RESOLUTION 2016-110 PASSED: SEPTEMBER 26, 2016

AUTHORIZING A TRANSIT LEASE AGREEMENT WITH THE VOLUNTARY ACTION CENTER OF DEKALB COUNTY FOR LEASING CITY OWNED TRANSIT VEHICLES AND EQUIPMENT TO PROVIDE TRANSIT SERVICES FOR THE DEKALB URBANIZED AREA FOR AN INITIAL PERIOD FROM OCTOBER 1, 2016 THROUGH SEPTEMBER 30, 2017.

WHEREAS, the provision of public transit services is essential to the transportation of persons in the DeKalb urbanized area; and the Urbanized Area Formula Grant Program (Title 49 U.S.C. Section 5307) makes funds available to the City of DeKalb for the purchase of vehicles and equipment to support the provision of public transportation; and,

WHEREAS, the City provides these purchased vehicles and equipment to the contracted Transit Services Provider; and,

WHEREAS, the Voluntary Action Center of DeKalb County (VAC) has entered into an agreement with the City of DeKalb to provide public transit services for the DeKalb urbanized area (UZA); now,

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

Section 1: That the Mayor of the City of DeKalb be authorized and directed to execute an agreement substantially in the form attached hereto as Exhibit A, subject to such changes as shall be acceptable to the Mayor with the recommendation of staff, with VAC the term of which shall be coterminal with the Transit Services Provider Agreement with VAC with any extension, modification, or termination of said TSPA similarly extending, modifying, or terminating this agreement.

Section 2: That the City staff person designated as DeKalb Sycamore Area Transportation Study Director and the designated Executive Director of VAC shall be jointly authorized to approve any modification to the Lease Agreement Master List.

Section 3: That the City Clerk of the City of DeKalb, Illinois be authorized and directed to attest the Mayor's Signature and shall be effective thereupon.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a Regular meeting thereof held on the 26th day of September, 2016, and approved by me as Mayor on the same day. Passed by an 8-0 roll call vote. Aye: Jacobson, Finucane, Marquardt, Snow, Noreiko, Baker, Faivre, Rey.

ATTEST:

JENNIFER JEEP JOHNSON, City Clerk

JOHN A. REY, Mayor
TRANSIT VEHICLES AND EQUIPMENT LEASE AGREEMENT

This Lease Agreement is entered into this 1st day of October 2016, by and between, the City of DeKalb, hereinafter referred to as, LESSEE, and the Voluntary Action Center of DeKalb County, hereinafter referred to as the TRANSIT PROVIDER.

In consideration of the mutual covenants, promises and representations herein, the parties agree as follows:

1. TRANSIT VEHICLES AND EQUIPMENT LEASE AGREEMENT. LESSEE hereby provides to the TRANSIT PROVIDER Vehicles and Equipment for use in TRANSIT PROVIDER’s public transit systems to provide transportation services to the general public, visitors, and people with special needs, such as the elderly and disabled, as outlined in the Transit Services Provider Agreement (“TSPA”).

2. VEHICLE AND EQUIPMENT LISTING: A Master List of all vehicles and equipment leased by the LESSEE to the TRANSIT PROVIDER shall be maintained under the following provisions:
   a. Any vehicles or equipment purchased for the use of the TRANSIT PROVIDER to provide public transit during the period of the TSPA shall be added to the Master List.
   b. Any vehicles or equipment removed from service due to mechanical failure or removal due to expiration of its useful life shall be identified as removed from active service in the Master List.
   c. All additions and removals from the Master List shall be automatically included into the Transit Vehicles and Equipment Lease Agreement identified herein.

3. TERM. This lease shall correspond to the TSPA.
   a. EFFECTIVE DATE: The LESSEE hereby grants to TRANSIT PROVIDER the right to operate all leased transit vehicles and equipment on behalf of the LESSEE. The term of this Agreement shall be coterminous with the TSPA; any extension, modification or termination of said TSPA shall similarly extend, modify, or terminate this lease.

4. RENT. The TRANSIT PROVIDER agrees to pay one Dollar Amount ($1.00) per year overall, the said rental amount being due upon effective date of this Lease Agreement. Fee may be waived at the discretion of the City Manager. Rent is payable at the office of Finance located at 200 S Fourth Street, DeKalb, IL 60115. The Parties agree and acknowledge that the primary consideration for this lease is the TRANSIT PROVIDER’s performance of services under the TSPA.

5. FEDERAL STATUTES. All vehicles and equipment purchased with Federal Transit Administration (FTA) funds shall be subject to all FTA rules and regulations. The LESSEE and TRANSIT PROVIDER shall agree to comply with all real property regulations identified in FTA Circular 5010.1D Chapter IV Project Management or its current iteration.

