

**AUTHORIZING THE FINANCE DEPARTMENT TO EXTEND A LINE-OF-CREDIT TO THE VOLUNTARY ACTION CENTER OF DEKALB COUNTY FROM SEPTEMBER 1, 2018, THROUGH SEPTEMBER 30, 2018, VIA THE CITY GENERAL FUND UNTIL GRANT FUNDS ARE RECEIVED, FOR AN ADDITIONAL \$168,222.60, FOR A TOTAL LINE-OF-CREDIT NOT TO EXCEED \$542,826.82.**

**WHEREAS**, the provision of public transportation service is essential to the people of Illinois; and

**WHEREAS**, the Downstate Public Transportation Act (30 ILCS 740/2-1 et seq.) ("Act") authorizes the State of Illinois, acting by and through the Illinois Department of Transportation (IDOT), to provide grants and make funds available to assist in the development and operation of public transportation systems; and

**WHEREAS**, due to delays in receiving the City's State Fiscal Year (SFY) 2019 Downstate Operating Assistance Program (DOAP) Intergovernmental Agreement (IGA) agreement with IDOT, funding for the first quarter of SFY2019 from July 1, 2018 through September 30, 2019 is not anticipated to be received until December 2018; and

**WHEREAS**, the City received its final State Fiscal Year 2018 DOAP grant reimbursement on September 7, 2018, and credited the Voluntary Action Center (VAC) line-of-credit (LOC) in the amount of \$387,642.35; and

**WHEREAS**, the City authorized a LOC to VAC for payment of outstanding invoices for transit services from August 1, 2018, through August 31, 2018, via Resolution 2018-134, in the amount \$195,078.06, for a total LOC not to exceed \$374,604.22; and

**WHEREAS**, the funding situation at VAC has become critical and VAC must drastically cut services and/or raise public transit fares until VAC receives payment for services rendered during the first quarter of SFY2019; and

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

**SECTION 1:** That the City of DeKalb Finance Director be authorized to amend a LOC to include payment of funds from the City's General Fund to VAC for transit services provided from September 1, 2018, through September 30, 2018, for \$168,222.60, for a total LOC not to exceed \$542,826.82.

**SECTION 2:** That VAC uses the invoices already submitted to the City to request a drawdown on the LOC with the City for partial or full payment of the existing invoices.

**SECTION 3:** That staff is authorized to make direct payments to VAC, up to the allotted

amount, without further Council approval.

**SECTION 4:** Upon receipt of grant funds from the State of Illinois from the City SFY2019 DOAP grants and Federal Transit Authority Operating Assistance grant funds, the City will credit the grant funding against the payments already made.

**SECTION 5:** If there is additional money owed to the City that is identified as part of the annual audit process, Finance Department Accounts Receivable staff shall submit an invoice to VAC for payment in full on the annual billings. Notwithstanding the foregoing, the provision of funding to VAC pursuant to the above-referenced letter of credit shall not constitute a general obligation or indebtedness of the City, nor shall it constitute a forgivable payment to VAC. The letter of credit shall require repayment by VAC upon the provision of state funding, at such time as it becomes clear that the state funding will not be provided, or at such time as repayment is required by the City under the terms of the letter of credit. The funding to be extended is provided with the expectation of repayment by VAC. The Finance Director shall be authorized and directed to reconcile future payments made to the City on behalf of VAC as a transit provider (or otherwise) and to apply the same against any then-present indebtedness under the letter of credit where permitted by law, or to require repayment from VAC. Additionally, the City and VAC shall reconcile all payments and transfers between the parties as a component of their customary transit audit and reconciliation process that is completed on an annual basis.

**PASSED BY THE CITY COUNCIL** of the City of DeKalb, Illinois, at a Regular meeting thereof held on the 26<sup>th</sup> day of November 2018 and approved by me as Mayor on the same day. Passed by a 7-0-1 roll call vote. Aye: Finucane, Marquardt, Fagan, Noreiko, Verbic, Faivre. Nay: None. Absent: Jacobson.

