

RESOLUTION

VILLAGE OF GILBERTS

Resolution authorizing a Service Agreement between the Village of Gilberts and Current Technologies to provide IT services

Be it Resolved by the President and Board of Trustees of the Village of Gilberts, Kane County, Illinois that:

Section 1:

The Village of Gilberts hereby authorizes the Village President and Village Clerk to execute an Service Agreement with Current Technologies to provide IT services, and such documents as are necessary and convenient to effectuate the service agreement as here by attached hereto and made a part hereof as Exhibit A as approved.

Section 2:

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

Passed this 14th day of March, 2017 by a roll call vote as follows:

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

APPROVED THIS 14th DAY OF March 2017

[Signature]
Village President, Rick Zirk



[Signature]
Village Clerk, Debra Meadows

**VILLAGE OF GILBERTS
PROFESSIONAL SERVICES AGREEMENT**

This **AGREEMENT** is dated as of the 14th day of March, 2017 ("**Agreement**"), and is by and between the **VILLAGE OF GILBERTS** ("**Village**") and **CURRENT TECHNOLOGIES** ("**Consultant**")

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth in the Agreement, and pursuant to the Village's authority, the parties agree as follows:

SECTION 1. CONSULTANT AND SCOPE OF SERVICES.

A. Engagement of Consultant. The Village desires to engage the Consultant to perform and to provide the professional consulting services described in the Consultant's proposal, a copy of which is attached as **Exhibit A** to this Agreement ("**Proposal**"). The Consultant represents that it is financially solvent, has the necessary financial resources, and is sufficiently experienced and competent to perform and complete the consulting services set forth in the Proposal ("**Services**") in accordance with the standards of professional practice, care, and diligence practiced by recognized consulting firms in performing services of a similar nature in existence at the time of performance. The representations and certifications expressed shall be in addition to any other representations and certifications expressed in this Agreement, or expressed or implied by law, which are hereby reserved unto the Village.

B. Commencement; Time of Performance. The Consultant shall commence the Services immediately upon receipt of written notice that this Agreement has been fully executed by the Parties ("**Commencement Date**"). The Consultant shall diligently and continuously prosecute the Services until the completion of the Services or upon the termination of this Agreement by the Village, but in no event later than 10 days after the execution of this Agreement ("**Time of Performance**"), unless extended by the Village in its discretion.

C. Agreement Amount. The total amount billed for the Services during the term of this Agreement shall not exceed the amount identified in the Proposal without the prior express written authorization of the Village Administrator. The Consultant shall submit invoices in an approved format to the Village for costs incurred by the Consultant in performing the Services. The amount billed in such invoice for the Services shall be based on the rates set forth in the Proposal. The Village shall pay to the Consultant the amount billed within 30 days after receiving such an invoice.

D. Term. The term of this Agreement shall be one year. Notwithstanding any other provision hereof, the Village may terminate this Agreement at any time upon 15 days prior written notice to the Consultant. In the event that this Agreement is so terminated, the Consultant shall be paid for Services actually performed and reimbursable expenses actually incurred, if any, prior to termination, not exceeding the value of the Services completed determined on the basis of the rates set forth in the Proposal.

SECTION 2. CONFIDENTIAL INFORMATION.

A. Confidential Information. The term "**Confidential Information**" shall mean information in the possession or under the control of the Village relating to the technical, business, or corporate affairs of the Village; Village property; user information, including, without limitation, any information pertaining to usage of the Village's computer system, including and without limitation, any information obtained from server logs or other records of electronic or machine readable form; and the existence of, and terms

and conditions of, this Agreement. Village Confidential Information shall not include information that can be demonstrated: (1) to have been rightfully in the possession of the Consultant from a source other than the Village prior to the time of disclosure of said information to the Consultant under this Agreement ("**Time of Disclosure**"); (2) to have been in the public domain prior to the Time of Disclosure; (3) to have become part of the public domain after the Time of Disclosure by a publication or by any other means except an unauthorized act or omission or breach of this Agreement on the part of the Consultant or the Village; or (4) to have been supplied to the Consultant after the Time of Disclosure without restriction by a third party who is under no obligation to the Village to maintain such information in confidence.

