

# Village of Gilberts

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

## Village Administrator Memorandum 62-12

**TO:** President Rick Zirk  
Board of Trustees

**FROM:** Ray Keller, Village Administrator *PK*

**DATE:** November 16, 2012

**RE:** Village Board Meeting – November 20, 2012

---

The following summary discusses the agenda items for the Village Board meeting scheduled for November 20, 2012:

### 1. CALL TO ORDER

### 2. ROLL CALL / ESTABLISH QUORUM

### 3. PUBLIC COMMENT

### 4. CONSENT AGENDA

#### A. Motion to approve Minutes from the November 6, 2012 Village Board Meeting

Staff recommend approval of the minutes, which were reviewed at the November 13 Committee of the Whole meeting. Please contact Village Clerk Debra Meadows prior to the meeting if you have any questions or corrections.

#### B. Motion to approve Minutes from the November 13, 2012 Committee of the Whole Meeting

Please review the enclosed minutes from the November 13 Committee of the Whole meeting. Please contact Village Clerk Debra Meadows prior to the meeting with any corrections or questions. Staff recommend approval.

#### C. Motion to approve October 2012 Treasurer's Report

Staff recommend approval of the October 2012 Treasurer's Report, which was reviewed at the November 13 Committee of the Whole meeting. Please contact Finance Director Marlene Blocker prior to the meeting if you have any questions or need another copy of the report.

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

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

**D. Motion to approve Bills & Salaries dated November 20, 2012**

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

**E. Motion to approve Resolution 26-2012, a Resolution Estimating the amount of the Tax Levy**

The Village is required to set a maximum amount of property taxes to be collected in the next tax year, which is projected to be \$963,044.00 in tax year 2013, an increase of 3.5% over the 2012 tax levy amount. Because the projected levy increase is less than 5% over the 2012 actual levy (i.e. the amount collected), the Truth in Taxation Act does not require a public hearing but Staff recommend holding one anyway to provide residents a formal opportunity to comment on the estimated levy.

Staff recommend approval of the resolution, which was reviewed and added to the consent agenda at the November 13 Committee of the Whole meeting. The public hearing will be held at the December 18 Village Board meeting.

**F. Motion to approve Resolution 27-2012, a Resolution Establishing a Time and Place for the Public Hearing to Consider a Tax Increment Financing Redevelopment Plan and Project for the Proposed Higgins Road Industrial Park Conservation (IPC) Area**

PGAV, the Village's TIF consultants, have prepared a draft Redevelopment Plan for the Higgins Road Industrial Park Conservation Area TIF District. This is a new TIF district that would support the redevelopment of the Riemer Centre Industrial Park into the Prairie Corporate Park concept proposed by Interstate Partners.

State statute requires that a public hearing on the redevelopment plan be held prior to the creation of the TIF. The provided resolution sets the public hearing date for the Village Board meeting on January 8, 2013. Approval of the resolution has no impact on the adoption of the redevelopment plan, TIF structure, etc. other than to satisfy the statutory requirement. The public hearing notice will be sent to the affected taxing jurisdictions and published twice prior to the hearing date. Staff recommend approval. Please let me know if you have any questions about the plan or the TIF setup process.

**5. ITEMS FOR APPROVAL**

There are no items submitted for approval, except any items that may be removed from the Consent Agenda.

**6. ITEMS FOR DISCUSSION**

**A. Resolution 25-2012, a Resolution authorizing the execution of an agreement between the Village of Gilberts and i3 American Inc. to provide for the construction and operation of FiberCity Gilberts**

Staff continue to refine an agreement with i3 America Inc. to start the FiberCity Gilberts project, a public-private partnership that would extend a fiber optic network throughout Gilberts. At no cost to the Village, i3 would primarily use the Village's sanitary sewer system to install fiber optic cable adjacent to every address in the Gilberts. I3 would manage the open-content network, which will ultimately expand residents' and business' options for internet, cable and telecommunications providers.

I3 is also committing to providing two strands of fiber to all of the Village's facilities, including the water towers, by August 31, 2013.

The agreement has been revised to address most of the issues raised at the November 6 board meeting, as outlined in the accompanying staff report and revised draft agreement. Staff identified two remaining questions to be addressed:

1. The term of the agreement. I3 assumes that the cost of installing the fiber optic network will be amortized over 30 years, but Staff question whether a shorter duration would be appropriate term for this agreement.
2. Delivery date by which the network will be extended to the entire Village. I3 has committed to extending the fiber network to connect the Village's facilities by August 31, 2013, but has not committed to completing the Village-wide network by a certain date. I3 intends to prioritize network extensions into neighborhoods and subareas of the Village based on demand, which may affect the eventual rollout of services to the entire Village. Staff request direction on an appropriate deadline for extending the network throughout the entire Village.

Staff request the Board's direction on these issues. Staff will revise the agreement to incorporate the Board's comments and prepare the document for the Board's formal consideration at one of the meetings in December. Please contact Assistant to the Administrator Bill Beith with any questions or requests for additional documentation.

**B. Higgins Road Industrial Park Conservation Area TIF District**

PGAV, the Village's TIF consultants, have prepared a draft Redevelopment Plan for the Higgins Road Industrial Park Conservation Area TIF District. This is a new TIF district that would support the redevelopment of the Riemer Centre Industrial Park into the Prairie Corporate Park concept proposed by Interstate Partners. At the meeting, Staff will continue the discussion regarding using TIF-funded incentives to assist with infrastructure completion and other eligible development costs. Staff and the developer's representatives continue to work on the numbers and will report on their progress at the meeting.

**7. STAFF REPORTS**

**Staff will provide updates on current activities at the meeting.**

**8. BOARD OF TRUSTEES REPORTS**

**9. PRESIDENT'S REPORT**

**10. EXECUTIVE SESSION**

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

**11. ADJOURNMENT**

**Village Board of Trustees  
Meeting Agenda  
Village of Gilberts  
87 GALLIGAN ROAD,  
GILBERTS, ILLINOIS 60136  
November 20, 2012  
7:00 P.M.**

**A G E N D A**

**ORDER OF BUSINESS**

- 1. CALL TO ORDER / PLEDGE OF ALLEGIANCE**
- 2. ROLL CALL / ESTABLISH QUORUM**
- 3. PUBLIC COMMENT**
- 4. CONSENT AGENDA**
  - A. A Motion to approve Minutes from the November 6, 2012, Village Board Meeting
  - B. A Motion to approve Minutes from the November 13, 2012 Committee of the Whole Meeting
  - C. A Motion to approve the October 2012 Treasurer's Report
  - D. A Motion to approve Bills & Salaries dated November 20, 2012
  - E. A Motion to approve Resolution 26-2012, a Resolution Estimating the amount of the Tax Levy
  - F. A Motion to approve Resolution 27-2012, a Resolution Establishing a Time and Place for the Public Hearing to Consider a Tax Increment Financing Redevelopment Plan and Project for the Proposed Higgins Road Industrial Park Conservation (IPC) Area
- 5. ITEMS FOR APPROVAL**
- 6. ITEMS FOR DISCUSSION**
  - A. Resolution 25-2012, a Resolution authorizing the execution of an agreement between the Village of Gilberts and i3 American Inc. to provide for the construction and operation of FiberCity Gilberts
  - B. Higgins Road Industrial Park Conservation Area TIF District
- 7. STAFF REPORTS**
- 8. BOARD OF TRUSTEES REPORTS**
- 9. PRESIDENT'S REPORT**
- 10. EXECUTIVE SESSION**

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

**AUDIENCE PARTICIPATION**

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

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

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

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

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

**Village of Gilberts  
87 Galligan Road  
Gilberts, Illinois 60136  
Village Board  
Meeting Minutes  
November 6, 2012**

**Call to Order/Pledge of Allegiance**

President Zirk called the meeting to order at 7:00 p.m. He proceeded to lead those present in the Pledge of Allegiance.

**Roll Call/Establish Quorum**

Village Clerk Meadows called the roll. Roll call: Members present: Trustees Corbett, Clark, Mierisch, Zambetti, Farrell, Hacker and President Zirk. Others present: Administrator Keller, Assistant to the Village Administrator Beith, Finance Director Blocker and Village Clerk Meadows. For members of the audience please see the attached list.

