

RESOLUTION AUTHORIZING VEHICLE LEASE AGREEMENT BETWEEN THE CITY OF FREEPORT AND PRETZEL CITY TRANSIT, LLC – VEHICLE 11 AND VEHICLE 12

RESOLUTION No. 2010-80

WHEREAS, the provision of public transit service is essential to the transportation of persons in the non-urbanized area; and

WHEREAS, the City of Freeport desires to provide for the general population of Freeport and Stephenson County an effective transportation services program; and

WHEREAS, the City of Freeport has received transportation grants under Section 5311 of the Federal Transit Act, as amended (49 U.S.C. Section 5311) and the Illinois Downstate Operating Assistance Program, through the Illinois Department of Transportation, Division of Public Transportation, and the Federal Transit Administration of the United States Department of Transportation; and

WHEREAS, the City of Freeport intends to lease the following vehicles to Pretzel City Transit, LLC to be utilized for purposes as described in the Section 5311 Operating Program to provide general public transportation: 2010 Ford Eldorado Aero Lite 12 Passenger, VIN #1FDEE3FL7ADB01505, commonly known as "Vehicle 11", and 2010 Ford Eldorado Aero Lite 12 Passenger, VIN #1FDEE3FL5ADB01504, commonly known as "Vehicle 12" by the City of Freeport.

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

Section 1. That this City Council hereby authorizes participation in the vehicle lease agreement with Pretzel City Transit, LLC attached to, and made a part of this Resolution as Exhibit A.

Section 2. That the Mayor of the City of Freeport is hereby authorized and directed to execute and file on behalf of the City of Freeport said lease.

Section 3. That all resolutions or parts of resolutions in conflict with this Resolution are repealed insofar as they conflict.

Section 4. That this Resolution is passed under the home Rule Authority of the City of Freeport as provided in Section 6 of Article VII of the Illinois Constitution of 1970.

RESOLVED this _____ day of _____, 2010.

Martha Zuravel, City Clerk

APPROVED this _____ day of _____, 2010

George W. Gaulrapp, Mayor

EXHIBIT A

VEHICLE LEASE AGREEMENT BETWEEN CITY OF FREEPORT, ILLINOIS AND PRETZEL CITY TRANSIT LLC

This Agreement is made and entered into, by and between the City of Freeport, Illinois, hereinafter referred to as "Lessor", and Pretzel City Transit LLC, hereinafter referred to as "Lessee".

Lessor and Lessee, for the considerations set forth below, hereby agree as follows:

SECTION 1 **Vehicle Leased**

Lessor hereby leases to Lessee, on the terms and conditions herein contained, the following motor vehicles:

2010 Ford Eldorado Aero Lite 12 Passenger, VIN #1FDEE3FL7ADB01505,
commonly known as "Vehicle 11"

2010 Ford Eldorado Aero Lite 12 Passenger, VIN #1FDEE3FL5ADB01504,
commonly known as "Vehicle 12"

purchased with funds from the Illinois Department of Transportation, Contract No. IDOT 946-CVP between IDOT and the Lessor.

Vehicles shall have lettering, identifying it with the "Pretzel City Transit" logo, telephone number, and website address, and other information as directed by Lessor. Said lettering shall be provided at the cost of Lessor; Lessee shall be responsible for having the vehicle lettering completed within fifteen (15) days of execution of this lease agreement.

SECTION 2 **Use and Scope of Service Limits**

Lessee agrees that it will not use or permit the use of the leased vehicle in any negligent or improper manner, or in violation of any statute, law, or ordinance, or so as to void any insurance covering the vehicle, or permit any vehicle to become subject to any lien, charge, or encumbrance which may affect Lessor's title to said vehicle.

SECTION 3 **Term**

The term of the lease shall be for approximately two (2) years, six (6) months contingent upon funding from the Illinois Department of Transportation – Division of Public and Intermodal Transportation, hereinafter referred to as "IDOT", for the Lessor to continue to operate the Pretzel City Transit Service. The Lease shall commence on December 17, 2010 and terminating at midnight on June 30, 2013 at midnight broken down into the following periods:

Year #1 December 17, 2010 to June 30, 2011
Year #2 July 1, 2011 to June 30, 2012
Year #3 July 1, 2012 to June 30, 2013

Subject to the terms of the Federal Section 5310 Capital Assistance Program, Federal Section 5311 Operating Program, State of Illinois Downstate Operating Assistance Program (DOAP) and the Transportation System Provider Agreement between the Lessor and the Pretzel City Transit LLC, the Lessee shall notify Lessor in writing, no later than ninety (90) days prior to the termination date of this agreement, of Lessee's intention to either terminate this Agreement on June 30, 2013, or seek to renew the Agreement.

