

ORDINANCE NO. 2025-01

**AN ORDINANCE APPROVING A RIGHT-OF-WAY LICENSE AGREEMENT  
BETWEEN VILLAGE OF BRIGHTON AND VILLAGE OF GODFREY**

**WHEREAS**, in connection with the water main improvement and replacement project in the Village of Brighton, Macoupin and Jersey Counties, Illinois, the Village desires to continue a comprehensive community water plan to ensure health and general welfare of its users; and

**WHEREAS**, as part of the plan for operation and maintenance of the water system, it is necessary to have a right-of-way agreement with the Village of Godfrey, Illinois; and

**WHEREAS**, it is in the best interests of the Village of Brighton to enter into said Agreement for access to various public ways within the corporate limits of the Village of Godfrey for installation and maintenance of a potable water distribution system and associated appurtenances for the benefit of the Village of Brighton at large; and

**WHEREAS**, under the constitution of the State of Illinois and the Intergovernmental Cooperation Act of Illinois, local governments are authorized to enter into Intergovernmental Agreements, not effectively prohibited by law or ordinances.

**THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF BRIGHTON, MACOUPIN AND JERSEY COUNTIES, ILLINOIS, AS FOLLOWS:**

SECTION 1: That the Village of Brighton shall enter into the Right-of-Way License Agreement with the Village of Godfrey, Illinois.

SECTION 2: That the President of the Board of Trustees is authorized, empowered, and directed to sign said Agreement on behalf of the Village of Brighton, State of Illinois; and to do all acts and things necessary to carry out the terms and conditions of said Agreement.

SECTION 3. That this Ordinance shall be in full force and effect upon its passage and approval as required by law.

## RIGHT-OF-WAY LICENSE AGREEMENT

This Right-Of-Way License Agreement (hereinafter the "Agreement,") is made and entered into this 7<sup>th</sup> day of February, 2025 by and between the **VILLAGE OF GODFREY**, an Illinois Municipal Corporation (hereinafter the "Village,") and **VILLAGE OF BRIGHTON**, an Illinois Municipal Corporation, (hereinafter the "Licensee,,"), WITNESSETH;

### **Recitals**

**WHEREAS**, Village owns or controls various public ways within the corporate limits of Village, including but not limited to highways, roads, streets, lanes, alleys, paths, curbs, sidewalks, or other public ways and public rights-of-way (hereinafter "Public Ways,,"); and,

**WHEREAS**, Licensee desires to utilize the Village's Public Ways for the installation and maintenance of a potable water distribution system and associated appurtenances; and,

**WHEREAS**, the Village has agreed to grant to Licensee a non-exclusive privilege and license to use the Public Ways described above, all in accordance with and subject to the terms, conditions and limitations of this Agreement;

**NOW, THEREFORE**, for and in consideration of the mutual covenants, and obligations contained herein and other good and valuable consideration received by each party, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated into this Agreement in their entirety.
2. **Grant of License.** The Village hereby grants to Licensee a non-exclusive license, privilege and permission to enter upon the Village Public Ways and to use such Public Ways described above, (hereinafter the "License,,"), for the limited purposes hereinafter set forth, subject, however, to the terms, conditions and limitations of this Agreement. The License herein granted shall be subject to all existing utility easements, if any, located within the Village Public Ways, or any other easements, conditions, covenants or restrictions of record.
3. **Term.** This Agreement and the License granted to Licensee hereunder shall commence as of the date of this Agreement and shall continue until terminated in accordance with the terms of this Agreement.
4. **Consideration.** The consideration to the Village for the privilege granted by this Agreement shall be the benefits to be derived by Village as a result of the installation of said potable water distribution system.
5. **No Interest in Land.** Licensee understands, acknowledges and agrees that this Agreement does not create an interest or estate in Licensee's favor in the Public Ways. The Village retains legal possession of the full boundaries of its right-of-way and the Agreement merely

grants to Licensee the privilege to use the Public Ways described above throughout the term of this Agreement.

6. **No Vested Right.** Notwithstanding any expenditure of money, time and/or labor by Licensee on or within the Public Ways, the Agreement shall in no event be construed to create an assignment coupled with an interest or any vested rights in favor of Licensee. Licensee shall expend any time, money or labor on or in the Public Ways at Licensee's own risk and peril.

