

DOCUMENT VET SHEET
for
Karen McConnaughay
Chairman, Kane County Board

Name of Document: IGA's (originals) - Wasco Sanitary District,
Village of Burlington Village of Elburn, Maple
Park, Village of Gilberts, City of Batavia,
Submitted by: Campton Township, Virgil Drainage District #3
Phone Number: Jodie Wollnik EXT 23499
Date Submitted: 2-3-11

Examined by: KC Shepard
(Print name)
[Signature]
(Signature)
2-7-11
(Date)

Comments: Originals - all need signature
of chairman
All previously reviewed & approved

Chairman signed: Yes No 2-8-11
(Date)

Document returned to: Jodie Wollnik

ORIGINAL

RESOLUTION 28-2010

AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF GILBERTS AND KANE COUNTY, ILLINOIS FOR ALLOCATION AND LOAN OF BOND PROCEEDS PURSUANT TO THE AMERICAN RECOVERY AND REINVESTMENT TAX ACT OF 2009

BE IT RESOLVED by the President and the Board of Trustees of the Village of Gilberts, Kane County, Illinois that:

Section 1:

The Village of Gilberts hereby authorizes the Village President and Village Clerk to execute an intergovernmental agreement between the Village of Gilberts and Kane County, Illinois and such documents as are necessary and convenient to effectuate the intergovernmental agreement to allocate and loan bond proceeds in the amount of \$345,000.00 to the Village of Gilberts pursuant to the American Recovery and Reinvestment Tax Act of 2009 for the purpose of constructing stormwater management improvements and repairs within the Village of Gilberts.

Section 2:

This resolution shall be in full force and in effect from and after its passage and approval pursuant to law.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Gilberts, Kane County, Illinois, this 16th day of November, 2010.

	<u>Ayes</u>	<u>Nays</u>	<u>Absent</u>	<u>Abstain</u>
Trustee Everett Clark	_____	_____	<u>X</u>	_____
Trustee Bruce Erbeck	<u>X</u>	_____	_____	_____
Trustee Nancy Farrell	<u>X</u>	_____	_____	_____
Trustee Pete Cullotta	<u>X</u>	_____	_____	_____
Trustee Patricia Mierisch	<u>X</u>	_____	_____	_____
Trustee Guy Zambetti	<u>X</u>	_____	_____	_____
President Rick Zirk	_____	_____	_____	_____



APPROVED THIS 16th DAY OF November 2010.

RZ
Village President Rick Zirk

ATTEST: Debra Meadows
Village Clerk Debra Meadows

EXHIBIT A

Agreement Between The County of Kane and Village of Gilberts For Allocation and Loan of Bond Proceeds Pursuant to the American Recovery and Reinvestment Tax Act of 2009

This Agreement (“**Agreement**”) is made and entered, by and between the County of Kane, a unit of local government of the State of Illinois hereinafter referred to as the “**County**”, and Village of Gilberts, a unit of local government within the boundaries of the County of Kane, hereinafter referred to as the “**Agency**.” The County and Agency also may be referred to in this agreement as the “**Party**” or “**Parties**”.

WHEREAS, Section 10 of Article VII of the 1970 Constitution of the State of Illinois (the “**Illinois Constitution**”) provides, *inter alia*, that “Units of local government and school districts may contract or otherwise associate among themselves . . . to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance,” and further provides that “Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance”; and

WHEREAS, Section 1 of Article VII of the 1970 Illinois Constitution provides that:

“Municipalities” means cities, villages and incorporated towns.
“Units of local government” means counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects, but does not include school districts;

and

WHEREAS, the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, (the “**Intergovernmental Cooperation Act**”) provides that “any power or powers, privileges, functions, or authority exercised or which may be exercised by a public agency of this State may be exercised, combined, transferred, and enjoyed jointly with any other public agency of this State...except where specifically and expressly prohibited by law”; 5 ILCS 220/3; and

WHEREAS, Section 2 of the Intergovernmental Cooperation Act defines the term “public agency” as:

Any unit of local government as defined in the Illinois Constitution of 1970, any school district, any public community college district, and public building commission, the State of Illinois, any agency of the state government or of the United States, or of any other state, any political subdivision of another state, and any combination of

the above pursuant to an intergovernmental agreement which includes provisions for a governing body of the agency created by the agreement;

and

WHEREAS, The County of Kane, Illinois (the “**County**”), is a duly organized and existing county created under the provisions of the laws of the State of Illinois and operating under the provisions of the Counties Code, as amended, 55 ILCS 5/1-1001 et seq. (the “**Counties Code**”), and is a “unit of local government” as defined in Section 1 of Article VII of the 1970 Illinois Constitution and a “public agency” as defined in Section 2 of the Intergovernmental Cooperation Act; and

WHEREAS, Village of Gilberts is a duly organized and existing municipality created under the provisions of the laws of the State of Illinois and operating under the provisions of the Illinois Compiled Statutes, and is a “unit of local government” as defined in Section 1 of Article VII of the 1970 Illinois Constitution and a “public agency” as defined in Section 2 of the Intergovernmental Cooperation Act; and

WHEREAS, Section 1400U-2 of the Internal Revenue Code of 1986, as amended, enacted as part of the American Recovery and Reinvestment Act of 2009 (the “**Act**”), authorizes state and local governments to issue bonds that qualify as “recovery zone economic development bonds” as defined in that Section (“**Recovery Zone Economic Development Bonds**”); and

WHEREAS, Recovery Zone Economic Development Bonds may be used to finance certain “qualified economic development purposes,” as such term is defined in Section 1400U-2; and