6. MAINTENANCE AND REPAIRS. The TRANSIT PROVIDER shall pay for and furnish all maintenance and repairs to keep vehicles and equipment in good working order and condition and shall repair all damage that occurs to such vehicles while subject to this
lease. At the expiration or termination of this Lease, the vehicles and all safety equipment in the vehicles will be returned to the LESSEE in good condition, reasonable wear and tear excepted.

a. Any new transit vehicle leased to the TRANSIT PROVIDER may be equipped with; first-aid kit, fire extinguisher, visual warning devices, bio-hazard kit, spare tire and wheel and may also be equipped with; wheelchair securements, occupant restraints, two-way radio equipment. It is the responsibility of the TRANSIT PROVIDER to replace these items as necessary throughout the period of the Lease Agreement, and to provide any other equipment that shall be necessary, required or appropriate for use of the leased vehicles in a safe fashion and in compliance with applicable laws, rules and regulations. Upon termination of the TSPA all of the said items will be in proper working condition and shall be transferred to the LESSEE.

7. REGISTRATION, LICENSE, TAXES, INSPECTION, FEES, EXPENSES. The TRANSIT PROVIDER shall pay all expenses incurred in the use and operation of the Vehicles, including but not limited to, insurance, license, registration, and title fees, gasoline, oil, anti-freeze, repairs, maintenance, tires, storage, fines, inspections, assessments, sales or use taxes, if any, and all other taxes as may be imposed by law from time to time arising from TRANSIT PROVIDER'S use and operation of the Vehicles. The TRANSIT PROVIDER will reimburse and hold the LESSEE harmless for any and all amounts the LESSEE may pay in satisfaction, release, or discharge thereof. The TRANSIT PROVIDER shall permit the LESSEE and/or its designees, the Illinois Department of Transportation (IDOT), or the Federal Transit Administration (FTA) to inspect the Vehicles at reasonable times, places, and intervals. Each vehicle listed in the Master List, shall bear Illinois Municipal vehicle license plates.

8. USE AND OPERATION. The TRANSIT PROVIDER acknowledges receipt of Vehicles and Equipment, and that the same is in condition satisfactory to TRANSIT PROVIDER'S purposes. Vehicles shall not be altered, marked, or additional equipment installed without the prior written consent of the LESSEE in which case the TRANSIT PROVIDER will bear the expense thereof as well as the restoration expenses. The TRANSIT PROVIDER shall keep Vehicles free of all taxes, liens, and encumbrances and any sum of money that may be paid by the LESSEE in release or discharge thereof, including legal costs, shall be paid on demand by the LESSEE. The TRANSIT PROVIDER shall not use or permit the use of Vehicles in violation of any Federal, State, County or City laws, ordinances, rules or regulations, or contrary to the provisions of the insurance policy coverage. The TRANSIT PROVIDER, by acceptance of this Lease Agreement, agrees to abide by the terms hereof and to indemnify the LESSEE for any losses occurring as a result of such use in violation of said terms, laws, rules and ordinances.

9. REMOVAL FROM SERVICE. Any vehicle or piece of equipment which is deemed beyond its useful life by agreement of the Parties may be retired from service and returned to the LESSEE for reuse or disposal. The Useful Life for transit vehicles and equipment shall use the definition defined in FTA Circular 5010.1D, Chapter IV, Section f. Useful Life of Project Property. The LESSEE and TRANSIT PROVIDER shall dispose of all FTA funded property according to the regulations in FTA Circular 5010.1D, Chapter IV, Section J Real Estate Disposition. All vehicles and equipment removed from service shall be identified as removed in the Master List.

10. INDEMNIFICATION AND INSURANCE. The TRANSIT PROVIDER agrees and will protect, indemnify and hold harmless the LESSEE and its assignees and agents from
and against any and all losses, damages, injuries, claims, demands and expenses occasioned by, or arising out of, the condition, maintenance, use or operation of the Vehicles including any accident or other occurrence causing or inflicting injury and/or damage to any person or property, happening or done, in, upon, or about the Lease Agreement Vehicles, or due directly or indirectly to this Lease, or the condition, maintenance, use or operation of the Vehicles by the TRANSIT PROVIDER or any person claiming through or under the TRANSIT PROVIDER.

a. The TRANSIT PROVIDER agrees that it will at all times provide general liability and vehicle insurance policies which provide coverage for all LESSEE owned vehicles and equipment. The insurance coverage levels are identified in the TSPA. All vehicles shall be insured at full present-day new vehicle replacement value.

b. The TRANSIT PROVIDER shall provide and pay for any other insurance or bond that may be required by any governmental authority as a condition to, or in connection with, the TRANSIT PROVIDER'S use of the Vehicles.

