

ESCROW AGREEMENT

This Escrow Agreement (this “*Agreement*”), dated as of the date witnessed hereinbelow, by and between the City of Rochelle, Ogle and Lee Counties, Illinois (the “*City*”), and The Bank of New York Mellon Trust Company, National Association, a banking corporation having trust powers, organized and operating under the laws of the United States of America, located in Chicago, Illinois (the “*Escrow Agent*” or “*BNY*”), in consideration of the mutual promises and agreements herein set forth:

WITNESSETH:

ARTICLE I

DEFINITIONS

The following words and terms used in this Agreement shall have the following meanings unless the context or use clearly indicates another or different meaning:

Section 1.01. “*Board*” means the Council of the City.

Section 1.02. “*Code*” means Section 148 of the Internal Revenue Code of 1986, and all lawful regulations promulgated thereunder.

Section 1.03. “*Defeased Bonds*” means the outstanding bonds of the City as follows:

(a) \$5,620,000 Electric System Revenue Bonds, Series 2014, dated November 4, 2014, due on May 1 of the years and in the amounts and bearing interest as follows:

| YEAR OF MATURITY | PRINCIPAL AMOUNT | RATE OF INTEREST |
|------------------|------------------|------------------|
| 2021 | \$ 100,000 | 3.00% |
| 2022 | 100,000 | 3.00% |
| 2023 | 100,000 | 4.00% |
| 2024 | 105,000 | 4.00% |
| 2027 | 325,000 | 4.00% |
| 2030 | 360,000 | 3.40% |
| 2031 | 1,050,000 | 5.00% |
| 2032 | 1,105,000 | 5.00% |
| 2033 | 1,160,000 | 5.00% |
| 2034 | 1,215,000 | 5.00% |

(the “2014 Bonds”); and

(b) \$6,995,000 Electric System Revenue Bonds, Series 2015, dated March 4, 2015, due on May 1 of the years and in the amounts and bearing interest as follows:

| YEAR OF MATURITY | PRINCIPAL AMOUNT | RATE OF INTEREST |
|------------------|------------------|------------------|
| 2021 | \$575,000 | 4.00% |
| 2022 | 600,000 | 4.00% |
| 2023 | 630,000 | 4.00% |
| 2024 | 655,000 | 4.00% |
| 2025 | 680,000 | 4.00% |
| 2026 | 715,000 | 4.00% |
| 2027 | 740,000 | 4.00% |
| 2028 | 770,000 | 4.00% |
| 2029 | 800,000 | 4.00% |
| 2030 | 830,000 | 4.00% |

(the “2015 Bonds”).

Section 1.04. “Escrow Account” means the trust account established under this Agreement by the deposit of the Government Securities and the hereinafter defined Beginning Cash.

Section 1.05. “*Government Securities*” means the non-callable direct obligations of or non-callable obligations guaranteed by the full faith and credit of the United States of America as to principal and interest deposited hereunder as more particularly described in *Schedule I* to this Agreement and also including any direct obligations purchased pursuant to Section 3.02.

Section 1.06. “*Paying Agent*” means The Bank of New York Mellon Trust Company, National Association, Chicago, Illinois, as bond registrar and paying agent for the Defeased Bonds.

Section 1.07. “*Ordinance*” means the ordinance adopted on the 13th day of July, 2020, by the Board entitled:

ORDINANCE providing for the payment of the outstanding Electric System Revenue Bonds, Series 2014, and Electric System Revenue Bonds, Series 2015, of the City of Rochelle, Ogle and Lee Counties, Illinois, in advance of their respective maturities, authorizing the execution and delivery of an escrow agreement in connection therewith and related matters.

Section 1.08. “*Treasurer*” means the City Treasurer.

ARTICLE II

CREATION OF ESCROW

Section 2.01. The City by the Ordinance has authorized the provision for payment of the Defeased Bonds by the deposit on demand and to purchase on behalf of the City the Government Securities. Such deposit and securities will provide all moneys necessary to pay the principal of and interest on the Defeased Bonds when due and upon redemption prior to maturity.