WHEREAS, pursuant to prior action by the County Board of the County (the “**County Board**”), the County has been designated as a “recovery zone” for purposes of Section 1400U-2; and

WHEREAS, the County has been allocated a volume cap of \$16,800,000 for Recovery Zone Economic Development Bonds to be issued for projects constituting qualified economic development purposes within the County during calendar years 2009 and 2010, and may use such volume cap for eligible costs or may allocate such volume cap in any reasonable manner as the County shall determine in good faith at its discretion for use by other units of local government such as the Agency to finance eligible costs for qualified economic development purposes within the County; and

WHEREAS, on _____, 2010, the County Board adopted Ordinance No. ____, authorizing the issuance of Recovery Zone Economic Development Alternate Bonds (Riverboat Revenue Alternate Revenue Source) of the County, in an aggregate principal amount not to

exceed \$16,800,000 (the “Bonds”) for the purpose of paying all or a portion of 1) the costs of acquiring, constructing, improving and equipping various water and/or sewer public works projects to be undertaken jointly by the County and other units of local governments located within the County pursuant to intergovernmental agreements between the County and such units, and 2) the costs of certain other capital projects of the County; and incidental to these project costs, to pay bond discount, interest, bond reserve requirements, and legal, other financing and related administrative fees and costs (collectively, the “Recovery Zone Economic Development Project”); and

WHEREAS, the County intends to adopt an ordinance (the “Bond Ordinance”) for the purpose of issuing not to exceed \$16,800,000 Recovery Zone Economic Development Alternate Bonds (Riverboat Revenue Alternate Revenue Source) (the “Bonds”); and

WHEREAS, the County intends to deposit a portion of the proceeds of the sale of the Bonds (the “Bond Proceeds”) with a depository (the “Depository”) pursuant to a depository agreement (the “Depository Agreement”) among the County, the Agency, and the Depository; and

WHEREAS, the Bond Ordinance will authorize the [Chairman of the Board][and/or] [Chief Financial Officer] of the County, (the “Authorized Officer[s]”), among other things, to execute an agreement or agreements to allocate a portion of the proceeds of the Bonds to public agencies within Kane County; and

WHEREAS, the Agency has applied to the County for a loan of Bond Proceeds in the aggregate principal amount of \$345,000.00 for the purpose of paying all of the costs of stormwater management improvements within the Village of Gilberts, (the “Agency Project”); and

WHEREAS the Agency Project is described more fully in Exhibit A hereto; and

WHEREAS the Agency Project shall be located on the real property described in Exhibit A hereto (the “Property”); and

WHEREAS, the County hereby finds that the financing of the Agency Project is consistent with the purposes set forth in Ordinance No. ____; and

WHEREAS, the County wishes to loan to the Agency, pursuant to the terms of this Agreement, a portion of the Bond Proceeds in the aggregate principal amount of \$345,000.00 for the purpose of paying for all or a portion of the costs of the Agency Project; and

WHEREAS, in accordance with Section 1400U-2 of the Act the costs of the Agency Project are and shall be such of the Agency’s capital costs necessarily incurred or to be incurred in furtherance of qualified economic development purposes, and, pursuant to the Bond

Ordinance, the County has found and hereby finds that such costs consist of the cost of the Agency's capital improvements for the Agency Project; and

WHEREAS the County and the Agency now desire to enter into this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I: INCORPORATION OF RECITALS

The recitals set forth above are incorporated herein by reference and made a part hereof.

ARTICLE II: THE LOAN; GENERAL TERMS

1. The County will loan Bond Proceeds to the Agency in the aggregate principal amount of \$345,000.00 for the purpose of financing the Agency Project as described herein. in accordance with the terms and conditions of this Agreement.

2. The County shall authorize all actions and execute all documents necessary or desirable to loan the \$345,000.00 to the Agency for the Project. In so doing the County shall comply with the laws of the State of Illinois, including the terms and conditions contained within this Agreement.

3. The Agency shall authorize all actions and execute all documents necessary or desirable to accept the loans and to authorize repayment of the loans under the terms and conditions stated herein. In so doing, the Agency shall comply with the laws of the State of Illinois, and the terms and conditions contained within this Agreement. The Agency shall be responsible for its expenses incurred in the performance of this Agreement and of its activities contemplated herein. The costs of issuance of the Bonds, including but not limited to the fees and expenses of the financial consultant and bond counsel, shall be paid from the proceeds of the Bonds.

4. The County shall loan the Bond Proceeds to the Agency in accordance with the schedule and pursuant to the provisions set forth in Articles III and IV of this Agreement. Interest on the Bond Proceeds loaned to the Agency shall begin to accrue on the date of issuance of the Bonds. The loan shall bear interest at the rate or rates which are equal to 64% of the interest due on the Bonds on each interest payment date for the Bonds. The loan shall be amortized on the same schedule as the portion of the Bonds applicable to the loan, except that each payment on the loan will be due 10 business days prior to each interest payment date on the Bonds. The maximum yield on the Bonds shall not exceed 4.0% for an amortization period of approximately 10 years, and shall not exceed 4.0% for an amortization period of approximately 10 years.

5. In consideration of the mutual promises and the terms and conditions set forth herein, the County agrees to loan the amounts stated herein in exchange for the Agency's obligation to repay those amounts with interest at the above stated rate and in accordance with the above stated schedule. In consideration of the mutual promises and the terms and conditions set forth herein, the Agency agrees to repay the loaned amounts with interest at the above stated rates and in accordance with the above stated schedule in exchange for the County's loan of the amounts stated herein.

