinance a little over a week ago.

Staff met with Interstate and its counsel on Wednesday, March 27th to discuss these proposed changes. The attached revised version of the DA incorporates many, but not all, of the changes requested by Interstate, and also incorporates changes requested by Village President Zirk.

The following summarizes the substantive revisions to the DA that require Village Board direction. Based on that direction, we will incorporate further changes into the DA.

Section 3 – Zoning and Development Approvals

3.C.2. Final PUD and Engineering Plans. Language was incorporated to authorize the Village to take enforcement action for failure to meet the timeframes for submission of Final Plans, including revoking the approvals for a particular lot or withholding TIF incentives.

3.C.3. Final Landscaping Plans. Language was added to allow Interstate to submit Final Landscaping Plans in phases with the Final PUD and Engineering Plans.

Board Issue: Interstate asked that they be allowed to submit landscaping plans within 90 days of approval of Final PUD and Engineering Plans rather than with the plans. We did not include this change.

Section 4 – Development and Use of Property

4.C. Minor and Major Adjustments. Interstate initially proposed that they be authorized to approve their own minor adjustments rather than the Village. In discussions with staff, however, they expressed that they would be willing to strike this entire section from the Agreement. They acknowledge that by striking this language, they will have to seek variations or other relief for any deviation from their approved plans that does not comply with Village Codes.

Section 5 – Improvements

5.B.6. Easements. The trail easement has been removed (see discussion below for 5.C.6).

5.C.1. Water and Sewer Service. The language has been revised to require completion of the Solo to Center Drive water main extension at the earlier of (i) completion of the first phase of development or (2) 12 months from the DA.

Board Issue: Interstate has requested that this section be modified to allow them to defer the water main extension to the third phase of development. We did not include this change.

5.C.2. Storm Water Detention and Drainage. This section has been revised so that Interstate must provide evidence of a signed agreement for purchase of the storm water credits.

5.C.3. Roadways. Language was eliminated obligating them to maintain the roads. These roads will be dedicated to the Village, and responsibility for maintenance will be the Village's upon acceptance. Any repairs that must be made prior to acceptance are already covered under the guaranty provisions of the Agreement.

5.C.4. Right of Way for South Access Road. This section was mostly rewritten to reflect negotiations between Interstate and the Tyrell Farm owners. It has also been divided into two separate sections – one establishes the trigger for dedication of the right of way and the second establishes the triggers for construction of the south access road. Language was added clarifying that no development can occur in the south phase until the ROW to the Tyrell Farm is platted.

5.C.5. Trail. Interstate has stated that the proposed trail will not be dedicated to the Village and the maintenance of the private trail will be covered by the CCRs.

Board Issue: We have incorporated this change, but the Board should discuss and confirm whether a private trail rather than public trail is acceptable.

5.G. Guaranty and Maintenance of Improvements.

Board Issue: Interstate proposes to provide a guaranty for one year (rather than 2) for all public improvements. This is not consistent with recent proposed amendments to the subdivision regulations so we did not include this change.

Section 6. TIF

6.F. Note. The TIF Note might be issued in one or more notes, so this change was incorporated.

6.H & I Progress Meetings & Records. These two sections have been clarified to apply specifically to the improvements relating to the TIF.

Section 7. Sales Tax Rebates.

At the Village President's request, this language was modified to eliminate sales tax rebates for existing industrial uses.

Section 8. Declaration of Covenants.

One CCR will cover the entire property, rather than have separate CCRs. We eliminated most of the language regarding the terms of the CCR since it will be attached as an exhibit to the DA.

Section 9. Fees, Dedications, Donations and Contributions

Board Issue: Interstate proposes to delete the language requiring an escrow for payment of Village fees, costs and expenses. We did not include this change.

Section 10. Performance Security

10.A. Performance and Payment Security. The most significant change in this Section is the addition of language allowing the developer to choose between a letter of credit or a bond. State statute authorizes a developer to choose the form of security, provided it is 110% of the cost of the improvements to be secured. They have exercised this option. The posted security will be required to cover both "performance and payment." The value of the improvements will be tied to the Village Engineer's opinion of cost, not the value of the contracts.

10.B. Guaranty Security.

Board Issue: As noted above under 5.G, they are requesting a one year, rather than two year, maintenance period and security requirement. We did not include this change.

9.E. Reduction of Security. We separated this language out into a new subsection so it was easier to locate.

Section 11. Liability and Indemnity of Village

11.A. Village Review

Board Issue: Interstate proposes adding language making the Village liable for its negligence or willful misconduct in its review and approval of the improvements/project. We did not add this language as it is too broad.

11.B. Village Procedure

Board Issue: They propose eliminating language acknowledging that the Village's process was proper. We did not include this change.

11.D. Defense Expenses

Board Issue: They propose eliminating their obligation to pay the Village's costs in defending itself for claims that they are obligated to indemnify the Village. We did not include this change.

Section 12. Nature, Survival, and Transfer of Obligations

We eliminated the procedure that would provide Interstate with the ability to be relieved from its obligations under the DA if they and the new purchaser executed a Transferee Assumption Agreement obligated the new buyer to all of Interstate's obligations. This is usually a favorable provision for developers, but Interstate did not want it so it was removed. As a result, Interstate will remain obligated under the DA even if they sell the property to a new developer.

Section 14. Default and Remedies.

14.A. Notice and Cure.

All of the various notice and cure provisions have been consolidated into this new Section 14.A. The notice and cure procedure applies to all parties to the agreement. The timeframe for cure is 30 days, unless an extension is granted. However, if a default relates to a public health or safety matter, immediate action must be taken to cure the default.

Board Issue: The Board should discuss whether 30 days is an appropriate period of time to cure a breach. The previous version of the DA had various cure periods from 5-30 days. Interstate requested 90 days. This was a compromise but is certainly subject to negotiation.

14.B. Enforcement.

Board Issue: They propose eliminating language that protects the Village from a damages lawsuit, as well as language allowing the Village to withhold permits if they are in violation of the DA. We did not include this change.

Section 15. General Provisions

15.A. Notice. Email and fax notice has been removed.

15.M. Authority to Execute. Language has been added that the Owner warrants and represents that it has obtain any necessary consents, approvals, or authorizations from lenders or mortgage holders to enter into this agreement. This issue was raised by the Village President.

Exhibits

Interstate has provided exhibits to the DA. The final form of the TIF Note and the CCR still need to be reviewed.