**Consent Agenda**

- A. A Motion to approve Minutes from the October 16, 2012 Village Board Meeting**
- B. A Motion to approve Bills & Salaries dated November 6, 2012 as follows: General Fund \$48,398.81, Developer Donations \$3,420.00, Permit Pass Thrus/TIF \$1,590.00, Performance Bonds and Escrows \$10,615.95, Water Fund \$57,501.54, Payroll \$117,354.90.**
- C. A Motion to approve Ordinance 25-2012, an Ordinance authorizing the Disposal of Personal Property Owned by the Village of Gilberts**

President Zirk reported that the minutes had been amended to reflect clarification to the last sentence of page two. In addition Ordinance 25-2012 exhibit "A" had been amended to reflect additional items to be disposed.

**A motion was made by Trustee Clark and seconded by Trustee Farrell to approve the consent agenda as amended.** Roll call: Vote: 6-ayes: Trustees Corbett, Clark, Mierisch, Zambetti, Farrell and Hacker. 0-nays, 0-abstained. Motion carried.

**Items for Approval**

**A Motion to approve Resolution 25-2012, a Resolution authorizing the execution of an agreement between the Village of Gilberts and i3 America Inc. to provide for the construction and operation of Fibercity Gilberts.**

President Zirk commented on the fact that unfortunately the representative from i3 America Inc. was unable to attend the meeting. However, the representative will be in attendance at the November 20<sup>th</sup> Board Meeting.

President Zirk asked the Board Members to send any questions or comments they may have on the revised draft agreement to Assistant to the Village Administrator Beith. President Zirk reported that he had a handful of questions that he has now shared with Assistant to the Village Administrator Beith.

#### **Items for Discussion**

##### **Village entry signage**

Administrator Keller reported that some Board Members have expressed an interest in discussing Village entry signage during next year's budget discussions.

The Board Members commented on their desire to have Village entrance signage. The Board Members discussed the type of signage they thought would be appropriate. In the near future staff will provide the Board Members with monument signage options and associated cost. Trustee Mierisch would like to also see improvements to some of the subdivision entrance signs. Trustee Clark recommended drafting a policy regulating what would be allowed on the entrance signage.

This matter will be discussed in length during the budget process.

#### **Staff Reports**

Administrator Keller reported that he is working on the TIF Plan and the Interstate Partners Development Agreement and other related documents.

#### **Board of Trustee Reports**

Trustee Zambetti commented on Waitcus Park playground equipment and the improvements Public Works employees have made to the park. He reported that they had painted the equipment and the equipment now has an appearance of being brand-new. Trustee Zambetti recommended that the Board Members visit the park to view the improvements.

Trustee Mierisch reported that Ms. Kathy Tonelli has made improvements to her Route 72 strip mall. Ms. Tonelli has improved the façade of the mall and the improvements have enhanced the streetscape along Route 72.

#### **President's Report**

President Zirk asked if staff had researched the question with respect to the 1% municipal retailers' occupation tax. The Board Members are questioning if the occupation tax can only be used on infrastructure improvements or is it transferable. Administrator Keller will discuss this matter with Attorney Tappendorf.

Village Board  
November 6, 2012  
Meeting Minutes  
Page 3

**Adjournment**

There being no further public business to discuss, a motion was made by Trustee Clark and seconded by Trustee Zambetti to adjourn from the public meeting at 7:24 p.m. Roll call: Vote: 6 ayes by unanimous voice vote. 0-nays, 0-abstained. Motion carried.

Respectfully submitted,

Debra Meadows



**Village of Gilberts  
87 Galligan Road  
Gilberts, IL 60136  
Committee of the Whole  
Meeting Minutes  
November 13, 2012**

**Call to Order/Pledge of Allegiance**

President Zirk called the meeting to order at 7:03 p.m. He proceeded to lead those present in the Pledge of Allegiance.

**Roll call/Establish Quorum**

Village Clerk Meadows called the roll. Roll call: Members present: Trustees Corbett, Clark, Mierisch, Zambetti, Farrell, Hacker and President Zirk. Others present: Administrator Keller, Assistant to the Village Administrator Beith and Village Clerk Meadows. For members of the audience please see the attached list.

**Items for Discussion**

**Minutes from the November 6, 2012 Village Board Meeting**

President Zirk asked if there were any comments on the November 6<sup>th</sup> Village Board Meeting Minutes. There were no comments. This matter will be placed on the next consent agenda.

**October 2012 Treasurer's Report**

President Zirk asked if there were any comments on the October 2012 Treasurer's Report. There were no comments. This matter will be placed on the next consent agenda.

**Resolution for the Estimate Amount of the Tax Levy**

Administrator Keller provided the Board Members with a brief overview on the formula used to estimate the tax levy. He reported that although the estimated tax levy amount is less than 5% of the proceeding year he is recommending the Board Members holding a Public Hearing for the consideration of the adoption of the Tax Levy. This matter will be placed on the next consent agenda.

**Higgins Road Industrial Park Conversation Area TIF District**

Administrator Keller discussed the proposed Higgins Road Industrial Park Conservation Area TIF Redevelopment Plan. Administrator Keller commented on five key pages of the proposed TIF plan. He first discussed the map depicting the proposed IPC area boundaries.

Village of Gilberts  
Committee of the Whole  
Meeting Minutes  
November 6, 2012  
Page 2

He noted that the Zwick and Koplos properties had been removed from the IPC area. When those parcels were included in the IPC area the numbers were skewed. However, the pond will remain in the IPC area. The pond improvements will assist with stormwater run-off and benefit the entire IPC area.

Administrator Keller discussed the estimated cost associated with the redevelopment project. He referenced page 13 of the proposed plan. Administrator Keller commented on Exhibit B-1 in which the total estimated cost of the project is \$67,250,000 and broadly broken down into various categories.

Administrator Keller noted that of the approximately \$67 million 4.25 million is designated for transfer to the adjoining industrial area located in the Central TIF District to upgrade the poor streets and infrastructure. However, the funds would probably not be available for 10-15 years. Trustee Corbett asked who would make the decision to transfer the funds to the Central TIF. Administrator Keller replied the current Board at the time the funds are available.

Administrator Keller discussed Exhibit B-2 which expressed the financing funding sources. He stated the project would be 80% privately funded and 20% publicly funded.

Administrator Keller provided an overview of Exhibit B-3. He reported that the Village would have an estimated 13 million dollars of TIF funds invested in the project.

Trustee Zambetti asked what the contingency line item of \$600,000 represented. Administrator Keller reported that this was just a cushion.

Trustee Corbett inquired what would happen if the other taxing bodies on the Joint Review Board disapprove of the creation of the TIF District. Administrator Keller replied the Board would then need a super majority (2/3) vote to pass the TIF Ordinance. Administrator Keller reported that the proposed development in the future will increase tax rolls which will benefit all the taxing districts.

A lengthy discussion ensued with respect to the Board collectively defining the percentage of TIF funds they are comfortable with investing in the development's public improvements.

Administrator Keller discussed the fact the Redevelopment Project Area would not reasonably be developed without the use of tax increment revenues. The use of the tax increment revenues provides little risk to the Village. The Village and the developer anticipate an accelerated construction schedule which should also have a positive effect on the Central TIF District.

There was some discussion on the development's positive impact on the residents' quality of life.

Administrator Keller discussed the preliminary schedule for adopting the TIF Redevelopment Plan & Project. He is anticipating having the development agreement ("the deal") drafted by the end of next week. The other corresponding documents should be completed in time for the December 4<sup>th</sup> Board Meeting packets.

#### **Staff Reports**

Administrator Keller pointed out that Trustee Clark was correct with his statement regarding the use of Non-Home Rule Municipal Retailers' Occupation Tax. The sale tax revenues shall be used for expenditure on public infrastructure. Trustee Keller reported that he is still waiting on an answer with respect to Trustee Hacker's follow-up question.

Assistant to the Village Administrator Beith reported that the i3 America's Fibercity Gilberts agreement should be already by the end of the week and included in the next Board packet. Trustee Hacker asked for the cost on residential internet services. In his opinion any company requesting exclusive rights to the Village's sewer system and investing millions of dollars should have a business plan which includes an estimate cost of the content providers' monthly residential service fees. Assistant to the Village Administrator Beith stated the monthly service fees would vary on the type and level of services being provided. This is an open network and will be market driven.

A lengthy discussion ensued with respect to the i3 American Business plan and the monthly content service fees. Trustee Corbett and Trustee Clark had no concerns with the unknown monthly content service fees. They agreed the fees will be market driven.

#### **Board of Trustees Reports**

Trustee Corbett reported that the Park Funding Referendum failed.

Trustee Clark reported that there recently was an auction at the Read Excavating facility. He recommended staff research any past special uses that were granted and tied to the property.