ARTICLE III: THE AGENCY PROJECT

1. The plans and specifications for the Agency Project shall: (a) meet the general requirements for the Project set forth in the applicable portions of Exhibit A hereof, and (b) be provided to the County by the Agency. The Agency shall comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, as well as all policies, programs and procedures of the Agency, all as may be in effect from time to time, pertaining to or affecting the Agency Project or the Agency as related thereto, including but not limited to those summarized on Exhibit B attached hereto and incorporated herein. The Agency shall include a certification of such compliance with each request for Bond Proceeds hereunder and at the time the Agency Project is completed. The County shall be entitled to rely on this certification without further inquiry. Upon the County's request, the Agency shall provide evidence satisfactory to the County of such compliance.

2. In all contracts relating to the Agency Project, the Agency agrees to require the contractor to name the County as an additional insured on insurance coverages and to require the contractor to indemnify the County from all claims, damages, demands, losses, suits, actions, judgments and expenses including but not limited to attorney's fees arising out of or resulting from work on the Agency Project by the contractor or the contractor's suppliers, employees, or agents.

3. The Agency covenants to the County that it shall complete the Agency Project; provided, however, the Agency shall not be considered in breach of or in default of its obligation to complete the Agency Project in the event of any delay caused by damage or destruction by fire or other casualty, strike, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or for an abnormal duration, tornadoes or cyclones, and other events or conditions beyond the reasonable control of the Agency which in fact interferes with the ability of the Agency to discharge its obligation to complete the Agency Project. With respect to any such delay the Agency shall, upon the occurrence of the event causing such delay, immediately give written notice to the County. The Agency may rely on this section only to the extent of the actual number of days of delay affected by any such events described above.

4. On or before December 10, 2010, the Agency shall furnish the County with a drawdown schedule evidencing the Agency's reasonable expectation that the Agency Project will

be acquired and constructed with due diligence and that 85% of the Agency Project will be completed within 3 years from the date of issuance of the Bonds.

5. On or before December 10, 2010, the Agency will furnish evidence satisfactory to the County establishing its reasonable expectation that the Agency has either satisfactory title to the Property (which may be evidenced by an acceptable pro forma title insurance policy), subject only to those title exceptions acceptable to the Authorized Officer in his or her reasonable judgment, or an adequate easement or leasehold interest for the construction and continued operation of the Agency Project.

ARTICLE IV: FUNDING

1. (a) With respect to the Agency Project, on a monthly basis (or at such other intervals as the County may agree to), the Agency shall provide the Depository and the County's Department of Finance (the "Department") with a Requisition Form, in substantially the form attached hereto as Exhibit C, along with: (i) a cost itemization of the Agency Project budget in substantially the form attached hereto as Exhibit D Project Budget"; (ii) evidence of the expenditures upon project improvements which the Agency has paid or will pay; and (iii) all other documentation described in Exhibit C. Pursuant to the Depository Agreement, the Depository will make the applicable requested disbursement of Bond Proceeds to the Agency (or to such other party as the Agency may request in writing). The availability of Bond Proceeds is subject to the County's compliance with all applicable requirements regarding the use of such proceeds and the timing of such use.

(b) Prior to the disbursements of any of the Bond Proceeds to the Agency for costs incurred or to be incurred relative to the Agency Project, the Agency shall satisfy the County, to the reasonable satisfaction of the Authorized Officer, that the Agency has either satisfactory title to the Property (which may be evidenced by an acceptable pro forma title insurance policy), subject only to those title exceptions acceptable to the Authorized Officer in his or her reasonable judgment, or an adequate easement or leasehold interest for the construction and continued operation of the Agency Project.

(c) Delivery by the Agency of a Requisition Form hereunder shall, in addition to the items therein expressly set forth, constitute a certification, representation and warranty to the Depository and the County, as of the date of such Requisition Form, that:

(i) the total amount of the Bond Proceeds requested represents the actual amount paid or to be paid to the general contractor, subcontractors, and other parties who have performed work on or otherwise provided goods or services in connection with the Agency Project, and/or their payees;

(ii) all amounts shown as previous payments on the Requisition Form (if any) have been paid to the parties entitled to such payment;

(iii) the Agency has approved all work and materials for the Requisition Form, and such work and materials conform to the plans and specifications for the Agency Project; and

(iv) the Agency is in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, as well as all policies, programs and procedures of the Agency, all as may be in effect from time to time, pertaining to or affecting the Agency Project or the Agency as related thereto, including but not limited to those summarized on Exhibit B of this Agreement.

The County shall have the right, in its discretion, to require the Agency to submit further documentation as the County may require in order to verify that the matters certified to above are true and correct; provided, however, that nothing in this sentence shall be deemed to prevent the County or the Depository from relying on such certifications by the Agency.

(d) If, at any time, with the approval of the County, the Depository disburses Bond Proceeds in advance and in anticipation of the incurrence of costs by the Agency then, upon disbursement by the Depository, such Bond Proceeds shall be held in a segregated account for the Agency Project, and the Agency shall provide the County with the statements for such segregated Project account as part of the quarterly report for such Project required pursuant to Article IV, Section 5 below.

(e) Payment of Bond Proceeds will be made subject to all applicable restrictions on and obligations of the County contained in: (i) the Depository Agreement [and the Insurance Policy], and (ii) all County ordinances relating to the Bonds, including but not limited to the Bond Ordinance, and all agreements and other documents entered into by the County pursuant thereto.