B. No Disclosure of Confidential Information by the Consultant. The Consultant acknowledges that it shall, in performing the Services for the Village under this Agreement, have access to or be directly or indirectly exposed to Confidential Information. The Consultant shall hold confidential all Confidential Information and shall not disclose or use such Confidential Information without express prior written consent of the Village. The Consultant shall use reasonable measures at least as strict as those the Consultant uses to protect its own confidential information. Such measures shall include, without limitation, requiring employees and subcontractors of the Consultant to execute a non-disclosure agreement before obtaining access to Confidential Information.

SECTION 3. INDEMNIFICATION.

The Consultant proposes and agrees that the Consultant shall indemnify, save harmless, and defend the Village against all damages, liability, claims, losses, and expenses (including attorneys' fee) that may arise, or be alleged to have arisen, out of or in connection with the Consultant's performance of, or failure to perform, the Services or any part thereof, or any failure to meet the representations and certifications set forth in this Agreement.

SECTION 4. DEFAULT.

A. By Consultant. If it should appear at any time that the Consultant has failed or refused to prosecute, or has delayed in the prosecution of, the Services with diligence at a rate that assures completion of the Services in full compliance with the requirements of this Agreement, or has otherwise failed, refused, or delayed to perform or satisfy the Services or any other requirement of this Agreement ("**Event of Default**"), and fails to cure any such Event of Default within 10 business days after the Consultant's receipt of written notice of such Event of Default from the Village, then the Village shall have the right, without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

1. **Cure by Consultant.** The Village may require the Consultant, within a reasonable time, to complete or correct all or any part of the Services that are the subject of the Event of Default; and to take any or all other action necessary to bring the Consultant and the Services into compliance with this Agreement.

2. **Termination of Agreement by Village.** The Village may terminate this Agreement without liability for further payment of amounts due or to become due under this Agreement after the effective date of termination.

3. **Withholding of Payment by Village.** The Village may withhold from any payment, whether or not previously approved, or may recover from the Consultant, any and all costs, including attorneys' fees and administrative expenses, incurred by the Village as the result of any Event of Default by the

Consultant or as a result of actions taken by the Village in response to any Event of Default by the Consultant.

B. **By Village.** If it should appear at any time that the Village has failed or refused to honor its obligations under this Agreement, or modification thereto, including but not limited to providing access to the Consultant for the Consultant to perform work or pay the Consultant as required hereunder or according to any Proposals submitted, or has otherwise failed, refused, or delayed to perform or satisfy the Village's obligations or any other requirement of this Agreement ("***Event of Default***"), and fails to cure any such Event of Default within 10 business days after the Village's receipt of written notice of such Event of Default from the Consultant, then the Consultant shall have the right, without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

1. **Cure by Village.** The Consultant may require the Consultant, within a reasonable time, to complete or correct all or any part of the Event of Default; and to take any or all other action necessary to bring the Village into compliance with this Agreement.

2. **Termination of Agreement by Consultant.** The Consultant may terminate this Agreement without liability for further performance of the Consultant's obligations under the Agreement, any modification thereof, or the Proposals, after the effective date of termination. The Consultant shall not be required to perform any of the work set forth in this Agreement, any modification thereto or in the Proposals, during the period of time that Consultant provided notice of the Event of Default to the Village and until said Event of Default is cured.

SECTION 5. SPECIAL PROVISIONS.

A. **Relationship of the Parties.** The Consultant shall act as an independent contractor in providing and performing the Services. Nothing in, nor done pursuant to, this Agreement shall be construed (1) to create the relationship of principal and agent, employer and employee, partners, or joint venturers between the Village and Consultant; or (2) to create any relationship between the Village and any subcontractor of the Consultant.

B. **Conflict of Interest.** The Consultant represents and certifies that, to the best of its knowledge, (1) no Village employee or agent is interested in the business of the Consultant or this Agreement; (2) as of the date of this Agreement neither the Consultant nor any person employed or associated with the Consultant has any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement; and (3) neither the Consultant nor any person employed by or associated with the Consultant shall at any time during the term of this Agreement obtain or acquire any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement.

