Resolution No. 01-2016

VILLAGE OF GILBERTS

A RESOLUTION AUTHORIZING EXECUTION OF A TEMPORARY LICENSE AGREEMENT AND HOLD HARMLESS AGREEMENT BETWEEN THE VILLAGE OF GILBERTS AND FOSIVA

Be it Resolved by the President and 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 a Temporary License Agreement between the Village and FOSIVA as are necessary and convenient to effectuate the temporary license agreement as here by attached hereto and made a part hereof as Exhibit A as approved.

Section 2:

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

Passed this 5th day of January, 2016 by a roll call vote as follows:

	Ayes	Nays	Absent	Abstain
Trustee David LeClercq	✓			
Trustee Dan Corbett	✓			
Trustee Nancy Farrell	✓			
Trustee Louis Hacker	✓			
Trustee Elissa Kojzarek	✓			
Trustee Guy Zambetti	✓			
President Rick Zirk				

APPROVED THIS 5th DAY OF Jan, 2016

_____
Village President, Rick Zirk

ATTEST:

_____
Village Clerk, Debra Meadows

SEAL OF THE
INCORPORATED
1890
ILLINOIS
(SEAL)
VILLAGE OF GILBERTS

TEMPORARY LICENSE AND HOLD HARMLESS AGREEMENT

THIS TEMPORARY LICENSE AGREEMENT dated as of this 5th day of January, 2016, (**"Execution Date"**) between the **VILLAGE OF GILBERTS**, an Illinois municipal corporation (**"Village"**) and **FOSIVA** (**"Licensee"**):

WHEREAS, the Village and Licensee are negotiating an agreement for the Licensee to install and operate a fiber optic network in the Village (**"Fiber Optic Agreement"**); and

WHEREAS, while the parties continue to negotiate the terms of the Fiber Optic Agreement, the Licensee has requested, and the Village has agreed to grant, limited access to and use of two Village owned properties, the Public Works Building at 73 Industrial Drive and the Glacial Falls Lift Station located at 900 Glacial Falls Dr., both in Gilberts, Illinois (collectively referred to as **"Licensed Premises"**), to allow Licensee to begin installation of certain facilities related to the fiber optic network, as described and/or depicted on **Exhibit A** (**"Facilities"**); and

NOW THEREFORE, in consideration of the recitals, mutual covenants, and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby mutually agree as follows:

SECTION 1. GRANT OF LICENSE.

The Village hereby grants to the Licensee, and the Licensee hereby accepts, a revocable limited use license (**"License"**) to access the Licensed Premises for the purpose of constructing and maintaining the Facilities in conformity with the plans attached as **Exhibit A.** The Licensee shall complete the Facilities in a lien-free, workmanlike manner pursuant to permits issued by the Village. The Licensee shall keep the Facilities and Licensed Premises at all times in the proper condition for their intended use and shall be solely responsible for any and all injuries caused by the Licensee's failure to do so. The Village reserves the right to use the Licensed Premises in any manner that will not prevent, impede, or interfere in any way with the exercise by Licensee of the rights granted by this License Agreement. The Licensee acknowledges that this License is for the sole and exclusive benefit of the Licensee, and shall not be transferred or assigned without prior written consent of the Village, which consent may be withheld at the Village's sole and absolute discretion.

SECTION 2. TERM.

This License Agreement will expire the earlier of (i) the parties approving and executing the Fiber Optic Agreement; (ii) termination pursuant to Section 3 of this License Agreement; or (iii) March 30, 2016. Upon termination or expiration of this License Agreement, the Licensee shall remove the Facilities and restore the Licensed Premises, at its sole cost and expense, as nearly as practicable to the condition immediately preceding the installation of the Facilities.

SECTION 3. TERMINATION.

A. **Termination by the Village.** Notwithstanding anything to the contrary in this License Agreement, the Village may terminate this License Agreement, in whole or in part, by providing Licensee with notice of one of the following conditions:

(i)	If the Licensee fails to comply with any of the terms, conditions, or limitations set forth in this License Agreement and does not cure such failure within 10 days of prior written notice; or
(ii)	If the Licensee violates any applicable federal, state, county, or Village law, ordinance, rule, or regulation; or
(iii)	If the Village, in its sole discretion, determines that a public need or purpose exists that requires the termination of this License Agreement or that there is a safety concern resulting from activities undertaken pursuant to this License Agreement.

B.   **Termination by Licensee.** Upon removal of the Facilities from the Licensed Premises and restoration of the Licensed Premises, the Licensee may terminate this License Agreement by providing the Village with 30 days prior written notice.

SECTION 4. INDEMNIFICATION AND INSURANCE.

Licensee shall hold harmless, indemnify, and defend the Village, its elected and appointed officials, attorneys, employees, and representatives against any and all losses, expenses, claims, costs, causes, and damages, including without limitation litigation costs and attorneys' fees (i) for any accident, injury, or death to persons or loss or damage to property occurring on or about the Facilities and/or Licensed Premises, or any parts thereof, and due in whole or in part to any act or failure to act or any negligence or default under this License Agreement by Licensee, its tenants, contractors, representatives, invitees, licensees or employees; or (ii) on account of any failure on the part of Licensee to perform or comply with any terms or conditions of this License Agreement ("*Claims*"). The provisions of this Section shall not be limited by the amounts of any insurance provided by Licensee pursuant to this License Agreement. Claims that arise prior to the termination of this License Agreement shall survive the termination of this License Agreement.

Licensee shall obtain and maintain, at its sole expense, comprehensive general liability insurance in an amount not less than $2,000,000 to insure against (i) personal injury, death, or property damage occurring on or in connection with the Facilities and/or Licensed Premises, (ii) Licensee's obligations under this License Agreement, and (iii) contractor liability. In addition, all of Licensee's contractors shall procure and provide evidence of insurance in the amounts and manner set forth in this Section, and as approved by the Village. The Village shall be named as an additional insured on all insurance policies and provide a certificate of insurance to evidence coverage and, at the Village's request, provide copies of all policies.

SECTION 5. ENFORCEMENT.

The parties may, in law or in equity, by suit, action, mandamus or any other proceeding, including, without limitation, specific performance, enforce or compel the performance of this License Agreement; provided that the Licensee agrees that it will not seek, and does not have the right to seek, to recover a judgment for monetary damages against the Village or any elected or appointed officials, agents, representatives, attorneys or employees on account of the negotiation, execution, or breach of any of this License Agreement. Licensee agrees to pay all reasonable costs, attorneys' fees, and expenses incurred by the Village in enforcing this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this License Agreement to be executed, effective as of the date first written above.

ATTEST:

Delia Meadows

VILLAGE OF GILBERTS

By: _____

Its: _____

ATTEST:

FOSIVA

_____

_____

73 Industrial Drive: Upstairs document storage room will receive a single vertical 19 inch rack cabinet to be located on the far east end of the room. Installation of this rack will include fiber and electrical connections.

Glacial Falls Lift Station: Fiber network support cabinets will be located within the Glacial Falls Lift Station in the Conservancy. Preliminary drawing is attached.