2. The estimate of the cost of the Agency Project is set forth on the applicable portion of Exhibit A hereto. The Agency has delivered to the Authorized Officer a detailed preliminary budget, attached hereto and incorporated herein as Exhibit D. The Agency shall deliver to the County an amended budget (if necessary) in connection with each Requisition Form and a final budget (upon Agency Project completion) for the Agency Project, and when approved by the County in writing such amended (if any) and final budgets shall also be attached hereto and incorporated herein as Exhibit D. The budget shall identify the sources of and uses for all funds for the Agency Project. The Agency certifies that it has identified sources of funds (including the Bond Proceeds) sufficient to complete the Agency Project. The Agency agrees that the County will only contribute the Bond Proceeds to the Agency Project and that all costs of completing the Agency Project over the Bond Proceeds (if any) shall be the sole responsibility of the Agency. If the Agency at any time does not have sufficient funds to complete the Agency Project, the Agency shall so notify the County in writing, and the Agency may reduce the scope

of the Agency Project as agreed with the County in order to complete the Agency Project with the available funds.

3. “Agency Project Improvements” shall mean the capital improvements; land assembly costs; relocation costs; rehabilitation, remodeling, renovation and reconstruction costs; financing costs and other costs, if any, recognized and approved in writing by the County as being eligible costs for qualified economic development purposes under Section 1400U-2 of the Act with respect to the Agency Project, to be paid for out of Bond Proceeds. Attached as Exhibit E and incorporated herein is a preliminary list of Agency Project Improvements. The Agency shall deliver to the County an amended list of Agency Project Improvements (upon Agency Project Completion), and when approved by the County in writing such amended (if any) and final lists of Agency Project Improvements shall also be attached hereto and incorporated herein as Exhibit E. During the course of a Project, the Authorized Officer, based upon the detailed Project Budget attached as Exhibit D and any necessary modifications thereto, shall make or approve such modifications to Exhibit E as he or she wishes in his or her discretion to account for all of the Bond Proceeds to be expended under this Agreement; provided, however, that all Agency Project Improvements shall (i) be for qualified economic purposes under the Act, and (ii) be improvements or costs that the Authorized Officer has agreed to pay for out of Bond Proceeds, subject to the terms of this Agreement.

4. If the aggregate cost of the Agency Project is less than the amount of the Bond Proceeds contemplated by this Agreement, the Agency shall have no claim to the difference between the amount of the Bond Proceeds contemplated by this Agreement and the amount of the Bond Proceeds actually paid by the County to the Agency and expended by the Agency on the Project (the “Excess Bond Proceeds”); provided, however, that the foregoing shall not be construed to preclude the Agency from requesting all or some of the Excess Bond Proceeds from the County to finance other costs incurred by the Agency for the purposes allowed by Section 1400U-2 of the Act and provided for in the Bond Ordinance, subject to the County’s approval (in the County’s sole discretion). The County may also request that the Agency return Excess Bond Proceeds to the County, in which case the County shall use such Excess Bond Proceeds to reduce the loan obligation of the Agency.

5. The Agency shall provide to the County quarterly reports on the progress and status of the Agency Project and reasonable access to its books and records relating to the Project.

6. During the Term hereof, the Agency shall not sell, transfer, convey, lease or otherwise dispose (or cause or permit the sale, transfer, conveyance, lease or other disposal) of all or any portion of (a) the Property or any interest therein, or (b) any Agency Project Improvement or any interest therein (each a “Transfer”), or otherwise effect or consent to a Transfer, without the prior written consent of the County. The County’s consent to any Transfer may, in the County’s sole discretion, be conditioned upon (among other things) whether such a Transfer would conflict with the statutory basis for the loan of the Bond Proceeds hereunder pursuant to

the Act. Subject to applicable law, the Agency shall pay any proceeds of any Transfer to the County.

ARTICLE V: TERM

The Term of the Agreement shall commence as of the Agreement Date and shall expire upon repayment of the loan.

ARTICLE VI: INDEMNITY; DEFAULT

1. The Agency agrees to indemnify, defend and hold the County, its officers, officials, members, employees and agents harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, reasonable attorneys' fees and court costs) suffered or incurred by the County arising from or in connection with (i) the Agency's failure to comply with any of the terms, covenants and conditions contained within this Agreement, or (ii) the Agency's or any contractor's, subcontractors or materialmen in connection with the Project. In no event shall the Agency's obligation to indemnify the County exceed the County's actual damages that are attributable to the actions of the Agency as they relate solely to this Agreement.

2. The failure of the Agency to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the Agency with respect to an Agency Project under this Agreement or any related agreement (including the Depository Agreement) shall constitute an "Event of Default" by the Agency hereunder. Upon the occurrence of an Event of Default, the County may terminate this Agreement with respect to the Agency Project and all related agreements, and may, pursuant to the Depository Agreement, give the Depository written notice to suspend disbursement of the Bond Proceeds (or, in the alternative to disburse the Bond Proceeds only upon the written request of the County) with respect to the Agency Project until such time as the County give the Depository written notice to resume regular disbursement of the Bond Proceeds as contemplated hereunder. The County may by any action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to injunctive relief or the specific performance of the agreements contained herein. Any such legal proceeding shall be brought in the Sixteenth Judicial Circuit, Kane County, Illinois.

