
**THE CITY OF ROCHELLE
Ogle County, Illinois**

**RESOLUTION
NO.**

**A RESOLUTION APPROVING A DEVELOPMENT AGREEMENT
WITH MIDWEST POWER INVESTORS, LLC**

**JOHN BEARROWS, Mayor
ROSE HUERAMO, City Clerk**

**TOM McDERMOTT
BIL HAYES
KATE SHAW-DICKEY
DAN McDERMOTT
ROSAELIA ARTEAGA
BEN VALDIVIESO
City Council**

Published in pamphlet form by authority of the Mayor and City Council of the City of Rochelle
Ottosen DiNolfo Hasenbalg & Castaldo, Ltd. – City Attorneys
2441 Warrenville Road, Suite 310, Lisle, Illinois 60532

**CITY OF ROCHELLE
Ogle County, Illinois**

**RESOLUTION NO.
Date Passed:**

**A RESOLUTION APPROVING A DEVELOPMENT AGREEMENT WITH
MIDWEST POWER INVESTORS, LLC**

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, Midwest Power Investors, LLC ("Developer") is the owner of commercial real estate identified as PIN numbers: 25-31-100-006 and 25-31-200-015. ("Subject Property") located within the City of Rochelle; and

WHEREAS, Developer intends to improve the Subject Property by facilitating the development of a large-scale data center/data storage facility; and

WHEREAS, the City operates Rochelle Municipal Utilities ("RMU") which provides retail electric and distribution service to commercial and industrial customers; and

WHEREAS, the City wishes to foster the development of the Subject Property as it will promote economic development, enhance the City's tax base, create jobs and support the growth of technology in the area; and

WHEREAS, the City and Developer have come up with a mutually beneficial Development Agreement attached herein as Exhibit A; and

WHEREAS, it has been determined by the Corporate Authorities of the City of Rochelle that it is in the best interests of the City and its residents to authorize and enter into a Development Agreement with Midwest Power Investors, LLC.

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 approve the Development Agreement with Midwest Power Investors, LLC, attached hereto as Exhibit A, and the City Manager is hereby authorized to execute said Agreement and any ancillary documents necessary to memorialize said Agreement, subject to review and revision as to form by the City Attorney.

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 27th day of April, 2026.

AYES:

NAYS:

ABSENT

ATTEST:

City Clerk

Mayor

STATE OF ILLINOIS)
)
COUNTY OF OGLE) SS.

CERTIFICATE

I, Rose Huéramo, 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 APPROVING A DEVELOPMENT AGREEMENT WITH MIDWEST POWER INVESTORS, LLC," which was adopted by the Mayor and City Council of the City of Rochelle on April 27, 2026.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of Rochelle this 27th day of April 2026.

CITY CLERK

EXHIBIT A
DEVELOPMENT AGREEMENT

This Development Agreement (the “**Agreement**”) is made and entered into as of this ____ day of March, 2026 (“**Effective Date**”),¹ by and between **Midwest Power Investors, LLC**, an Illinois limited liability company (“**Midwest**”), and the **City of Rochelle, Ogle and Lee Counties, Illinois**, an Illinois municipal corporation (the “**City**”), each a “**Party**” and collectively the “**Parties**,” and is based on the following recitals:

RECITALS

- A. The City is duly organized and existing under the laws of the State of Illinois as a non-home rule municipality.
- B. Midwest is a limited liability company in good standing with the Illinois Secretary of State.
- C. Midwest is the record owner of commercial real estate located at the northeast corner of Steward Road and South Main Street, Rochelle, Illinois 61068, Ogle County, Illinois (“**Subject Property**”), as more particularly described in Exhibit 1.
- D. Midwest intends to improve the Subject Property by facilitating development of a large-scale data center/data storage facility (the “**Facility**”), to be developed in one or more separate phases where the first phase (“**Phase I**”) will require an initial electrical load of 48 Megawatts (“**MWs**”).
- E. The City operates the Rochelle Municipal Utilities (“**RMU**”), which provides retail electric and distribution service to commercial and industrial customers, and which, upon completion, will include the Facility for anticipated commercial operations.
- F. To accommodate the development and anticipated electric capacity needs of Phase I of the Facility once operational, the City and Midwest are entering into this Agreement to set forth the terms and conditions for (i) the proposed modifications to RMU’s existing electric distribution facilities located at the adjacent distribution substation commonly known as the Ritchie Substation (“**Substation**”), (ii) installation of dedicated distribution feeder to the Subject Property necessary to connect the Substation to the Facility, and (iii) installation of primary metering equipment to the Subject Property for RMU to provide electric distribution service to the Facility, as more particularly described in Exhibit 2 (the “**Project**”).
- G. The City will undertake the design, procurement and installation of the Project, including the new, dedicated electrical distribution power lines (collectively, the “**Phase I Electrical Improvements**”). Based on engineering estimates, the total estimated costs (the “**Phase I Costs**”) of the Phase I Electrical Improvements for the Project are estimated to be four million forty-three thousand nine hundred

¹ To be the date of ratification by the City.

dollars (\$4,043,900) (the “*Phase I Costs Cap*”), as more particularly detailed on Exhibit 2.