SECTION 4 Additional Conditions of IDOT

As The State of Illinois, Department of Transportation, Division of Public Transportation (hereinafter referred to as IDOT is lien holder on the vehicle to be leased, previously operated by Lessor pursuant to the above-mentioned capital grant agreement listed in Section 1. IDOT acknowledges that the making of this Agreement between Lessor and Lessee neither violates the terms of the Section 5311 Grant Contract, nor causes any default or forfeiture thereunder.

Lessee shall use the vehicle for the purposes as described in the Section 5311 Grant Contract IDOT2512 and in the Section 5311 Operating Program, State of Illinois Downstate Operating Assistance Program (DOAP) and the Transportation System Provider Agreement between the Lessor and the Pretzel City Transit LLC to provide general public transportation.

Lessee represents and warrants that it will comply with said terms, conditions and obligations of IDOT, so as not to jeopardize Lessor's relationship with IDOT, nor cause Lessor to be in default of any agreement with IDOT. Any breach of the above mentioned contracts shall be considered a default by Lessee under the terms hereof.

SECTION 5 Lessee's Representations and Warranties

In consideration of Lessor entering into this Agreement, the Lessee hereby represents and warrants:

- (a) Lessee is an Illinois corporation, duly organized, validly existing, and in good standing under the laws of the State of Illinois, and has the power and authority to carry on its business, as now conducted, to own and operate its property and assets, to execute this Agreement and any other agreements and instruments referred to in this Agreement that it is executing and delivering, and to carry out the transactions contemplated hereby and thereby.
- (b) Neither the execution, delivery or performance of this Agreement or any other agreement or instrument referred to in this Agreement that is executed and delivered by or on behalf of Lessee in conjunction herewith, nor the consummation of the transactions herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof, contravenes the Certificate of Incorporation, Articles of Incorporation, or Bylaws of Lessee or any provision of law, statute, rule, regulation, or order of any court or

governmental authority to which Lessee is subject, or any judgment, decree, franchise, order or permit applicable to Lessee, or conflicts or is inconsistent with, or will result in any breach of or constitute a default under, any contract, commitment, agreement, understanding, arrangement, or instrument, or result in the creation of or imposition of, or the obligation to create or impose, any lien, encumbrance or liability on any of the property or assets of Lessee, or will increase any such lien, encumbrance, or liability.

- (c) Lessee now has and will continue to have during the term of this Agreement, all necessary licenses, certification, or other documents required by any governmental agency, federal, state or local, which authorize or empower the services to be performed hereunder by Lessee.

SECTION 6
Rent and Terms of Payment

Lessee agrees to pay as rent for the vehicle leased herein the sum of One Hundred Dollars (\$100.00) per year, paid annually in advance by the fifteenth (15th) of June of each year for the duration of this lease agreement.

SECTION 7
Insurance

Lessee shall, at its sole cost, provide and maintain during the term of this Agreement, a policy or policies of vehicle liability insurance containing the coverage, exceptions, and exclusions which are ordinarily contained in vehicle liability insurance policies written for the locality where the vehicle is stored. Such policy shall insure Lessor and Lessee, and their respective agent and employees, with respect to liability as a result of the ownership, maintenance, use or operation of vehicle furnished by Lessor to Lessee pursuant to this Agreement. Furthermore, Lessee shall, at its sole cost, provide and maintain during the term of the Agreement, insurance coverage for collision and comprehensive damages as is customary for such vehicle, naming Lessor as an additional insured.

The insurance shall be primary, and not excessive or contributory, with respect to any accident involving such vehicle(s), and shall, at minimum afford the following coverages:

Combined single limit:	\$1 million
Medical Payments:	\$5,000
Uninsured / Underinsured:	\$1 million
Hired and Non-Owned:	\$1 million

Such insurance shall include destruction and/or loss of use or property as a result of an accident. Lessor shall not be liable for damage to property owned by, rented to, or in charge of Lessee.

All such insurance shall be in a form acceptable to Lessor. Lessee shall cause the insurer to furnish to Lessor a certificate of insurance, and a certificate of any renewal or replacement of insurance, evidencing coverage as outlined herein. The certificate shall provide that the insurance shall not be cancelled or materially modified except upon ten (10) days advance written notice to Lessor.

SECTION 8
License Plates and Registration

The vehicle subject to this Agreement shall bear the proper license plate. The title to such vehicle is registered in the name of the Lessor, subject to the lien rights of IDOT. The annual registration, license fees, safety inspection costs, etc. shall be paid by Lessee.

SECTION 9
Delivery of Vehicle

Lessor shall use all reasonable diligence to transfer the vehicle leased hereunder to the Lessee on the execution of this Agreement and any supplement thereto, but shall not be liable to Lessee for any failure or delay if Lessor shall have exercised reasonable diligence herein.