In the event the Agency shall fail to perform a covenant which the Agency is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an event of default shall not be deemed to have occurred unless the Agency has failed to cure such default within thirty (30) days after its receipt of a written notice from the City not capable of being cured within such thirty (30) days period, the Agency shall not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

3. The failure of the County to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the County with respect to an Agency Project under this Agreement or any related agreement (including the Depository Agreement) shall constitute an "Event of Default" by the County hereunder. Upon the occurrence of an Event of Default, the Agency may terminate this Agreement with respect to the Agency Project and any other agreement directly related to this Agreement. The Agency may by any action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to injunctive relief or the specific performance of the agreements contained herein. Any such legal proceeding shall be brought in the Sixteenth Judicial Circuit, Kane County, Illinois.

In the event the County shall fail to perform a covenant which the County is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an event of default shall not be deemed to have occurred unless the County has failed to cure such default within thirty (30) days after its receipt of a written notice from the Agency. If an event of default is not capable of being cured within such thirty (30) days period, the County shall not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

ARTICLE VII: CONSENT

Whenever the consent or approval of one or both parties to this Agreement is required hereunder, such consent or approval shall not be unreasonably withheld.

ARTICLE VIII: NOTICE

Notice to Agency shall be addressed to:

Village Administrator
Village of Gilberts
87 Galligan Road
Gilberts, Illinois 60136
FAX: (847) 428-2955

and

Finance Director
Village of Gilberts
73 Industrial Drive
Gilberts, Illinois 60136
FAX: (847) 428-2955

Notice to the County shall be addressed to:

Chief Financial Officer
Kane County Government Center
719 South Batavia Avenue
Geneva, Illinois
FAX: (630) 208-5110

with a copy to:

Kane County State's Attorney
100 S. Third Street
4th Floor
Geneva, IL 60134
Attention: Chief Civil Division

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth above, by any of the following means: (a) personal service; (b) electric communications, whether by telex, telegram, telecopy or facsimile (FAX) machine; (c) overnight courier; or (d) registered or certified mail, return receipt requested.

Such addresses may be changed when notice is given to the other party in the same manner as provided above. Any notice, demand or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier and, if sent pursuant to subsection (d) shall be deemed received two (2) days following deposit in the mail.

ARTICLE IX: ASSIGNMENT; BINDING EFFECT

This Agreement, or any portion thereof, shall not be assigned by either party without the prior written consent of the other.

This Agreement shall inure to the benefit of and shall be binding upon the County, the Agency and their respective successors and permitted assigns. This Agreement is intended to be and is for the sole and exclusive benefit of the parties hereto and such successors and permitted assigns.

ARTICLE X: MODIFICATION

This Agreement may not be altered, modified or amended except by written instrument signed by all of the parties hereto.

ARTICLE XI: COMPLIANCE WITH LAWS

The parties hereto shall comply with all federal, state and municipal laws, ordinances, rules and regulations relating to this Agreement.

ARTICLE XII: GOVERNING LAW AND SEVERABILITY

This Agreement shall be governed by the laws of the State of Illinois. If any provision of this Agreement shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, ordinance, rule of law or public policy, or for any reason, such circumstance shall not have the effect of rendering any other provision or provisions contained herein invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses, or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof.

ARTICLE XIII: COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original.

ARTICLE XIV: ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties.

ARTICLE XV: AUTHORITY

Execution of this Agreement by the County is authorized by the Bond Ordinance. Execution of this Agreement by the Agency is authorized by Resolution 28-2010 adopted by the Agency on November 16, 2010. The parties represent and warrant to each other that they have the authority to enter into this Agreement and perform their obligations hereunder.

ARTICLE XVI: HEADINGS

The headings and titles of this Agreement are for convenience only and shall not influence the construction or interpretation of this Agreement.

ARTICLE XVII: DISCLAIMER OF RELATIONSHIP

Nothing contained in this Agreement, nor any act of the County or the Agency shall be deemed or construed by any of the parties hereto or by third persons, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving the County and the Agency.

ARTICLE XVIII: CONSTRUCTION OF WORDS

The use of the singular form of any word herein shall also include the plural, and vice versa. The use of the neuter form of any word herein shall also include the masculine and feminine forms, the masculine form shall include feminine and neuter, and the feminine form shall include masculine and neuter.

ARTICLE XIX: NO PERSONAL LIABILITY

No officer, member, official, employee or agent of the County or the Agency shall be individually or personally liable in connection with this Agreement.

ARTICLE XX: REPRESENTATIVES

Immediately upon execution of this Agreement, the following individuals will represent the parties as a primary contact in all matters under this Agreement.

For the Agency:

Village Administrator
Village of Gilberts
87 Galligan Road
Gilberts, Illinois 60136
FAX: (847) 428-2955

or the County:

Chief Financial Officer
Kane County Government Center
719 South Batavia Avenue
Geneva, Illinois
FAX:

Each party agrees to promptly notify the other party of any change in its designated representative, which notice shall include the name, address, telephone number and fax number of the representative for such party for the purpose hereof.

ARTICLE XXI: TAX MATTERS

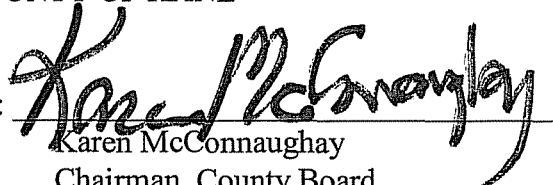
The Agency shall not act or fail to act in such a way as to prevent the County from complying with the terms and conditions of that certain Tax Compliance Certificate entered into by the County in connection with the Bonds, a copy of which has been provided to the Agency.

