

RESOLUTION # _____

MULFORD ROAD IMPROVEMENTS
ESCROW AGREEMENT

This ESCROW AGREEMENT is entered into this 10th day of February 2020, by and among the CENTRAL BANK ILLINOIS ("Escrowee"), THE CITY OF ROCHELLE, an Illinois Municipal Corporation ("the City"), ROCHELLE WASTE DISPOSAL, an Illinois Limited Liability Company ("Operator").

WHEREAS, the City and Operator are prepared to construct the improvements along Mulford Road ("Mulford Road Improvements") anticipated under the amendment for Restated Host Agreement for the Operation and Development of the Rochelle Municipal Landfill No 2 ord. #08-3668 ("Host Agreement"), the Agreement for Third Amendment to the Restatement of Host Agreement for Operation/Development of City of Rochelle Landfill No. 2 ("Host Agreement amendment #3)); And

WHEREAS, the Operator is required to place the full amount of the construction costs of the Mulford Road Improvements into an Escrow Account per the Agreement for Third Amendment to the Restatement of Host Agreement for Operation/Development of City of Rochelle Landfill No. 2 ("Host Agreement amendment #3); And

WHEREAS, the City has received bids January 23, 2020 in which a low Alternate bid in the amount of \$1,149,389.78 was received by Martin and Company Excavating for the Mulford Road Improvements. Which said bid has been accepted and approved for contract by the City; And

WHEREAS, the City Engineer has reviewed the bid with the Operator and the Operator shall deposit in cash a minimum of \$1,375,000.00 which includes 100% of the actual Alternate Base Bid costs for the Mulford Road Improvements, plus 10% contingency, plus costs related to Right of Way acquisition required for the construction project, and the costs for Construction Engineering and Testing Services meets the Host Agreement, Host Agreement amendment #3, and requirements of the Section 86-52 of Chapter 86 Subdivisions for Public Land Improvements, Article II of the Rochelle Municipal Code; And

WHEREAS, the parties intend that the construction of the Mulford Road Improvements begin as soon as practical in April, 2020 with periodic payments for the construction and construction related items or services to be paid from the escrow in accordance with the provisions of this Escrow Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein and other good and valuable consideration, the sufficiency of which is acknowledged by the parties hereto, it is hereby agreed as follows:

- I. DEPOSITS INTO ESCROW: The Operator shall deposit the following sum of money within 7 days of the full execution of this Agreement but no later than February 23, 2020:
 - A. The fully executed original of this Agreement.
 - B. A certified check in the amount of \$1,375,000 representing Operators Mulford Road Improvements Contribution.

2. INVESTMENT OF CASH DEPOSITS: All of the cash deposited into escrow pursuant to Section 1 above or which remains in escrow after the payments called for under this Agreement from time to time shall be invested as follows:
 - A. All monies deposited by Operator shall be held at the Central Bank Illinois. Escrowee shall bear no responsibility for the investment results or security of said monies. However, these monies shall be held in such a manner that they remain subject to the provisions of this Escrow Agreement and accessible to the City for the purposes set forth herein. Before receiving Operators deposit, Central Bank Illinois must sign a statement acknowledging receipt of an executed copy of this Agreement and its willingness to comply with it particularly with regard to coordinating with Escrowee in the timely payments called for hereunder. Central Bank Illinois shall pay no interest for the amounts invested with it.

3. DISBURSEMENT OF CASH HELD IN ESCROW: Prior to each disbursement of funds by Escrowee hereunder, City shall furnish or cause to be furnished to Escrowee the following:
 - A. A completed contractor's pay estimate approved by the City Engineer and City Manager setting forth the names of the contractors, their addresses, the various line items of work completed which are to be paid for, the amount of such contracts, the amounts paid to date, if any, the amounts of current payments, if any, the change orders for the pay estimate period, if any and the balances to become due, if any.
 - B. A current dated sworn Statement, to City, by the Contractor of certified payroll in accordance with Illinois Department of Labor, setting forth the names and addresses of such persons furnishing labor, service or materials, the type of labor, service or materials to be furnished, the amounts of the contracts, amounts paid to date, if any, amounts of current payments, if any, and balances to become due, if any.