**ATTEST:**

  
LYNN A. FAZEKAS, Deputy City Clerk

  
JERRY SMITH, Mayor



The seal is circular with a double border. The outer border contains the text "CITY OF DE KALB" at the top and "STATE OF ILLINOIS" at the bottom. The inner border contains "DEKALB" at the bottom. The center of the seal features a coat of arms with a plow, a sheaf of wheat, and a bundle of cotton, with a banner below it.

## AMENDMENT 1 OF REVOLVING LINE OF CREDIT AGREEMENT

This Revolving Line of Credit Agreement (the "Agreement") is made and entered into this 27<sup>th</sup> day of November, 2018 (the "Effective Date"), by and between the City of DeKalb (the "Lender"), and the Voluntary Action Center of DeKalb County, Inc. ("Borrower").

In consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

**1. Line of Credit.** Lender hereby establishes for a period of six (6) months from the Effective Date (the "Maturity Date") an amendment to the revolving line of credit (the "Credit Line") for Borrower in the principal amount of One Hundred Sixty-Eight Thousand Two Hundred Twenty-Two Dollars and Sixty Cents (\$168,222.60) (the "Credit Limit") which indebtedness shall be evidenced by and repaid in accordance with the terms of a promissory note for the amount of the Credit Limit in substantially the form attached hereto as Exhibit A (the "Promissory Note"). With this addition, the Credit Limit is extended to Five Hundred Forty-Two Thousand Eight Hundred Twenty-Six Dollars and Eighty-Two Cents (\$542,826.82). All sums advanced on the Credit Line or pursuant to the terms of this Agreement (each an "Advance") shall become part of the principal of the applicable Promissory Note.

**2. Renewal and Extension of Line of Credit.** Provided that Borrower is not in default under this Agreement or the Promissory Note, at the Maturity Date, the Lender and Borrower may later agree to extend and renew this Credit Line for one additional term of six (6) months, contingent upon further approval by the DeKalb City Council.

### **3. Advances.**

(a) Lender agrees to make funds available under this Credit Line on the following schedule:

(i) Payment of \$168,222.60 can be made on Tuesday, November 27, 2018, immediately following execution of this Agreement and the attached Promissory Note.

(ii) This payment will be followed by discussions between the Lender and the Borrower on the status of the grant funding and the cash flow needs of the Borrower. At each check in, it will be determined if another advance payment is needed and what the payment amount will be, in the sole discretion of Lender. Any additional advances must be approved by the DeKalb City Council.

(b) Subject to subparagraph(a) above, any request for an Advance may be made from time to time and in such amounts as Borrower may choose, provided, however, any requested Advance will not, when added to the outstanding principal balance of all previous Advances, exceed the Credit Limit. Requests for Advances must be made in writing, delivered to the Lender, by such officer of Borrower authorized by it to request such advances. Until such time as Lender may be notified otherwise, Borrower hereby authorizes its Chief Executive Officer or its Chief Financial Officer to request Advances. For each Advance, properly requested, the Lender shall advance an amount equal to the Advance amount. The Lender may refuse to make any requested Advance if an event of default has occurred and is continuing hereunder either at the time the request is given or the

date the Advance is to be made, or if an event has occurred or condition exists which, with the giving of notice or passing of time or both, would constitute an event of default hereunder as of such dates.

**4. Interest.** The Lender waives the payment or collection of interest on the proceeds advanced.

**5. Repayment.** The entire unpaid principal balance, together with any unpaid charges or fees hereunder, shall be due and payable on the Maturity Date. Payment shall be made to the Lender at such place as the Lender may, from time to time, designate in lawful money of the United States of America. All payments received hereunder shall be applied as follows: first, to any late charge; second, to any costs or expenses incurred by Lender in collecting such payment or to any other unpaid charges or expenses due hereunder; third, to principal; and fourth, the balance, if any, to such person entitled thereto; provided, however, upon occurrence of an Event of Default, a Lender may, in its discretion, change the priority of the application of payments as it deems appropriate. Borrower may prepay principal at any time without penalty.

(a) Lender and Borrower acknowledge that Lender is the recipient of both federal and state funds that are paid through to Borrower on the basis of Lender's status as grant or funding applicant. Borrower irrevocably agrees that Lender may retain any such proceeds and may apply them against this Repayment obligation in such fashion as it shall determine appropriate, or Lender may choose to advance such funds to Borrower and retain this repayment obligation. No payment of funds to Borrower by Lender shall constitute a forgiveness or waiver of the indebtedness contemplated herein.

