



Meeting Date: 7/11/2011
Agenda Item: 6e

Mission Statement
Delivering quality services in courteous, cost-effective and efficient manner.

VILLAGE BOARD MEETING STAFF REPORT

REPORT TO: President Burt McIntyre and Village Board of Trustees
REPORT FROM: Robert Bartelt, Interim Village Administrator
AGENDA ITEM: Review and take action on development agreement with Amerex
ACTION REQUESTED: Ordinance Resolution Motion Receive/File

POLICY ISSUE

Does the Village Board want to enter into a developer agreement with Amerex in order for Amerex to construct a manufacturing plant in the 1500 block of Brookfield Avenue?

RECOMMENDED ACTION BY VILLAGE BOARD

If the Village Board is in favor of this policy action, the following motion may be made:

“Motion to approve the Developer Agreement with Amerex Corporation.”

POLICY ALTERNATIVE(S)

The Village Board could take the following action:

- Amend the agreement
- Deny the agreement
- Table the item and request additional information

POLICY REFERENCE

Wisconsin Statutes: 66.105, 66.1331, 66.1337
Howard Municipal Code: N/A
Policies & Procedure Manual: N/A

FINANCIAL INFORMATION

FISCAL IMPACT:

1. Is There A Fiscal Impact?	<u>Yes</u>
2. Is it Currently Budgeted?	<u>Yes</u>
3. If Budgeted, Which Line?	<u>TIF #6</u>

FISCAL SYNOPSIS:
3,500 (\$3,500,000 New Value of Property) x \$17.20 (tax increment rate) = \$60,200

\$60,200 x 55% = \$33,110 (annual payment on New Value)

The incentive will be paid for 15 years

BACKGROUND INFORMATION

Amerex Corporation will build a manufacturing, research and testing facility for fire retardant products. Amerex will create 20 new full-time jobs, including those for chemists and scientists.

In January, the board approved the following terms, which are listed in the developer agreement, in closed session:

1. The Village will extend utilities. This will cost the Village approximately \$125,000 for the length of the property.
2. The Village will provide a TIF incentive of 55% of the increment for 15 years in exchange for a LEED-certified building.
3. During the 15-year TIF, any expansion will be covered by the two previous bullet points.

Upon completion of the project and reassessment of a guaranteed new assessed value of three million five hundred twenty-three thousand seven hundred dollars (\$3,523,700), the Village will pay fifty five percent (55%) of the tax increment real estate taxes generated and collected from the new value of the Property to Amerex on an annual basis for 15 years.

For illustration purposes only, the general net tax rate for the Village of Howard for 2010 was \$17.37 per \$1,000 of value. In subtracting the State of Wisconsin's tax rate from the total net tax rate for the Village, the tax increment rate is \$17.20 per \$1,000 of valuation. Assuming there were \$3.5 million of New Value in 2013 and the tax increment rate remained at \$17.20, the annual payment would be \$110,080 as follows:

3,500 (\$3,500,000 New Value of Property) x \$17.20 (tax increment rate) = \$60,200

\$60,200 x 55% = \$33,110 (annual payment on New Value)

The annual payment shall be made on the first day of March of each year beginning in March 2013 contingent upon verification of the payment of real estate taxes and personal property taxes for the Property. The Village will be under no obligation to make the annual payment until such time as Amerex has paid all outstanding personal property and real estate taxes for the Property.

The Village's obligation to make annual payments under the Payment Schedule shall be suspended for any year that the general real estate tax value of the property as of January 1 is less than three million five hundred twenty-three thousand seven hundred dollars (\$3,523,700).

The Village's obligation to make annual payments shall terminate and Amerex will hold the Village harmless and make no further claim against the Village under the Payment Schedule upon the happening of any of the following events:

- a. Sale or other transfer of the property without the consent of the Village, which consent shall not be unreasonably withheld.
- b. Assignment of the property by Amerex for the benefit of creditors or bankruptcy proceedings involving Amerex.

