

VILLAGE OF GILBERTS

RESOLUTION 24-2024

**A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING
BETWEEN THE VILLAGE OF GILBERTS AND NORTHERN ILLINOIS
UNIVERSITY FOR FIBER OPTIC CABLE ACCESS**

WHEREAS, the Village of Gilberts ("*Village*") has a Public Works Department ("*Department*"), which maintains Village streets and other Village infrastructure; and

WHEREAS, the Department currently operates from the Village facility located at 73 Industrial Drive, Gilberts, Illinois; and

WHEREAS, on February 5, 2024, the Village Board of Trustees approved Ordinance 05-2024, approving a purchase and sale agreement for the property located at 185 Industrial Drive, Gilberts, Illinois, which is intended for use by the Village as the new site for the Department's operations (the "*New Facility*"); and

WHEREAS, the New Facility is not currently connected to the Village's internal fiber optic network ("*Village Network*") and, therefore, cannot access Village files or applications necessary for the Department's operations; and

WHEREAS, Northern Illinois University ("*NIU*") is an Illinois public institution of higher education that maintains a regional fiber optic network ("*NIU Network*") that is functional and adequately located to provide service to the New Facility; and

WHEREAS, in order to connect to the NIU Network, the New Facility must first be serviced by the expansion of fiber optic cable resources through the Village Network; and

WHEREAS, NIU has represented to the Village that it is able to install an expanded stretch of fiber optic cable connecting the Village Network to the New Facility in preparation for the Department's relocation to the New Facility at a cost to the Village of \$67,000; and

WHEREAS, the Village Board of Trustees has determined that it is in the best interests of the health, safety, and welfare of the Village and its residents to approve the memorandum of understanding between the Village and NIU ("*Memorandum of Understanding*") for the expansion of the Village Network to the New Facility in a form substantially similar to the one attached to this Resolution as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE VILALGE OF GILBERTS, IN KANE COUNTY, ILLINOIS, as follows:

Section 1. Recitals and Exhibits. The foregoing recitals are incorporated herein as the findings of the Village Board, and, together with this Resolution's exhibit, are hereby incorporated into and made a part of this Resolution.

Section 2. Approval: Authorization. The Memorandum of Understanding with NIU attached hereto as Exhibit A is hereby approved, and the Village President and Village Clerk are authorized and directed to execute the Memorandum of Understanding on the Village's behalf.

Section 3. Repeal. All ordinances, resolutions, or parts thereof in conflict with this Resolution are repealed to the extent of any such conflict.

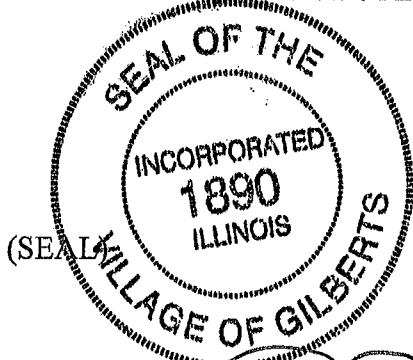
Section 4. Severability. Any section or provision of this Resolution that is found to be void or invalid shall not affect the remaining sections or provisions of this Resolution, which are hereby deemed severable and shall remain in full force and effect.


Section 5. Effective Date. This Resolution shall be in full force and effect from and after its approval in the manner provided for by law.

PASSED BY THE BOARD OF TRUSTEES of the Village of Gilberts, Kane County, Illinois, this 16th day of July, 2024.

	<u>Ayes</u>	<u>Nays</u>	<u>Absent</u>	<u>Abstain</u>
Trustee Robert Vanni	X	_____	_____	_____
Trustee Robert Chapman	X	_____	_____	_____
Trustee Justin Redfield	X	_____	_____	_____
Trustee Jeanne Allen	X	_____	_____	_____
Trustee Frank Marino	X	_____	_____	_____
Trustee Brandon Coats	X	_____	_____	_____
President Guy Zambetti	X	_____	_____	_____

APPROVED THIS 16th DAY OF JULY, 2024.