Committee of the Whole  
Meeting Minutes  
November 13, 2012  
Page 4

Trustee Zambetti commented on a recent vacant home scam. In which someone advertises the vacant home for sale on the internet and the seller does not legitimately own the property.

Trustee Farrell suggested that the Board Members in the future discuss possible park funding options.

**President's Report**

President Zirk reported that the Grizzlies' Bantam Orange team won the Super Bowl and had a perfect season.

President Zirk recognized Scout Cossi who was attending the meeting to fulfill a merit badge.

**Adjournment**

There being no further public business to discuss, a motion was made by Trustee Clark and seconded by Trustee Corbett to adjourn from the public meeting at 8:05 p.m. Roll call: Vote: 6-ayes by unanimous voice vote. 0-nays, 0-abstained. Motion carried.

Respectfully submitted,

Debra Meadows

File 11/20/2012  
DRAFT-11/10/12

	VENDOR	TOTAL	GENERAL FUND	DEVELOPER DONATIONS	PERMIT PASS THRU	PERFORMANCE BONDS AND ESCROWS	WATER FUND	PAYROLL
	<b>GRAND TOTAL</b>	<b>438,406.49</b>	<b>330,324.96</b>	<b>-</b>	<b>2,652.50</b>	<b>736.10</b>	<b>34,626.47</b>	<b>70,066.46</b>
	<b>BILLS ADDED AFTER PACKETS:</b>							
	<b>PAYROLL - 11/04/12 - 11/17/12</b>	70,066.46						70,066.46
B&F001	B&F TECHNICAL CODE SERVICES	2,842.50	90.00		2,652.50	100.00		
B&W002	BAXTER & WOODMAN CONTROL	1,807.93	1,241.17				566.76	
BLOCKER	MARLENE BLOCKER	186.92	186.92					
BPC001	BENEFIT PLANNING CONSULTANTS	100.00	100.00					
CALONE	CALL ONE	1,081.22	839.22				242.00	
CROWN01	CROWN TREE CARE	578.10				578.10		
FOR001	JOS. D. FOREMAN & CO.	238.00					238.00	
GPBENE	GILBERTS POLICE BENEVOLENT	65.00	65.00					
GPF01	GILBERTS POLICE PENSION FUND	3,920.91	3,920.91					
MANAL Y01	MCHENRY ANALYTICAL	310.00					310.00	
MEN002	MENARDS CARPENTERSVILLE	59.88	59.88					
STAPLES	STAPLES ADVANTAGE	683.96	561.68				122.28	
STEW001	STEWART SPREADING	22,680.00					22,680.00	
SUBLAB01	SUBURBAN LABORATORIES	60.00					60.00	
WCOM01	COMMONWEALTH EDISON WATER	375.35					375.35	
ACE002	ACE COFFEE BAR INC.	27.50	27.50					
AFID001	ASSOC. FOR INDIVIDUAL DEVELOPMENT	44.94	44.94					
AIRGAS	AIRGAS	37.77	37.77					
AIRONE01	AIR ONE EQUIPMENT, INC.	120.00					120.00	
AMALBANK	AMALGAMATED BANK OF CHICAGO	234,112.50	234,112.50					
BANKCARD	UMB CARD SERVICES	1,392.32	1,392.32					
EXELON	CONSTELLATION	6,853.84	1,265.61				5,588.23	
IIMC	IIMC	100.00	100.00					
ILSTREA	ILL UNCLAIMED PROPERTY OFFICE	50.00	50.00					
KANEFIN	KANE COUNTY FINANCE DEPT.	35,885.96	35,885.96					
KCRECORD	KANE COUNTY RECORDER	32.00					32.00	
KASCHUB	WAYNE KASCHUB	110.00	110.00					
MANAL Y01	MCHENRY ANALYTICAL WATER	359.50					359.50	
MCCROM01	MCCROMETER, INC	1,612.27					1,612.27	
MDCENV01	ROCK RIVER ENVIRONMENTAL	42,219.96	42,219.96					
MEN002	MENARDS - CARPENTERSVILLE	257.90	206.41				51.49	
NAPA01	DUNDEE NAPA AUTO PARTS	98.62	98.62					
NIG001	NICOR	313.76					313.76	
NORSAF01	NORTHERN SAFETY CO., INC.	129.87	129.87					
PAC001	PACES AUTO SERVICE	1,404.50	1,404.50					



Village of Gilberts	
Check Warrant Report	
Payroll Checks From 11/04/12 - 11/17/12	
Employee Name:	Net Pay
Blocker, Marlene	1,659.31
Meadows, Debra	1,497.01
Sorenson, Shirley	1,176.92
Danca, Karen	305.19
Beith, William	503.91
Keller, Raymond B.	2,416.02
Joswick, Michael	2,058.39
Thomas, Randall	125.44
Joswick, Christopher	195.69
Mueller, Steve	250.98
Maculitis, Jerome	200.18
Izydorski, Michael	1,273.97
Meador, Eric E.	1,339.05
Hernandez, Jason	133.45
Steiner, George	200.18
Rood, Jackie E. Jr	1,951.95
Block, Todd J	1,949.83
Pulgar, Hector L	2,123.10
Oberth, Michael	1,282.30
Hill, Jeff R	1,272.13
Levand, James A	1,370.15
Williams, Steven	2,509.45
Schuring, Larry	781.05
Klaras, Jason	1,110.66
Sheppard, Paul	1,234.34
Foley, Aaron	3,300.45
Stokes, Janet	1,054.32
Swedberg, John L	2,104.65
Castillo, John	1,769.50
Varas, Randy	1,664.16
Siegbahn, Lisa	683.24
Payroll Liabilities:	
Federal Tax Deposits	13,866.80
Gilberts Police Benevolent	70.00
Gilberts Police Pension	3,553.78
Illinois Department of Revenue	2,621.45
IMRF	9,040.13
SDC State Disbursement Unit-Cook	186.57
KCC State Disbursement Unit	116.01
SD1 State Disbursement Unit	160.00
SDU State Disbursement Unit	323.00
ICMA-RC	337.47
MAP	186.00
Central United Life Insurance	108.28
<b>Total All Checks</b>	<b>70,066.46</b>

RESOLUTION NO. 26-2012

VILLAGE OF GILBERTS  
RESOLUTION FOR THE ESTIMATE OF THE AMOUNT  
OF A TAX LEVY IN COMPLIANCE WITH THE  
REQUIREMENTS OF THE TRUTH IN TAXATION ACT

**WHEREAS**, in certain circumstances the law with respect to the passage of a tax levy ordinance ("THE TRUTH IN TAXATION ACT") [ 35 ILCS 200/18-55 through 18-95] requires the governing authorities of a taxing district to estimate the amount of its tax levy at least twenty days prior to the adoption thereof; and

**WHEREAS**, the Board of Trustees of the Village of Gilberts, Kane County, Illinois desire to adopt its Tax Levy Ordinance at its regularly scheduled meeting on December 18, 2012 and therefore now desire to estimate its tax levy for its fiscal year commencing May 1, 2013 and ending April 30, 2014 to comply with the aforesaid legal requirement:

**NOW THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF GILBERTS, KANE COUNTY, ILLINOIS as follows:**

**Section 1.** That the Board of Trustees of the Village of Gilberts have determined that the amount of money estimated to be necessary to be raised by taxation for the Village's fiscal year commencing May 1, 2013 and ending April 30, 2014 upon the taxable property of the Village is \$ 963,044.00

**Section 2.** BE IT FURTHER RESOVLED that the estimate of the amount of the tax levy set forth in Section 1 of this Resolution is made at least twenty days prior to the date the Village intends to adopt its tax levy ordinance.

**Section 3.** BE IT FURTHER RESOLVED that the estimate of the amount of the tax levy set forth in Section 1 of this Resolution is not greater than 105% of the amount which was extended or abated upon the Village's tax levy for the preceding year and is not required to comply with The Truth in Taxation Act. However, the Village President and Board of Trustees desire to conduct public business in an open and transparent manner. The Village will publish notice, and conduct a public hearing on December 18, 2012. The meeting will be held at 87 Galligan Road, Gilberts Illinois at 7:00 p.m. The Village will comply with all the other requirements of law prior to the adoption of this tax levy ordinance for its fiscal year commencing May 1, 2013 and ending April 30, 2014.



**Section 4.** This resolution shall be in full force and effect from and after its passage, approval and publication as provided by law.

Passed by roll call vote of the Board of Trustees of the Village of Gilberts, Kane County, Illinois, this \_\_\_\_\_ day of November, 2012.