Section 2.02. The City deposits \$_____ from funds on hand and legally available for the purchase of the Government Securities and the funding of a beginning cash escrow deposit on demand in the amount of \$_____ (the “*Beginning Deposit*”). The Beginning Deposit and the Government Securities are held in an irrevocable trust fund account for the City to the

benefit of the holders of the Defeased Bonds to pay the principal of and interest on the Defeased Bonds when due and upon redemption prior to maturity.

Section 2.03. The Escrow Agent and the City have each received the report of Stanley P. Stone & Associates, Inc., New York, New York, attached hereto as *Schedule II* (the “*Verification Report*”), that the principal of and income and profit to be received from the Government Securities, when paid at maturity, and the cash held in accordance with Section 2.02 hereof, will be sufficient, at all times pending the final payment of the Defeased Bonds, to pay all interest on and all principal of the Defeased Bonds when due and upon redemption prior to maturity as evidenced by the Verification Report.

ARTICLE III

COVENANTS OF ESCROW AGENT

The Escrow Agent covenants and agrees with the City as follows:

Section 3.01. The Escrow Agent will hold the Government Securities and all interest income or profit derived therefrom and all uninvested cash in an irrevocable segregated and separate trust fund account for the sole and exclusive benefit of the holders of the Defeased Bonds until final payment thereof.

Section 3.02. The Beginning Deposit shall not be invested by the Escrow Agent. Otherwise, the Escrow Agent will reinvest all available uninvested balances (except for an amount under \$1,000 or as explicitly provided in this Section) in the Escrow Account on deposit from time to time, whenever said balances exceed \$1,000 unless said balance is needed to pay principal of or interest on the Defeased Bonds within 14 days, and acknowledges that the schedule of amounts available for reinvestment appears in the cash flow tables in the Verification Report and in *Schedule III*. Investments so made shall be in direct obligations of the United States of America and shall be scheduled to mature on or prior to the interest payment date on the

Defeased Bonds on which such proceeds will be needed to pay the principal of or interest on the Defeased Bonds. Such investments shall, to the extent possible, be in zero-yield obligations issued directly by the Bureau of Fiscal Service of the United States Treasury (currently designated “*U.S. Treasury Securities—State and Local Government Series Certificates of Indebtedness, Notes or Bonds*”) (“*SLGS*”). Such investments shall be made only to the extent permitted by, and shall be made in accordance with, the applicable statutes, rules and regulations governing such investments issued by the Bureau of Fiscal Service. The Escrow Agent and the City expressly recognize that under current regulations all SLGS must be subscribed for not less than 5 days (7 days for amounts of \$10,000,000 or more) nor more than 60 days prior to date of issuance.

Schedule III contains a list of scheduled reinvestments. The Escrow Agent is instructed to subscribe for and take delivery of the Government Securities described in *Schedule III*.

If the Department of the Treasury (or the Bureau of Fiscal Service) of the United States suspends the sale of SLGS causing the Escrow Agent to be unable to purchase SLGS, then the Escrow Agent will take the following actions. On the date it would have purchased SLGS had it been able to do so, the Escrow Agent will purchase direct obligations of the United States (the “*Alternate Investment*”) maturing no more than 90 days after the date of purchase and no later than the scheduled maturity date of such SLGS as shown on *Schedule III*. The purchase price of the Alternate Investment shall be as close as possible but not more than to the principal amount of the SLGS that would have been purchased on such date if they had been available for purchase and also not more than the total of all principal and interest to be received on such investment. The maturity date of the Alternate Investment shall be the latest possible date that (i) is not more than 90 days after the purchase date and (ii) is not after the scheduled maturity date for the SLGS that would have been purchased if available as shown on *Schedule III*. The Escrow Agent will