 Guy Zambetti, Village President

ATTEST: 

 Lynda Lange, Village Clerk

EXHIBIT A

Memorandum of Understanding

**MEMORANDUM OF UNDERSTANDING BETWEEN THE VILLAGE OF GILBERTS
AND NORTHERN ILLINOIS UNIVERSITY**

This Memorandum of Understanding (“*MOU*”) by and between the Village of Gilberts and Northern Illinois University is made and entered into as of the 16 day of July, 2024. The Village and NIU are sometimes referred to herein individually as a “*Party*” and collectively as “*Parties*”.

WHEREAS, The purpose of this MOU between the Village of Gilberts (“*Village*”) and Northern Illinois University is to define and establish a collaborative fiber optic service between the Village and Board of Trustees of Northern Illinois University (“*NIU*” or “*University*”) for the build of fiber resources from the current Village Public Works Building, located at 73 Industrial Drive, Gilberts, Illinois, 60136 (“*73 Industrial Drive*”), to the newly acquired Village property, located at 185 Industrial Drive, Gilberts, Illinois, 60136 (“*185 Industrial Drive*” or “*Premises*”). The goal of this MOU is to continue the collaboration between the Parties and expand the Village’s use of fiber optic cable resources.

WHEREAS, access to fiber optic resources is necessary for the connection of the newly acquired Village property located at 185 Industrial Drive; and

WHEREAS, the Village has requested NIU to purchase materials, install, and deliver the requested duct, fiber optic cable, hand holes, racks, and complete splicing to install fiber optic at 185 Industrial Drive.

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements set forth herein, and for other valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows.

SECTION 1. RECITALS. The above recitals are incorporated by reference herein as if restated.

SECTION 2. VILLAGE OBLIGATIONS. In consideration of NIU installing the fiber optic cable, and in addition to the payment required under Section 4, the Village agrees as follows:

- A. The Village will pay in full all financial obligations in accordance with the terms of this MOU.
- B. Duct maintenance and locating services will be provided by the Village.
- C. The Village will assume ownership of the installed fiber optic cable, duct, and hand hole assets once construction, installation, and testing at 185 Industrial Drive is completed by NIU.
- D. The Village will assume any and all future costs for maintenance, including repairs, and relocation requests of the fiber assets covered by this MOU.

SECTION 3. ACCESS TO PREMISES. The Village shall be notified by NIU for access to Village fiber handholes, vaults, buildings, or other facilities at the Premises. NIU will contact the

Village by e-mail (info@villageofgilberts.com) or phone (847-428-2861) to request access to Village fiber handholes, vaults, buildings, or other facilities at the Premises. The Village shall review and respond to a request by NIU to access 185 Industrial Drive in a reasonably timely manner.

SECTION 4. NIU OBLIGATIONS. NIU agrees to purchase, install, and test fiber optic cable, duct, and handholes necessary to connect the current fiber near the building at 73 Industrial Drive to the building at 185 Industrial Drive. The building entry for fiber optic at 185 Industrial Drive shall be at the building entry of 185 Industrial Drive with bulkhead, terminations, and installed racks where appropriate. The defined installation route of fiber strands connecting 73 Industrial Drive to 185 Industrial Drive shall follow the route as displayed in Exhibit A.

SECTION 5. OWNERSHIP OF FIBER ASSETS. Upon NIU's completion of construction, installation, and testing of fiber optic at 185 Industrial Drive, the Village shall assume ownership of fiber, duct, and hand holes at 185 Industrial Drive.

SECTION 6. PAYMENT. The Village shall make a one-time payment in the amount of sixty-seven thousand dollars (\$67,000.00) to NIU for the installation and testing of duct, fiber optic cable, and handholes to 185 Industrial Drive as outlined in Exhibit A.

- A. With respect to any payment made by the Village to NIU under this MOU, NIU shall invoice the Village, and the Village shall make payment, in accordance with any instructions set forth by the invoice issued by NIU to the Village.
- B. The Village shall make the one-time payment under this MOU to Commercial Accounts Receivable, Bursar Office, Northern Illinois University, 1425 W. Lincoln Hwy., DeKalb, Illinois 60115.
- C. The Village shall make the one-time lump sum payment to the NIU under this MOU within thirty (30) days of the Village's receipt of the invoice from NIU.

SECTION 7. TERM AND TERMINATION.