- C. Escrowee will disburse funds to the City upon written direction by the City Manager and City Engineer to pay for the approved contractor's pay estimate(s) as stated above. If non-construction costs are to be paid hereunder (eg. professional construction engineering and testing services and Right of way acquisition costs or fees,, etc.), then the City Manager and City Engineer shall provide written directions to Escrowee setting forth the names and addresses of the payees, the amounts to be paid, and the purpose of the payments.
 - D. Certification by the City Engineer, or designee, that the work relating to the current construction draw request, has been installed and approved by the City Engineer or its Engineering consultant in accordance with the Mulford Road Improvements plans and specifications and Section 86-52 of the Rochelle Municipal Code.
 - E. Statements, waivers, affidavits, supporting waivers and-releases of lien from such persons and in such form as the City deems appropriate and which City shall certify to Escrowee in writing as being sufficient for the payment of the current construction draw request pay estimate.
4. DISPUTES: This Escrow Agreement, and the Escrow Amount, are intended to satisfy the requirements of the Host Agreement, the Host Agreement Amendment #3, Sections 86-52 ("Guarantee for Completion of Improvements"), 86-54 (Completion of Land Improvements"), and 86-56 ("Release of Guarantee for Completion") of the Rochelle Municipal Code. Accordingly, upon written notice from the City Manager of the City of Rochelle that Operator has failed to complete the Mulford Road Improvements in accordance with said provisions, Escrowee shall pay the remaining proceeds of the Escrow Amount to the City. Any proceeds so paid to the City shall be used only for the purpose of completing the Mulford Road Improvements or other non-construction costs as identified above.
5. EXPENSES OF ESCROWEE: All reasonable costs and expenses incurred by Escrowee in performing its duties as Escrowee, including, but not limited to, reasonable attorneys' fees shall be paid from the escrow account.
6. FEES OF ESCROWEE: For the services rendered hereunder, Escrowee agrees to a fee of \$1,000.00 for setting up the escrow account. Such fee will be paid from the escrow funds as soon as possible after the initial funding.

7. COMPLETION OF MULFORD ROAD IMPROVEMENTS: The Mulford Road Improvements shall be deemed completed upon acceptance of improvements designated for acceptance by the City Manager and City Engineer, in accordance with Section 86-56 of the Rochelle Municipal Code. Any monies remaining in the escrow account which were contributed by Operator after the initial deposits referred to in Section I above shall be returned to Operator.
8. AMENDMENT OF PRIOR AGREEMENTS: City and Operator hereby agree that the timing of the respective Mulford Road improvement contributions and as set forth in their respective agreements for construction of Mulford Road Improvements shall be controlled by this Escrow Agreement.
9. DUTIES OF ESCROW AGENT: It is agreed that the duties of Escrowee are only as herein specifically provided, and that Escrowee shall not be liable for any error in judgment or for any act done or step taken or omitted by it in good faith, or for any mistake of fact or law, or for anything which it may do or refrain from doing in connection therewith, except for the bad faith, gross negligence or willful misconduct of Escrowee. Escrowee shall not be obligated to inquire as to the performance of any obligation described in the Agreement. Escrowee shall not incur any liability for acting upon any notice, consent, waiver or document which appears to be signed by an authorized person described in this Agreement, not only as to its due execution and validity and the effectiveness of its provisions, but also as to the truth of any information therein contained, which Escrowee in good faith believes to be genuine and what it purports to be. The parties hereto, jointly and severally, agree to indemnify and hold Escrowee harmless from and against any loss, damage, claim or expense, including reasonable attorneys' fees, resulting from this Escrow Agreement, except for the bad faith, gross negligence or willful misconduct of Escrowee. Escrowee shall not be bound by any modification to this Escrow agreement, unless the modification be in writing and signed by the parties hereto, and if the duties of the Escrowee herein are affected, unless Escrowee shall have given its prior written consent thereto.
10. NO THIRD PARTY BENEFICIARIES: The terms and provisions of this Escrow Agreement shall create no right in any person, firm or corporation other than the parties and their respective successors and permitted assigns of the Agreement and no third party shall have the right to enforce or benefit from the terms hereof.

Unless otherwise specified, Notices shall be deemed given when received, but if delivery is not accepted, on the earlier of the date delivery is refused or the fourth business day after the same is deposited with the United States Postal Service.

12. **GOVERNING LAW:** This Escrow Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois without regard to principles of conflict of law.
13. **RECORDING:** The parties agree to the recording of this document in the Ogle County Recorder's Office and such expense shall be deducted from the Escrow funds.

(Signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Escrow Agreement as of the date first above written.

CENTRAL BANK ILLINOIS

Escrowee

Escrowee Representatives:

By: _____
Earl Fleming, Vice President

By: _____
Jeff Glen, Community Market President

CITY OF ROCHELLE,
An Illinois Municipal Corporation

By: _____
Jeff Fiegenschuh, City Manager

Attest

By: _____
Sue Messer, City Clerk

ROCHELLE WASTE DISPOSAL, LLC
An Illinois Limited Liability Company
A wholly Owned subsidiary of
Waste Connections, LLC

By: _____
Greg Paine, Corporate Treasurer
"Operator"

Prepared by:
Sam Tesreau
City of Rochelle
City Engineer
420 N. 6th Street
Rochelle, IL 61068