purchase each Alternate Investment in the customary manner for such investments (in the secondary market or in a Treasury auction) at a price no higher than the fair market value of the Alternate Investment and will maintain records demonstrating compliance with this requirement. If the Escrow Agent is unable to purchase any investment satisfying all of these requirements, then the Escrow Agent will leave the balance uninvested and shall notify the City that it has been unable to purchase such an Alternate Investment, providing the reason for such inability to the City. On the maturity of each Alternate Investment, the Escrow Agent shall pay the difference between the total of the receipts (principal and interest) on the Alternate Investment and the purchase price of the Alternate Investment to the City with a notice to the City that such amount may need to be paid to the Internal Revenue Service pursuant to Rev. Proc. 95-47 or successor provisions including any finalized version of Prop. Treas. Reg. Section 1.148-5(c). If the Alternate Investment matures more than 14 days prior to the next succeeding interest payment date on the Defeased Bonds on which such proceeds will be needed to pay principal of or interest on the Defeased Bonds, the Escrow Agent shall treat such amounts as an uninvested balance available for reinvestment and shall take all reasonable steps to invest such amounts in SLGS (or additional Alternate Investments as provided in this Section).

The Escrow Agent shall hold balances not so invested in the Escrow Account on demand and in trust for the purposes hereof and shall secure same in accordance with applicable Illinois law for the securing of public funds.

Section 3.03. The Escrow Agent will take no action in the investment or securing of the proceeds of the Government Securities which would cause the Defeased Bonds to be classified as “arbitrage bonds” under the Code, *provided*, it shall be under no duty to affirmatively inquire whether the Government Securities as deposited are properly invested under the Code; and,

provided, further, it may rely on all specific directions in this Agreement in the investment or reinvestment of balances held hereunder.

Section 3.04. The Escrow Agent will promptly collect the principal, interest or profit from the Government Securities and promptly apply the same as necessary to the payment of principal and interest on the Defeased Bonds when due and upon redemption prior to maturity as herein provided.

Section 3.05. The Escrow Agent will remit to the Paying Agent, in good funds on or before each principal or interest payment or redemption date on the Defeased Bonds, moneys sufficient to pay such principal, interest and redemption price as will meet the requirements for the retirement of the Defeased Bonds, and such remittances shall fully release and discharge the Escrow Agent from any further duty or obligation thereto under this Agreement.

Section 3.06. The Escrow Agent will make no payment of fees, charges or expenses due or to become due, of the Paying Agent or the bond registrar and paying agent on the Defeased Bonds, and the City either paid such fees, charges and expenses in advance as set forth in Section 3.07 hereof or covenants to pay the same as they become due.

Section 3.07. The charges, fees and expenses of the Escrow Agent (other than any charges, fees and expenses incurred pursuant to Section 3.08 hereof) have been paid in advance, and all charges, fees or expenses of the Escrow Agent in carrying out any of the duties, terms or provisions of this Agreement shall be paid solely therefrom.

Section 3.08. The City has called the 2014 Bonds due on and after May 1, 2025, for redemption and payment prior to maturity on May 1, 2024. The City has called the 2015 Bonds due on and after May 1, 2026, for redemption and payment prior to maturity on May 1, 2025. As Paying Agent for the Defeased Bonds, BNY will provide for and give timely notice of the call for redemption of the Defeased Bonds. The form and time of the giving of such notice regarding the

Defeased Bonds shall be as specified in the ordinance authorizing the issuance of the Defeased Bonds. The City shall reimburse BNY for any actual out of pocket expenses incurred in the giving of such notice, but the failure of the City to make such payment shall not in any respect whatsoever relieve the Escrow Agent from carrying out any of the duties, terms or provisions of this Agreement.

BNY shall give notice of the call of the Defeased Bonds, on or before the date the notice of such redemption is given to the holders of the Defeased Bonds, to the Municipal Securities Rulemaking Board (the “MSRB”) through its Electronic Municipal Market Access system for municipal securities disclosure or through any other electronic format or system prescribed by the MSRB for purposes of Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended. Information with respect to procedures for submitting notice can be found at <https://msrb.org>.

