
THE CITY OF ROCHELLE
Ogle County, Illinois

RESOLUTION
NO. _____

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO TERMINATE
POLE ATTACHMENT AGREEMENT**

JOHN BEARROWS, Mayor
ROSE HUERAMO, City Clerk

TOM McDERMOTT
BIL HAYES
KATE SHAW-DICKEY
DAN McDERMOTT
JOHN GRUBEN
ROSAELIA ARTEAGA
City Council

Published in pamphlet form by authority of the Mayor and City Council of the City of Rochelle
Peterson, Johnson, and Murray Chicago, LLC, City Attorneys
200 W. Adams, Suite 2125, Chicago, IL 60606

CITY OF ROCHELLE
Ogle County, Illinois

RESOLUTION NO. _____

Date Passed: November 28, 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO TERMINATE
POLE ATTACHMENT AGREEMENT**

WHEREAS, Section 7 of Article VII of the 1970 Constitution of the State of Illinois provides that a municipality that is not a home rule unit shall only have the powers granted to them by law and as such the City of Rochelle, Ogle County, Illinois being a non-home rule unit pursuant to the provisions of said Section 7 of Article VII, and may exercise only the powers expressly granted by law; and

WHEREAS, the Illinois General Assembly granted non-home rule municipalities broad authority to “pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities.” 65 ILCS 5/1-2-1; and

WHEREAS, while “non-home rule municipalities have the authority to enact ordinances, such ordinances may in no event conflict with state law or prohibit what a state statute expressly permits . . . A local ordinance may impose more rigorous or definite regulations in addition to those enacted by the state legislature so long as they do not conflict with the statute.” (*Village of Wauconda v. Hutton*, 291 Ill. App. 3d 1058, 1060 (1997)); and

WHEREAS, the City of Rochelle (“City”) operates various utilities and owns utility poles in the utility service areas; and

WHEREAS, the City previously entered into a Pole Attachment Agreement in 2009; and

WHEREAS, the Pole Attachment Agreement requires written termination of said agreement, in order to renegotiate the terms of the agreement; and

WHEREAS, City staff believes that it is the best interest of the City’s residents and utility customers to update the terms of the pole attachment agreement; and

WHEREAS, it has been determined by the Corporate Authorities of the City of Rochelle that it is necessary, advisable and in the best interests of the City and its residents to authorize the City Manager terminate the Pole Attachment Agreement executed with Verizon North, Inc. on October 22, 2009;

NOW THEREFORE BE IT RESOLVED by the Mayor and City Council of the City of Rochelle, Ogle County, Illinois, as follows:

SECTION ONE: The foregoing recitals shall be, and are hereby, incorporated into and made a part of this Resolution as if fully set forth in this Section One.

SECTION TWO: That the Mayor and City Council of the City of Rochelle hereby authorize the City Manager terminate the Pole Attachment Agreement executed with Verizon North, Inc. on October 22, 2009.

SECTION THREE: If any provision of this Resolution or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Resolution is severable.

SECTION FOUR: Where the conditions imposed by any provisions of this Resolution are more restrictive than comparable provisions imposed by Resolution in any other local law, ordinance, resolution, rule or regulation, the regulations of this Resolution will govern.

SECTION FIVE: The City Clerk shall publish this Resolution in pamphlet form.

SECTION SIX: This Resolution shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

PASSED THIS 28th day of November, 2022.

AYES:

NAYS:

ABSENT:

APPROVED THIS 28th day of November, 2022.

MAYOR

ATTEST:

CITY CLERK

STATE OF ILLINOIS)
)
COUNTY OF OGLE) SS.

CERTIFICATE

I, Rose Hueramo, City Clerk of the City of Rochelle, County of Ogle and State of Illinois,
DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. _____,
“A RESOLUTION AUTHORIZING THE CITY MANAGER TO TERMINATE POLE
ATTACHMENT AGREEMENT,” which was adopted by the Mayor and City Council of the
City of Rochelle on November 28, 2022.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of
the City of Rochelle this 28^h day of November, 2022.

CITY CLERK

EXHIBIT 1
Agreement

FARM MANAGEMENT AGREEMENT

THIS AGREEMENT is made and entered into as of this 12th day of October, 2022, by and between, the City of Rochelle, "Owner"; and First Mid Ag Services, a division of First Mid Wealth Management Company, "Manager".

WITNESSETH;

The Owner hereby appoints Manager to act as Owner's agent for and to manage the following described real property, (the "Property") consisting of 47.38 acres, more or less, located in the County of Ogle & Lee, State of Illinois, and more specifically described as:

See Exhibit 1 attached Plat of Survey containing legal descriptions.