c. In the event Vehicles are involved in an accident, damaged, stolen or destroyed by fire, the TRANSIT PROVIDER shall promptly notify the LESSEE, in writing, within 24 hours and will also comply with all terms and condition entered in the insurance policies. The TRANSIT PROVIDER agrees to cooperate with the LESSEE, and the insurance companies in defending against any claims or actions resulting from the TRANSIT PROVIDER'S operation or use of the Vehicles or Equipment.

d. Vehicles shall not be used by any person or entity, in any manner or for any purpose that would cause any insurance herein specified to be suspended, canceled, or rendered inapplicable.

e. TRANSIT PROVIDER shall implement a risk management program in accordance with the recommendations of its insuror, and shall implement all best management practices identified or recommended through such program.

11. DAMAGE TO VEHICLES. Should Vehicles or any part thereof be so damaged as to preclude usage for the purpose intended and should the TRANSIT PROVIDER be indemnified therefor pursuant to any insurance coverage required pursuant to paragraph 10 hereof in an amount not less than the full amount of the insurance coverage provided by the TRANSIT PROVIDER, the obligation of LESSEE to provide said vehicle(s) to TRANSIT PROVIDER under this Lease Agreement shall terminate, but TRANSIT PROVIDER's obligation to provide insurance and indemnification to the LESSEE shall continue in full force and effect. However, should the TRANSIT PROVIDER be indemnified in an amount less than the full amount of the insurance coverage provided by the TRANSIT PROVIDER, the TRANSIT PROVIDER will repair or replace Vehicles or the damaged part thereof and the proceeds of the insurance recovery shall be applied to such repair or replacement. Should vehicles or any part thereof be damaged by any cause for which the TRANSIT PROVIDER makes no insurance recovery and should Vehicles or the damaged part thereof be capable of repairs, this Lease Agreement shall terminate and the TRANSIT PROVIDER shall immediately pay the LESSEE the reasonable value of Vehicles, regardless of rentals paid or accrued.

12. TITLE. The TRANSIT PROVIDER acknowledges that this is an agreement to use only and that the TRANSIT PROVIDER does not in any way acquire title to Vehicles, under
this agreement. Without the prior written consent of the LESSEE, the TRANSIT PROVIDER agrees not to do any act to encumber, convert, pledge, sell, assign, re-hire, lease, lend, conceal, abandon, give up possession of, or destroy Vehicles.

13. WARRANTIES AND WAIVER. The TRANSIT PROVIDER uses Vehicles and Equipment herein described in "as is" condition and agrees that the LESSEE has not made, and does not hereby make any representation, warranty or covenant expressed or implied with respect to the condition, quality, durability, capability, or suitability of Vehicles or against any patent or latent defects therein. The TRANSIT PROVIDER agrees that the LESSEE shall not be liable to the TRANSIT PROVIDER for any liability, claim, loss, damage or expense of any kind or nature caused directly or indirectly by Vehicles or the inadequacy thereof for any purpose, or for any deficiency or defect therein, or for the use or maintenance thereof, or for any repairs, servicing, adjustments, or expenses thereto or for any loss of business or for any damage whatsoever and howsoever caused. TRANSIT PROVIDER shall engage in a full and detailed inspection of each vehicle, shall repair any damage or unsafe condition, and shall take all actions necessary to render such vehicles in compliance with all applicable laws, rules or regulations prior to operation of such vehicles.

14. ASSIGNMENT. Without the prior written consent of the LESSEE or any assignee of the LESSEE, the TRANSIT PROVIDER agrees not to sublet, mortgage, pledge, sell, assign, or otherwise transfer or dispose of this Lease Agreement. The TRANSIT PROVIDER acknowledges and understands that the LESSEE may assign this Lease Agreement and that such assignee shall be entitled to all of the benefits of this Lease Agreement in the place of the LESSEE. In connection therewith, the TRANSIT PROVIDER agrees this Lease Agreement, Vehicles, and Equipment used there under will be subjected to any rights and interest in and to said Vehicles and Equipment under any contract the LESSEE has with another regarding title or interests in title; to accept the directions, demands or consents of such assignee in place of those of the LESSEE; to surrender Vehicles only to such assignee; to pay all rent hereunder as directed by such assignee.

