

**RESOLUTION 2018-025 PASSED: FEBRUARY 12, 2018**

**APPROVING AN AGREEMENT AUTHORIZING DIRECTED PAYMENT OF DOWNSTATE TRANSPORTATION OPERATING ASSISTANCE GRANT FUNDS ON BEHALF OF THE VOLUNTARY ACTION CENTER.**

**WHEREAS**, the City of DeKalb is a home-rule municipality with the power and authority conferred thereupon by virtue of the Illinois Constitution, the Illinois Municipal Code and the City Code of the City of DeKalb; and,

**WHEREAS**, the City presently has an agreement with the Voluntary Action Center ("VAC") through which VAC provides certain transportation services to the City; and,

**WHEREAS**, the services provided by VAC are funded in part through Illinois Department of Transportation Downstate Transportation Operating Assistance Grant Funds that VAC applies and qualifies for on an annual basis ("DOAP Grant Funds"); and,

**WHEREAS**, the DOAP Grant Funds are disbursed by the State on an irregular basis, and thus to allow VAC to have consistent cash flow to permit continuing operations, VAC has sought and obtained an operating line of credit from the First National Bank of Omaha ("Lender"); and,

**WHEREAS**, in previous years, the City, VAC and Lender have entered into an agreement providing that VAC may pledge DOAP Grant Funds towards repayment of the operating line of credit to Lender, and indicating that the City will issue payment of any DOAP Grant Funds actually received in a negotiable instrument made payable to VAC and Lender; and,

**WHEREAS**, the City, VAC and Lender wish to extend the utilization of this arrangement by approving an agreement authorizing the directed payment of DOAP Grant Funds;

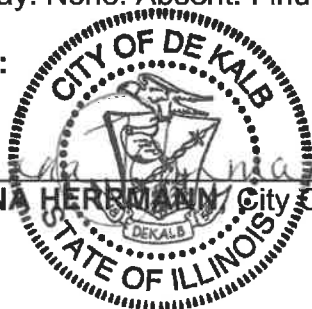
**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:**

**Section 1:** The City Council of the City of DeKalb hereby approves of the Consent and Agreement for Directed Payment of Grant Proceeds substantially in the form attached hereto as Exhibit A, subject to such modifications as shall be acceptable to the Mayor of the City of DeKalb with the advice and recommendation of the City Manager.

**Section 2:** 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 12<sup>th</sup> day of February, 2018, and approved by me as Mayor on the same day. Passed on a 7-0-1 roll call vote. Aye: Jacobson, Marquardt, Fagan, Noreiko, Verbic, Faivre, Smith. Nay: None. Absent: Finucane.

**ATTEST:**

  
SUSANNA HERRMANN, City Clerk  


  
JERRY SMITH, Mayor

## **Consent and Agreement for Directed Payment of Grant Proceeds**

WHEREAS, the City of DeKalb has previously entered into a series of agreements ("the Prior Agreements") by and between the City, the Voluntary Action Center of DeKalb County, an Illinois Not For Profit Corporation ("VAC") and First National Bank of Omaha ("Lender"); and,

WHEREAS, the Prior Agreements consist of a Consent and Agreement dated February 6, 2014, and an amendment thereto entered into in 2015, providing for an extension of the same; and,

WHEREAS, under the Prior Agreements, Lender agreed to provide VAC with certain funding to assist with cash flow and operating expenses, which loan was secured in part by an Illinois Department of Transportation Downstate Transportation Operating Assistance Grant Agreement funds that VAC qualifies for and obtains from year to year ("the Annual Grant Funds"); and,

WHEREAS, under the terms of the Prior Agreements, the City did not incur any general obligation, but rather acknowledged the Lender's security interest in the proceeds of the Annual Grant Funds, and agreed that upon receipt of funds from the Annual Grant Funds, the City would issue checks payable to both VAC and the Lender; and,

WHEREAS, the City, VAC and the Lender wish to continue and extend their agreement with respect to similar Downstate Transportation Operating Assistance Grants, wish to memorialize that agreement herein, and wish to amend the Agreement to provide for the continuation of its benefits;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the adequacy and receipt of which are hereby acknowledged, the City, VAC and Lender agree as follows:

1) **TERM:** This Agreement shall take effect upon execution hereof and shall continue in full force and effect unless and until terminated by the City of DeKalb, VAC or Lender, upon the provision of not less than thirty (30) days written notice to the other parties. Termination shall take effect as of the start of the first full fiscal year applicable to the Annual Grant Funds that occurs after the conclusion of the thirty day notice window. In addition, this Agreement shall terminate without notice at any time that the City or VAC terminate the master operating agreement between the City and VAC for VAC's provision of transit services to the City, with termination in such instance being effective following payment of the last Annual Grant Funds (as defined below) in accordance with the terms of this Agreement.