NOW THEREFORE MANAGER ACCEPTS SAID APPOINTMENT AND OWNER AND MANAGER AGREE AS FOLLOWS:

1. Term. The term of this Agreement shall be for a period commencing January 1, 2023 and ending December 31st, 2023 and shall not be extended for an additional term, unless agreed to in writing by Owner and Manager.
2. Manager's Duties, Powers and Authority. The Manager shall have the following duties, powers, and authority with respect to the Property:
 - (a) Type of Operation - Subject to the approval of the Owner, Manager shall select the type of farm operation for the Property such as contract, crop share, livestock share, cash rent, or combination thereof.
 - (b) Lease or Contracts - Manager shall have the authority to negotiate and execute leases or contracts with farm operators for a term of one year and if the farm operators prove satisfactory, to renew such leases on a year to year basis; if the farm operators prove unsatisfactory, to terminate such lease or contract. The Manager shall also have the authority to negotiate leases for any residential structure or other buildings on the Property and such other contracts or leases as are appropriate for the operation of the Property.
 - (c) Government Programs - The Manager shall have the authority to enter into contracts and leases, Commodity Credit Corporation grain loans and other agreements with an official, bureau, department, division or other agency of the United States of America or the state in which the property is located.
 - (d) Crop Plans - The Manager shall prepare with the farm operators an annual crop plan for the operation of the Property and shall supervise and consult with the farm operators in carrying out such plans. The nature of the lease agreement will affect the scope of the crop plans.
 - (e) Marketing - The Manager shall sell crops and livestock at such time or times as the Manager, in its discretion, deems advisable, unless otherwise directed by the Owner in writing. The Manager is authorized to enter into contracts for forward sales and/or delayed pricing of crops and to store or sell crops at such elevators or markets as the Manager in its discretion, deems reasonable; provided, however, that the Manager shall not be responsible for handling of crops by or the solvency of elevator operators.
 - (f) Receipts - The Manager shall collect all rents, proceeds from the sale of crops and

livestock, insurance proceeds, payments under government contracts, Commodity Credit Corporation loans, and other payments and amounts due the Owner.

- (g) Farm Account - The Manager shall deposit all receipts into an account with a bank affiliated with the Manager, which shall be designated as an agency account for the Owner, to be referred to as the "Farm Account".
- (h) Farm Expenses - The Manager shall pay from the Farm Account expenses incurred in the harvesting and storage of crops, purchasing of fertilizer, agricultural chemicals, seeds, feeds, livestock and other expenses as are incidental to the operation of the Property, as well as all other items with respect to the Property, for which payment is provided elsewhere in this agreement.
- (i) Repairs and Improvements - The Manager shall plan and contract for repairs and capital expenditures. Owner approval is required for any such item that exceeds \$1,000. In case of an emergency that requires immediate repairs or maintenance, the Manager shall use its own discretion if the Owner is not immediately available for consultation.
- (j) Taxes - The Manager shall pay from the Farm Account the general real estate taxes and special assessments levied upon the Property.
- (k) Insurance - The Manager shall obtain and pay for from the Farm Account fire and extended coverage hazard insurance, public liability insurance, crop hail insurance and, if possible, underground storage tank insurance and pollution liability insurance, in such amounts as the Manager deems reasonable. All policies shall name Owner and Manager as co-insurers. The Owner agrees that, if feasible, such insurance shall be written under the Manager's comprehensive group liability contracts. Manager shall have no responsibility to obtain workman's compensation or other insurance for the benefit of employees, if applicable. If Manager is unable to obtain said insurance, this Agreement shall terminate.
- (l) Cash Management - The Manager shall have the authority to invest funds in the Farm Account not currently needed for operating expenses in a short term investment fund of prudent investment quality suitable for trusts. If authorized by the Owner in writing, the Manager also shall invest funds in certificates of deposit or other time deposits with a bank affiliated with the Manager or in securities of the United States of America.
- (m) Reports to Owner - The Manager shall furnish the Owner:
 - (1) Periodic financial reports on the operations of the Property to include a report on receipts and disbursements. The status of the Owner's Farm Account shall be furnished at a reasonable time upon the request by the Owner.
 - (2) Reports on the improvements, crops, marketing, and general condition of the Property as circumstances warrant.