7. **Limited Scope of License.** The License granted to Licensee is limited in scope to the following use or uses:

To construct, install, operate, inspect, maintain, repair, upgrade, replace and remove water distribution pipes and any and all lines, conduits, access manholes, vaults, meters, and other similar equipment and devices owned or used by Licensee (hereafter the "Equipment,") in the Public Ways for the purpose of providing water services.

8. **Taxes.** The Licensee agrees to pay any and all applicable taxes and failure to pay such taxes shall be considered a material breach of this Agreement. Licensee shall be subject to audit and shall itemize by category of service the amount received and taxes paid for services provided by Facilities in the Public Ways. Such taxes shall be in addition to compensation or reimbursement of costs relating to use of the Public Ways, if any, required herein or otherwise by the Village by ordinance subject to any limitations of applicable state or federal law.

9. **Installation.** Licensee agrees and warrants that any installation will be done and completed in a good and workmanlike manner, and at no expense to Village. Installation will be undertaken in the name of, or pursuant to contracts or agreements with Licensee. The water distribution system will be installed with as minimal excavation as necessary. Such water distribution system shall be installed at a minimum depth of three (3) feet. At all street crossings functionally classified as collector or higher, water pipes installed not longitudinal to the direction of traffic shall be encased in steel sleeves to eliminate the need for any future excavation in paved areas. In all excavations in paved areas, including roadway pavement, driveways, and sidewalks, select granular backfill shall be provided and shall extend to a point at least two feet (2') past the edge of the paved areas. All of the water distribution equipment except for hydrants and similar appurtenances shall be installed underground. Excavations in pavement shall be inspected by the Village prior to restoration. Seeding of restored areas shall not be considered as the basis of acceptance of restoration by Village, and a minimum of 75% of new growth must be obtained, as determined by Village in its sole discretion, prior to acceptance.

10. **Restoration.** On completion of any installation activity by Licensee or persons acting pursuant to contracts or agreements with Licensee, Licensee agrees to (a) replace and grade all topsoil removed or disturbed in connection with such installation, (b) restore all disturbed, removed, or damaged fences, roads, alleys, driveways, parkways, and similar

improvements to at least as good a condition as existing immediately preceding the Installation, and (c) reseed all grass removed in connection with any Installation.

11. **Relocation of Equipment for Village.** Upon receipt of at least sixty (60) days advance written notice, the Licensee shall, at its sole cost, relocate in or remove from the Public Ways, any Equipment of Licensee when lawfully required by the Village by reason of traffic conditions, public safety, street abandonment, highway and street construction, change or establishment of street grade, installation of sewers, drains, or any other type of public structures, utilities, or improvements. The Licensee shall in all cases have the right of abandonment of part or all of its Equipment. The Village will reasonably endeavor to provide a place to which the Equipment may be relocated, but if no such place is available, then Licensee must relocate the water distribution system off the Public Way at its expense. The Village shall not be liable for any costs associated with any such relocation, rerouting or removal of Licensee's Equipment.
12. **Relocation For Third Party.** The Licensee shall, on the request of any third party holding a lawful license or permit issued by Village, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Ways as necessary any Equipment of Licensee, provided: (A) the expense of such is paid by said third party benefiting from the relocation, including, if required by the Licensee, making such payment in advance; and (B) the Licensee is given reasonable advance written notice to prepare for such changes. For purposes of this section, reasonable advance written notice shall be no less than ninety (90) days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.
13. **Transferability of License.** The Licensee's right, title, or interest in the License shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Licensee, without prior written notice to and prior written approval by Village. No such notice shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Licensee in its water distribution system in order to secure indebtedness.
14. **Termination.** This Agreement and the License herein granted to Licensee may be terminated by Village, if after written notice by Village to Licensee of the occurrence or existence of a default or material breach, Licensee, fails to cure, or commence good faith efforts to cure, such default or material breach within forty-five (45) days after delivery of such notice.
15. **Removal or Abandonment Upon Termination.** At such time as this Agreement and the License herein granted to Licensee is terminated, Licensee shall cease using its equipment, and Licensee may, but shall not be required to, remove its Equipment located in the Public Ways. With respect to any removal, Licensee shall repair all damage caused in connection with removal and shall restore the areas affected by the Equipment to the condition and appearance in which they were found, or better, prior to installation of the Equipment, reasonable wear and tear and damage by casualty excepted. Licensee may, at its option, abandon such Equipment in place.