- H. The City wishes to foster the development of the Subject Property by granting the licenses and permits, subject to all applicable fees and costs, specified in this Agreement or as reasonably required for operation of the Facility, as the case may be, and by undertaking the Phase I Electrical Improvements.
- I. The City is entering into this Agreement pursuant to its non-home rule powers and its determination that the Project contemplated by this Agreement will enhance the City’s businesses and redevelopment of its downtown area.
- J. The City has determined that it is essential to the economic and social welfare of the City that the Project contemplated by this Agreement are necessary to foster economic development.
- K. The City finds that the powers to be exercised hereunder are in furtherance of a public use and essential to the public interest.
- L. The Mayor and City Council of the City have determined that entering into this Agreement is in the best interests of the City and its residents.
- M. Midwest has full right, power and authority to enter into this Agreement and acknowledges and consents to its terms and conditions.

NOW, THEREFORE, in consideration of TEN DOLLARS (\$10.00) and the promises, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Midwest agree as follows:

**SECTION ONE.
RECITALS**

The foregoing Recitals are hereby incorporated herein as if fully set forth below.

**SECTION TWO.
UTILITY SERVICE**

A. Electrical Service.

- (i) The City, which owns and operates RMU as its electrical service utility, agrees that it will, at Midwest’s expense, increase the electrical service and distribution by constructing the Phase I Electrical Improvements, as provided herein. Midwest agrees to pay all of the Phase I Costs for the Phase I Electrical Improvements, up to a maximum (the “*Phase I Costs Cap*”) of Four Million Forty-Three Thousand Nine Hundred Dollars (\$4,043,900.00), as provided herein. If the Phase I Costs exceed the Phase I Costs Cap, the City will (A)

provide notice to Midwest of the amount of additional Phase I Costs and (B) Midwest shall pay the same so as to complete the Phase I Electrical Improvements. The amount of the Phase I Costs and the Phase I Costs Cap will then be adjusted upward to reflect the increase in the Phase I Costs.

- (ii) The City shall provide, at Midwest's expense, all equipment necessary to construct the Phase I Electrical Improvements, which will include the equipment necessary for RMU to provide distribution service to be received to the Subject Property at 34.5kV for Phase I of the Facility operations and the City shall be reimbursed for the total equipment costs (without markup) as set forth in Exhibit 2.
- (iii) Midwest acknowledges that the City is expending the Phase I Costs to enhance the distribution service specifically for Phase I of the Facility. Subject to, and without waiving any rights under, state and federal law, Midwest shall cause the Subject Property (and all users and occupants of the Subject Property requiring electrical service) to procure all of its electricity needs from or through the City for Phase I of the Facility at the City's applicable rates, determined in good faith by the City or RMU, until the earlier of (a) the Phase I Costs are recovered by the City (whether from payments made by Midwest, a user of the Subject Property or any third party deriving the benefits of the Phase I Electrical Improvements) by the inclusion of a surcharge on the electric bills for the Subject Property that consists of sixty (60) equal monthly payments of the Phase I Electrical Improvement Costs, commencing with the first electric bill issued for the Subject Property, but in no case later than twelve (12) months after the completion of the Phase I Electrical Improvements, or (b) Midwest pays the City an amount sufficient to pay the Phase I Costs that, at the time of such payment, have not been recovered by the purchase of electricity from the City.
- (iv) Until the Phase I Costs are fully recovered by the City in accordance with subsection (iii) above, Midwest shall not, and shall ensure that the users and occupants of the Subject Property do not, without the City Council's approval of any other such generation source, such approval not to be unreasonably withheld, conditioned, or delayed, use third-party electrical providers or any other generation source, including, but not limited to on-site solar generation, any form of reusable generation, or any other form of generation that would reduce, augment, supplement, or replace the electrical load, provided, however, the foregoing shall not (a) be construed as a waiver of Midwest's rights under state and federal law and regulation or (b) be deemed to limit or restrict the right of Midwest, or any user or occupant of the Subject Property, to utilize an on-site back-up generator solely for occasions when the City is unable to provide power to the Subject Property.
- (v) In addition to the foregoing, if Midwest or any user or occupant of the Subject Property elects to participate in the City's demand response program, then

Midwest or any such user or occupant will (i) use the City's then-chosen demand response service vendor and (ii) not use a third-party demand response service vendor.

- (vi) If Midwest or any user or occupant of the Subject Property declines to participate in the City's demand response program, the Parties acknowledge that the City will incur incremental excess capacity, excess transmission, including NITS charges, coincident-peak, or other peak-demand-related charges (collectively, "**Excess Charges**") from its upstream utility or wholesale power supplier as a result of Midwest's (or such user's or occupant's) electric load. In order that residents of the City do not experience increased electric rates as a consequence of the Subject Property's contribution to system peak, any such incremental Excess Charges that would *not* have been incurred but for Midwest's (or such user's or occupant's) electric load, shall be borne solely by Midwest, such user or occupant, whichever is causing such incremental Excess Charges to be incurred. So long as Midwest (or such user or occupant) pays all Excess Charges resulting from Midwest's (or such user's or occupant's) electric load, Midwest (or such user or occupant) shall not be required to curtail load, shed load, participate in mandatory demand response, or accept any operational flexibility obligation. Nothing in this Agreement shall be interpreted or applied in a manner that would impose any such load curtailment requirement, so long as Midwest (or such user or occupant) pays for all Excess Charges. The obligations under this sub-section (vi) are solely financial in nature and shall not impair or interfere with the right of Midwest (or such user or occupant) to continuous operations. Midwest's (or such user's or occupant's) electrical service may be disconnected if Midwest (or such user or occupant) fails to pay Excess Charges for which Midwest (or such user or occupant) is responsible as provided herein.