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



Village President, Rick Zirk

Debra Meadows, Village Clerk

**Resolution 27-2012**

**Resolution Establishing a Time and Place for a Public Hearing  
to Consider a Tax Increment Financing Redevelopment  
Plan and Project for the Proposed Higgins Road Industrial Park Conservation Area**

**BE IT RESOLVED BY THE BOARD OF TRUSTEES** of the Village of Gilberts, Kane County, Illinois, as follows:

That the Village of Gilberts, Kane County, Illinois hereby establishes January 8, 2013, at 7:00 p.m. or as the agenda allows at the Village Hall, 87 Galligan Road, Gilberts Illinois as the time and place for the Public Hearing to consider the adoption of the Tax Increment Financing Redevelopment Plan and Project for the Higgins Road Industrial Park Conservation Area.

**Passed this \_\_\_\_\_ day of \_\_\_\_\_ 2012 by roll call vote as follows:**

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

APPROVED THIS \_\_\_\_\_ DAY OF November, 2012

\_\_\_\_\_  
Village President, Rick Zirk

(SEAL)

ATTEST: \_\_\_\_\_

Village Clerk, Debra Meadows

Published: \_\_\_\_\_

**RESOLUTION**

**VILLAGE OF GILBERTS**

**A Resolution authorizing the execution of an agreement between the Village of Gilberts and i3America Inc. to provide for the construction and operation of Fibercity Gilberts**

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

**Section 1:**

The agreement by and between the Village of Gilberts and i3 America Inc. attached hereto as Exhibit A shall be and is hereby authorized and approved, and the President and Village Clerk are hereby authorized to execute said Agreement.

**Section 2:**

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

Passed this \_\_\_\_ day of \_\_\_\_\_, 2012 by a roll call vote as follows:

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

APPROVED THIS \_\_\_\_ DAY OF November, 2012

\_\_\_\_\_  
Village President, Rick Zirk

(SEAL)

ATTEST:

\_\_\_\_\_  
Village Clerk, Debra Meadows

Published: \_\_\_\_\_

# *Village of Gilberts*

Village Hall  
87 Galligan Road, Gilberts, IL 60136  
Ph. 847-428-2861 Fax: 847-428-2955  
[www.villageofgilberts.com](http://www.villageofgilberts.com)

**TO:** President Rick Zirk  
Board of Trustees

**FROM:** William Beith, Assistant to the Village Administrator

**DATE:** November 16, 2012

**RE:** i3 Agreement

---

The following summary discusses the draft agreement between i3 and the Village of Gilberts that would create Fibercity Gilberts.

On April 10th, 2012 the Village of Gilberts, Illinois and i3 America Inc. entered into a Memorandum of Understanding in which each party agreed to work together to investigate the feasibility of constructing a fiber optic broadband network to serve all residential and business addresses within the Village to be known as Fibercity Gilberts.

A draft of the agreement between i3 America and the Village of Gilberts was presented to the Committee of the Whole on October 9, 2012. At the Boards direction, modifications were incorporated into the agreement, presented to i3, and returned to the Board on November 6, 2012. An i3 response to questions from the October 9, 2012 draft was presented to the Board and incorporated into the draft version of the agreement. In addition, an example of content provider pricing from the i3 Sandy Oregon project was included. All of this material generated a discussion of the draft agreement. Scott Bradshaw, the i3 representative was unable to attend this meeting, and Mike Norris, Chief Financial Officer and Company Secretary of i3 has agreed to attend the November 20, 2012 meeting to discuss the agreement with the Board.

The current draft agreement contains language changes from the November 6, 2012 meeting that have tightened up definitions and added clarity to the document. In the current draft agreement, the following modifications have been made:

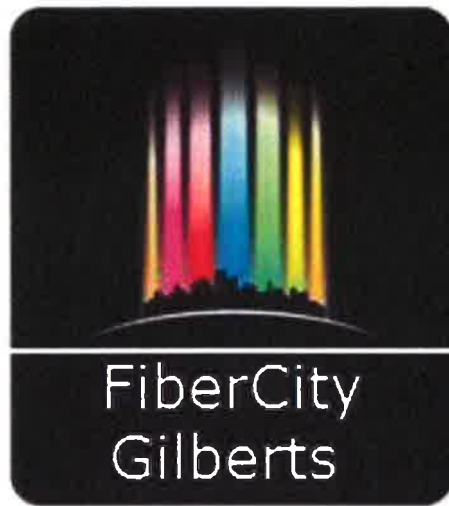
1. Section 2.1.2 discusses in the absence of active service providers, for a defined period of time, exclusivity is lost. Earlier versions suggested 12 months and this version contains a suggested 45 days.
2. Section 2.2 discusses the term of the agreement. Two basic options have been discussed, an initial period of twenty years with two five year extensions (for a total of thirty years), and an initial period of 10 years with two five year extensions (for a total of twenty years).
3. Section 6.2.3 was added to address general indemnification.

4. Section 7.3.1 discusses the Fibercity Gilberts network will only provide services to those addresses within the municipal boundary of the Village, and includes any future annexation.
5. Section 8.7 discusses mechanisms to continue service if a cessation of daily service or a termination of the agreement occurs. If the network were to fail and enter bankruptcy, the Village would be allowed a say, but the court would give preference to creditors. If the Village made the choice to purchase the network, the trigger points for that action would occur either through the default provisions of the agreement or through the length of term of agreement as discussed in Section 2.2.
6. Section 9.3 clarifies that this agreement must comply with Village Ordinances. Additionally, Village Code is a part of this document, and provides details in areas of construction and telecommunications management.
7. Section 9.9 was added to clarify that if the network was transferred or sold, the obligations in this document would be binding on subsequent owners. This would prevent a cable company from purchasing the system and closing the system to other content providers.

Two significant issues remain for the Board to discuss with i3:

- In Section 2.2, two alternatives are provided for the term of the agreement. Staff requests the Boards direction on this topic.
- In Section 4.2 the construction of the system is discussed. The agreement states the build out will pass every existing residence and business, but that build-out will occur on an order of demand. A build by date of August 31, 2013 is set to provide fiber to the municipal buildings identified in Exhibit 2 of the agreement. Beyond that, the construction schedule is based upon demand. Following acceptance of the agreement, an advertising/awareness campaign will begin. This campaign will contain details of content providers and their prices, and will run concurrently with the development of the engineering plans to build the network. Once the fiber back-bone is in place throughout the sewer system, surface construction will begin in those areas with the highest number of new subscribers. Staff requests the Boards direction on this topic.

Please contact Assistant to the Administrator Bill Beith with questions or requests for additional documents.



**DRAFT AGREEMENT**

**NOVEMBER 20, 2012**

AGREEMENT .....	5
SECTION 1: Definition of Terms .....	5
1.1 Terms .....	5
SECTION 2: Grant of Authority .....	7
2.1 Grant of Agreement .....	7
2.2 Term of Agreement .....	7
2.3 Fees, Expenses and other Charges .....	7
2.4 Reservation of Authority .....	8
SECTION 3: The System .....	8
3.1 Permits and General Obligations .....	8
3.2 Conditions on Street Occupancy .....	9
3.3 Conditions on Sewer System Occupancy .....	10
SECTION 4: Construction and Facilities .....	11
4.1 Construction of System .....	11
4.2 Designation and Construction of Facilities .....	11
4.3 Subscriber Connections .....	12
SECTION 5: Oversight and Regulation by Authority .....	12
5.1 Oversight of Agreement .....	12
5.2 Compliance with Applicable Laws .....	12
5.3 Confidentiality and Proprietary Information .....	13
5.4 Transfer of Agreement .....	13
SECTION 6: Insurance and Indemnity .....	13
6.1 Insurance; Indemnification .....	13



SECTION 7: System Description and Service .....	14
7.1. System Description and Service. ....	14
7.2 Project Obligations. ....	14
SECTION 8: Enforcement and Termination of Agreement .....	15
8.1. Notice of Violation or Default. ....	16
8.2. Grantee's Right to Cure or Respond. ....	16
8.3. Default. ....	16
8.4. Enforcement. ....	16
8.5 Authority Breach or Default. ....	17
8.6 Limitation on Liability. ....	18
8.7 Transition upon Cessation of Daily System Operation or Termination .....	18
SECTION 9: Miscellaneous Provisions.....	20
9.1 Force Majeure.....	20
9.2. Notice.....	20
9.3. Entire Agreement .....	21
9.4. Severability.....	21
9.5. Governing Law .....	21
9.6. Modification .....	22
9.7. No Third Party Beneficiaries .....	22
9.8. No Waiver of Rights.....	22
9.9 Nature, Survival, and Transfer of Obligations .....	22
EXHIBIT 1 .....	24
EXHIBIT 2 .....	25
EXHIBIT 3 .....	25





EXHIBIT 4 .....	47
EXHIBIT 5 .....	48
EXHIBIT 6 .....	49



## AGREEMENT

This Agreement (hereinafter, the "Agreement") is made between the Village of Gilberts, Illinois (hereinafter, the "**Village**" or "Authority") and FiberCity Gilberts LLC (hereinafter, the "Grantee").