(b) Lender and Borrower agree and acknowledge that they, on an annual basis, reconcile payments made through Lender to Borrower. This indebtedness shall be reconciled no later than the date of the next audit and reconciliation. The Lender reserves the right to extend this timeline from time to time in its sole and absolute discretion.

(c) The Borrower specifically acknowledges that upon receipt of the SFY2019 Downstate Operating Assistance Program grant and Federal Transit Administration operating funds payments (which are referenced in the resolution authorizing this Line of Credit), the Lender shall credit such funds against this line of credit. Borrower specifically covenants that it shall comply with all obligations of the Lender resolution authorizing this Line of Credit.

(d) The full sum due and owing shall be paid by Borrower to Lender prior to the Maturity Date (or such extension of the Maturity Date as the Lender shall agree to from time to time).

(e) Borrower acknowledges that if this Agreement contemplates the use of third party (State and Federal) funds for repayment of the obligation contained herein. Borrower agrees and covenants that in the event those funds are not received for any reason, Borrower shall not be released from the repayment of the obligations contained herein.

(f) Borrower agrees and acknowledges that it shall continue providing public transit services at the level they are currently being afforded, without any reduction or limitation in such services, at all times that this Line of Credit remains outstanding and unpaid, unless and until the Lender agrees to a reduction in services. Borrower

acknowledges that the Lender is extending this Line of Credit based upon Borrower's representation that this Line will permit such continuing operations.

**6. Conditions Precedent.** No Lender shall not be required to make any advance hereunder unless and until:

(a) All of the documents required by such Lender, including a Promissory Note, have been duly executed and delivered to such Lender and shall be in full force and effect.

(b) The representations and warranties contained in this Agreement are then true with the same effect as though the representations and warranties had been made at such time. The request for an Advance by Borrower shall constitute a reaffirmation to Lender that all representations and warranties made herein remain true and correct in all material respects to the same extent as though given the time such request is made, and that all conditions precedent listed in this Paragraph 5 have been, and continue to be, satisfied in all respects as of the date such request is made.

(c) No event of default hereunder has occurred and is continuing, and no condition exists, or event has occurred which, with the passing of time or the giving of notice or both, would constitute an event of default hereunder.

**7. Representations and Warranties.** In order to induce Lender to enter into this Agreement and to make the advances provided for herein, Borrower represents and warrants to Lenders as follows:

(a) Borrower is a duly organized, validly existing, and in good standing under the laws of the State of Illinois with the power to own its assets and to transact business in Illinois, and in such other states where its business is conducted.

(b) Borrower has the authority and power to execute and deliver any document required hereunder and to perform any condition or obligation imposed under the terms of such documents.

(c) There is no action, suit, investigation, or proceeding pending or, to the knowledge of Borrower, threatened, against or affecting Borrower or any of its assets which, if adversely determined, would have a material adverse effect on the financial condition of Borrower or the operation of its business.

(d) No information or report furnished by Borrower to Lender in connection with the negotiation of this Agreement contained any material misstatement of fact or omitted to state a material fact or any fact necessary to make the statements contained therein not misleading.

**8. Affirmative Covenants.** So long as any sum remains unpaid hereunder, in whole or in part, Borrower covenants and agrees that except with the prior written consent of the Lender, which consent will not be unreasonably withheld, it shall do the following:

(a) Borrower shall duly observe and conform to all valid requirements of any governmental authority relative to the conduct of its business, its properties, or its assets and will maintain and keep in full force and effect its corporate existence and all licenses and permits necessary to the proper conduct of its business.

(b) Borrower shall keep proper books of records and accounts in which full,

true, and correct entries will be made of all dealings or transactions relating to its business and activities.

(c) Borrower shall (1) file all applicable reports which it is required to file with any unit of government in a timely manner; (2) file all applicable federal, state, and local tax returns or other statements required to be filed in connection with its business, including those for income taxes, sales taxes, property taxes, payroll taxes, payroll withholding amounts, FICA contributions, and similar items; (3) maintain appropriate reserves for the accrual of the same; and (4) pay when due all such taxes, or sums or assessments made in connection therewith. Provided, however, that (until distraint, foreclosure, sale, or similar proceedings have been commenced) nothing herein will require Borrower to pay any sum or assessment, the validity of which is being contested in good faith by proceedings diligently pursued and as to which adequate reserves have been made.