- c. Stopping business operations at the property or reducing the level of operations such as to materially impact the value of the property, except during reasonable periods for remodeling or reconstruction due to casualty.
- d. Relocation of the business from the property.
- e. Any change in the Tax Incremental Finance Law in the State of Wisconsin which would materially impact the Village's ability to use the tax increment generated by the property for payment of the annual percentage value to Amerex or cause the Village to make all or part of the payment from the general tax levy for the Village.

ATTACHED INFORMATION

- I. Proposed Development Agreement

**AMEREX DEVELOPMENT AGREEMENT
TIF DISTRICT NO. 6**

THIS AGREEMENT, entered into as of this _____ day of July, 2011, by and between the VILLAGE OF HOWARD, WISCONSIN, (“Village”), a Wisconsin municipal corporation, and Amerex Corporation, an Alabama corporation and manufacturer of firefighting products, (“Amerex”).

WITNESSETH

WHEREAS, in August, 2008 the Village of Howard created and approved the Project Plan for Tax Incremental Financial District No. 6 in accordance with the provisions of Section 66.1105 of the Wisconsin Statutes in order to provide a viable method of financing the costs of needed public improvements within said district and create incentives and opportunities for appropriate private development which will contribute to the overall development of the Village; and

WHEREAS, Wis. Stats. Sec. 66.1331 and 66.1337 empower Villages to assist development projects by lending or contributing funds and performing other actions of a character which the Village is authorized to perform for other purposes; and

WHEREAS, Amerex has acquired certain Property in the TIF District No. 6, located in the 1500 Block of Brookfield Avenue, Village of Howard, Brown County, Wisconsin, and legally described as follows:

Lot 5, Brookfield Business Park First Addition, a County Plat, recorded with the Brown County Register of Deeds Office on March 31, 2011 as Document No. 2520530, Volume 1, Page 260 of County Plats

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hereinafter referred to as the (“Property”) and a copy of the County Plat (Exhibit A) is attached hereto and made part of this Agreement;

WHEREAS, Amerex will construct on the Property a twenty thousand (20,000) square foot office and manufacturing building and a six thousand five hundred (6,500) square foot fire research and test facility, with a valuation of \$3.5 Million Dollars which will provide twenty (20) to twenty-five (25) jobs hereinafter referred to as the (“Project”); and

WHEREAS, the Village believes that the development described herein and fulfillment generally of this Agreement are in the vital and best interests of the Village and its residents and in accord with the public purposes and conditions of applicable state and local laws and requirements under which said development has been undertaken and is being carried out; and

WHEREAS, the Village has determined to pay the costs of certain public improvements which are necessary to the development of the Property as contemplated herein, and to make certain

allocations to the Project in order to induce and assist Amerex in undertaking the Project and to meet the objectives of the TIF District No. 6 Project Plan.

NOW, THEREFORE, in consideration of the promises and mutual obligations of the parties hereto, the parties do hereby covenant and agree as follows:

**ARTICLE I
REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

Section 1.1 **Representation and Warranties of the Village.** The Village makes the following representations and warranties as of the date hereof and as of the date of closing:

- a. The Village represents and warrants to Amerex that they have the power and authority and legal right to enter into all of the transactions and to perform all of the obligations required to be entered into or performed by them under this Agreement.
- b. The Village represents and warrants to Amerex that they are empowered and authorized to execute and deliver this Agreement. This Agreement has been duly executed and delivered on behalf of the Village, and will constitute, when executed and when delivered, legal, valid and binding obligations of the Village, enforceable in accordance with these terms except as limited by bankruptcy, insolvency or civil laws of general application affecting the enforcement of creditors' rights.
- c. The Village represents and warrants that there are no actions, suits, or mechanic's or construction liens, and no legal proceedings before any Court or governmental agency pending or threatened for the Project.
- d. The Village represents and warrants that it shall cooperate with Amerex in a timely manner to obtain any land use or zoning permits from any applicable local, state, or federal authorities, including any permits required by Chapter 30 of the Wisconsin Statutes.