2) **GRANT PLEDGE:** The City, VAC and Lender agree and acknowledge that:

- a) VAC has continued to apply for and receive Downstate Transportation Operating Assistance Grants in substantially the same in form as the Annual Grant Funds, and shall continue such activity during the term of this Agreement and thereafter;
- b) VAC has continued to pledge the funds represented by those grants to Lender in exchange for Lender's extension of a line of operating credit to VAC, and will continue to so pledge those funds for the period of time that this Agreement remains in place and VAC continues borrowing from Lender; and,
- c) The City, shall, at any time that it receives the actual Annual Grant Funds, process payments of such grant funds through issuance of a negotiable instrument made payable both to VAC and Lender, unless Lender has advised the City, in writing, that such payments may be made directly to VAC.

3) **LIMITATION ON LIABILITY:** The City's sole liability under this Agreement shall be to take payments of Annual Grant Funds which are actually received by the City and to forward such payments, in accordance with the terms of any applicable grant agreements or federal, state or local laws, in a negotiable instrument made payable to both VAC and Lender. The City does not serve as a guarantor or surety of VAC debt, does not guarantee the approval of any Annual Grant Funds by agencies having jurisdiction thereof, and does not guarantee that funds will be budgeted or appropriated by such agencies, in the event that subsequent years' grants are approved by the agencies having jurisdiction. The City does agree that if future years' grants are approved and if the City actually receives funds for Annual Grant Funds, such funds will be disbursed pursuant to the terms of this Agreement. This Agreement does not represent any extension of credit by the City, it being acknowledged that the Annual Grant Funds are restricted purpose funding which is sought for the purpose of funding VAC operations and which are limited to being utilized solely for such purposes. This Agreement permits VAC to obtain operating lines of credit to meet operational financial needs from time to time, to allow for continuing operation between disbursement of Annual Grant Funds by the state or federal government. VAC and Lender both expressly acknowledge and agree to the terms of this Agreement, including but not limited to this Limitation on Liability. This Agreement shall not be construed as an extension of credit by the City, nor as a general obligation thereof. The City, VAC and Lender all agree and acknowledge that VAC is obligated to take certain actions in compliance with applicable regulations and program requirements in order to maintain eligibility for receipt of Annual Grant Funds; the City shall have no liability for the failure to maintain such eligibility, for any reason.

4) **NOTICES:** Notices to City or VAC shall be provided to the persons identified in the Agreement. Notices to Lender shall be provided to:

First National Bank of Omaha  
Attn: Frank Roberts  
141 W. Lincoln Highway  
DeKalb, Illinois 60115

5) REMAINDER OF AGREEMENT: The Remainder of the Agreement shall remain in full force and effect, unless specifically amended by this Amendment.

**First National Bank of Omaha**

*Frank H. Roberts VP*

Frank Roberts

**Voluntary Action Center of DeKalb County**

*Ellen Rogers*  
Ellen Rogers, Executive Director

**City of DeKalb**

*Jerry Smith*  
Jerry Smith, Mayor



ATTEST

*Susanna Herrmann*  
Susanna Herrmann, City Clerk

**Amendment to Consent and Agreement  
(VAC Operating Assistance Grant)**

WHEREAS, the City of DeKalb has previously entered into a certain agreement dated February 6, 2014 ("the Agreement"), by and between the City, the Voluntary Action Center of DeKalb County, an Illinois Not For Profit Corporation ("VAC") and First National Bank of Omaha ("Lender"); and,

WHEREAS, under the Agreement, Lender agreed to provide VAC with certain funding to assist with cash flow and operating expenses, which loan was secured in part by an Illinois Department of Transportation Downstate Transportation Operating Assistance Grant Agreement, Contract No. 4339, Grant No. OP-13-21-IL ("the Grant"); and,