- A. The term of this MOU shall be through the completion of the construction of the fiber installation and Village acceptance upon completion of testing.
- B.

SECTION 8. INSURANCE. Each Party to this MOU shall maintain adequate insurance, either as self-insurance or with companies lawfully authorized to do business in the state of Illinois, sufficient to cover any liability that may arise out of the activities contemplated by this MOU.

SECTION 9. INDEMNIFICATION AND HOLD HARMLESS. Subject to applicable state law, the Parties agree that neither Party to this MOU shall be legally liable for any damages, whether bodily injury or property damage, caused by the acts, omission, or negligent conduct of

the other Party. To the extent permitted by law, neither Party shall be required to indemnify and defend the other Party, its officers, officials, employees, and agents from and against any and all losses, claims, liabilities, and expenses, including reasonable attorney fees, if any, which the other Party may suffer or incur from this MOU.

SECTION 10. ASSIGNMENT. This MOU shall be binding upon and inure to the benefit of the Parties and all respective successors and assignees of a Party. Neither Party may assign any rights, duties, or obligations under this MOU without prior written consent of the other Party. A Party shall not unreasonably withhold consent to an assignment under this section.

SECTION 11. SERVICE OF NOTICE. Service of any notices required or permitted under this MOU shall be sent to Parties at:

Village of Gilberts

Northern Illinois University

Via E-mail: info@villageofgilberts.com

Via-Email: nimc@niu.edu
Northern Illinois University, Division
of Information Technology Services

With a copy to:

Via E-Mail: kasprooth@ancelglink.com

Village Attorney

A copy of any notice required or permitted under this MOU shall be sent to any other address specified by a Party upon giving notice in accordance with this Section. Notices sent in accordance with this section are to be effective upon receipt with the sender to bear the burden of proof.

SECTION 12. MODIFICATION. No modification or amendment of this MOU shall be effective or binding unless agreed to in writing and signed by both NIU and the Village.

SECTION 13. FORCE MAJEURE. No liability hereunder shall result to a Party by reason of delay in performance or inability to perform caused by force majeure, that is, circumstances beyond the reasonable control of the party, including, without limitation, acts of God, fire, flood, war, civil unrest, epidemic, pandemic, or shortage of or inability to obtain material as equipment. In the event that unforeseen circumstances or any force majeure event prevents the delivery of the services as specified in this MOU beyond the fifteen (15) business days to allow NIU to cure, the delivery of the services will be terminated, and this MOU may be terminated upon written notice from either party. Notwithstanding the foregoing, under no circumstances will unforeseen circumstances or any force majeure event excuse Village's payment obligations under this MOU for services rendered.

SECTION 14. GOVERNING LAW. The Parties shall comply with all applicable laws, rules, and regulations in performing their respective obligations under this MOU. This MOU shall be governed by, and interpreted according to, the laws of the State of Illinois without regard to the conflict of law principles of the State of Illinois. The venue for any dispute, conflict, or legal claim arising out of this MOU shall be in the Circuit Court of Kane County, Illinois.

SECTION 15. RELATIONSHIP OF THE PARTIES. The Parties agree that each Party shall perform its obligations under this MOU as an independent contractor of the other Party. Neither Party shall be considered an employer or agent of the other Party for any purpose under this MOU.

[Remainder of this page intentionally left blank]

IN WITNESS THEREOF, the undersigned Parties have caused this MOU between the Village and NIU to be duly executed by their authorized representatives as of the date set forth below.

The Board of Trustees of Northern Illinois University


George
Middlemist

Digitally signed by George Middlemist
Date: 2024.09.03 10:08:49 -0500'

George Middlemist, Vice-President and Chief Financial Officer

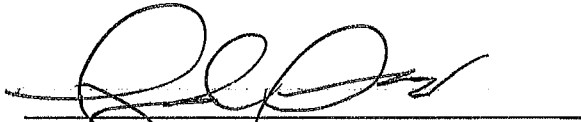
Date: __, __, ____

The Village of Gilberts



Guy Zambetti, Village President

Date: __, __, ____



Lynda Lange, Village Clerk

Date: 7, 16, 2024

EXHIBIT A

Route of Fiber Installation To and Access Installation Point At 185 Industrial Drive