B. Other Utility Service.

- (i) Midwest acknowledges that the City will need to construct, or cause RMU to construct, additional municipal utility services. Such services include water and water reclamation/sewer improvements (the "**Phase I Water and Water Reclamation Improvements**") to service the needs of the Subject Property. The Phase I Water and Water Reclamation Improvements are estimated, as of the Effective Date, to cost approximately Two Million Eight Hundred Thousand Dollars (\$2,800,000.00). The Phase I Water and Water Reclamation Improvements that exclusively serve the Facility shall be the financial responsibility of Midwest, and Midwest shall reimburse the City for the cost of all such improvements. If and to the extent that Midwest has borne the cost of the Phase I Water and Water Reclamation Improvements and other properties make use of the Phase I Water and Water Reclamation Improvements for which Midwest has paid, the City will undertake commercially reasonable benefits to recapture from these properties the costs borne by Midwest and reimburse Midwest in the amount of these recaptured costs.

- (ii) The City shall not incur any costs of the Phase I Water and Water Reclamation Improvements or any non-electrical utilities or infrastructure that would be the obligation of Midwest under this Section 2.B without Midwest's prior written consent. Promptly following delivery of Midwest's express written approval to proceed with the Phase I Water and Water Reclamation Improvements, Midwest shall deliver to the City a payment or performance bond or a letter of credit naming the City as beneficiary thereunder (the "**Water and Water Reclamation Security**"). It is presently anticipated that the Water and Water Reclamation Security will be in the amount of one hundred percent (100%) of the cost of the Phase I Water and Water Reclamation Improvements required to be made for the Subject Property. The Water and Water Reclamation Security will be adjusted (a) upward, to reflect any increase in costs not covered by the budget for the Phase I Water and Water Reclamation Improvements, and (b) downward, to reflect any payment of the costs of the Phase I Water and Water Reclamation Improvements. Upon completion of the Phase I Water and Water Reclamation Improvements (and payment in full of the costs of same), the Water and Water Reclamation Security held by the City shall be returned to Midwest. Midwest acknowledges that the City will not proceed with making the Phase I Water and Water Reclamation Improvements or providing necessary permits for the development of the Facility until the Water and Water Reclamation Security has been posted in accordance with this sub-section (ii).

- (iii) In connection with development and use of the Subject Property, the City will make reasonable accommodations to enable the Subject Property to receive up to 50,000 gallons of water per day (and corresponding water reclamation), as well as fiber optic service. For the avoidance of doubt, all terms, conditions and rates for providing utility services will be the prevailing terms, conditions, and rates set forth in the applicable published RMU rate schedule. Furthermore, the City will provide support for the installation and maintenance of gas pipeline facilities necessary to connect the Facility, without expense to the City, to the local retail gas distribution network, including access by authorized third parties as required.

C. Perimeter and Road Improvements.

- (i) Midwest acknowledges that the City will need to construct perimeter and offsite road improvements and street lights satisfying Illinois Department of Transportation (IDOT) standards and City requirements for a Class II industrial/truck route along Steward Road ("**Roadway Improvements**") to service the needs of the Subject Property. Midwest, at its sole cost and expense, shall be responsible for the cost of engineering, design, plans, specifications and construction of the Roadway Improvements. The Parties anticipate that the Roadway Improvements shall (a) run from the westerly boundary of the Subject Property or from the end of the existing urbanized curb and gutter terminus located approximately five hundred feet east of South Main Street, (b) include

a roadway widening of approximately 1,280 feet and a minimum width of twelve feet with curbs and gutters, RCCP storm sewer drainage system with drainage structures and (c) satisfy Illinois Department of Transportation (IDOT) standards and City requirements, in the latter case as reasonably interpreted by the City Engineer. At the election of the City, the “**Roadway Improvements**” will include (I) an additional right-of-way to be dedicated to the City along the north side of Steward Road as required by City Engineer, and (II) an exclusive easement granted to the City of not less than thirty (30) feet in width along Steward Road. These dedications shall be made through the preliminary and final plat process to be approved by the City Council.