C. **No Collusion.** The Consultant represents and certifies that the Consultant is not barred from contracting with a unit of state or local government as a result of (1) a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless the Consultant is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax, as set forth in Section 11-42.1-1 *et seq.* of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 *et seq.*; or (2) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 1961, 720 ILCS 5/33E-1 *et seq.* The Consultant represents that the only persons, firms, or corporations interested in this Agreement as principals are those disclosed to the Village prior to the

execution of this Agreement, and that this Agreement is made without collusion with any other person, firm, or corporation. If at any time it shall be found that the Consultant has, in procuring this Agreement, colluded with any other person, firm, or corporation, then the Consultant shall be liable to the Village for all loss or damage that the Village may suffer, and this Agreement shall, at the Village's option, be null and void.

D. No Personal Liability. No elected or appointed official or employee of the Village shall be personally liable, in law or in contract, to the Consultant as the result of the execution of this Agreement.

E. Compliance With Laws and Grants. Consultant shall give all notices, pay all fees, and take all other action that may be necessary to ensure that the Services are provided, performed, and completed in accordance with all required governmental permits, licenses, or other approvals and authorizations that may be required in connection with providing, performing, and completing the Services, and with all applicable statutes, ordinances, rules, and regulations, including without limitation the Fair Labor Standards Act; any statutes regarding qualification to do business; any statutes prohibiting discrimination because of, or requiring affirmative action based on, race, creed, color, national origin, age, sex, or other prohibited classification, including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.*, and the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* Consultant shall also comply with all conditions of any federal, state, or local grant received by Owner or Consultant with respect to this Contract or the Services. Consultant shall be solely liable for any fines or civil penalties that are imposed by any governmental or quasi-governmental agency or body that may arise, or be alleged to have arisen, out of or in connection with Consultant's, or its subcontractors, performance of, or failure to perform, the Services or any part thereof. Every provision of law required by law to be inserted into this Contract shall be deemed to be inserted herein.

F. Mutual Cooperation. The Village agrees to cooperate with the Consultant in the performance of the Services, including meeting with the Consultant and providing the Consultant with such non-confidential information that the Village may have that may be relevant and helpful to the Consultant's performance of the Services. The Consultant agrees to cooperate with the Village in the performance of and the completion of the Services and with any other consultants engaged by the Village.

G. Ownership. Designs, drawings, plans, specifications, photos, reports, information, observations, calculations, notes, and any other documents, data, or information, in any form, collected, or received by the Consultant in connection with any or all of the Services to be performed under this Agreement ("**Documents**") shall be and remain the exclusive property of the Village. At the Village's request, or upon termination of this Agreement, the Consultant shall cause the Documents to be promptly delivered to the Village. The Village shall have no right in the designs, drawings, plans, specifications, photos, reports, information, observations, calculations, notes or other documents prepared by the Consultant, unless in the form of a written report to the Village; provided, however, that Consultant shall promptly provide all passwords, access codes, as well as copies of all documentation, data, and information generated by Consultant while providing the Services to the Village promptly at the request of the Village, and shall cooperate with the Village in responding to all Freedom of Information Act requests, court orders, and subpoenas for Village records."

SECTION 6. GENERAL PROVISIONS.

- A. Amendment.** No amendment or modification to this Agreement shall be effective unless and until the amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed.
- B. Assignment.** This Agreement may not be assigned by the Village or by the Consultant without the prior written consent of the other party.
- C. Binding Effect.** The terms of this Agreement shall bind and inure to the benefit of the Parties to this Agreement and their agents, successors, and assigns.
- D. Notice.** All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (1) personally, (2) by a reputable overnight courier, or by (3) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each Party shall have the right to change the address or the addressee, or both, for all future notices and communications to the other party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to the Village shall be addressed to, and delivered at, the following address:

William Beith
Village of Gilberts
87 Galligan Road
Gilberts, IL 60136

Notices and communications to the Consultant shall be addressed to, and delivered at, the following address:

Frank Shoemaker
Current Technologies
1423 Centre Circle
Downers Grove, IL 60515

- E. Third Party Beneficiary.** No claim as a third party beneficiary under this Agreement by any person, firm, or corporation shall be made or be valid against the Village.
- F. Provisions Severable.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- G. Time.** Time is of the essence in the performance of this Agreement.
- H. Calendar Days and Time.** Unless otherwise provided in this Agreement, any reference in this Agreement to "day" or "days" shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a

Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday.