Section 1.2 **Representation and Warranties of Amerex.** Amerex makes the following representations and warranties:

- a. Amerex has power to enter into this Agreement and to perform its obligations hereunder and is not in violation of the Laws of State of Wisconsin.
- b. Amerex shall proceed with due diligence following execution of this Agreement to cause the Project to be undertaken and constructed on the Property pursuant to the terms, conditions and limitations of this Agreement, in accordance with the terms of this Agreement, and in the accordance with the plans and specifications and all local, state, and federal laws, ordinances, and regulations (including, but not limited to, Chapter 30 Permit, Site Plan and all conditions approved by the Village Plan Commission on January 31, 2011, wetland, storm water, environmental, zoning, energy, conservation, building code and public health laws, ordinances and regulations).

- c. Amerex will use its best efforts to obtain in a timely manner, all required permits, licenses and approvals, and will meet in a timely manner all ordinances and regulations which must be obtained or met before the project can lawfully undertaken or constructed, except those pertaining to portions of the Project specifically assigned to the Village herein.

ARTICLE II RESPONSIBILITIES OF THE PARTIES

Section 2.1 **Responsibilities of the Village.** The Village shall be responsible for the performance and all costs incurred for the following subject to Amerex's performance and the conditions and contingencies described below:

1. **Base Value.** The Base Value for the vacant Property located at 1520 Brookfield Avenue, as of January 1, 2011 is Twenty-Three Thousand Seven Hundred (\$23,700.00) Dollars.
2. **Amerex's Guaranty.** Pursuant to Amerex's Guaranty the new Assessed Value of the Property upon completion of the Project at 1520 Brookfield Avenue, shall reflect an increase of not less than \$3.5 Million Dollars over the Base Value of the Property as of January 1, 2012 and on the first day of January each year thereafter that the Village is required to make any annual payments under this Agreement.
3. **Project Completion.** Upon completion in 2011 of the Amerex (Solberg Division Headquarters) including an office/manufacturing facility and a testing facility, the Property at 1520 Brookfield Avenue, will be reassessed in accordance with Chapter 70, Wis. Stats. and have a general real estate tax value of not less than Three Million Five Hundred Twenty-Three Thousand Seven Hundred (\$3,523,700.00) Dollars as of January 1, 2012.
4. **New Value.** For each year of payment, the New Value of the Property and buildings located at 1520 Brookfield Avenue, shall be calculated by subtracting the Base Value of the Property from the Assessed Value of the Property for real estate tax purposes as of January 1st for that year and each year thereafter that payments will be made by the Village.
5. **Payment Schedule.** Upon completion of the Project in 2011 and reassessment of the Property as of January 1, 2012, with a guaranteed new Assessed Value of \$3.5 Million Dollars, the Village will pay fifty-five percent (55%) of the tax increment real estate taxes generated and collected from the New Value of the Property to Amerex on an annual basis for a period of fifteen (15) years commencing in 2013 subject to the suspension provision at paragraph 7 and the termination provisions at paragraph 8.

The current tax incremental rate that would apply to the New Value is the total net tax rate for the Village minus the tax rate for the State of Wisconsin.

For illustration purposes only, the general net tax rate for the Village of Howard for 2010 was \$17.37 per \$1,000 of value. In subtracting the State of Wisconsin's tax rate from the total net tax rate for the Village, the tax increment rate is \$17.20 per \$1,000 of valuation. Assuming there was \$3.5 Million Dollars of New Value in 2012 and the tax increment rate remained at \$17.20 the annual payment would be \$33,110.00 as follows:

$$3,500 (\$3,500,000 \text{ New Value of Property}) \times \$17.20 (\text{tax increment rate}) = \$60,200.00$$

$$\$60,200.00 \times 55\% = \underline{\$33,110.00} (\text{annual payment on New Value})$$

The annual payment shall be made on the first day of March of each year beginning March 1, 2013 contingent upon verification of the payment of real estate taxes and personal property taxes for the Property. The Village will be under no obligation to make the annual payment until such time as Amerex has paid all outstanding personal property and real estate taxes for the Property.