IN WITNESS WHEREOF, the County of Kane, by a Resolution duly adopted by the County Board of Kane County, causes this Agreement to be signed by its Chairman and attested by its Clerk and _____, by order of its _____, has caused this Agreement to be executed by the _____, and attested to by its Clerk, all on the day and year hereinafter written.

Dated _____ day of _____, 2010.

COUNTY OF KANE

By:



Karen McConnaughay
Chairman, County Board
Kane County


PLEA

Attest: _____

John A. Cunningham
Clerk, County Board
Kane County, Illinois

Dated 16th day of November, 2010.

VILLAGE OF GILBERTS

By: 
Rick Zirk
Village President
Village of Gilberts, Illinois


Attest: 
Debra Meadows
Village Clerk
Village of Gilberts, Illinois

EXHIBIT A

THE AGENCY PROJECT

Bond Issuance Date	
Bonds	
Depository	
Depository Agreement Date	
Insurer	
Property Location (attach legal description)	
Category of Project (Acquiring, Constructing, Improving, Equipping [water and/or sewer] Public Works Project)	
Description of Agency Project Improvement	
Bond Proceeds	\$
Project Budget	\$

EXHIBIT B

**RULES, AND REGULATIONS APPLICABLE TO THE AGENCY/
AGENCY POLICIES, PROGRAMS AND PROCEDURES**

(see attached)

EXHIBIT C

AGENCY PROJECT

REQUISITION FORM # _____

State of Illinois)
) SS
County of Kane)

The affiant, _____, _____ a unit of local government and public agency of the State of Illinois (the “Agency”), hereby certifies to _____ (the “Depository”) and the County of Kane (the “County”) that with respect to that certain Intergovernmental Agreement between the Agency and the County dated _____, 2010 (the “Agreement”):

A. The following is a true and complete statement of all costs incurred for the Project by the Agency:

TOTAL: \$ _____

B. This paragraph B sets forth and is a true and complete statement of all costs of Agency Project Improvements for the Agency Project paid for by the County to date (if any) through its loan of Bond Proceeds (as defined in the Agreement) to the Agency:

\$ _____

C. The Agency requests disbursement for the following cost of Agency Project Improvements:

\$ _____

D. None of the costs referenced in paragraph C above has been previously loaned to the Agency by the County.

E. The Agency hereby certifies to the County that, as of the date hereof,

1. The representations and warranties contained in the Agreement are true and correct and the Agency is in compliance with all applicable covenants contained therein.

2. No Event of Default (as defined in the Agreement) or condition or event that, with the giving of notice or passage of time or both, would constitute an Event of Default, exists or has occurred.

3. The Agency is in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, as well as all policies, programs and procedures of the Agency, all as may be in effect from time to time, pertaining to

or affecting the Project or the Agency as related thereto, including but not limited to those summarized in Exhibit B of the Agreement.

F. Attached hereto are: (1) a cost itemization of the applicable portions of the budget attached as Exhibit D to the Agreement; and (2) evidence of the expenditures upon Agency Project Improvements for which the Agency hereby seeks disbursement.

H. The Agency hereby requests that the Depository direct disbursement to:

All capitalized terms that are not defined herein have the meanings given such terms in the Agreement.

	<p>_____, a unit of local government and public agency of the State of Illinois</p> <p>By: _____ Name: _____ Title: _____</p>
--	---

Subscribed and sworn before me this ___ day of _____, ____.

My commission expires: _____

Exhibit D
[Preliminary] [Amended] [Final] Agency Project Budget

<u>Uses of Funds</u>		<u>Source (County or Agency)</u>	<u>Cost</u>
Legal Fees			
	Land Acquisition		\$
	Fees and Reimbursable Costs		\$
	<i>Subtotal for Legal Fees</i>		\$
Abatement, Demolition, Site Preparation & Remediation			\$
Design and Management			\$
Pre-Purchased Materials			\$
Furniture, Fixtures and Equipment			\$
Construction Expenditures			
	Fees and Services		\$
	General Construction		\$
	Construction Contingency (5%)		\$
	PBC Administration (3%)		\$
Project Management Office Costs			\$
Project Total			\$

Exhibit E
[Preliminary] [Amended] [Final] Agency Project Improvements

<u>Uses of Funds</u>	<u>Cost</u>
Legal Fees	
Land Acquisition	\$
Relocation	\$
Fees and Reimbursable Costs	\$
<i>Subtotal for Legal Fees</i>	\$
	\$
Abatement, Demolition, Site Preparation & Remediation	\$
Design and Management	\$
Pre-Purchased Materials	\$
Furniture, Fixtures and Equipment	
Construction Expenditures	
Fees and Services	\$
General Construction	\$
Construction Contingency (5%)	\$
PBC Administration (3%)	\$
Project Management Office Costs	\$
Project Total	\$

DRAFT

***Request for Proposals (RFP) No. XXX
Gilberts Glen Drainage Improvements***

The Village of Gilberts, Illinois invites appropriate firms to submit proposals to plan, design, permit, and construct the drainage improvements described in this Request for Proposals (RFP). Please read each section carefully for information regarding proposal contents and submittal instructions.

SECTION 1: GENERAL INFORMATION

About the Village

The Village of Gilberts platted in 1855 and incorporated in 1890 has a population of 6,364 at the 2008 special census. The Village is located in Kane County and governed by a Village President and Board of Trustees. The Village's policies are set by the Village President and the Village Board. The Village Administrator is responsible for implementing the policies and directives of the Village President and the Village Board.