**9. Negative Covenants.** So long as any amounts due hereunder remain unpaid in whole or in part, Borrower covenants that except with the prior written consent of the Lender, which consent will not be unreasonably withheld, it will not do any of the following:

(a) Borrower shall not make any loans or advances to any person or other entity other than in the normal and ordinary course of business now conducted; make any investment in securities of any person or other entity; or guarantee or otherwise become liable upon the obligations of any person or other entity, except by endorsement of negotiable instruments for deposit or collection in the normal and ordinary course of business. This restriction will apply, without limitation, to loans to any subsidiaries of Borrower.

(b) Borrower shall not create or permit to exist any lien, claim, or encumbrance on the assets of Borrower or any part thereof, except as may be granted to Lender.

**10. Events of Default.** An event of default (each, an "Event of Default") will occur if any of the following events occurs:

(a) Failure to make any payment when due;

(b) Any representation or warranty made by Borrower in this Agreement or in connection with any borrowing or request for an advance hereunder, or in any certificate, financial statement, or other statement furnished by Borrower to Lender is untrue in any material respect at the time when made.

(c) Default by Borrower in the observance or performance of any other covenant or agreement contained in this Agreement, other than a default constituting a separate and distinct event of default under this Paragraph 10.

(d) Default by Borrower in the observance or performance of any other covenant or agreement contained in any other document or agreement made and given in connection with this Agreement, other than a default constituting a separate and distinct event of default under this Paragraph 10, and the continuance of the same unremedied for a period of fourteen (14) days after notice thereof is given to Borrower.

(e) Any of the documents executed and delivered in connection herewith for any reason ceases to be valid or in full force and effect or the validity or

enforceability of which is challenged or disputed by any signer thereof, other than Lender.

(t) Borrower shall default in the payment of principal on any other obligation for borrowed money other than hereunder, or defaults in the payment of the deferred purchase price of property beyond the period of grace, if any, provided with respect thereto, or defaults in the performance or observance of any obligation or in any agreement relating thereto, if the effect of such default is to cause or permit the holder or holders of such obligation (or trustee on behalf of such holder or holders) to cause such obligation to become due prior to the stated maturity.

(g) Filing by Borrower of a voluntary petition in bankruptcy seeking reorganization, arrangement or readjustment of debts, or any other relief under the Bankruptcy Code as amended or under any other insolvency act or law, state or federal, now or hereafter existing.

(h) Filing of an involuntary petition against Borrower in bankruptcy seeking reorganization, arrangement or readjustment of debts, or any other relief under the Bankruptcy Code as amended, or under any other insolvency act or law, state or federal, now or hereafter existing, and the continuance thereof for sixty (60) days undismissed, unbonded, or undischarged.

(i) All or any substantial part of the property of Borrower shall be condemned, seized, or otherwise appropriated, or custody or control of such property is assumed by any governmental agency or any court of competent jurisdiction, and is retained for a period of thirty (30) days.

**11. Remedies.** Upon the occurrence of an Event of Default as defined above, the Lender may declare the entire unpaid principal balance to be immediately due and payable without presentment, demand, protest, or other notice of any kind. Lender may suspend or terminate any obligation it may have hereunder to make additional Advances. To the extent permitted by law, Borrower waives any rights to presentment, demand, protest, or notice of any kind in connection with this Agreement. No failure or delay on the part of the Lender in exercising any right, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. The rights and remedies provided herein are cumulative and not exclusive of any other rights or remedies provided at law or in equity. Borrower agrees to pay all costs of collection incurred by reason of the default, including court costs and reasonable attorney's fees, including such expenses incurred before or after any legal action or Bankruptcy proceeding involving Borrower has commenced, during the pendency of such proceedings, and continuing to all such expenses in connection with any appeal to higher courts arising out of matters associated herewith.

