

## RIGHT-OF-WAY PERMITTING AGREEMENT

This *Right-Of-Way Permitting Agreement* ("Agreement") is made and entered into this 13<sup>th</sup> day of April, 2023, by and between the **VILLAGE OF LAKE IN THE HILLS**, an Illinois municipal corporation (the "Municipality") and **i3 BROADBAND** ("CLEC").

### **Recitals**

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

**WHEREAS**, CLEC, through its affiliate, iTV-3, LLC, is a holder of a certificate to provide competitive local exchange carrier service and is thus entitled to access to the Municipality's Public Ways and desires to utilize the Municipality's Public Ways for the installation of a fiber optic cable and appurtenances; and

**WHEREAS**, the Municipality intends to exercise its authority to manage CLEC's use of Municipality's Public Ways, all in accordance with and subject to the terms, conditions and limitations of the Municipality's Chapter 25, Construction of Utility Facilities in the Rights-of-Way (the "Right of Way Ordinance"), except to the extent specifically modified by this Agreement, for the mutual convenience of and efficient operations of CLEC and the Municipality.

**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. **Conditions of Use**. CLEC hereby agrees to follow and be bound by the Municipality's Right of Way ordinance, except as otherwise specifically modified by this Agreement, in order to construct, install, operate, inspect, maintain, repair, upgrade, replace and remove a fiber optic cable and any and all lines, conduits, access manholes, pull vaults, and other similar equipment and devices owned or used by CLEC in the Municipality's Public Ways for the purpose of providing telecommunication services (the "Installation Project"). CLEC anticipates that the Installation Project will take place over a multi-year period in separate phases over that time ("Individual Installation(s)").
3. **Term**. This Agreement and the conditions of use granted to CLEC hereunder shall commence as of the date of this Agreement and shall continue through December 31, 2025.
4. **Installation Project Subject to this Agreement**. CLEC agrees and warrants that the Installation Project will be done and completed in a good and workmanlike manner, and at no expense to Municipality. The Installation Project will be undertaken in the name of, or pursuant

to contracts or agreements with CLEC, and CLEC agrees that all parties contracting with CLEC for any part of the Installation Project shall be bound by the terms and conditions of this Agreement and by the Municipality's Right of Way Ordinance, other than as modified by this Agreement.

5. **Two Stage Permitting Procedure.**

- a. The Parties agree that the permitting process for the Installation Project may take place in two stages. The intent of this two-stage process is to streamline the process for both parties, and to ensure that the Parties' resources can be expended in the most efficient manner possible.
- b. First, the CLEC must annually apply for and obtain a "Master Permit" pursuant to this Agreement. The Master Permit is intended to provide the Municipality with generally applicable information about the CLEC Installation Project proposed to be undertaken within the Municipality.
- c. Thereafter, for each Individual Installation, the CLEC may provide only such additional information as is described in this Agreement related to each Individual Installation.
- d. Unless the Parties mutually agree otherwise, in writing, the application for a Master Permit must be submitted at least thirty (30) days before the CLEC intends to begin work in the Municipality's rights of way, and the Municipality shall have twenty-five (25) days to respond to any such Master Permit application.
- e. Unless the Parties mutually agree otherwise, in writing, the application for any Individual Installation project, must be submitted at least 10 days before the CLEC intends to begin work in the Municipality's rights of way for that Individual Installation, and the Municipality shall have seven (7) days to respond to any such Individual Installation application.

6. **Master Permit Application for Installation Project.** CLEC may satisfy certain permit requirements annually rather than for each Individual Installation by completing a master permit application (the "Master Application") for the Installation Project. Once the requirements of the Master Application have been met, the Municipality shall issue a permit (the "Master Permit") which authorizes the CLEC to proceed to the Stage Two permit process for each Individual Installation. The following items must be submitted annually (and updated if information changes) to be eligible for a twelve-month long Master Permit:

- a. The CLEC's corporate name and address, telephone and fax numbers, and an e-mail address and cell phone number for a contact person, as well as such information for a local contact, if different.
- b. The CLEC's subcontractor's name and address, if different than the CLEC, its telephone and fax numbers, and an e-mail address and cell phone number for a contact person, as