Background

Portions of the Village, including the Gilberts Glen east and west subdivisions, suffer from localized flooding. The purpose of this project is to plan, design, permit, and construct drainage improvements that will alleviate the localized flooding issues in this area. The bulk of the work will involve the replacement of approximately 2,500 linear feet of 12 to 15 inch high density polyethylene (HDPE) pipe that runs from stormwater pond located in the northeast corner of the Gilberts Glen east subdivision southwest under Tyrell Road and through the Gilberts Glen west subdivision to Tyler Creek.

In addition, the easterly 700 feet of the Village owned portion of Binnie Road is to be reconstructed along with the improvement to downstream stormwater conveyance in order to minimize backwater flooding at the low point of the roadway section.

SECTION 2A: SCOPE OF WORK – Gilberts Glen East and West

Scope of Services

In general, the scope of work for this project includes planning, designing, permitting, and constructing drainage improvements that will relieve localized flooding issues in the Gilberts Glen east and west subdivisions. The bulk of the work will involve the replacement of approximately 2,500 linear feet of 12 to 15 inch high density polyethylene (HDPE) pipe that runs from stormwater pond located in the northeast corner of the Gilberts Glen east subdivision southwest under Tyrell Road and through the Gilberts Glen west subdivision to Tyler Creek. The successful proposer will be knowledgeable and experienced with these types of projects, and will proceed toward completion of this work as outlined below.

1. Perform due diligence to evaluate the conditions throughout the tributary drainage area. Identify services and calculation methodology for pipe sizing, overland relief (swale sizing) and pond storage and restoration. Document and provide to

DRAFT

the Village the maximum storm event that can be conveyed and also the maximum storm event stored in the pond for Village concurrence.

2. Provide staging and mobilization plan, environmental protection and erosion control plan, safety plan, and potential dewatering plan for review and acceptance by municipality.
3. Provide adequate materials lists in submittal form for all applicable materials for municipal acceptance.
4. If needed, provide environmental impact mitigation plan and final signoff by applicable agencies.
5. Provide proposed engineering drawings and specifications for municipal acceptance, along with final as-built drawings.
6. Provide the Village with survey or metes and bounds descriptions of all necessary permanent and temporary easements for construction and future maintenance of proposed improvements.
7. Obtain permits from all applicable agencies, local, county, state or federal.
8. Survey of existing conditions.
9. Construction pond outlet structure and pipe conveyance, approximately 2,500 linear feet of 12 to 15 inch high density polyethylene (HDPE) piping, provide structures at key points, elevations, and/or critical areas to allow proper drainage and/or cleanout of areas.
10. Provide earthwork to bring swale system leading through Gilberts Glen east and west.
11. Remove offsite any asphalt and/or concrete that may be obstructing existing swale system.
12. Remove any soil overburden offsite.
13. Provide final grading, topsoil placement, and seeding and restoration of all disturbed areas of pond embankment and overland swale conveyance..
14. Provide documentation of any found, broken, and/or repaired drain tiles throughout course of scheduled work.
15. Provide final record drawings in electronic format and final waivers, product and work guarantees, and maintenance bonds.

DRAFT

SECTION 2B: SCOPE OF WORK – Binnie Road

Scope of Services:

The objective of this portion of the project is to relieve historic flooding conditions within the depressional area located on Binnie Road. The bulk of the work will fall under performing engineering due diligence related to historic flooding conditions of Binnie Rd, and repairs/replacement of drain tiles/culverts and overland flows to restore historic conveyance conditions. In addition, approximately 700 linear feet of roadway will be reconstructed by raising the base +/-4" along with the construction of new binder and final surface course asphalt. The successful proposer will be knowledgeable and experienced with these types of projects, and will proceed toward completion of this work as outlined below.

1. Perform due diligence related to historical conditions throughout the watershed tributary area. Identify services and calculation methodology to determine downstream improvements necessary to lower the existing backwater condition approximately one (1) foot. Document and provide to municipality for the signoff and concurrence.
2. Provide staging and mobilization plan, environmental protection plan, safety plan, and potential dewatering plan for review and acceptance by municipality.
3. Provide adequate materials lists in submittal form of all applicable materials for municipal acceptance.
4. If needed, provide environmental impact mitigation plan and final signoff by applicable agencies.
5. Provide proposed engineering drawings for municipal acceptance, along with final as built drawings.
6. Provide the Village with survey or metes and bounds descriptions of all necessary permanent and temporary easements for construction and future maintenance of proposed improvements
7. Obtain permits from all applicable agencies; local, county, state of federal.
8. Survey existing conditions.

DRAFT

9. Obtain access to various private industry properties needed to complete full scope of services.
10. Repair concrete overland flow structure to historic conditions to reduce flooding conditions.
11. Repair/replace approximately 1000-1200 Linear feet of drain tiles
12. Repair of 800LF of overland swale area leading SW along Binnie Rd, provide critical elevations for municipal signoff
13. Reseed approximately 1.5 acres of various disturbed shoreline areas (along with second application)
14. Remove existing asphalt in the 700 LF project length of Binnie Rd.
15. Replace existing culvert.
16. Raise depressional area base course +/- 4" to provide flood relief and construct new 2.25 inch HMA binder and 1.5 inch HMA final surface.
17. Provide required erosion control and ditch and swale work and restoration as necessary.
18. Remove any soil/asphalt spoils offsite
18. Provide final grading, topsoil placement, and seeding of all disturbed areas.
19. Provide documentation of any found, broken, and repaired drain tiles throughout course of scheduled work.
20. Provide final record drawings in electronic format and final waivers, product and work guarantees, and maintenance bonds.