16. **Insurance.** For as long as Licensee maintains Equipment within the Village's Public Ways, Licensee shall maintain commercial general liability insurance insuring against liability for personal and advertising injury, bodily injury, death or damage to personal property, property damage liability insurance for explosion, collapse, and underground coverages with combined single limits of One Million and No/100 Dollars (\$1,000,000). In addition, Licensee shall maintain worker's compensation in statutory amounts, employer's liability insurance with combined single limits of One Million and No/100 Dollars (\$1,000,000); and automobile liability insurance, if applicable, insuring against claims for bodily injury or property damage with combined single limits of One Million and No/100 Dollars (\$1,000,000). These insurance policies required of Licensee shall specifically provide that they are primary/non-contributory to Village's separate liability insurance policies, and the limits of same shall be separately exhausted prior to exposure of any of Village's separate liability limits. The insurance policies required of Licensee herein shall not provide in any part thereof that the respective liability insurance policies are to provide coverage on a pro-rata basis of their liability limits. Licensee shall provide Village with evidence of such insurance in the form of a certificate of insurance prior to performing the work contemplated herein, and shall cause such insurance to remain in effect until such time as Licensee's Equipment is removed from the Village's public Ways, and agrees to cause Village to be named as an Additional Insured through use of ISO additional insured endorsement form number CG 20 10 (through use of either the 11/85 or 10/93 version but not the 07/04 version) on all such policies, and will provide Village with copies of the Certificates of Insurance and Additional Insured Endorsements evidencing said coverages and provisions. In connection with any claim made against Village, all insurance policies required of Licensee hereunder shall further grant Village the right to select and designate counsel of its own choosing in connection with any claim for which it is an additional insured. Failure of Licensee to provide or Village to request and verify that coverage has been obtained by Licensee as required herein shall not be construed as a waiver by Village of its right to require coverage as contractually agreed.
17. **Construction and Maintenance.** Licensee agrees that the improvements described herein shall be installed and maintained at all times in a safe, neat, sightly and good physical condition and in accordance with all requirements of law. During the term of this Agreement, Licensee shall, at Licensee's sole cost and expense, maintain its facilities in the Public Ways in good condition and in compliance with any applicable requirements of law. Village shall be the sole judge of the quality of the construction, restoration, and maintenance and, upon written notice of Village stating in general terms how and in what manner restoration or maintenance is required, Licensee shall be required to perform such restoration or maintenance. If Licensee fails to do so, then the Village shall have the right to perform such restoration and maintenance, the full and complete cost of which shall be borne by Licensee. Licensee covenants and agrees to reimburse the Village its full cost and expense for any such restoration and maintenance.
18. **Audits.** The Village shall have the right, in its discretion and at all reasonable times, to audit the books and records of Licensee to determine if Licensee has properly accounted to the Village the amount due to the Village under the Licensee's obligation to pay taxes

herein. Any underpayment of the amount to the Village shall be paid to the Village plus five percent (5%) of the total amount of the underpayment determined in an audit, plus any costs incurred by the Village in conducting the audit not to exceed five percent (5%) of the total amount of the underpayment determined in an audit. Said total sum shall be paid to the Village within twenty-one (21) days after the date of issuance of any invoice for the same.