I. **Governing Laws.** This Agreement shall be governed by, construed and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

J. **Authority to Execute.**

1. **The Village.** The Village hereby warrants and represents to the Consultant that the persons executing this Agreement on its behalf have been properly authorized to do so by its corporate authorities. In the event this Agreement, or any modification of this Agreement, exceeds the statutory amount authorized by the person(s) executing this Agreement, the Village shall provide written authorization from the Village Board and Village Clerk prior to the Consultant proceeding with the work. In the event the person(s) who execute this Agreement, or any modification thereof, does not have the requisite authority, said person(s) hereby agree that they are executing this Agreement or modification personally and shall be personally liable for all costs, expenses, including but not limited to attorney's fees and court costs, in collecting the amounts due under this Agreement or modification thereof and for any amounts that the Village refuses to pay or a court of competent jurisdiction determines the Village is not legally obligated to pay.

2. **The Consultant.** The Consultant hereby warrants and represents to the Village that the persons executing this Agreement on its behalf have the full and complete right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement and that all legal actions needed to authorize the execution, delivery, and performance of this Agreement have been taken.

K. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties to this Agreement and supersedes all prior agreements and negotiations between the parties, whether written or oral relating to the subject matter of this Agreement.

L. **Waiver.** Neither the Village nor the Consultant shall be under any obligation to exercise any of the rights granted to them in this Agreement except as it shall determine to be in its best interest from time to time. The failure of the Village or the Consultant to exercise at any time any such rights shall not be deemed or construed as a waiver of that right, nor shall the failure void or affect the Village's or the Consultant's right to enforce such rights or any other rights.

M. **Consents.** Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any party to this Agreement, or of any duly authorized officer, employee, agent, or representative of any party to this Agreement, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent shall be in writing.

O. **Interpretation.** This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

Q. Exhibits. Exhibit A is attached to this Agreement, and by this reference incorporated in and made a part of, this Agreement. In the event of a conflict between the Exhibit and the text of this Agreement, the text of this Agreement shall control.

R. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law.

ATTEST:

By: Debra Meadows
Village Clerk

VILLAGE OF Silberts

By: [Signature]
Village Administrator

ATTEST:

By: Debra Meadows
Title: Village Clerk

CONSULTANT

By: Frank Shoemaker
Its: VP - Sales

EXHIBIT A - PROPOSAL
IT Service and Support - Time and Materials Agreement For
Village of Gilberts, IL

March 14, 2017

DESCRIPTION OF TIME AND MATERIALS AGREEMENT

Current Technologies Corporation (CTC) agrees to provide Information Technology (IT) services to the Village of Gilberts, IL on a Time and Materials basis. Current Technologies feels that one of our strong advantages over competition is the depth and versatility of our support staff. The purpose of the Agreement is to avail the Village of Gilberts, IL of that talent on a Time and Materials basis.

Labor Rate – The Village of Gilberts will be invoiced on a Time and Materials basis for IT support. That labor rate for support either onsite or remote is \$125.00 per hour, billed to the ¼ hour.

Travel Fee – The travel fee applied to onsite visits is waived.

Convenience – The Village of Gilberts does not have to create a purchase order for every request for service event.

Emergency on-site support after normal business hours will be billed at 1.5 times the above stated labor rates.

USAGE OF TIME and MATERIALS Agreement

This Agreement can be utilized for, but not limited to the following:

1. Server Administration, Implementation, Migration, and Virtualization Projects
2. Security & Availability Projects including Firewall / Antivirus / Antispam / Backup
3. Networking Projects including Design, Installation, and Maintenance on Routers, Switches and Wireless Devices
4. Workstation Infrastructure Installation & Migration
5. Remote and Onsite User Support

STANDARD RESPONSE TIMES

We strive to provide timely service and provide the following minimum service levels.

1. Remote service within 1 Hour for network down emergencies
2. Onsite service within 4 Hours for network down emergencies
3. Remote service within 4 Hours for non-emergency work
4. The Primary assigned consultant can typically be scheduled for onsite service when we have 1-3 days advance notice.

PAYMENT

Payment terms are: Net 30



Current Technologies Corporation

Date

3/17/17



Village of Gilberts, IL

Date

3/14/2017