WHEREAS, under the terms of the Agreement, the City did not incur any general obligation, but rather acknowledged the Lender's security interest in the proceeds of the Grant, and agreed that upon receipt of funds from the Grant, the City would issue checks payable to both VAC and the Lender; and,

WHEREAS, the City, VAC and the Lender wish to continue and extend their agreement with respect to similar Downstate Transportation Operating Assistance Grants, wish to memorialize that agreement herein, and wish to amend the Agreement to provide for the continuation of its benefits;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the adequacy and receipt of which are hereby acknowledged, the City, VAC and Lender agree as follows:

1) **TERM:** The Agreement, as amended herein, shall remain in full force and effect until September 30, 2016, and shall terminate on that date unless renewed or extended.

2) **FUTURE GRANTS:** The City, VAC and Lender agree and acknowledge that, VAC has continued to apply for and receive Downstate Transportation Operating Assistance Grants subsequent to the Grant identified above ("Subsequent VAC Grants"), and further acknowledge that the subsequent grants have been pledged by VAC to Lender as security for Lender's agreement to continue to extend operating loans to VAC. The City agrees and covenants that:

- a) During the Term of this Agreement (as amended);
- b) Should the City receive any funding from Subsequent VAC Grants;
- c) The City will process payments of such funding in the manner contemplated by the Agreement and otherwise treat the funds from the Subsequent VAC Grants in the same fashion as it committed to treating the funds from the Grant.

3) **NOTICES:** Notices to City or VAC shall be provided to the persons identified in the Agreement. Notices to Lender shall be provided to:

First National Bank of Omaha  
Attn: Frank Roberts  
141 W. Lincoln Highway  
DeKalb, Illinois 60115

4) **REMAINDER OF AGREEMENT:** ~~The Remainder of the Agreement shall remain in full force and effect, unless specifically amended by this Amendment.~~

**First National Bank of Omaha**

Frank H. Roberts, vP  
Frank Roberts

**Voluntary Action Center of DeKalb County**

Tom Zucker  
Tom Zucker, Executive Director

**City of DeKalb**

John A. Rey  
John Rey, Mayor

**ATTEST:**

Marcia E. Swieght  
Marcia Swieght, City Clerk



## CONSENT AND AGREEMENT

**THIS AGREEMENT** is made and entered into this   6   of February, 2014, by and between the **City of DeKalb**, a Municipal Corporation (hereinafter referred to as "the City"); **Voluntary Action Center of DeKalb County**, an Illinois Not-For-Profit Corporation (hereinafter referred to as "VAC"); and **First National Bank of Omaha**, a National Banking Association (hereinafter referred to as "Lender") WITNESSETH:

**WHEREAS**, VAC has requested a loan in the amount of \$450,000.00 from the Lender to assist with cash flow and operating expenses which loan would be secured, in part, by payments due the City of DeKalb from the Illinois Department of Transportation pursuant to the terms of a Downstate Transportation Operating Assistance Grant Agreement, Contract number 4339, Grant number OP-13-21-IL (hereinafter referred to as "the Grant"), and

**WHEREAS**, VAC is a direct beneficiary in the Grant in that VAC provides the services described in the Grant and will, ultimately, receive those funds from the City of DeKalb after the City has received them from the Department of Transportation, and

**WHEREAS**, VAC is in need of the funds which it will ultimately receive from the Grant (through the City) immediately and it is not anticipated that said funds will be released by the State of Illinois for several weeks, and

**WHEREAS**, Lender has agreed to lend to VAC money based upon the anticipated receipt of Grant funds in order to provide VAC with cash flow and liquidity needed between the time of this Agreement and the time said funds are paid from the Illinois Department of Transportation to the City and from the City to VAC, and

**WHEREAS**, VAC has agreed to unconditionally pledge to the Lender all of its right, title and interest to the funds to be received by the City from the Illinois Department of Transportation pursuant to the Grant as collateral security for the loan hereinabove referred to, and

**WHEREAS**, the City acknowledges VAC's ultimate right to receive the funds (except such amounts as may be necessary to repay the City for the amount it has already advanced to VAC) represented by the Grant and recognizes the need VAC has for the funds to be represented by the loan from the Lender and is willing to cooperate with VAC and the Lender to secure the loan with the Grant proceeds, and

**WHEREAS**, nothing in this Agreement is intended to impose any obligation whatsoever upon the City to pay the loan hereinabove contemplated with funds other than those that it will ultimately receive pursuant to the Grant.