19. **Enforcement; Attorneys' Fees.** The Village shall be entitled to enforce any provision of this Agreement through all remedies lawfully available, and Licensee shall pay the Village its costs of enforcement, including all reasonable attorneys' fees and expenses incurred in connection therewith.
20. **Reservation of Rights.** The Village hereby reserves the right to use the Public Ways and all adjacent property of the Village in any manner that will not interfere with the exercise by Licensee of the rights granted hereunder. The Village has the right to grant other nonexclusive easements, over, along, on, or across the Public Ways, except that any such other easements will be subject to this Agreement and the rights granted hereby.
21. **Compliance with Law.** Licensee shall adhere to and comply with all ordinances, laws, rules and regulations that may pertain to or apply to the Public Ways and the Licensee's use thereof. Licensee agrees and warrants that it has procured or shall procure any licenses, permits or like permission required by law, if any, to conduct or engage in the use of the Public Ways described herein, that Licensee will procure all additional licenses, permits or like permission hereinafter required by law during the term of this Agreement, and that Licensee will keep the same in full force and effect during the term of this Agreement. Licensee shall perform under this Agreement in accordance with all applicable legal requirements.
22. **Indemnification.** To the fullest extent permitted by Illinois law, including indemnification for Village's own negligence, Licensee agrees to defend, indemnify and save harmless Village, its officers, elected and appointed officials, employees, and agents, from and against all fines, penalties, judgments, claims, losses, costs, expenses, damages (including consequential damages), injury or death, including specifically, but not limited to, Village's attorneys and paralegal's fees and expenses incurred in connection therewith, as well as any disbursements, settlement costs, consultant fees, expert witness fees, investigation and laboratory fees and costs to which Village or its officers, elected and appointed officials, employees and agents may become subject, insofar as they may be deemed to arise out of or are based upon this Agreement, and whether caused by the negligence of Licensee, Village, their agents, or employees or otherwise. In connection with same, Licensee agrees to waive any and all limitations on contribution liability, including specifically but not limited to those provided by the *Kotecki* doctrine, which Licensee may have or be able to assert as a defense to any action which relate to or may be based upon Licensee's status as an employer under Illinois law. Examples of indemnified claims include, but are not limited to, the subparagraphs below.

- a. **Damage to Licensee's Property.** Any and all claims for loss or damage (including reasonable attorney's fees and/or lost revenue) to the Licensee's Equipment or any property belonging to or rented by Licensee, its officers, servants, agents or employees, which may be destroyed, or in any way damaged, by any cause whatsoever, including unintentional damage caused by Village.
- b. **Damage to Others.** Any claims, suits, judgments, costs, attorney's fees, loss, liability, damage or other relief, including but not limited to Workers' Compensation claims, to any person or property in any way resulting from or arising out of the existence of this Agreement and/or the existence, maintenance, use or location of Licensee's Equipment within Village's Public Ways. In the event of any action against Village, its officers, agents, servants, employees, boards or commissions covered by the foregoing duty to indemnify, defend and hold harmless, such action shall be defended by legal counsel of Village's choosing at the sole cost and expense of Licensee.
- c. **Mechanic's Lien.** Any loss, liability, claim or suit arising from the foreclosure, or attempted foreclosure, of a mechanic's or materialmen's lien for goods delivered to Licensee or work performed by or for Licensee upon the Public Ways. Such indemnification shall include, but not be limited to, the Village's reasonable attorney's fees incurred in connection with any such loss, claim or suit. The provisions of this paragraph shall survive any termination and/or expiration of this Agreement.

23. **Breach and Limitation on Damages.** If either party violates or breaches any term of this Agreement, such violation or breach shall be deemed to constitute a default, and the other party shall have the right to seek such administrative, contractual or legal remedies as may be suitable for such violation or breach.

24. **Notices.** Any notice required or permitted under this Agreement shall be in writing and shall be sufficient if personally delivered or mailed by certified mail, return receipt requested, addressed as follows:

To Village:

Attn: Mayor

Village of Godfrey

6810 Godfrey Road

Godfrey, IL 62035

To the Licensee:

Attn: Mayor

Village of Brighton

206 S Main Street

Brighton, IL 62012

Notices mailed in accordance with the provisions of this paragraph shall be deemed to have been given on the third business day following mailing. Notices personally delivered shall be deemed to have been given upon delivery.

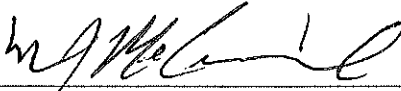
25. **No Joint Venture or Partnership.** This Agreement shall not be construed so as to create a joint venture, partnership, employment, or other agency relationship between the parties hereto.