SECTION 10
Reporting and Audit

- (a) Lessee shall be responsible for providing any and all data pertaining to the scope of services as requested upon reasonable notice by Lessor. Data required may include, but not be limited to, vehicle maintenance records and trip logs.
- (b) Lessor or representatives from IDOT and the Federal Transportation Administration (hereinafter referred to as "FTA") or any designees may perform, at any time, one or more audits and/or inspection of the records with regard to compliance with the provisions of the Agreement. Lessee agrees to comply with all requests to have equipment available as requested by Lessor for completion of audits.
- (c) Lessee agrees to preserve for a period of five years after the termination of this Agreement, any and all reports, insurance policies, trip sheets, and other data pertaining to compliance with any and all terms of the Agreement.

SECTION 11
Maintenance

All service, materials, and repairs in connection with the use and operation of the respective vehicle during the lease term, including but not limited to gasoline, fuel, oil, batteries, repairs, maintenance, tires, tubes, and towing necessary for the proper use and operation of the vehicle, are at Lessee's expense. Lessee agrees that the oil in the crankcase shall at all times be kept at proper level and shall be completely changed and the vehicle lubricated at intervals recommended in the manual provided by the manufacturer of the vehicle. Lessee shall take the vehicle to the appropriate factory-authorized dealer for all service and repairs under manufacturer's warranty. Lessor shall not be liable for repairs, nor shall any such repairs be charged to Lessor. Lessee shall maintain and clean said vehicle in a reasonable manner. Lessee shall immediately take reasonable corrective action on any item of repair, maintenance or cleanliness upon receipt of any complaint from Lessor.

Lessee shall prepare and maintain accurate records relating to all vehicle maintenance performed herein and shall provide Lessor with any such information when requested in writing.

SECTION 12
Acceptance by Lessee

Upon taking possession of vehicle, it shall be conclusively presumed to be in neat and proper appearance, good repair, mechanical condition and running order when accepted by Lessee.

NEITHER LESSOR NOR LESSEE IS THE MANUFACTURER OF THE VEHICLE SUBJECT TO THIS AGREEMENT, NOR THE MANUFACTURER'S AGENT, AND NEITHER MAKES ANY EXPRESS OR IMPLIED WARRANTY OF ANY NATURE REGARDING THE VEHICLE SUBJECT TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO: ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE; ITS DESIGN OR CONDITION; ITS WORKMANSHIP; ITS FREEDOM FROM LATENT DEFECTS; ITS COMPLIANCE WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT; OR ITS NONINFRINGEMENT OF ANY PATENT, TRADEMARK OR LICENSE.

This Agreement shall not operate to release or waive any rights of Lessor or Lessee against any person not a party hereto, including the manufacturer of the vehicle subject to this Agreement.

Lessor shall assign or otherwise make available, as legally permitted, any manufacturer's warranties covering the vehicle subject to this Agreement.

SECTION 13
Risk of Loss

Lessee shall bear all risks of damage or loss of the leased vehicle, or any portion of damage or loss not covered by insurance. All replacements, repairs, or substitution of parts or equipment of respective vehicle shall be at the cost and expense of the Lessee and shall be accessions to the vehicle. The Lessee shall at all times, and at Lessee's expense, keep the vehicle in good working order, condition, and repair, reasonable wear and tear excepted.

SECTION 14
Indemnity

Lessee agrees to save Lessor and the State of Illinois, including IDOT, harmless from any and all claims, losses, causes of action, and expenses, for whatever reason, including legal expenses and reasonable attorneys fees, arising from the use, maintenance, and operation of the vehicle leased under this Agreement or the provision of services hereunder.

SECTION 15
Additional Charges

Lessee agrees to pay any and all storage charges, parking charges, and fines which are levied against Lessee as a result of the improper acts of Lessee or its employees.

Lessee will pay any fees (including vehicle registration and inspection fees) or taxes which may be imposed with respect to such vehicle by any duly constituted governmental authority as the result of Lessee's use or intended use of the vehicle.

SECTION 16 Drivers of Vehicle

The leased vehicle under this Agreement shall be operated only by safe, careful, and legally qualified drivers having a proper license. Such drivers shall be selected, employed, controlled, and paid by Lessee. Lessee shall cause the vehicle to be used and operated with reasonable care and precaution to prevent loss and damage to said vehicle because of negligent or reckless use, abuse, fire, theft, collision, or injury to persons or property.

Lessee's drivers shall comply with all applicable state and federal regulations governing transportation services.

SECTION 17 Termination

At least ninety (90) days prior to the expiration of the term set forth in Section 3, the parties shall either (i) agree in writing to extend the Agreement upon such terms and conditions as may be mutually agreeable, or (ii) if an extension of the Agreement is not completed, then one party may provide written notice to the other party that the Agreement shall terminate at the expiration of the term set forth in Section 3. This Agreement shall terminate in any event upon default as provided in Section 23.