Section 3.09. The Escrow Agent has all the powers and duties herein set forth with no liability in connection with any act or omission to act hereunder, except for its own negligence or willful breach of trust, and shall be under no obligation to institute any suit or action or other proceeding under this Agreement or to enter any appearance in any suit, action or proceeding in which it may be defendant or to take any steps in the enforcement of its, or any, rights and powers hereunder, nor shall be deemed to have failed to take any such action, unless and until it shall have been indemnified by the City to its satisfaction against any and all costs and expenses, outlays, counsel fees and other disbursements, including its own reasonable fees, and if any judgment, decree or recovery be obtained by the Escrow Agent, payment of all sums due it, as aforesaid, shall be a first charge against the amount of any such judgment, decree or recovery.

Section 3.10. The Escrow Agent may in good faith buy, sell or hold and deal in any of the Defeased Bonds.

Section 3.11. The Escrow Agent will submit to the Treasurer a statement within forty-five (45) days after May 1 and November of each calendar year, commencing November 1, 2020, itemizing all moneys received by it and all payments made by it under the provisions of this Agreement during the preceding six (6) month period (or, for the first period, from the date hereof to November 1, 2020), and also listing the Government Securities on deposit therewith on the date of said report, including all moneys held by it received as interest on or profit from the collection of the Government Securities.

Section 3.12. If at any time it shall appear to the Escrow Agent that the available proceeds of the Government Securities and deposits on demand in the Escrow Account will not be sufficient to make any payment due to the holders of any of the Defeased Bonds, the Escrow Agent shall notify the Treasurer, the City Manager of the City and the Board, not less than five (5) days prior to such date, and the City agrees that it will from any funds legally available for such purpose make up the anticipated deficit so that no default in the making of any such payment will occur.

ARTICLE IV

COVENANTS OF CITY

The City covenants and agrees with the Escrow Agent as follows:

Section 4.01. The Escrow Agent shall have no responsibility or liability whatsoever for (a) any of the recitals of the City herein, (b) the performance of or compliance with any covenant, condition, term or provision of the Ordinance, and (c) any undertaking or statement of the City hereunder or under the Ordinance.

Section 4.02. All payments to be made by, and all acts and duties required to be done by, the Escrow Agent under the terms and provisions of this Agreement, shall be made and done by the Escrow Agent without any further direction or authority of the City or the Treasurer.

Section 4.03. The City will take any and all action necessary to ensure that adequate provision is made for the payment of the Defeased Bonds and that the Defeased Bonds are not classified as “arbitrage bonds” under the Code.

ARTICLE V

AMENDMENTS, REINVESTMENT OF FUNDS, IRREVOCABILITY OF AGREEMENT

Section 5.01. Except as provided in Section 5.04 hereof, all of the rights, powers, duties and obligations of the Escrow Agent hereunder shall be irrevocable and shall not be subject to amendment by the Escrow Agent and shall be binding on any successor to the Escrow Agent during the term of this Agreement.

Section 5.02. Except as provided in Section 5.04 hereof, all of the rights, powers, duties and obligations of the City hereunder shall be irrevocable and shall not be subject to amendment by the City and shall be binding on any successor to the officials now comprising the Board during the term of this Agreement.

Section 5.03. Except as provided in Section 5.04 hereof, all of the rights, powers, duties and obligations of the Treasurer hereunder shall be irrevocable and shall not be subject to amendment by the Treasurer and shall be binding on any successor to said official now in office during the term of this Agreement.

Section 5.04. This Section 5.04 shall not apply to *Schedules I, II and III* which may be amended or supplemented in accordance with the foregoing provisions of this Agreement. Otherwise, this Agreement may be amended or supplemented, and the Government Securities or any portion thereof may be sold, redeemed, invested or reinvested, in any manner provided (any such amendment, supplement, or direction to sell, redeem, invest or reinvest to be referred to as a “*Subsequent Action*”), upon submission to the Escrow Agent of each of the following:

(1) Certified copy of proceedings of the Board authorizing the Subsequent Action and copy of the document effecting the Subsequent Action signed by duly designated officers of the City.

(2) An opinion of nationally recognized bond counsel or tax counsel nationally recognized as having an expertise in the area of tax-exempt municipal bonds that the Subsequent Action has been duly authorized by the Board and will not adversely affect the tax-exempt status of the interest on the Defeased Bonds nor violate the covenants of the City not to cause the Defeased Bonds to become “arbitrage bonds” under the Code, and that the Subsequent Action does not materially adversely affect the legal rights of the holders of the Defeased Bonds.