- (ii) The Roadway Improvements shall be the financial responsibility of Midwest, and, (a) if the City constructs or causes the construction of the Roadway Improvements, Midwest shall reimburse the City for the cost of all such Roadway Improvements, and (b) if Midwest constructs or causes the construction of the Roadway Improvements, Midwest shall pay for the cost of all such Roadway Improvements. The City shall not incur any costs of the Roadway Improvements without Midwest’s prior written consent. Promptly following delivery of the City’s and Midwest’s express written approval to proceed with the Roadway Improvements, Midwest shall, prior to the commencement of the Roadway Improvements, (i) if the Roadway Improvements are to be constructed by the City fund an escrow account (the “**Roadway Improvements Escrow**”), to be maintained by an independent third party escrow agent satisfactory to the City and Midwest, in the amount of one hundred ten percent (110%) of the estimated cost of the Roadway Improvements required to be made for the Subject Property, and (ii) if the Roadway Improvements are to be constructed by Midwest, deliver to the City a payment or performance bond or letter of credit (the “**Roadway Improvements Security**”) in the amount of one hundred ten percent (110%) of the estimated cost of the Roadway Improvements required to be made for the Subject Property. The Roadway Improvements Escrow and the Roadway Improvements Security will be adjusted from time to time (a) upward, to reflect any increase in costs not covered by the budget for the Roadway Improvements, and (b) downward, to reflect any payment of the costs of the Roadway Improvements. Upon completion of the Roadway Improvements (and payment in full of the costs of same), then subject to the provisions of sub-section (iii) below, the Roadway Improvements Security held by the City and the funds held in the Roadway Improvements Escrow shall be returned to Midwest. Midwest acknowledges that the City will not proceed with making the Roadway Improvements (or permitting Midwest to make the Roadway Improvements) or providing necessary permits for the development of the Facility until either the Roadway Improvements Escrow or the Roadway Improvements Security, as applicable, has been posted in accordance with this sub-section (ii).
- (iii) Upon completion of the Roadway Improvements, (a) the City will retain ten percent (10%) of the Roadway Improvements Security or (b) ten percent (10%)

of the Roadway Improvements Escrow shall remain in escrow with the escrow agent, until the second (2nd) anniversary of completion and acceptance of the Roadway Improvements by the City Engineer, in accordance with the Rochelle Municipal Code.

- D. Phase II Option. The City agrees and acknowledges that following Phase I, Midwest may subsequently expand the Facility's capacity up to an additional 100 MWs (such expansion, the "**Phase II Option**"), for an aggregate total of approximately 150 MWs. Accordingly, for the period of time commencing on the Completion Date (as defined in Section 3 below) up until thirty-six (36) full calendar months thereafter, and subject to the availability of electricity on the City's electric distribution system and Commonwealth Edison's transmission system delivering electricity to the City's distribution system, Midwest upon notice to the City may elect to proceed with the Phase II Option, whereupon the City, Midwest, and Commonwealth Edison shall promptly negotiate a tripartite development agreement covering upgrades to the transmission system, Substation, and other impacts to the electric distribution system, *provided*, the terms of such agreement shall be on economic terms no less favorable to Midwest than agreed to by the City in this Agreement for the Phase I Electrical Improvements. Midwest shall pay any and all fees and costs associated with any studies, professional fees, and infrastructure costs and equipment costs required for the Phase II Option, including any charges from Commonwealth Edison to the City that are incurred as a result of designing, building, commissioning, and placing into operation the Phase II Option electrical infrastructure improvements.
- E. Phase III Option. The City agrees and acknowledges that following Phase I and/or Phase II, Midwest may subsequently expand the Facility's capacity beyond 150 MWs (such expansion, the "**Phase III Option**"). Accordingly, for the period of time commencing on the Completion Date up until sixty (60) full calendar months thereafter, and subject to the availability of electricity on the City's electric distribution system and Commonwealth Edison's transmission system delivering electricity to the City's distribution system, Midwest upon notice to the City may elect to proceed with the Phase III Option, whereupon the City, Commonwealth Edison and Midwest shall negotiate a tripartite development agreement covering upgrades to the transmission system, Substation and impacts to the electric distribution system, *provided*, the terms of such agreement shall be on economic terms no less favorable to Midwest than agreed to by the City in this Agreement for the Phase I Electrical Improvements. Furthermore, the City shall notify Midwest in advance of reasonably anticipated circumstances that could materially increase the cost to Midwest of subsequent distribution system upgrades, or otherwise adversely affect the ability to increase the electric capacity for the Facility for the Phase III Option. Provided that Midwest has provided its prior written approval, Midwest shall pay any and all out-of-pocket fees and costs associated with any studies, professional fees, and infrastructure costs and equipment costs required for the Phase III Option, including any charges from Commonwealth Edison to the City that are incurred as a result of designing, building, commissioning, and placing into operation the Phase III Option electrical infrastructure improvements.

**SECTION THREE.
OBLIGATIONS OF THE CITY FOR THE PROJECT**

The City agrees to design, procure and construct the Phase I Electrical Improvements in accordance with the specifications set forth in Exhibit 2. The City shall use commercially reasonable efforts to complete the Phase I Electrical Improvements within twelve (12) months from the Effective Date. At such time as the Phase I Electrical Improvements have been completed (the “**Completion Date**”), the City shall cause RMU to make available to the Facility an electrical load of not less than 48 MWs, and Midwest shall pay for such electricity at rates then established by RMU pursuant to a Power Purchase Agreement (as defined in Section 14.B). Midwest shall have a period of twenty-four (24) months following the Completion Date (the “**Start-Up Date**”) to enter into a Power Purchase Agreement for the electrical power made available to the Facility by RMU. The City acknowledges that RMU has the right and obligation to deliver 4 MWs of electrical power to the Facility, and neither the City nor RMU shall allocate this capacity to another user or users unless Midwest (or a user of Facility) does not enter into a Power Purchase Agreement by the Start-Up Date.

**SECTION FOUR.
IMPACT FEE**

Midwest recognizes and acknowledges that the City has utilized extensive staff, legal, and consulting resources to enter into this Agreement, and as such agrees to pay an Impact Fee to the City’s general fund to compensate the City for said resources as follows:

Phase I Impact Fee: \$50,000 within thirty (30) days of the Completion Date (*i.e.*, the date on which an initial electrical load of 48 MWs is available to Midwest’s property).