The Village desires to enter into this Agreement with the Grantee for the right to construct, maintain and operate the System, on the terms and subject to the conditions set forth herein.

### SECTION 1: Definition of Terms

#### **1.1 Terms.**

For the purpose of this Agreement, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below.

"Act" means, collectively, Title 9, Chapter 8, Article C of the Village of Gilberts Village Code, commonly known as "**Construction of Facilities in Public Rights of Way**", and any other applicable Federal or State statute, law, or regulation or other Village of Gilberts ordinance by which the Village has authorized the execution, delivery and performance of this Agreement.

"Agreement" means the initial authorization, or renewal thereof, issued by the Village President, whether such authorization is designated as a; registration, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes construction and operation of the System. Agreement also includes any amendments or modifications hereto.

"Authority" means the Village of Gilberts, Illinois including its Board of Trustees, Commissions and Committees or the lawful successor, transferee, designee, or assignee thereof.

"Effective Date" shall be the date of execution of the Agreement by the Village and Grantee.

"Facilities" means the Point of Presence (PoP) at 73 Industrial Drive, Gilberts, Illinois, 60136, which is the building and related electronic and fiber facilities [which are designated and agreed upon and set forth on Exhibit 1] are located in the Village from which



the fiber optic cables will be deployed to a Premise Wall.

"Boundary" means the present legal boundaries of the Village as of the Effective Date, and shall also include any additions thereto or subtractions thereof, by annexation or other legal means.

"Grantee" shall have the meaning set forth in the preamble hereof.

"Law" shall include all federal, state or local laws, regulations or rules, and any other action by an authorized entity or person that has the effect of law.

"Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Village.

"PoP" means point of presence, the physical central location of the Facilities.

"Premise Wall" means the wall of the business or residence to which the fiber optic cable will terminate, which is part of the System.

"Public Way" shall mean the Right(s) of Way and any public utility easements, licenses, or other rights to use property for public purposes under the control and jurisdiction of the Village, as such term is defined in Section 9-8C-2 of the Village Code.

"Service Provider" means a person who will provide telecommunications, information, or video programming services at retail over the System to any subscribing premise that requests all or a part of such services.

"System" means a neutral-host, fiber optic network, located within the Boundary that will allow Service Providers to deliver telecommunications, information, or video programming services to subscribing premises, with the fiber optic cable to be laid from the PoP through the Public Way and to the Premise Wall. The Grantee will use its reasonable commercial efforts to contract System access to one or many Service Providers who have an intention to deliver subscriber services. So long as the Grantee does not provide telecommunications, information, or video programming services, it is not a Service Provider. No Service Provider shall be granted access which is mutually exclusive with any other Service Provider except to the extent such exclusivity is required by reason of technical incompatibility.

**"Sewer System"** means the sanitary and storm sewer utility systems owned and operated by the Village of Gilberts within the Boundary.



## **SECTION 2: Grant of Authority**

### ***2.1. Grant of Agreement.***

2.1.1 The Authority hereby grants to the Grantee under the Act a non-exclusive Agreement, which authorizes the Grantee to construct, maintain and operate the System on a daily basis among, upon, across, under, or in any manner connected with Public Ways within the Boundary, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, operate or retain in, on, under, upon, across, or along any Public Way and all extensions thereof and additions thereto: wires, cables, ducts, conduits, vaults, manholes, pedestals, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the System installed below ground level as approved by the Village.

2.1.2 The Authority hereby grants to the Grantee an exclusive Agreement which authorizes Grantee to construct, maintain and operate the portions of the System within and through such parts of the Sewer System as are necessary and convenient for the operation of the System. For the purpose of this Agreement, the exclusivity granted herein is solely with respect to installation of the System in the Sewer System. The portions of the System which may be erected, installed, constructed, repaired, replaced and maintained in the Sewer System shall be subject to the exclusive and sole discretion of the Authority. In the event there is no active Service Provider providing telecommunications, information, or video programming services at retail over the System for any period of not less than ~~twelve (12) months~~45 days following the commencement of this Agreement, the exclusivity granted hereby shall be rescinded.

2.1.3 In consideration of the authority granted herein, Grantee will enter into agreements with one or more Service Providers for purposes of selling telecommunications, information, or video programming services at retail using the System. Nothing in this Agreement shall be construed to grant any authority to a Service Provider with respect to the sale at retail of any telecommunications, information, or video programming services.

### ***2.2. Term of Agreement.***

The term of the Agreement hereunder shall commence on the Effective Date and expire ~~twentyten~~ (10) years from the date hereof. This Agreement may be renewed upon the mutual assent of the parties for two (2) successive five (5) year terms, on the same terms and conditions, provided that there is no uncured event of default at the time of renewal.

### ***2.3 Fees, Expenses and other Charges.***

Except as expressly set forth herein, each party shall bear and be responsible for all of



its own costs, fees and expenses incurred in executing and performing under this Agreement.

2.3.1 Any Service Provider that delivers content over the System to a subscribing premise will pay the respective fees and taxes applicable to such service, including but not limited to franchise fees, service provider fees, and simplified municipal telecommunications taxes.

2.3.2 In consideration for the exclusive right to occupy the waste water assets, Grantee shall convey to the Authority and install two strands of fiber to each address listed in Exhibit 2 with no limitation to the content carried on that fiber.

2.3.3 In further consideration for the exclusive right to occupy the waste water assets, Grantee shall install the aforementioned two (2) strands of fiber at each address listed in exhibit 2 no later than August 31, 2013.

2.3.4 The Authority agrees to grant a non-exclusive license to the Grantee over the land for the PoP.

## **2.4. Reservation of Authority.**

Nothing in this Agreement shall (A) abrogate the right of the Authority to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the Authority, (C) be construed as a waiver or release of the rights of the Authority in and to the Public Ways, or (D) be a waiver or result in the diminution of the Authority's police power.

## **SECTION 3: The System**

### **3.1. Permits and General Obligations.**

The Grantee shall abide by the lawful rules and regulations of the Village, including but not limited to Title 9, Chapter 8, Article C, "Construction of Facilities in Public Rights of Way," of the Gilberts Village Code. Construction, installation, and maintenance of the System shall be performed in a safe, thorough, workmanlike and reliable manner using materials of good and durable quality. All transmission and distribution structures, and equipment installed by Grantee for use in the System in accordance with the terms and conditions of this Agreement shall be located so as to minimize the interference with the proper use of the Sewer System and Public Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Way.



### **3.2 Conditions on Street Occupancy.**

**3.2.1. Relocation at Request of the Authority.** The Grantee shall comply with Section 9-8C-12 of the Code. Grantee shall also not be responsible for the cost associated with relocating the System to accommodate a private development project or the construction of a new school, hospital or other public entity that affects the Public Way, but the Grantee shall remain responsible for costs associated with relocating the System to accommodate all public projects of the Village affecting the Public Way. The Village shall use its reasonable efforts to reduce or keep Grantee's costs of compliance with this provision to a minimum, **provided the Village's costs take precedence over Grantee's costs in planning future public improvements.**

**3.2.2. Relocation at Request of Third Party.** The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the Authority to move any structure, temporarily move its fiber optic cables to permit the moving of such structure; provided (i) the Grantee may impose a reasonable charge on any Person for the movement of its fiber optic cables, and such charge may be required to be paid in advance of the movement of its fiber optic cables; and (ii) the Grantee is given not less than fifteen (15) business days advance written notice to arrange for such temporary relocation.

**3.2.3. Restoration of Public Ways.** Grantee shall comply with Section 9-8C-13 of the Gilberts Village Code.

**3.2.4. Safety Requirements.** The Grantee shall, at its own cost and expense, undertake all necessary and commercially reasonable efforts to maintain its work sites and the System, consistent with industry practices, in a safe manner and in normal order and repair in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the System shall be performed in substantial compliance with applicable federal, state, and local regulations. The System shall not unreasonably endanger or interfere with the safety of Persons or property in the Boundary. The Grantee shall maintain a labor force sufficient to ensure compliance with this provision.