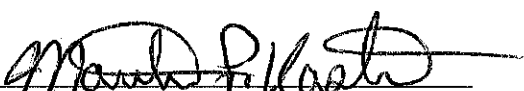
26. **No Personal Liability.** No official, director, officer, agent or employee of Village shall be charged personally or held contractually liable under any term or provision of this Agreement, or because of their execution, approval or attempted execution of this Agreement.
27. **Joint and Collective Work Product.** This Agreement is and shall be deemed and construed to be a joint and collective work product of Village and Licensee, and as such, this Agreement shall not be construed against one party as the otherwise purported drafter of the same by any court of competent jurisdiction in order to resolve any inconsistency, ambiguity, vagueness or conflict, if any, in the terms or provisions contained herein.
28. **Severability.** The terms of this Agreement shall be severable. In the event any of the terms or provisions of this Agreement are deemed to be void or otherwise unenforceable, for any reason, the remainder of this Agreement shall remain in full force and effect.
29. **Governing Law.** This Agreement shall be subject to and governed by the laws of the State of Illinois. The sole and exclusive venue for the resolution of any disputes or the enforcement of any rights arising out of or in connection with this License agreement shall be in the Circuit Court for the Third Judicial Circuit, Madison County, Illinois.
30. **References in Agreement.** All references in this Agreement to the singular shall include the plural where applicable, and all references to the masculine shall include the feminine and vice versa. If either reference shall be declared invalid, such decision shall not affect the validity of any remaining portion that shall remain in full force and effect.
31. **Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
32. **Paragraph Headings.** Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.
33. **Binding Agreement on Parties.** This Agreement shall be binding on the parties hereto and their respective successors and permitted assigns.
34. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties and supersedes any prior agreement or understanding relating to the subject matter of the Agreement.
35. **Modification.** This Agreement may be changed, modified or amended only by a duly authorized written instrument executed by the parties hereto. Each party agrees that no representations or warranties shall be binding upon the other party unless expressed in or writing herein or in a duly authorized and executed amendment hereof.

**IN WITNESS WHEREOF**, each of the parties hereto has caused this Agreement to be executed by its duly authorized representatives as of the day and year first above written.

VILLAGE OF GODFREY, ILLINOIS

VILLAGE OF BRIGHTON, ILLINOIS

By:   
Mike McCormick, Mayor

By:   
Matt Kasten, Mayor

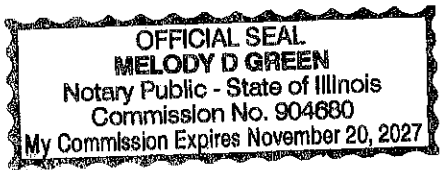
ATTEST:   
Susan Robbins, Village Clerk

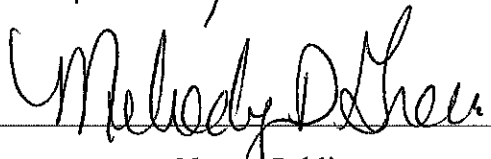
ATTEST:   
Tamara Jenkins, Village Clerk

STATE OF ILLINOIS            )  
  ) SS.  
COUNTY OF MACOUPIN    )

I, the undersigned, Notary Public, in and for said County, in the State aforesaid, to hereby certify that Matt Kasten, personally known to me to be the President of the Village of Brighton, Illinois and Tamara Jenkins, personally known to me to be the Village Clerk of the said Village, whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Village Clerk they signed and delivered the said instrument of writing and caused the corporate seal of said Village to be affixed thereto, pursuant to authority given by the Village Board of said Village, as the free and voluntary act and deed of said Village, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 11<sup>th</sup> day of February, 2025.



  
Notary Public

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF MADISON    )

I, the undersigned, Notary Public, in and for said County, in the State aforesaid, to hereby certify that Mike McCormick, personally known to me to be the President of the Village of Godfrey, Illinois and Susan Robbins, personally known to me to be the Village Clerk of the said Village, whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Village Clerk they signed and delivered the said instrument of writing and caused the corporate seal of said Village to be affixed thereto, pursuant to authority given by the Village Board of said Village, as the free and voluntary act and deed of said Village, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 22<sup>nd</sup> day of January, 2025.



Melessia L Jones  
Notary Public