(3) An opinion of a firm of nationally recognized independent certified public accountants that the amounts (which will consist of cash or deposits on demand held in trust or receipts from non-callable direct obligations of or non-callable obligations guaranteed by the full faith and credit of the United States of America, all of which shall be held hereunder) available or to be available for payment of the Defeased Bonds will remain sufficient to pay when due all principal and interest on the Defeased Bonds after the taking of the Subsequent Action.

ARTICLE VI

MERGER, CONSOLIDATION OR RESIGNATION OF ESCROW AGENT

Any banking association or corporation into which the Escrow Agent may be merged, converted or with which the Escrow Agent may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Escrow Agent shall be a party, or any banking association or corporation to which all or substantially all of the corporate trust business of the Escrow Agent shall be transferred, shall succeed to all the Escrow Agent’s rights,

obligations and immunities hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding. The Escrow Agent may at any time resign as Escrow Agent under this Agreement by giving 30 days' written notice to the City, and such resignation shall take effect upon the appointment of a successor Escrow Agent by the City. The City may select as successor Escrow Agent any financial institution with capital, surplus and undivided profits of at least \$75,000,000 and having a corporate trust office within the State of Illinois, and which is authorized to maintain trust accounts for municipal corporations in Illinois under applicable law. Further, if no such successor Escrow Agent has been designated within 60 days after the City's receipt of the written notice of resignation, the resigning Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent.

ARTICLE VII

NOTICES TO THE CITY, THE TREASURER AND THE ESCROW AGENT

Section 7.01. All notices and communications to the City (including to the Board and the Treasurer) shall be addressed in writing to: (1) Director of Finance, City of Rochelle, City Hall, 420 North 6th Street, Rochelle, Illinois 61068, and (2) Peterson, Johnson & Murray Chicago, LLC, Attention: City Attorney for the City of Rochelle, 200 West Adams Street, Suite 2125, Chicago, Illinois 60606

Section 7.02. All notices and communications to the Escrow Agent shall be addressed in writing to: The Bank of New York Mellon Trust Company, National Association, Corporate Trust Department, 30 North LaSalle Street, 38th Floor, Chicago, Illinois 60602.

ARTICLE VIII

TERMINATION OF AGREEMENT

That, upon final disbursement of funds sufficient to pay the principal and interest of the Defeased Bonds as hereinabove provided for, the Escrow Agent will transfer any balance remaining in the Escrow Account to the Treasurer with due notice thereof mailed to the Board, and thereupon this Agreement shall terminate.

ARTICLE IX

EXECUTION IN COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

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IN WITNESS WHEREOF, The City of Rochelle, Ogle and Lee Counties, Illinois, has caused this Agreement to be signed in its name by its Mayor and to be attested by its City Clerk under its seal hereunto affixed; and The Bank of New York Mellon Trust Company, National Association, Chicago, Illinois, not individually, but in the capacity as hereinabove described, has caused this Agreement to be signed in its corporate name by one of its officers and attested by one of its officers under its corporate seal hereunto affixed, all as of the 29th day of July, 2020.

THE CITY OF ROCHELLE, OGLE AND LEE
COUNTIES, ILLINOIS

By _____
Mayor

Attest:

City Clerk

[SEAL]

THE BANK OF NEW YORK MELLON TRUST
COMPANY, NATIONAL ASSOCIATION,
Chicago, Illinois

By _____
Its _____

Attest:

Its _____

[BANK SEAL]

This Escrow Agreement received and acknowledged by me this 29th day of July, 2020.

City Treasurer

SCHEDULE I
GOVERNMENT SECURITIES

SCHEDULE II

VERIFICATION REPORT

SCHEDULE III

SCHEDULED REINVESTMENTS

| SUBSCRIBE BY | PURCHASE DATE | MATURITY DATE | PAR AMOUNT | TYPE | RATE |
|-----------------|------------------|------------------|---------------|------|------|
|-----------------|------------------|------------------|---------------|------|------|

None.