DRAFT

Variations from Scope of Services

Proposers may find instances where their proposed approach varies from the scope of services outlined above. All variations shall be clearly identified, and written explanations shall describe the variations, outline the ramifications of the variations for the Village of Gilberts, and describe the advantage to be gained or disadvantages to be incurred by the Village as a result of the variations.

SECTION 3: SUBMITTAL REQUIREMENTS

PROPOSALS MUST BE RECEIVED BY THE VILLAGE NO LATER THAN 3:00 PM ON TUESDAY, NOVEMBER 30, 2010.

Proposal Format

Proposals shall be submitted in the following format and shall include the following information:

1. A general description of your firm's organization, experience, services and staff.
2. A narrative describing the approach that your firm would take to complete the tasks outlined in the Scope of Services section of this RFP.
3. Descriptions of the three most recent projects completed by your firm that demonstrate capacity to complete the tasks outlined in the Scope of Services section of this RFP.
4. At least three references, including individual contact name, name of company and phone number, that Village staff may contact regarding your qualifications to undertake this project.
5. Professional resumes of the project manager and all other members of the project team.
6. A detailed price proposal demonstrating the cost-effectiveness of your firm's approach. Proposers shall provide a breakdown of their proposed fee based on the scope of work as outlined in this RFP with resource allocations (man hours, etc.) and fees associated with each task. The price proposal shall also include a consultant retainage fee equal to 4% of the total cost of the 15 items in the project scope.

Additional information may be submitted as appropriate to further describe your firm's experience, knowledge, and capabilities.

Submittal Information

Three (3) paper copies of all proposals as well as one (1) electronic version in PDF format on CD ROM must be submitted no later than 3:00 p.m., November 30, 2010. Submissions must be in a sealed package or envelope. All proposals shall be marked Gilberts Glen Drainage Improvements RFP #XXX. The applicant's organization name

DRAFT

and address shall appear in the upper left corner of the package. Submittal of proposals by fax or e-mail is not acceptable. Submittals may be delivered to the Village in person or sent (by U.S. Postal Service or other reliable means) to the following address:

Village of Gilberts
Attn: Contract Officer
Response to RFP No.XXX
87 Galligan Road
Gilberts, Illinois 60136

There will be no public opening for this RFP.

Late submittals will be rejected and returned unopened. Proposers shall be responsible for the actual delivery of proposals prior to the submittal deadline. It shall not be sufficient to show that the proposal was mailed in time to be received before the scheduled submittal deadline.

Contact Information

Proposers shall submit proposals in accordance with the instructions contained in this RFP. All requested information must be submitted with the proposal. Questions regarding this RFP should be directed to:

Village Administrator(Ray or Bill?)

Technical Questions should be addressed to:

B&W

SECTION 4: PROCUREMENT INFORMATION

Proposal Evaluation

After receiving responses to this RFP, the Village plans to review submittals and conduct interviews, as necessary, with the firm(s) it determines can best meet the requirements outlined in this RFP. All qualified proposals will be analyzed for completeness and cost-effectiveness. The following criteria will be used in evaluating proposals:

1. The firm's demonstrated record of experience and knowledge in providing the professional services outlined in the Scope of Services.
2. The qualifications of personnel to be assigned to the project.
3. The reputation of the firm based on references.
4. Responsiveness to the scope of services and other information provided in this RFP.

DRAFT

5. Cost to the Village.

All timely responses received to this RFP will be reviewed and interviews may be conducted with selected submitters the Village determines can best meet the above requirements. Proposal cost will be evaluated against the other factors based upon the professional judgment of those involved in the evaluation.

Negotiations will be held as necessary to select the firm(s) that the Village believes can best satisfy its requirements at a fee it believes is reasonable for the services provided. It is anticipated that a contract will be awarded for the work described in this RFP in December 2010.

Timetable

Proposals must be submitted no later than:	3:00 p.m., November 30, 2010
Interviews, if necessary, of most qualified firms:	December 2-3, 2010
Village Board approval, if necessary, of selection of vendor:	December 8, 2010

Village anticipates signing contract by December 20, 2010

Village anticipates work beginning during January 2011

Village anticipate all work being completed by

Request for Additional Information

Prior to the final selection, proposers may be required to submit additional information which the Village may deem necessary to further evaluate the proposer's qualifications.

Right of Rejection and Clarification

The Village of Gilberts reserves the right to reject any and all proposals and to request clarification of information from any proposer. The Village of Gilberts is not obligated to enter into a contract on the basis of any proposal submitted in response to this document.

Right of Rejection of Lowest Fee Proposal

The Village of Gilberts is under no obligation to award this project to the proposer offering the lowest fee proposal. The evaluation criteria included in this document shall be used in evaluating proposals.

Right of Withdrawal

A proposal may not be withdrawn before the expiration of ninety (90) days from the proposal due date.

Rights to Submitted Material

All proposals, responses, inquiries, or correspondence relating to or in reference to this RFP, and all reports, charts, and other documentation submitted by proposers shall become the property of the Village of Gilberts when received.

Denial of Reimbursement

DRAFT

The Village of Gilberts will not reimburse proposers for any costs associated with the preparation and submittal of any proposal, or for any travel and/or per diem costs that are incurred.

Gratuity Prohibition

Proposers shall not offer any gratuities, favors, or anything of monetary value to any official, employee, or agent of the Village of Gilberts for the purpose of influencing consideration of this proposal.

Right of Negotiation

The Village of Gilberts reserves the right to negotiate with the selected proposer the exact terms and conditions of the contract for the work.