3. Manager's Authority to Direct Operations. The Owner agrees that the Manager shall have the authority to direct the farm operators and the farming operation of the Property. This grant of authority shall not be affected by any period of disability or incapacity by the Owner. In addition, any action taken in good faith, pursuant to the foregoing authority shall be binding upon the Owner, the Owner's heirs, assignees, and personal representatives. The Manager assumes no responsibility to verify title or Ownership of the Property.

4. Compensation of Manager

- (a) Annual fee - Manager shall receive an annual management fee equal to the greater of:

The sum of the amounts calculated by multiplying each gross revenue category by the indicated percentage, shall be as follows:

Sale of Crops	6	%
Government Payments	6	%
CCC Loans on Grain for Income	6	%
House Rents	6	%
Cash Rents & Building Rents	6	%
Crop Hail Insurance Proceeds	6	%
Multi-Peril Insurance Proceeds	6	%
Patronage Refunds and Dividends	6	%
Other Gross Farm Crop Related Receipts	6	%
Livestock Receipts-After deducting		
Livestock Purchase & Feed Purchases	6	%
Interest and Dividends	0	%

Or

Minimum Fee - Manager shall receive an annual minimum fee of \$400.00 taken in December of the year it is earned.

- (b) Payment of Fee - The Manager may deduct the management fee from gross revenues received by the Manager at the time of deposit of revenue. On or before December 31 of each year, or as soon thereafter as possible, the Manager shall deduct from the Farm Account the balance of the management fee due for the year.
- (c) Special Services - The Manager shall be separately compensated for special services requested by the Owner and not included in this Agreement. Special services shall include, but not be limited to: 1) extensive new building, rehabilitation or conservation programs not contemplated as of the date of this Agreement; 2) advice, consultation, and marketing services related to the sale of the Property; 3) special accounting and tax services; 4) negotiation of easements and right-of-ways.
- (d) Fee Adjustments - The Owner agrees that the Manager may change the management fee schedule by sending the Owner by certified mail a new fee schedule no later than September 1. The new fee schedule shall then become effective on January 1 of the following calendar year.

5. Distribution of Net Revenue. The net revenue received each year from the operation of the Property, less any amount to be held in reserve for paying expenses in connection with the management of the Property shall be distributed to the Owner at least annually or at times as mutually agreed to by the Owner and the Manager. The Owner agrees to promptly advance funds to the Farm account if funds are needed to pay farm Real Estate Taxes and operating expenses.
6. Termination. This Agreement shall automatically terminate on December 31st of each year and may only be extended by written agreement of Owner and Manager in writing at least thirty (30) days prior to December 31st. This Agreement may be terminated by the Manager at any time by giving thirty (30) days written notice to the Owner. In addition, this Agreement may be terminated at any time upon the written consent of both the Manager and the Owner.

If this Agreement is terminated at any other time, the Manager shall be entitled to receive a pro-rata fee for the portion of the year prior to the termination date based on gross revenues for the previous year as follows:

<u>Date of Termination</u>	<u>Percentage</u>
January 1 to February 28 (or 29)	25%
March 1 to June 30	50%
July 1 to August 31	75%
September 1 to December 31	100%

In the event the termination occurs during the first year of management of the farm and there is no previous crop year gross income which can be used to calculate the fee, the fee will be calculated at the annual minimum fee.

Any notice on termination shall be mailed to the office of the assigned Manager.

7. Purchase of Goods and Services. The Manager is authorized to purchase goods and services in relation to the management of the Property from any entity that is an affiliate of the Manager, provided that the compensation paid for such goods and services shall be competitive with nonaffiliated entities providing the same or similar goods and services.
8. Disposition of Assets. The Owner shall not assign, transfer, convey, or mortgage, or in any way dispose of grain, livestock, machinery, buildings, equipment, issues, rentals or profits arising out of or incidental to the operation without first giving the Manager written notice.
9. Legal Proceedings. At the discretion of Manager upon written request of the Owner and at the Owner's expense Manager may prosecute or defend any suits or proceedings affecting the Property, or the issues, rents, or profits arising therefrom.
10. Environmental Representations and Warranties. The Owner represents and warrants to the Manager, its successors and assigns that to the best of the Owner's knowledge there is no (i) environmental contamination on this or from this Property (ii) violation of any state, federal or local law, regulation or ordinance applicable to the Property (including environmental laws, regulations or ordinances and collectively called the "Laws").
11. Unlawful Operations. The Manager shall not be required by the Owner to conduct farming operations which may be in violation of environmental agency rules and regulations.
12. Binding Effect. This Agreement shall be binding upon the heirs, devisees, assignees, grantees and personal representative(s) of the Owner and upon the successor(s) of the Manager.
13. Non-Discrimination: THE UNDERSIGNED ACKNOWLEDGE AND UNDERSTAND THAT IT IS ILLEGAL FOR EITHER THE SELLER'S DESIGNATED AGENT OR THE SELLER TO REFUSE TO DISPLAY OR TO SELL TO ANY PERSON BECAUSE OF THEIR RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, ANCESTRY, AGE, MARTIAL STATUS, PHYSICAL OR MENTAL HANDICAP, FAMILIAL STATUS, UNFAVORABLE MILITARY DISCHARGE OR DISCHARGE STATUS, ORDER OF PROTECTION STATUS, OR ANY OTHER CLASS PROTECTED BY ARTICLE 3 OF THE ILLINOIS HUMAN RIGHTS ACT.
14. Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