**3.2.5 Distribution Equipment.** Distribution equipment shall be installed below grade except with prior written consent of the Village.

**3.2.6 Non-Sewer System Storm Utility Facilities.** Where the System is installed within a right-of-way constructed with a “**rural cross-section,**” or **without curb and gutter,** the System shall be constructed so as to not reduce the storm volume capacity of the ditches and culverts.



### **3.3 Conditions on Sewer System Occupancy.**

**3.3.1 Manner of Installation.** The System shall be installed in the Sewer System in substantial compliance with Grantee Document No. 000-FS-MS-010, Installation of Cable within the Sewer (“Installation Specifications”), attached hereto as Exhibit 8 and incorporated as though fully set forth herein; provided that the Installation Specifications may be amended by authorized representatives of the Authority and the Grantee for the purpose of conforming the specifications to industry custom and practice established in the United States.

**3.3.2 Condition of Sewer System.** Prior to and immediately following either the (i) installation of the System in the Sewer System, or (ii) temporary relocation of the System for Sewer System maintenance purposes, the Grantee and Authority shall cooperate to establish, record and document the physical condition of the Sewer System. The recording and documentation of the physical condition of the Sewer System shall be performed in substantial compliance with Grantee Document 000-FS-MS-070, CCTV Camera Inspections (“Televising Specifications”), attached hereto as Exhibit 9 and incorporated as though fully set forth herein at ~~Grantees~~Grantee’s sole expense, with copies to Authority; provided that the Televising Specifications may be amended by authorized representatives of the Authority and the Grantee for the purpose of conforming the specifications to industry custom and practice established in the United States. Records of the inspection of the physical condition of the Sewer System shall be maintained for at least five (5) years.

**3.3.3 Remediation of Sewer System Failures.** Grantee shall indemnify and hold the Authority harmless for (a) any damage caused to the Sewer System or material impairment of the Sewer System’s functionality resulting from the installation, operation, maintenance, repair and replacement of the System, and (b) any claims, liabilities, damages, fines, penalties, judgments and/or judicial or administrative orders arising from any personal injury, death, property damage or destruction, or violations of applicable law resulting from the installation, operation, maintenance, repair and replacement of the System in the Sewer System.

**3.3.4 Maintenance, Repair and Relocation of System.** Following the installation of the System in the Sewer System, Grantee shall, at its sole cost and expense, maintain, repair, replace and, if necessary, temporarily relocate the System in substantial compliance with Grantee Document 000-FS-GD-006, FOCUS System Post Installation Wastewater Maintenance Guide Document (“Maintenance Specifications”), and Grantee Document 000-FS-MS-030, Emergency Cable Cutting and Removal from the Sewer (“Removal and Relocation Specifications”), collectively attached hereto as Group Exhibit 10 and incorporated as though fully set forth herein; provided that the Maintenance Specifications and the Removal and Relocation Specifications may be amended by authorized





representatives of the Authority and the Grantee for the purpose of conforming the specifications to industry custom and practice established in the United States.

**3.3.5 Cooperation.** Grantee shall cooperate with the Authority in taking all commercially reasonable measures requested by the Authority for the purpose of ensuring the proper operation of the Sewer System.

## **SECTION 4: Construction and Facilities**

### ***4.1. Construction of System.***

The parties agree the Grantee will construct a System that passes every existing premises within Exhibit 2 (municipal addresses), Exhibit 3 (residential addresses), and Exhibit 4 (business addresses), and provision expansion of the fiber to serve pending and future development within Exhibit 5 and Exhibit 6. Construction of the i3 FOCUS fiber optic cable system will be built out according to order of demand with Construction to begin by early 2013 with two strands of fiber to each municipal address listed in Exhibit 2 no later than August 31, 2013. Order of demand is a marketing measure of subscribing premise's expressing a desire to receive content delivery from a specified provider through the System.

### ***4.2 Designation and Construction of Facilities.***

**4.2.1 Facilities Access.** The Grantee shall during the term and all renewal terms hereof have access to and rights to use the Facilities, subject to applicable law, at its own cost and expense. The Facilities will house the equipment necessary in Grantee's judgment to enable the System to operate.

**4.2.2 Construction Techniques – Right of Way.** Except to the extent approved by the Department of Public Works, Grantee shall comply with all Village ordinances pertaining to construction within rights of way including without limitation Section 9-8C-10- of the Gilberts Village Code. All facilities relating to the Authority must be constructed or installed below ground unless otherwise expressly approved by the Authority. The Authority agrees to work cooperatively with Grantee in reviewing all potential construction methods.

**4.2.3 PoP location and Material Storage.** Village will lease space to the Grantee for the installation of Grantee's PoP as set forth in Exhibit A, located behind the Village of Gilberts Public Works building at 73 Industrial Drive, Gilberts, Illinois, 60136. The design of the PoP will allow 24/7 access without Village of Gilberts personnel to be present to perform installation, operation, maintenance, replacement, repair, or other activities necessary to





maintain the network in operating condition. Village will assist with a space for the housing of materials to build the System.

### **4.3 *Subscriber Connections***

When a Service Provider confirms a subscriber has entered into an agreement to accept services over the System a fiber strand will be terminated at the subscriber Premise Wall, via a drop from the System and in a manner to be determined by the Grantee. The location and the method of the drop to the premise wall will vary depending on the circumstances of the subscriber location.

The following will apply to the connection between the System and the Premise Wall of each subscriber:

- i) Village will assist Grantee in securing private property easement access rights, when necessary, to connect the System from the subscriber property boundary to the Premise Wall at [Grantee's](#) cost.
- ii) Grantee shall install subscriber drops underground, [unless otherwise expressly approved by the Village.](#)
- iii) Grantee shall not charge subscribers a connection fee for installation to the System. Nothing herein shall be construed to relate to the service contract between the subscriber and the Service Provider.

## **SECTION 5: Oversight and Regulation by Authority**

### **5.1 *Oversight of Agreement.***

Grantee agrees to comply with Title 9, Chapter 8, Article C [of the Gilberts Village Code.](#) To the extent such ordinance clearly conflicts with the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail, except where such conflict arises from the Authority's lawful exercise of its police powers. Nothing in this Section 5.1 shall be construed to limit the Authority's ability to enforce the terms and conditions of this Agreement.

### **5.2 *Compliance with Applicable Laws.***

Subject to Section 5.1 of this Agreement, the Grantee shall, at all times during the life of this Agreement, be subject to and comply in all material respects with all applicable Federal, State and local laws, rules regulations and policies, as now or hereafter adopted



or amended.

### ***5.3. Confidentiality and Proprietary Information.***

**5.3.1. Treatment of Confidential and Proprietary Information.** Though all information is subject to Illinois Freedom of Information Act, the Village represents that it will use all reasonable efforts to claim available exemptions under state Freedom of Information Act (FOIA) law, and will notify Grantee if a FIOA request is received in connection with that proprietary information. All materials that Grantee believes are **proprietary will be labeled “Proprietary, privileged and confidential”**. The Authority and Grantee agree that all Exhibits containing technical specifications for the installation, maintenance, repair, replacement and relocation of the System shall be considered confidential and proprietary trade secrets that are exempt from disclosure under FOIA.

### ***5.4. Transfer of Agreement.***

Neither the Grantee nor any other Person may transfer the System or this Agreement without the prior written consent of the Authority. Consent shall be required, however, for:

(i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in this Agreement or the System in order to secure indebtedness, provided that the security holder shall execute an agreement reasonably acceptable to the Village that it shall operate the System for the term of this Agreement in the event it enforces any or all of its rights relative to Grantee, or

(ii) a transfer to an entity directly or indirectly owned or controlled by or controlling or under common control with Grantee.

## **SECTION 6: Insurance and Indemnity**

### ***6.1. Insurance; Indemnification.***

6.2.1 Throughout the term of this Agreement, the Grantee shall, at its own cost and expense, Comply with Section 9-8C-5 of the Gilberts Village Code.

6.2.2 The Authority shall indemnify, defend and hold harmless the Grantee, its members, directors, officers, employees, and agents and its and their respective affiliates,



successors and assigns from and against any liability or claims resulting from property damage or bodily injury (including accidental death), which arise solely out of any act or omission for which the Village may be held liable under the Laws of the State of Illinois, provided that the Grantee shall give Authority written notice of its obligation to indemnify the Grantee as soon as reasonably possible or practical to do so following the proper and legal receipt of a claim or action pursuant to this Section 6.2 and in any case no longer than ten (10) days after receipt. If the Grantee determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Grantee.