6. **Reduction in Payment of New Value.** If the constructed office manufacturing building is not LEED certified then the Village's payment of New Value shall be reduced from fifty-five percent (55%) to fifty percent (50%) of the tax increment real estate taxes generated and collected from the New Value of the Property subject to all the same provisions and conditions set forth in Section 2.1.

7. **Suspension of Payment Schedule.** The Village's obligation to make annual payments shall be suspended for any year that the general real estate tax value of the Property as of January 1st is less than Three Million Five Hundred Twenty Three Thousand Seven Hundred (\$3,523,700.00) Dollars.

8. **Termination of Payment Schedule.** The Village's obligation to make annual payments shall terminate and Amerex will hold the Village harmless and make no further claim against the Village under the Payment Schedule upon the happening of any of the following events:

- a. Sale or other transfer of the Property without the consent of the Village, which consent shall not be unreasonably withheld.
- b. Assignment of the Property by Amerex for the benefit of creditors or bankruptcy proceedings involving Amerex.
- c. Stopping business operations at the Property or reducing the level of operations such as to materially impact the Value of the Property.
- d. Relocation of the business from the Property.
- e. Any change in the Tax Incremental Finance Law in the State of Wisconsin which would materially impact the Village's ability to use the tax increment generated by the Property for payment of the annual percentage value to

Amerex or cause the Village to make all or part of the payment from the general tax levy for the Village.

9. **Utilities.** The Village at Village expense will install sewer and water service to the Property line. The location of these utilities on the Property line is identified in Exhibit B. Amerex would be responsible for the cost of lateral installation and connection to the municipal sewer and water.

Section 2.2 **Amerex's Responsibilities.** Amerex shall be responsible for the performance and all costs incurred for the following:

A. Building - Project

Amerex will construct on the Property a twenty thousand (20,000) square foot office manufacturing building which will be LEED certified along with a six thousand five hundred (6,500) square foot test facility per the Site Plan and all conditions as approved by the Village Plan Commission on January 31, 2011 which is incorporated herein by reference and made part of this Agreement.

B. Guarantee

For payments by the Village to Amerex, Amerex is guaranteeing an assessed 2012 real estate value for the Buildings and Improvements at 1520 Brookfield Avenue, Village of Howard, of Three Million Five Hundred Twenty-Three Thousand Seven Hundred (\$3,523,700.00) Dollars.

**ARTICLE III
INDEMNIFICATION**

Section 3.1 **Indemnification by the Village.** The Village agrees to protect and defend Amerex now and forever, and further agrees to hold Amerex harmless, from any claim, demand, suit, action or other proceeding whatsoever by any person or entity arising or purportedly arising from the negligence, willful or negligent misrepresentation, or willful or wanton misconduct of the Village, or their respective employees and/or agents, in fulfilling the obligations under this Agreement or the transactions contemplated hereby.

Section 3.2 **Indemnification by Amerex.** Amerex agrees to protect and defend the Village now and forever, and further agrees to hold the Village harmless, from any claim, demand, suit, action or other proceeding whatsoever by any person or entity arising or purportedly arising from the negligence, willful or negligent misrepresentation, or willful or wanton misconduct of Amerex, or their respective employees and/or agents, in fulfilling the obligations under this Agreement or the transactions contemplated hereby.

Section 3.3 **Contractual Liability.** Each party shall be responsible for satisfying any and all contracts and/or subcontracts entered into by that party with third parties for purposes of completing its respective portion of the project, and shall indemnify and hold the other parties harmless from any such contractual liability.