15. DEFAULT. In any of the following default events:

a. failure to pay any rent or sum herein provided when the same are due and payable and such default continues for a period of ten (10) days after receipt of notice thereof of TRANSIT PROVIDER;

b. Failure to comply with any terms or conditions hereof;

c. A proceeding in insolvency or receivership by or against the TRANSIT PROVIDER or its property, or in the event lessee suspends business, makes an assignment for the benefit of creditors, or if an attachment be levied or tax lien filed against the Vehicle, or

d. the TRANSIT PROVIDER fails for any reason to comply with the repair, insurance or indemnification requirements of the Lease Agreement, then and in those events, or any of them, the LESSEE may, at its option and without prejudice to any other rights it may have:

i. Take possession of Vehicles and/or Equipment and for the purpose thereof may enter the premises on which Vehicles and/or Equipment are located and remove them without court order or other process of law (damages occasioned by such taking being expressly waived by the
TRANSIT PROVIDER), and thereupon the TRANSIT PROVIDER’S right to possession and use of Vehicles shall terminate;

ii. May (but need not) use Vehicles or any portion thereof for such period, rental, and to such persons or entities as the LESSEE shall elect and shall apply the net proceeds of any such renting in payment of the rent and other obligations due from TRANSIT PROVIDER to the LESSEE hereunder by acceleration or otherwise;

iii. May (but need not) sell Vehicles or any part thereof at public or private sale without demand or notice of intention to sell or of sale and shall apply the net proceeds of any such disposition against the total obligations owed the LESSEE;

iv. May deduct all costs and expenses in connection with such retaking, including insurance, repairs, storage, renting or sale of Vehicles from the proceeds derived from such renting or sale;

v. Terminate TRANSIT PROVIDER’S rights hereunder as to Vehicles and terminate the TSPA;

e. No right or remedy conferred upon or reserved to the LESSEE by this Lease Agreement shall be exclusive of any other right or remedy herein or by law provided; all rights and remedies conferred upon the LESSEE by this Lease Agreement or by law shall be cumulative and in addition to every other right and remedy to.

f. If it is necessary to employ the services of an attorney or incur expenses in enforcing this Lease, the TRANSIT PROVIDER shall pay to the LESSEE all such expenses and court costs, in addition to all sums due the LESSEE, including reasonable attorney’s fees.

16. CONSTRUCTION. This Lease Agreement shall be construed and determined in accordance with the laws of the State of Illinois. Any provision herein prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions of the Lease Agreement. Jurisdiction and venue for any dispute arising out of this Agreement shall be exclusively fixed in the DeKalb County Circuit Court.

17. TIME IS OF THE ESSENCE. Time is of the essence of this Lease. However, the LESSEE’s failure at any time to require strict performance by the TRANSIT PROVIDER of any provisions herein shall not waive or diminish the LESSEE’s right to thereafter demand strict compliance therewith or with other provisions of this Lease Agreement and written waiver by the LESSEE of any default hereunder shall not constitute a waiver of any other default.

18. ENTIRE AGREEMENT. This Lease Agreement contains the whole agreement of the parties. None of the covenants, provisions, terms, or conditions of this Lease Agreement shall be in any manner modified, waived, abandoned, or amended except by a written instrument duly signed by the parties or their assignee and delivered to the LESSEE and the TRANSIT PROVIDER or their assignee.

19. MASTER LIST. The Master List of Vehicles and Equipment shall be amended each time any vehicles or equipment are added or removed from active service. Amendments to the Master List shall not require an amendment to this Lease
Agreement, and shall be approved by the LESSEE staff person identified as the DeKalb Sycamore Area Transportation Study (DSATS) Director (as approved by the DSATS Policy Committee) and the Executive Director of the TRANSIT PROVIDER.

20. BINDING. Each and every covenant and agreement herein contained shall extend to and be binding upon the respective successors, heirs, administrators, executors and assigns of the parties hereto except as may be modified in paragraph 14 or 22 hereof.

21. NOTICE. Notices as provided for in this Lease Agreement shall be given to the respective parties or their assignees at their respective addresses designated herein unless there is notification of the parties to the other, in writing, of a different address. Such notice shall be deemed to be given and received when deposited in the United States mail, postage prepaid, addressed as herein designated.

22. INFORMATION TO BE FURNISHED BY TRANSIT PROVIDER TO THE LESSEE. The TRANSIT PROVIDER shall furnish the following information to the LESSEE during the term of this Lease Agreement.

   a. Passenger Count (monthly & annual report)
   b. Passenger Type i.e. elderly, handicapped, general public (monthly & annual report)
   c. Miles Driven (monthly & annual report)
   d. Revenue Miles (monthly & annual report)
   e. Revenue Hours of Service (monthly & annual report)
   f. Total Cost of Operation (for quarterly DOAP 10-C report)
   g. Breakdown of revenues received for operation (for quarterly DOAP 10-C report)
   h. Any other reports requested by the LESSEE

IN WITNESS WHEREOF, the parties have duly executed this Lease Agreement on the day and year first written above.

CITY OF DEKALB

By: ___________________________
   Title: ________________________
   Date: _________________________

VOLUNTARY ACTION CENTER

By: ___________________________
   Title: Executive Director
   Date: 9/12/16