- well as such information for a local contact, if different, and a description of its interest in the work.
- c. The names, addresses and telephone and fax numbers, and e-mail addresses of all professional consultants, if any, advising the CLEC with respect to the application.
  - d. A detailed description of the proposed work and the purposes and intent of the facilities to be installed and the uses to which the facilities will be put. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed.
  - e. A written traffic control plan demonstrating the protective measures and devices that will be employed consistent with the Illinois Manual on Uniform Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.
  - f. An emergency contingency plan which shall specify the nature of potential emergencies, including, without limitation, construction and hazardous materials emergencies, and the intended response by the CLEC. The intended response shall include notification to the Municipality and shall promote protection of the safety and convenience of the public. Compliance with ICC regulations for emergency contingency plans constitutes compliance with this section unless the Municipality finds that additional information or assurances are needed.
  - g. Evidence of insurance as required by the Right of Way Ordinance that will cover all Installation Project work of CLEC in the Municipality plus evidence of professional liability insurance of one million dollars (\$1,000,000.00).
  - h. Submission to the Municipality of a Performance Bond:
    - i. The Performance Bond shall be in a form acceptable to the Municipality.
    - ii. The Performance Bond shall be for \$50,000, unless the CLEC is working on greater than two Individual Installations at the same time, in which case the Municipality may require a bond in a dollar amount sufficient to provide for one hundred twenty five percent (125%) of the reasonably estimated cost to restore the right-of-way for all such Individual Installations to at least as good a condition as that existing prior to the construction project proposed under the Master Permit, as determined by the Director of Public Works. Notwithstanding the requirement to post a greater bond amount in the event that more than two Individual Installations are underway at the same time, the CLEC shall not be required to post a total Performance Bond in an amount greater than \$100,000.
    - iii. The Performance Bond may be called upon to address any and all liens and all damages, claims, costs or expenses that the Municipality may pay or incur by reason of any action or nonperformance by CLEC in violation of this Agreement and the applicable provisions of the Municipality's Right of Way Ordinance for the Installation Project, including, without limitation, any damage to public property or restoration work the CLEC was required to perform, but that the Municipality must perform itself or have completed as a consequence solely of the CLEC's failure to perform or complete, and all other payments due the Municipality from the CLEC pursuant to this Agreement and to the applicable provisions of the Municipality's Right of Way Ordinance.

- iv. Only where the construction of facilities proposed under the Master Permit will be performed in phases in multiple locations in the Village, with each phase consisting of construction in multiple locations, but where construction in one location will not be undertaken prior to substantial completion of restoration in the previous location, then the Public Works Director may, in the exercise of sound discretion, allow the CLEC to post a single amount of security which shall be applicable to each phase or location of the construction under the Master Permit. The amount of the Bond for such phased construction shall be equal to the greatest amount that would have been required under the provisions of this section for any single phase or location (or equal to the amount for multiple locations if construction will be occurring in more than one place at a time).
- v. This Performance Bond shall be continuously maintained at the CLEC's sole cost and expense until the completion of the Installation Project.
- i. All licenses and regulatory authorizations issued by any agency authorizing the provision of the services to be provided.
- j. A master landscape plan, if, in the opinion of the Director of Public Works, any is appropriate for the Installation Project.
- k. At least one customer service contact name, number and e-mail address that the Municipality may provide to members of the public with any complaints or comments about CLEC service or work in the public ways.