**12. Notices.** All notices, requests, demands and other communications under this Agreement, shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given or within five (5) business days if mailed to the party to whom notice is to be given, by first-class mail, registered, or certified, postage prepaid and properly addressed as follows:

**If to the Borrower, addressed to:**

Voluntary Action Center of DeKalb County, Inc.  
1606 Bethany Road  
DeKalb, Illinois 60115

**If to Lender, addressed to:**

City of DeKalb  
Attn: Raymond Munch  
200 S. Fourth Street  
DeKalb, Illinois 60115

**13. General Provisions.** All representations and warranties made in this Agreement and the Promissory Note shall survive the execution and delivery of this Agreement and the making of any loans hereunder. This Agreement will be binding upon and inure to the benefit of Borrower and Lender, their respective successors and assigns, except that Borrower may not assign or transfer its rights or delegate its duties hereunder without the prior written consent of Lender. This Agreement, the Promissory Note, and all documents and instruments associated herewith will be governed by and construed and interpreted in accordance with the laws of the State of Illinois. Time is of the essence hereof. Lender may set off against any debt or account it owns Borrower, now existing or hereafter arising, in accordance with its rules and regulations governing deposit accounts then in existence, and for such purposes is hereby granted a security interest in all such accounts. This Agreement will be deemed to express, embody, and supersede any previous understanding, agreements, or commitments, whether written or oral, between the parties with respect to the general subject matter hereof. This Agreement may not be amended or modified except in writing signed by the parties.

**14. Waiver of Jury Trial.** The Parties hereto hereby voluntarily and irrevocably waive trial by jury in any Proceeding brought in connection with this Agreement, any of the related agreements and documents, or any of the transactions contemplated hereby or thereby. For purposes of this Agreement, "Proceeding" includes any threatened, pending, or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing, or any other actual, threatened, or completed proceeding, whether brought by or in the right of any party or otherwise and whether civil, criminal, administrative, or investigative, in which a Party was, is, or will be involved as a party or otherwise. Any dispute arising out of or relating to this Agreement shall have its jurisdiction and venue fixed in the Twenty-Third Judicial Circuit Court of DeKalb County, Illinois.

**15. Counterparts: Facsimile Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Facsimile signatures shall be sufficient for execution of this Agreement.

**16. Independent Advice of Counsel.** The Parties hereto, and each of them, represent and declare that in executing this Agreement they relied solely upon their own judgment, belief, knowledge and the advice and recommendations of their own independently selected counsel, concerning the nature, extent, and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the Agreement by any representations or statements covering any matters made by any other party or that party's representatives hereto.

**17. Entire Agreement.** This Agreement, together with the Promissory Note, constitutes the entire understanding and agreement of the parties with respect to the general subject matter hereof; supersede all prior negotiations and agreements with respect thereto; may not be contradicted by evidence of any alleged oral agreement; and may not be amended, modified, or rescinded in any manner except by a written agreement signed by Lender which clearly and unequivocally expresses an intent to amend, modify, or rescind the same.



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


**BORROWER**

Voluntary Action Center

  
\_\_\_\_\_  
Signature Ellen Rogers

**LENDER**

City of DeKalb

  
\_\_\_\_\_  
Jerry Smith, Mayor

PROMISSORY NOTE


DeKalb, Illinois

November 27, 2018

On the above date, for value received, THE VOLUNTARY ACTION CENTER OF DEKALB COUNTY, INC., hereby promises to pay in lawful money of the Unites States, to the order of the CITY OF DEKALB at 200 South Fourth Street, DeKalb, Illinois, the principal sum of One Hundred Sixty-Eight Thousand Two Hundred Twenty-Two Dollars and Sixty Cents (\$168,222.60). Repayment hereof shall be subject to the terms and conditions of that certain Line of Credit Agreement by and between said parties, executed on 11-27-18 relating to the line of credit and borrowing undertaken. Said Agreement is hereby incorporated by reference and made a part hereof and shall govern the repayment terms of this Note.

This Note shall be secured by the promises and covenants contained herein and in the Line of Credit Agreement. The Voluntary Action Center of DeKalb County, Inc., pledges its full faith and credit, in addition to the pledges contained within the Line of Credit Agreement.

Voluntary Action Center of DeKalb County

  
\_\_\_\_\_  
Ellen Rogers