**ARTICLE IV
DEFAULT**

Section 4.1 **Acts constituting default.** Subsequent to closing, the failure of any party to observe or perform any of the covenants, conditions, or obligations applicable to that party under this Agreement in a timely or satisfactory matter, shall constitute a default under the terms of this Agreement.

Section 4.2 **Acts permissible in the event of a default.** In the event of such a default, the aggrieved party may take any one or more of the following actions after giving 30 days written notice to the defaulting party, but only if the default has not been cured within said 30 days:

- a. The party may suspend its performance under this Agreement until it receives assurance from the defaulting party, deemed adequate by the aggrieved party, that the defaulting party will cure its default in a timely matter and intends to continue performance under the Agreement.
- b. The aggrieved party may proceed to arbitration.

Section 4.3 **No implied Waiver.** In the event any covenant or provision of this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 4.4 **Arbitration.** In the event any dispute should arise under this Agreement, the parties agree to submit the matter to binding arbitration pursuant to Chapter 788 of the Wisconsin Statutes. Arbitration shall take place in Brown County unless otherwise agreed to by the parties. The parties shall select a mutually agreed upon arbitrator to arbitrate the matter. In the event the parties cannot agree upon the arbitrator, each party shall select their own arbitrator who shall jointly select a third arbitrator. The third arbitrator shall be the person who arbitrates the matter, and the decision shall be binding upon all parties. The parties share equally in the cost of such arbitrator.

**ARTICLE V
ADDITIONAL PROVISIONS**

Section 5.1 **Conflicts of Interest.** No member of the governing body or other officer of the Village shall have any financial interest, direct or indirect, in this Agreement, the Property, or the Project, or any contract, agreement or other transaction contemplated to occur or be undertaken there under or with respect thereto not shall any such member of the governing body or other official participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the Village shall be personally liable to the Village in the event of any default or breach by Amerex or successor or on any obligations under the terms of this Agreement.

Section 5.2 **Restrictions on Sale of the Development Area.** Without the express written consent of the Village, any lands or parcels comprising the Property may not be sold, transferred or conveyed in any manner which would under law in effect on the date of this Agreement render any portion of the Property exempt from property taxation; provided, however, that the Village's consent shall not be required in connection with the granting of any mortgage to finance or refinance lands or parcels comprising the Property or in connection with any sale or conveyance pursuant to or following any foreclosure (or acceptance of deed in lieu of foreclosure) of such mortgage. The covenants contained in this section shall bind and run with the lands and parcels comprising the Property.

Section 5.3 **Headings.** Descriptive headings as used in this Agreement are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

Section 5.4 **Notice.** Any notice required under this Agreement shall be given in writing, signed by the party giving notice, and personally delivered or mailed by first class mail, postage prepaid, to the parties, and addressed as follows:

If to the Village:
Village Administrator
2456 Glendale Avenue
P.O. Box 12207
Green Bay, WI 54307-2207

If to Amerex:
Amerex Corporation
7595 Gadsden Hwy
Trussville, AL 35173-0081

Notice shall be deemed delivered, in the case of personal delivery on the date when personally delivered, or in the case of mail, on the date when said notice is deposited in the United States mail with sufficient postage to affect such delivery.

Section 5.5 **Force Majeure.** If any party hereto shall be materially delayed or hindered in or prevented from the performance of any act required to be performed by such party by reason of Acts of God, strikes or walk outs, unavailability of materials, failure of power, riots, insurrections, terrorist acts, the act or failure to act of another party, adverse weather conditions preventing the performance of work as certified to by an architect, war or other reason beyond such party's control, then the time for performance of such act shall be extended for a period of such delay provided that the party whose performance is delayed, hindered, or prevented gives immediate written notice to the other parties and takes all reasonable actions to overcome the condition affecting its performance as expeditiously as possible. At the request of any party hereto, authorized representatives of all the parties to this Agreement shall meet to discuss any condition affecting performance hereunder and potential actions that might be undertaken to overcome such conditions.