6.2.3 In addition to the indemnification provided by paragraph 3.3.3 of this Agreement, the Grantee shall indemnify, defend and hold harmless the Authority, its officers, officials, employees, consultants, and agents and its and their respective affiliates, successors and assigns from and against any liability or claims resulting from the installation, operation, maintenance, repair and replacement of the System, and (b) any claims, liabilities, damages, fines, penalties, judgments and/or judicial or administrative orders arising from any personal injury, death, property damage or destruction, or violations of applicable law resulting from the installation, operation, maintenance, repair and replacement of the System in the Sewer System.

## **SECTION 7: System Description and Service**

### **7.1. System Description and Service.**

The System shall be designed in a manner using fiber optic cable using the Sewer System and Public Way emanating from the PoP to the Public Way and from there to the Premises Wall. The network shall conform to the Village of Gilberts Village Code including Title 12, Telecommunications and Wireless Services, Section 9-8C-4 Permit requirements, and Section 2-4-2 Performance Bond. The parties will collaborate on the System design from the Facilities, through the Public Way and to the Premise Wall.

### **7.2 Project Obligations.**

**7.2.1 Obligations of Village** In addition to all other obligations mentioned elsewhere in this Agreement, Village will have the following obligations:

- (a) Provide a single point of contact (“SPOC”) for Grantee, which SPOC will be responsible for addressing all administrative issues related to the System, providing coordination across Village departments and serving as a communications



and troubleshooting resource for Grantee. Nothing herein shall be construed as a delegation of legislative authority to the SPOC.

(b) Offer the full cooperation of all Village departments with respect to relevant issues on the System. Such cooperation will be supervised by the SPOC

(c) Participate in regular status meetings for the coordination of all matters related to the System.

(d) Provide quick, diligent review of all applications for permits, including permits or other necessary items for construction work on the System within Village Public Way.

(e) Cooperate with Grantee on all publicity and public relations for the System.

**7.2.2 Obligations of the Grantee** In addition to all other obligations mentioned elsewhere in this Agreement, the Grantee will have the following obligations:

(a) Work closely with the SPOC of the Village and relevant Village departments with respect to the construction of the System.

(b) Comply with all requirements of Village for permit and Public Way use applications, including but not limited to Title 9, Article 8C of the [Gilberts Village Code](#).

(c) Build the System to pass every premise as listed in Exhibit 2 through to Exhibit 4 and provision fiber to serve future development within Exhibit 5 and Exhibit 6. The parties will collaborate on the System design to serve Exhibit 5 and Exhibit 6.

(d) Distribution of content within a single premise is the responsibility of the premise owner. That owner may contract with a Service Provider to install internal network components to deliver content services as directed by the premise owner.

### **7.3 *Boundary Limitation.***

7.3.1 The System shall exclusively serve subscribers located within the Boundary and not be used to facilitate the construction and operation of a system serving areas outside the Boundary, as that term is defined in this Agreement, including future annexed territory.

## **SECTION 8: Enforcement and Termination of Agreement**



### ***8.1. Notice of Violation or Default.***

In the event the Authority believes that Grantee has not complied with the material terms of this Agreement, the Authority shall promptly notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

### ***8.2. Grantee's Right to Cure or Respond.***

The Grantee shall have thirty (30) days from the receipt of the Authority's notice described in Section 8.1, above:

(a) to respond to the Authority, contesting the assertion of noncompliance or default, or

(b) to cure such default, or

(c) in the event that, by nature of the default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default, notify the Village of Gilberts of the steps being taken, the projected date that they will be completed, and continue to exercise diligence in executing the cure to completion. Such date shall be negotiated between [Authority](#) and [Grantee](#) as an extension of time to cure

### ***8.3. Default.***

In the event Grantee fails to respond to the Authority's notice described in Section 8.1, above, or in the event that the alleged default is not remedied within said thirty (30) days or the later date agreed upon pursuant to Section 8.2 above, the Grantee shall be deemed in default and subject to the remedies herein described and otherwise available at law and in equity.

### ***8.4. Enforcement.***

Subject to applicable federal and state law and the preceding procedural steps, in the event the Authority determines that the Grantee is in default of any provision of the Agreement, the Authority may:

8.4.1. Seek specific performance of any provision which reasonably lends itself to such remedy, as an alternative to damages or seek other equitable relief; or



**8.4.2.** In the case of a substantial default of a material provision of the Agreement, declare the Agreement to be revoked in accordance with the following:

- (i) The Authority shall give written notice to the Grantee of its intent to revoke the Agreement on the basis of a material default or a pattern of noncompliance by the Grantee. The notice shall set forth with specificity the exact nature of the material default or pattern of noncompliance. The Grantee shall have thirty (30) days from the receipt of such notice to object in writing and to state its reasons with specificity for such objection. In the event the Authority has not received a satisfactory response from the Grantee, it may then seek termination of this Agreement. In the event the Authority seeks termination of this Agreement, the Authority shall schedule a public hearing to be held at the next regularly scheduled public meeting of the Authority for the purpose of allowing the Authority the opportunity to present its basis of termination and to allow the Grantee the opportunity to respond. The Authority shall cause to be served upon the Grantee, at least ten (10) days prior to such public meeting, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Agreement.
- (ii) At the designated hearing, the Authority shall give the Grantee an opportunity to state its position on the matter, including the presentation of documents or other materials or speakers necessary to present its position, after which, the Authority shall determine whether or not the Agreement shall be revoked. The public meeting shall be on the record and a written transcript shall be made available to the Grantee, at the Grantee's sole expense, within ten (10) business days. The decision of the Authority shall be in writing and shall be delivered to the Grantee in the manner set forth in Section 11.2, herein and shall be considered a final action of the Authority on the matter of revocation.

**8.4.3** The Authority may, at its sole discretion, take any lawful action that it deems appropriate to enforce its rights under the Agreement in lieu of **revocation**.

### ***8.5 Authority Breach or Default.***

In the event the Grantee believes that the Authority has not complied with the material terms of this Agreement; it shall promptly notify the Authority in writing with specific details regarding the exact nature of the alleged noncompliance or default. The other terms and provisions of section 8.2, 8.3 and 8.4.1 hereof shall then apply except simply





reversing Authority with Grantee and Grantee with Authority. The sole remedy available to Grantee for a breach or default by the Authority shall be specific performance or other available equitable relief. In no case shall the Authority be liable to Grantee for any special, indirect, incidental, consequential, or exemplary damages, including, without limitation, any damages resulting from loss of use, loss of data, interruption of business activities, or failure to realize profits arising out of the operation of the System, regardless of whether a claim is based on a theory of contract or tort, including negligence and strict liability. It is understood and agreed that any breach of the exclusivity provisions and term, not in limitation of other provisions set forth herein, are material.

### ***8.6 Limitation on Liability.***

EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, RELIANCE, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST REVENUES, LOST SAVINGS, OR HARM TO BUSINESS. EACH PARTY HEREBY RELEASES THE OTHER PARTY, ITS SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE TRUSTEES, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AND AGENTS, FROM ANY SUCH CLAIM.

### ***8.7 Transition upon Cessation of Daily System Operation or Termination***

In the event of cessation of daily system operation, termination of this Agreement or upon the expiration of this Agreement at the end of the term (and any renewal term), the parties may negotiate a commercially reasonable operating agreement for the continued use of the existing System, which could involve ownership and operation of the System by Village or a third party and at the same time compensate Grantee.

In the event of discontinuation of business activity related to i3 and/or Fibercity Gilberts LLC, the Village of Gilberts shall have the authority to maintain daily system operations.