FIRST MID AG SERVICES, a division of
FIRST MID WEALTH MANAGEMENT COMPANY

By: _____
Michael Bernhard

Its: _____
AVP, Farm Manager

OWNER

City of Rochelle

EIN _____ 36-6006075

Address _____ 420 N. 6th St, PO Box 456

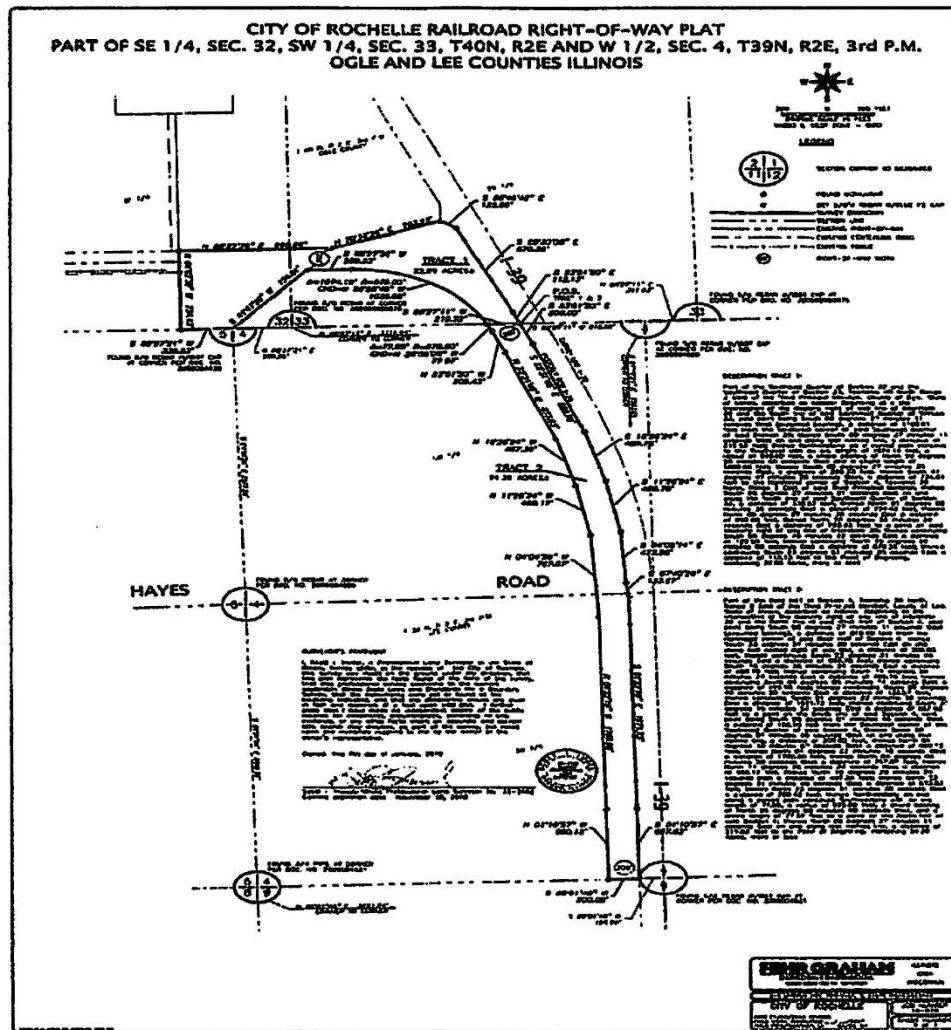
City, State, Zip _____ Rochelle, IL 61068

Phone _____ 815-561-2000

FAX _____

Email _____ jfiegeschuh@rochelleil.us

Exhibit 1



OGLE AND LEE COUNTIES ILLINOIS