Phase II Impact Fee \$100,000 at the time an additional electrical load of 100 MWs is available to Midwest’s property for an aggregate total of approximately 150 MWs.

Phase III Impact Fee: \$150,000 at the time an additional electrical load in excess of 150 MWs is available to Midwest’s property for an aggregate total of approximately 300 MWs.

**SECTION FIVE.
APPROVALS, PERMITS AND CONSENTS**

Subject to the payment of all applicable fees and costs by Midwest, the City agrees to provide approvals, permits and consents to Midwest as reasonably required for Midwest’s construction and operation of the Facility, upon appropriate petitions and requests by Midwest (including, for avoidance of doubt, such municipal utility services as requested under Section 2.C).

However, the City shall have reasonable approval over the appearance of the development, as well as the suppression measures to reduce sound levels that are generated from the Subject Property. The Parties will meet and confer regarding the reasonableness of the sound suppression measures needed, the location of any equipment that generates excessive noise (*e.g.*, cooling fans

and electric generators), and any other elements of the development that in the City's reasonable judgment can be deemed a nuisance for surrounding properties. The issuance of any permits, licenses or certificates by the City for the construction and operation of the Facility will be evidence of the City's approval.

Notwithstanding the foregoing or anything to the contrary contained herein, Midwest shall not construct a large-scale data center/data storage facility on the portion of the Subject Property lying north of Interstate Highway 88 for Phases I, II, or III.

SECTION SIX. MAINTENANCE

Except to the extent caused by the City's negligence or willful and wanton conduct, Midwest, at its sole cost and expense, shall maintain and repair the improvements to the Subject Property, including the development of the Facility, in accordance with all federal, state and local codes and regulations.

SECTION SEVEN. INSURANCE

The City agrees to cause contractors and subcontractors performing the Phase I Electrical Improvements (and any subsequent improvements performed pursuant to the Phase II Option and the Phase III Option) to maintain commercial general liability and property damage insurance with an insurance company qualified and licensed to do business in Illinois with limits of not less than two million dollars (\$2,000,000.00) for bodily injury or death to any one person, four million dollars (\$4,000,000.00) for bodily injury or death to more than one person, and five hundred thousand dollars (\$500,000.00) for damage to the Subject Property, during the construction of the Phase I Electrical Improvements. The City and Midwest will be named as an additional insured on these contractors' policies and shall be provided thirty (30) days' advance notice prior to the cancellation of any such policies. Certificates of such insurance, evidencing the foregoing coverages shall be delivered to the City Clerk and Midwest within thirty (30) days prior to the commencement of any work on Phase I.

SECTION EIGHT. COMPLIANCE WITH LAW

Midwest will at its own expense, comply with all federal, state and local laws, ordinances of the United States, State of Illinois and the City, and rules and regulations now or later in force which may be applicable to its operations in the City at the Subject Property. Midwest will obtain and pay for all permits, licenses, variations, and other authorizations which may be required for the improvements and its activities contemplated by this Agreement. The City agrees that it will, and will cause RMU to, construct, operate and maintain the Phase I Electrical Improvements in accordance with required Federal and State operational requirements, including the latest version of the National Electric Code.

**SECTION NINE.
WAIVER**

No waiver by either the City or Midwest of any default on the part of the other Party in the performance of any of the terms, covenants, or conditions of this Agreement to be performed, kept, or observed by the defaulting Party shall be or be construed to be a waiver by the non-defaulting Party of any other or subsequent default in the performance of any terms, covenants, or conditions of this Agreement to be performed, kept or observed by the defaulting Party.

**SECTION TEN.
AMENDMENT**

This Agreement may be modified or amended in whole or in part only by a written instrument executed by the City and Midwest.

**SECTION ELEVEN.
REMEDIES**

Either Party may exercise any rights or remedies available at law or equity in connection with this Agreement; *provided however*, in the event of litigation brought by either Party against the other Party for material breach or default, the prevailing Party shall be entitled to recover its reasonable costs and expenses for such litigation, including reasonable attorneys' fees, expert witness fees and other costs.

This Agreement may be terminated only by mutual written agreement of the Parties. Upon termination or expiration of this Agreement, the Parties shall be relieved of their obligations under this Agreement except for the following obligations which shall survive termination or expiration: (i) the obligation to pay or refund amounts owed to the City or Midwest under this Agreement; (ii) any other obligations which the Agreement specifically or by implication indicates shall survive termination or expiration. Upon termination, the City agrees to relinquish any remaining Letter of Credit or Bond in accordance with the terms of such instrument.

**SECTION TWELVE.
INDEMNIFICATION**

To the fullest extent permitted by law, except to the extent caused by negligence or intentional misconduct of the City, Midwest shall defend, indemnify and hold the City harmless from and against any and all claims, causes of action, liability, loss, damage, costs and expenses (including reasonable attorneys' fees) for injury to person or death or property damage arising out of or resulting from (i) Midwest's use of the Subject Property and the Facility or (ii) Midwest's breach of any provision of this Agreement.