**NOW THEREFORE**, in consideration of the mutual and several promises herein made by each of the parties to the other, the parties hereto do freely and voluntarily agree as follows:

1. **TERM.** The term of this Agreement shall commence upon the execution hereof by all of the parties. This Agreement will remain in full force and effect until such time the Grant, hereinabove described, representing collateral for the loan is both received by the City and paid to the Lender and VAC.
2. **LENDER'S NAME ON CHECKS.** The City agrees that it will not pay all or any portion of the Grant proceeds to VAC without either: (a) including the name of the Lender on the check from the City to VAC, or (b) without having received from the Lender, notice, in writing, stating that placing the Lender's name on any check representing any portion of said Grant proceeds is unnecessary.
3. **NOTICE WHEN GRANT RECEIVED.** The City further agrees to notify VAC and the Lender within ten (10) days of its receipt of the Grant proceeds that proceeds have been received.
4. **LENDER HAS SECURITY INTEREST.** The City understands that VAC has pledged, as security, for the loan hereinabove contemplated, its rights to receive those Grant proceeds from the City and that the Lender will have a valid and existing Security Agreement for Grant proceeds under Article 9 of the Uniform Commercial Code as adopted in the State of Illinois, which Security Agreement is superior to any right on the part of the City to hold and fail to deliver to VAC and the Lender all or any portion of said Grant proceeds, except as follows. It is understood by all parties that the City has or may have advanced certain funds to VAC in anticipation of receiving the Grant proceeds and the parties understand that the City will reimburse itself in said amount (without interest) before any amounts are paid over to VAC and the Lender.
5. **FURTHER SECURITY.** To further secure the loan hereinabove contemplated from the Lender to VAC, the City will sign any and all further documentation reasonably necessary to perfect the security interest Lender has now or will have at anytime in the future in the Grant proceeds. The City specifically acknowledges that the money received from the State of Illinois will be encumbered by a Security Interest in favor of the lender and will not pay said funds to VAC without notifying Lender and placing Lender's name on any check made by the City to pay over the funds it receives.
6. **CONSENT.** VAC hereby expressly consents to the terms and conditions of this Agreement including the requirement that the Lender's name be placed on any checks that the City writes to pay over the Grant proceeds to which it is otherwise entitled.



7. **LIMITATION.** Nothing in this Agreement shall be construed in any way, shape or form to create an obligation on the part of the City to pay any portion of the loan from the Lender to VAC - it being understood that the only obligation of the City is to follow the terms and conditions of this Agreement with respect to the payment of the proceeds from the Grant to the Lender to repay the loan as contemplated herein.
8. **NOTICES.** Notices under this Agreement shall be provided as follows:

**If to Lender:**

First National Bank of Omaha

Attention: David Randa

141 West Lincoln Highway

DeKalb, Illinois 60115

**If to VAC:**

Voluntary Action Center of DeKalb County

1606 Bethany Road

Sycamore, Illinois 60178

**If to City of DeKalb:**

City of DeKalb

Attention: Legal Department

200 South 4<sup>th</sup> Street

DeKalb, Illinois 60115

1. **TRIPPLICATE EXECUTION.** This Agreement will be executed in triplicate, each of which shall be deemed an original.
2. **ENTIRE AGREEMENT.** This Agreement shall be deemed the entire Agreement between the parties and may not be amended other than by written agreement signed by all parties hereto.
3. **CHOICE OF LAWS.** This Agreement shall be construed in accordance with all of the laws of the State of Illinois.

4. **PROHIBITED INTERESTS.** No member, officer, or employee of the City of DeKalb shall have, during his or her tenure, or for one year thereafter, any interest, direct or indirect, in this contract or the proceeds thereunder.

**IN WITNESS WHEREOF**, the parties hereto have hereunder set their hands and seals the day and year first above written.

**First National Bank of Omaha**

By: \_\_\_\_\_

David Randa

**Voluntary Action Center of DeKalb County**

By: \_\_\_\_\_

Tom Zucker, Executive Director

**City of DeKalb**

By: \_\_\_\_\_

John Rey, Mayor

**ATTEST:**

By: \_\_\_\_\_

Elizabeth E. Peerboom, City Clerk