Section 5.6 **Entire Agreement.** This document contains the entire Agreement between the parties with respect to the matter set forth herein, and shall inure to the benefit of and shall bind the parties hereto, their respective heirs, executors, successors or assigns. This Agreement may be modified only in writing, with said written modification(s) signed by an authorize representative of all parties.

Section 5.7 **Governing Law.** This Agreement shall be construed in accordance with the Laws of the State of Wisconsin.

Section 5.8 **Cooperation.** The parties hereto agree to cooperate in the prosecution of applications made by any party for any governmental certificates, permits, or approvals appropriate or necessary for the consummation of the transactions contemplated by this Agreement or the use of occupancy of the Property. The parties agree at any time, or from time to time at the written request of another party, to sign and deliver other such documents as may be reasonably requested or may be reasonably necessary or appropriate to give full effect to the terms and conditions of this Agreement.

Section 5.9 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

Section 5.10 **Relationship with Parties.** Nothing contained in this agreement shall be deemed or construed, either by the parties hereto or by any third party, to create the relationship of principal and agenda or to create any partnership, joint venture or other association between the Village and Amerex Development.

Section 5.11 **Further Assurances.** Village and Amerex, each agree, at any time or from time to time at the written request of the other, to sign and deliver such other instruments, notices, conveyances, Agreements or other documents as may be reasonable requested or as may be reasonably necessary or appropriate to give full effect to the terms and conditions of this agreement.

Section 5.12 **No Liability of Village.** Village shall have no obligation or liability to the lending institute, architect, contractor, or subcontractor, or any other party retained by Amerex in the performance of its obligations and responsibilities under the terms and conditions of this Agreement. Amerex specifically agrees that no representations, statements, assurances or guarantees will be made by Amerex to any third party or by any third party which are contrary to these provisions.

Section 5.13 **Recording of Agreement.** The Agreement and any and all subsequent modifications thereof or additions thereto may upon being duly executed, be recorded by the Village with the Register of Deeds for Brown County, Wisconsin.

Section 5.14 **Successors and Assigns.** The terms of this Agreement shall be binding upon and inure to the benefit of the parties hereto as well as their respective successors, transferees and assigns. With the consent of the Village, which consent shall not be unreasonably withheld, Amerex may assign this Agreement, or any part thereof, from time to time to any entity

controlled or managed by Amerex, or to any person acquiring any portion or portions of the Development Area, provided that, in the event of any such transfer, the applicable terms and conditions of this Agreement shall run with the title of the Property included in the portion of the Development Area so transferred. The Village may condition its consent upon the transferee expressly assuming all of the obligations of Amerex as contained in this Agreement. Upon any such transfer of Amerex’s interest, Amerex initially named herein shall be released from its obligations hereunder.

Section 5.15 **Construction of Agreement.** It is understood and agreed by Amerex and the Village that this Agreement shall be construed without regard to any presumption or other rule regarding construction against the party causing the Agreement to be drafted. Each party having had the opportunity to have the Agreement reviewed by their respective counsel or having waived their right to do so as evidence by their signature hereon.

Section 5.16 **Severability.** In the event that one or more provisions of this Agreement shall be declared to be invalid, illegal or unenforceable in any respect, unless such invalidity, illegality or unenforceability shall be tantamount to a failure of consideration, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be at all affected or impaired thereby.

In witness whereof, the parties hereto have executed this Agreement as of the date first written above.

VILLAGE OF HOWARD, WISCONSIN

By: _____
Name: Burt McIntyre
Title: Village President

By: _____
Name: Robert Bartelt
Title: Administrator/Clerk

AMEREX CORPORATION

By: _____
Name : Dennis C. Kennedy, PE
Title: General Manager, Foam Products



EXHIBIT B

to Amerex Development Agreement
Location of Sewer & Water Utilities to Property Line