**SECTION THIRTEEN.
NOTICE**

All notices and other communications shall be in writing and shall be deemed properly served if delivered in person to the Party to whom it is addressed two (2) days after deposit in the U. S. mail if sent postage prepaid by United States registered or certified mail, return receipt requested, addressed as follows:

All notices to the City of Rochelle shall be sent to:

City Manager
City of Rochelle
420 North 6th Street
Rochelle, Illinois 61068

Ottosen DiNolfo Hasenbalg & Castaldo, Ltd.
Attn: Dominick Lanzito
2441 Warrenville Road – Ste. 310
Lisle, Illinois 60532

All notices to Midwest shall be sent to:

Midwest AG Investors, LLC
145 Avenue of the Americas
Floor 7
New York, New York 10013
Attention: Zach La Motta

With a copy to:
White & Case LLP
Suite 5100
111 South Wacker Drive
Chicago, Illinois 60606
Attention: Eugene J.M. Leone (1906477-0002)

or to such other address as the City and/or Midwest may designate for one another by notice given from time to time to the other in the manner provided herein.

**SECTION FOURTEEN.
PERFORMANCE SECURITY AND MAINTENANCE**

- A. **Phase I Costs.** Within thirty (30) days of the Effective Date, Midwest shall provide a payment or performance bond or letter of credit (the “*Performance Security*”), naming

the City as beneficiary thereunder, equal to one hundred (100%) of the Phase I Costs Cap (as more particularly set forth in Exhibit 2). If, at any time, the Phase I Costs Cap is adjusted pursuant to Section 2.A(i) to reflect an increase in the Phase I Costs, the amount of the Performance Security shall be similarly adjusted (within thirty (30) days of determination that such an adjustment must be made). In addition, the amount of the Performance Security shall be adjusted (a) upward or downward, within thirty (30) days of completion of the Phase I Electrical Improvements, to reflect the actual amount of the Phase I Costs, and (b) downward, on or before February 15th of each year, to reflect the recovery by the City of the Phase I Costs paid to the City during the prior calendar year pursuant to Section 2.A(iii). In addition, the Performance Security will be released, relinquished, and returned to Midwest upon any termination of this Agreement.

- B. **Power Purchase Agreement.** If Midwest elects to negotiate and executes a power purchase agreement (a “***Power Purchase Agreement***”) to supply the energy for Phase I, Phase II and/or Phase III to be delivered to the City’s electric distribution system, or if the City negotiates and executes a Power Purchase Agreement to supply the energy for Phase I, Phase II and/or Phase III to be delivered to the City’s electric distribution system, setting forth the principal terms on which the energy for Phase I, Phase II and/or Phase III, then the payments set forth in the Power Purchase Agreement shall be secured by a payment or performance bond or a letter of credit naming the City as beneficiary thereunder (the “***Power Performance Security***”). It is presently anticipated that (i) the Power Performance Security will be in the amount of one hundred percent (100%) of the cost of the energy to be delivered to the City’s electrical distribution system pursuant to the Power Purchase Agreement covering Phase I, Phase II and/or Phase III, and (ii) the amount of the Power Performance Security shall be adjusted annually to reflect the remaining payments of the cost of energy pursuant to the remaining term of a Power Purchase Agreement. Nothing herein shall obligate Midwest to enter into a Power Purchase Agreement with any energy provider, and this Section 14.B shall only apply if and to the extent Midwest or the City enter into a Power Purchase Agreement for Phase I, Phase II and/or Phase III, as applicable.

**SECTION FIFTEEN.
RESERVED**

**SECTION SIXTEEN.
BINDING EFFECT**

This Agreement shall be binding upon and inure to the benefit of the Subject Property, the City, Midwest and occupants of the Property, and their respective successors and assigns. Either Party may assign this Agreement, in whole or in part, without prior consent of the other Party, including any collateral assignment by either Party. No person or entity that is not a Party to this Agreement shall be deemed a third party beneficiary hereof or have any right to enforce this Agreement.

**SECTION SEVENTEEN.
ENTIRE AGREEMENT**

This Agreement and the exhibits to this Agreement contain all the representations and the entire agreement between the Parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda or agreements are superseded in total by this Agreement and the exhibits to this Agreement. No Party has relied on any representations, written or verbal, of the other Party other than those express written representations made within this Agreement.

**SECTION EIGHTEEN.
MISCELLANEOUS**

All exhibits attached hereto are incorporated by reference and made a part of this Agreement.

[Signature page follows]

The Parties have executed this Agreement as of the day and year first above written.

THE CITY OF ROCHELLE, an Illinois
municipality

By: _____

Name: _____

Its: _____

MIDWEST POWER INVESTORS, LLC,
an Illinois limited liability company

By: _____

Name: _____

Its: _____

Exhibit 1 – Description of the Subject Property

Permanent Index Nos. 25-31-100-006 and 25-31-200-015.