7. **Permit Requirements for Individual Installations.** Once a Master Permit has been issued by the Municipality, CLEC shall only be required to submit such additional information as may be required by this section for each Individual Installation location within the Municipality. These shall include, but not necessarily be limited to, the following:

- a. Updates to any written traffic control and emergency contingency plan already on file with the Master Permit application, only if either will change for the Individual Installation. If any traffic interference or lane closures will be necessitated by an Individual Installation, CLEC must give municipality at least three business days' notice.
- b. For the Individual Installation, drawings, plans and specifications showing the work proposed, including engineering plans depicting the Individual Installation in detail, and the certification of an engineer that such drawings, plans and specifications comply with applicable codes, rules and regulations. Drawings shall include a location map, dimensions of the right-of-way line and a legend of all symbols.
- c. Any request for a variance from one or more provisions of the Right of Way Ordinance pursuant to the variance provisions of that Ordinance.
- d. A detailed site plan showing the preferred location of the proposed facilities (subject to One-Call marks) including any existing apparent structure and any apparent adjacent improvements.
- e. A specific landscape plan or update, if, in the opinion of the Director of Public Works, any is appropriate for the Individual Installation.
- f. Such additional information as may be reasonably required by the Municipal permitting authority to protect the public's health, safety, and welfare.

8. **Variations.** The Parties agree that the Municipality's Public Works Director may exercise discretion in determining whether an item identified in this Agreement applies to the

particular circumstances of a Master Application Permit or an individual Installation permits and may waive a requirement or modify it to better fit the circumstances of the specific application pursuant to the Variation Procedure of the Municipality's Right of Way Ordinance.

9. **Fees and Costs.** Municipality shall not impose any permit fees inconsistent with the requirements of 35 ILCS 635/30, but all Parties agree that the Municipality may recover third-party engineering and other third-party costs incurred in the review of any installations or permit requests. By executing this Agreement, the CLEC agrees to reimburse the Municipality for all reasonably incurred third-party engineering and other third-party costs within 30 days of receipt from the municipality of an invoice or other documentation of such costs. The Municipality shall endeavor to keep the CLEC informed of the need for any third-party review associated with any installations or permit requests.

10. **Miscellaneous Provisions.**

- a. **Transferability of Agreement.** The CLEC's right, title, or interest in this Agreement shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the CLEC, without prior written notice to Municipality. 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 CLEC in its fiber optic network in order to secure indebtedness.
- b. **Specific Performance.** This Municipality may seek specific performance of the CLEC's specific performance of this Agreement if after written notice by Municipality to CLEC of the occurrence or existence of a default or material breach, CLEC, fails to cure, or commence good faith efforts to cure, such default or material breach within 45 days after delivery of such notice. The Municipality may also seek monetary damages for its provable damages from any such breach.
- c. **Indemnification.** The indemnification provisions of the Right of Way Ordinance shall extend to and include any matters associated with or arising out of this Agreement.
- d. **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.
- e. **Joint and Collective Work Product.** This Agreement is and shall be deemed and construed to be a joint and collective work product of Municipality and CLEC, 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.
- f. **Severability.** If any provision of this Agreement is held unenforceable by any court having jurisdiction, no other provisions will be affected, and the court will modify the unenforceable provision (consistent with the intent of the parties as evidenced in this Agreement) to the minimum extent necessary so as to render it enforceable.
- g. **Governing Law.** This Agreement shall be subject to and governed by the laws of the State of Illinois. Venue for the resolution of any disputes or the enforcement of any



rights arising out of or in connection with this Agreement shall be in the Circuit Court for McHenry County, Illinois.

- h. **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.
- i. **Paragraph Headings.** Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.
- j. **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. This Agreement may be changed, modified or amended only by a duly authorized written instrument executed by the parties hereto.
- k. **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 Municipality:

Village Administrator Shannon Andrews  
Village of Lake in the Hills  
600 Harvest Gate  
Lake in the Hills, IL 60156

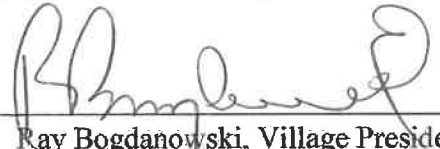
To the CLEC:

i3 Broadband  
602 High Point Lane  
East Peoria, IL 61611

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.

*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 Lake in the Hills, Illinois

By:   
Ray Bogdanowski, Village President

i3 Broadband

By:   
VP/GM, Director

ATTEST:

  
Shannon DuBeau, Village Clerk