In the event of termination of this Agreement upon the expiration of this Agreement at the end of the term (and any renewal term), the Village will have the right and option, but not the obligation, to purchase the fiber network from Grantee at any time prior to such a termination. Village shall exercise its aforesaid option by giving Grantee written notice of Village's election to exercise its option no less than 120 days prior to the end of the then existing term. The Village's exercise notice shall specify the date, time and place of closing, which date ( the "Closing") shall be neither earlier than 30 days nor later than 150 days after



the notice given. In connection with this option, the parties further agree as follows:

- (a) The purchase price to be paid by Village, or its designee, for the System (the **“Purchase Price”**) shall be the **“Fair Market Value of the System”**, which shall be mutually agreed upon Village and Grantee; however, if the parties do not agree as to the Fair Market Value of the System within thirty (30) days after the **Exercise Date**, then each party shall choose a **“Qualified Expert”** who shall make such determination of the Fair Market value of the System as of the Exercise Date and submit the same to the other party (together with the information forming the basis for such determination) within seventy five (75) days after the Exercise Date (with each party paying the fee for its own Qualified Expert), but if the two Qualified Experts do not agree as to the Fair Market Value for the System within fifteen (15) days thereafter, the two Qualified Experts shall promptly jointly select a third Qualified Expert. Within 30 days after his or her appointment, the third Qualified Expert shall select one of the two initially submitted appraisals as the Fair Market Value of the System and such selection shall be binding upon the parties.
- (b) For purposes hereof, the term **“Qualified Expert”** shall mean an independent unaffiliated third party with expertise and knowledge about fiber networks of this kind and the market value of the same, taking into account the technology, **infrastructure, depreciation, current liabilities, the parties’ previous contributions to the System, customer base, service speeds and other relevant market factors.** The fee of the third Qualified Expert, if any, shall be paid by the party whose determination of the Fair Market Value of the System is ~~not~~ selected by the third Qualified Expert. Notwithstanding the foregoing, Village may terminate the Agreement without giving 180 days notice if Grantee is in default and Village does not elect to exercise its option to purchase the System hereunder.

In the event of termination and non-renewal of this Agreement upon the expiration of this Agreement at the end of the term (and any renewal term), and no successor owner of the System is identified, the System may be abandoned in place subject to the express approval of the Village. If the Village does not approve such abandonment, then the Grantee shall remove all of the System components within 30 days of notice from the Village thereof.





**i3 America Inc, 750 Third Avenue, 9<sup>th</sup> Floor, New York 10017**

With a copy (which shall not constitute notice) to:

FREDRIC D. TANNENBAUM  
Managing Partner  
GOULD & RATNER LLP  
222 North LaSalle Street  
Suite 800  
Chicago, Illinois 60601

Notices shall be deemed received the same day with delivery upon hand delivery, and the next business day with delivery upon overnight mail, electronic mail, or by facsimile.

### ***9.3. Entire Agreement***

This Agreement, including all Exhibits, embodies the entire understanding and agreement of the Authority and the Grantee with respect to the subject matter hereof. All ordinances or parts of ordinances or other agreements whether written, verbal, or otherwise between the Grantee and the Authority that are in conflict with the provisions of this Agreement are hereby declared superseded and this Agreement shall control. However, this provision does not excuse the Grantee from compliance with Village ordinances.

### ***9.4. Severability***

If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

### ***9.5. Governing Law***

This Agreement shall be deemed to be executed in the Village of Gilberts, State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois, as applicable to contracts entered into and performed entirely within the State, irrespective of conflict of laws principles. The parties consent to venue for any disputes arising under this Agreement being in any state court serving Kane County or any federal court having jurisdiction thereof.



## **9.6. *Modification***

No provision of this Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Authority and the Grantee, which amendment shall be authorized on behalf of the Authority through the adoption of an appropriate resolution or order by the Authority, as required by applicable law.

## **9.7. *No Third Party Beneficiaries***

Nothing in this Agreement or in any prior agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of such Agreement.

## **9.8. *No Waiver of Rights***

Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural. Grantee may have under federal or state law unless such waiver is expressly stated herein.

## **9.9. *Nature, Survival, and Transfer of Obligations***

All obligations assumed by the Grantee under this Agreement shall be binding on the Grantee and on any and all of the Grantee's transferees, successors, and assigns. Grantee shall not be released of its obligations under this Agreement, however, unless and until it has provided notice to the Authority of any transfer or assignment, and the Authority, Grantee, and the new transferee, successor, or assignee have entered into a transferee assumption agreement. The failure to provide the Authority with a fully executed copy of a Transferee Assumption Agreement required above by the transferee to be bound by this Agreement shall result in the Grantee remaining fully liable for all of the obligations under this Agreement but shall not relieve the transferee of its liability for those obligations as a successor to the Grantee.

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of this 6<sup>th</sup> day of November, 2012.



THE VILLAGE:

THE VILLAGE OF GILBERT, ILLINOIS

By: \_\_\_\_\_  
Authorized Official

GRANTEE:

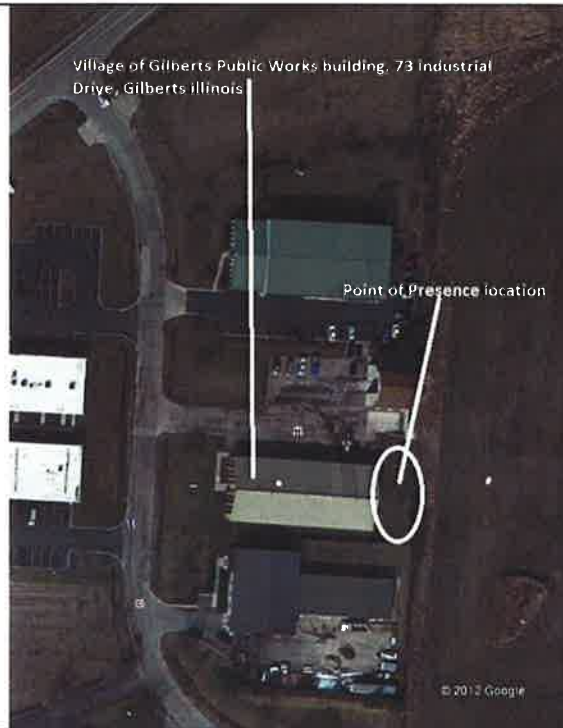
FIBERCITY GILBERTS LLC

By: \_\_\_\_\_  
Authorized Agent



## EXHIBIT 1

### PoP LOCATION



## EXHIBIT 2

### MUNICIPAL LOCATIONS

- Village Hall 87 Galligan Road
- Police Department 86 Railroad Street
- Public Works/Finance Dept. 73 Industrial Drive
- Waste Water Treatment Plant 281 Raymond Drive
- Fresh Water Treatment Plant 320 Raymond Drive
- North Water Tower 19N056 Galligan Road
- Middle Water Tower 598 Sleeping Bear Lane
- South Water Tower 16 Tyrrell Road
- Rutland Fire Protection District 11 East Higgins Road
- Gilberts Elementary School 729 Paperbark Lane

## EXHIBIT 3

### RESIDENTIAL ADDRESSES IN GILBERTS

ST #	ST NAME		ST #	ST NAME		ST #	ST NAME
			357	Alpine Dr		276	Aspen Cir
229	Alpine Ct		361	Alpine Dr		279	Aspen Cir
232	Alpine Ct		365	Alpine Dr		280	Aspen Cir
233	Alpine Ct		384	Andra Ct		284	Aspen Cir
236	Alpine Ct		388	Andra Ct		288	Aspen Cir
237	Alpine Ct		392	Andra Ct		21	Augusta Dr
240	Alpine Ct		397	Andra Ct		25	Augusta Dr
241	Alpine Ct		405	Andra Ct		26	Augusta Dr
244	Alpine Ct		406	Andra Ct		29	Augusta Dr
252	Alpine Dr		411	Andra Ct		30	Augusta Dr
256	Alpine Dr		414	Andra Ct		33	Augusta Dr
257	Alpine Dr		417	Andra Ct		34	Augusta Dr
260	Alpine Dr		403	Arrowhead Dr		37	Augusta Dr
261	Alpine Dr		404	Arrowhead Dr		38	Augusta Dr
264	Alpine Dr		199	Aspen Cir		41	Augusta Dr



## EXHIBIT 5

### UNDEVELOPED AREAS NORTH OF RT 72



## **SECTION 9: Miscellaneous Provisions**

### ***9.1 Force Majeure***

Neither party shall ~~not~~ be held in default under, or in breach or noncompliance with, the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Agreement), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to construct or maintain the System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility infrastructure on which the Grantee's fiber optic cable and/or equipment may be deployed, as well as unavailability of materials and/or qualified labor to perform the work necessary. To claim a force majeure event the affected party shall send notice to the other party within three (3) business days of the onset of the cause giving rise to the force majeure event. Thereafter, the delay granted by the force majeure shall only be for so long as the cause of the event continues. Either party may give notice to the other of the abatement of the cause giving rise to the force majeure event.

### ***9.2 Notice***

All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, overnight mail, or by facsimile with confirmed transmission and addressed as follows:

The Franchising Authority:

**Village of Gilberts, 87 Galligan Road, Gilberts, IL 60136**

With a copy (which shall not constitute notice) to:

Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C.  
140 South Dearborn Street, Sixth Floor  
Chicago, Illinois 60603  
(312) 782-0943 Fax

The Grantee:





## EXHIBIT 6

### UNDEVELOPED AREAS SOUTH OF RT 72