Section 1.1 TRACT 1:

THE WEST 1/2 OF THE NORTH EAST 1/4 OF SECTION 31; (EXCEPTING THE RIGHT-OF-WAY OF THE CHICAGO, BURLINGTON & QUINCY RAIL ROAD); AND THE NORTH WEST FRACTIONAL 1/4 OF SECTION THIRTY-ONE (31), TOWNSHIP FORTY (40) NORTH, RANGE TWO (2) EAST OF THE THIRD (3RD) PRINCIPAL MERIDIAN, OGLE COUNTY, ILLINOIS, SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD, ROADS AND HIGHWAYS, FEEDERS AND LATERALS AND EASEMENTS OR CLAIMS OF EASEMENTS, NOT SHOWN ON THE PUBLIC RECORDS; AND EXCEPTING, HOWEVER, THE FOLLOWING DESCRIBED TRACTS:

A.) ALL THAT PORTION OF SAID WEST 1/2 OF THE NORTH EAST 1/4 OF SECTION 31 WHICH LIES EASTERLY OF THE WESTERLY RIGHT-OF-WAY LINES OF THE RAILROADS KNOWN OR FORMERLY KNOWN AS THE CHICAGO, BURLINGTON & QUINCY RAIL ROAD, THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, AND THE GREAT NORTHERN PACIFIC AND BURLINGTON LINES; AND WHICH ALSO LIES NORTHERLY OF THE NORTHERLY RIGHT OF WAY LINE OF F.A.I. ROUTE 88 (FORMERLY) KNOWN AS THE EAST-WEST TOLLWAY EXTENSION).

B.) A TRACT DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHWEST ¼ OF SECTION 31, THENCE NORTH 18 RODS, THENCE EAST 22 RODS, THENCE SOUTH 18 RODS, AND THENCE WEST 22 RODS TO THE PLACE OF BEGINNING, CONTAINING ABOUT 2-1/2 ACRES, AS DISCLOSED BY WARRANTY DEED FROM HIRAM P. SPAULDING AND ROANA F. SPAULDING, HIS WIFE, TO ENOCH HOADLEY DATED APRIL 22, 1857, RECORDED APRIL 23, 1857 IN BOOKS OF DEEDS, PAGE 403.

C.) PREMISES DEDICATED FOR PUBLIC HIGHWAY PURPOSES BY DEED RECORDED IN RIGHT OF WAY BOOK 8, PAGE 338 IN OGLE COUNTY, ILLINOIS.

D.) PREMISES CONVEYED BY DEED RECORDED OCT. 25, 1943, IN BOOK 184 OF DEEDS PAGE 555 IN OGLE COUNTY, ILLINOIS, AND

E.) PART OF THE WEST HALF (W 1/2) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION THIRTY-ONE (31) TOWNSHIP FORTY (40) NORTH, RANGE TWO (2) EAST OF THE THIRD (3RD) PRINCIPAL MERIDIAN, BOUNDED AS FOLLOWS, TO-WIT: BEGINNING AT THE POINT OF INTERSECTION OF THE WESTERLY RIGHT OF WAY LINE OF THE C. B. & Q. RAILROAD COMPANY WITH THE NORTH LINE OF SAID SECTION 31; SAID POINT OF INTERSECTION BEING 2123.4 FEET EASTERLY,

MEASURED ALONG SAID NORTH LINE, FROM THE SECTION CORNER OF SECTION 30 AND 31, T. 40 N. R. 2 E., AND SECTIONS 25 AND 36, T. 40 N., R. 1 E; THENCE SOUTHEASTERLY ALONG SAID C. B. & Q. RIGHT OF WAY LINE 2020 FEET, MORE OR LESS, TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 31, THENCE SOUTH ALONG SAID QUARTER, QUARTER LINE TO A POINT 40 FEET WESTERLY MEASURED AT RIGHT ANGLES FROM SAID WESTERLY RIGHT OF WAY LINE; THENCE NORTHWESTERLY PARALLEL TO SAID WESTERLY RIGHT OF WAY LINE TO THE NORTH LINE OF SAID SECTION 31; THENCE EAST ALONG SAID NORTH LINE TO THE PLACE OF BEGINNING; CONTAINING 1.88 ACRES MORE OR LESS.

F.) BEGINNING ON THE WEST LINE OF SAID SECTION 31 AT A POINT 152.26 FEET SOUTHEASTERLY OF THE CENTERLINE OF A HIGHWAY KNOWN AS THE EAST-WEST TOLLWAY EXTENSION AS SAID CENTERLINE IS SURVEYED AND STAKED OUT BY THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY AND RECORDED IN BOOK G-1 OF PLAT SURVEY RECORDS, PAGE 11, IN THE RECORDER'S OFFICE OF OGLE COUNTY; THENCE NORTHERLY ALONG THE SAID WEST LINE OF SAID SECTION 31 WHICH INTERSECTS THE SAID CENTERLINE AT STATION 4073+00 TO A POINT 152.88 FEET NORTHWESTERLY OF SAID CENTERLINE; THENCE NORTHEASTERLY TO A POINT 150.00 FEET NORTHWESTERLY OF STATION 4074+00 OF SAID CENTERLINE; THENCE NORTHEASTERLY ALONG A LINE PARALLEL WITH SAID CENTERLINE TO A POINT 150.00 FEET NORTHWESTERLY OF STATION 4097+78.40 OF SAID CENTERLINE, SAID POINT LYING ON THE WESTERLY RIGHT-OF-WAY LINE OF THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY AND THE GREAT NORTHERN PACIFIC AND BURLINGTON LINES, INC. RIGHT-OF-WAY AND A TRACT DESCRIBED IN THE TRUSTEE'S DEED RECORDED IN BOOK 262 OF DEEDS, PAGE 628 RECORDED AS DOCUMENT #380322; THENCE SOUTHEASTERLY ALONG SAID RAILROAD RIGHT-OF-WAY LINE TO A POINT 150 FEET SOUTHEASTERLY OF TOLLWAY CENTERLINE STATION 4098+23.44; THENCE SOUTHWESTERLY ALONG A LINE 150 FEET SOUTHEASTERLY OF AND PARALLEL TO SAID TOLLWAY CENTERLINE TO A POINT 150 FEET SOUTHEASTERLY OF TOLLWAY CENTERLINE STATION 4080+09.52; THENCE SOUTHWESTERLY TO A POINT 150 FEET SOUTHEASTERLY OF TOLLWAY CENTERLINE STATION 40744+00; THENCE SOUTHWESTERLY TO THE POINT OF BEGINNING.

G.) BEGINNING ON THE WEST LINE OF SAID SECTION 31 AT A POINT 152.26 FEET SOUTHEASTERLY OF THE CENTERLINE OF A HIGHWAY KNOWN AS THE EAST-WEST TOLLWAY EXTENSION AS SAID CENTERLINE IS SURVEYED AND STAKED OUT BY THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY AND RECORDED IN BOOK G-1 OF PLAT SURVEY RECORDS, PAGE 11 IN THE RECORDER'S OFFICE IN OGLE COUNTY; THENCE NORTHEASTERLY TO A POINT 150 FEET SOUTHEASTERLY OF STATION 4074+00 OF SAID CENTERLINE; THENCE SOUTH 9°19'59" WEST FOR A DISTANCE OF 316.61 FEET TO THE CENTERLINE OF COUNTY HIGHWAY 17; THENCE NORTHWESTERLY ALONG THE SAID CENTERLINE OF. COUNTY HIGHWAY 17 TO

THE POINT OF BEGINNING.

H.) BEGINNING ON THE WEST LINE OF SAID SECTION 31 AT A POINT 152.88 FEET NORTHWESTERLY OF THE CENTERLINE OF A HIGHWAY KNOWN AS THE EAST-WEST TOLLWAY EXTENSION AS SAID CENTERLINE IS SURVEYED AND STAKED OUT BY THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY AND RECORDED IN BOOK G-1 OF PLAT SURVEY RECORDS, PAGE 11 IN THE RECORDER'S OFFICE OF OGLE COUNTY; THENCE NORTHERLY ALONG THE SAID WEST LINE OF SAID SECTION 31, A DISTANCE OF 449.73 FEET; THENCE EASTERLY ALONG A LINE PERPENDICULAR TO THE SAID WEST LINE OF SAID SECTION 31, A DISTANCE OF 40 FEET; THENCE SOUTHEASTERLY TO A POINT 150 FEET NORTHWESTERLY OF STATION 4074+00 OF SAID CENTERLINE; THENCE SOUTHWESTERLY TO THE POINT OF BEGINNING.

I.) THAT PART DEEDED TO OGLE COUNTY BY WARRANTY DEED RECORDED OCTOBER 8, 2008, AS DOCUMENT 200800809334.

(i) TRACT 2:

PART OF THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION THIRTY-ONE (31), TOWNSHIP FORTY (40) NORTH, RANGE TWO (2) EAST OF THE THIRD (3RD) PRINCIPAL MERIDIAN, OGLE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SAID SECTION THIRTY-ONE (31); THENCE EASTERLY, ALONG THE SOUTH LINE THEREOF, A DISTANCE OF 222.06 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN RAILROAD; THENCE NORTHWESTERLY, ALONG SAID WESTERLY RIGHT OF WAY UNE BEING THE ARC OF A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 16787.32 FEET, AND WHOSE CHORD FORMS AN ANGLE OF 73 DEGREES 19 MINUTES 47 SECONDS AS MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, AN ARC DISTANCE OF 754.18 FEET TO A POINT ON THE WEST LINE OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID NORTHEAST QUARTER (NE 1/4); THENCE SOUTHERLY, ALONG SAID WEST LINE, AT AN ANGLE OF 17 DEGREES 07 MINUTES 31 SECONDS AS MEASURED CLOCKWISE FROM THE LAST DESCRIBED CHORD, A DISTANCE OF 722.45 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PART DEEDED TO OGLE COUNTY BY WARRANTY DEED RECORDED OCTOBER 8, 2008 AS DOCUMENT 200800809334.

Exhibit 2 – Certain Project Details



Project Scope

Project Crossroads Electric Feed

Rochelle Municipal Utilities

Project Details

1. 34.5kV, 50mva, 837amps
2. 13.8kV, 50mva = 2,092amps
3. 37.5/50/62.5MVA xfmr
4. (2) - 750kcmil CU cables = 440amps ea., or 880amps @ 34.5kV, or 52.5MVA

Description

Proposed data center, 50MVA initial load, then planned growth to 150MVA. Initial feed would be 34.5kV, then switch to a 138kV connection



Project Details:

1. 34.5kV, 50mva, 837amps
2. 13.8kV, 50mva = 2,092amps
3. 37.5/50/62.5MVA xfmr
4. (2) - 750kcmil CU cables = 440amps ea., or 880amps @ 34.5kV, or 52.5MVA
5. project length is 5.21mi