Right of Lessor to Terminate. Upon written notice to the Provider, the Lessor and IDOT reserve the right to terminate this Agreement

- a) when the Provider is, or has been, in violation of the terms of this Agreement;
- b) for Lessor and IDOT convenience;
- c) in the event that the Operating Grant Agreement between Lessor and IDOT is not renewed or is terminated;
- d) in the event that Lessor decides to remove the vehicle from service (i.e., replace it because it is beyond its useful life);
- e) in the event that Lessor decides to reassign the vehicle to another provider;
or
- f) in the event that the Lessor and/or IDOT determine, in their sole discretion, that the purpose of the Acts authorizing the Grant would not be best served by the continuation of said Agreement.

Termination of the Agreement will not invalidate obligations properly incurred by the Lessee and concurred in by the Lessor and IDOT prior to the termination date, to the extent they are non-cancelable.

SECTION 18 Surrender of Vehicle

Upon termination, at the sole option of Lessor, Lessee shall surrender the respective vehicle leased hereunder, in the same condition as when received, less reasonable wear and tear, free from collision or upset damage, to the Lessor at the address listed in Section 26, or at any other location mutually agreed on by the parties to the Agreement.

SECTION 19
Warranties

THERE ARE NO WARRANTIES, EXPRESSED OR IMPLIED, BY THE LESSOR TO THE LESSEE AND LESSOR SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE TO LESSEE, NOR TO ANYONE ELSE, OF ANY KIND AND HOWSOEVER CAUSED, WHETHER BY THE LEASED VEHICLE, OR BY THE FAILURE OF THE VEHICLE, OR INTERRUPTION OF SERVICE OR USE OF THE LEASED VEHICLE.

SECTION 20
Compliance with Laws

The vehicle leased under this Agreement will not, while in the possession, custody, or control of Lessee, be operated in excess of its rated maximum weights or capacity. If the vehicle is damaged in any manner due to overloading, Lessee shall immediately pay to Lessor the amount of any and all damages and losses it may sustain thereby.

The leased vehicle shall not be used in violation of any federal, state or municipal statutes, laws, ordinances, rules or regulations applicable to the operation of such vehicle. Lessee will hold Lessor harmless from any and/or all fines, forfeitures, penalties for traffic violations or for the violation of any statute, law, ordinance, rule, or regulation of any duly constituted public authority.

Lessee shall not use nor allow any vehicle(s) to be used for any unlawful purpose or for the transportation of any property or material deemed hazardous by reason of being explosive, inflammable, or fissionable.

SECTION 21
Assignment

Lessee agrees not to assign, transfer, sublet, pledge, or encumber any of its rights under this Agreement, or the Agreement itself, or the subject vehicle, without the prior written consent of Lessor. Lessee hereby consents to and authorizes Lessor's assignment of all rentals, charges, and any other amounts payable by Lessee to Lessor, or to become payable. This Agreement and the rights and interests of Lessee under this Agreement are subordinate to any security agreement executed by Lessor and any such assignee, covering the vehicle leased hereunder.

SECTION 22
Default

Time is of the essence of this Agreement. Lessor, at its option, may declare this Agreement in default on the happening of any of the following:

- (a) Default by Lessee in payment or performance of any of its obligations under this Agreement.
- (b) Voluntary assignment of Lessee's interests herein.
- (c) Involuntary transfer of Lessee's interest herein, whether or not by operation of law, bankruptcy, or any assignment of Lessee's property for the benefit of

creditors, or if a receiver or trustee is appointed for Lessee's property or business.

- (d) Expiration or cancellation of any policy of insurance agreed to be paid for by Lessee, or the cessation in force according to its original terms of such insurance, or of any extension or renewal of such insurance, during the entire term of this Agreement.
- (e) Lessee not abiding by the terms set forth in Contract No.IDOT2512 between IDOT and Lessor.
- (f) Lessee not abiding by the terms and conditions of the Federal Section 5311 Operating Assistance Program.
- (g) Lessee not abiding by the terms and conditions of the Illinois Downstate Operating Assistance Program.
- (h) Lessee not abiding by the terms and conditions of the Transportation System Provider Agreement between Lessor and Lessee.

Lessor shall provide Lessee with written notice of default. Lessee shall have ten (10) days from the date Lessor's notice is given as required by Section 26 of this Agreement to cure the default. If upon the expiration of said ten (10) days time frame Lessee has not cured the default, then Lessor may seek to enforce any rights and or remedies it may have against Lessee hereunder.

On declaration by Lessor that the Agreement is in default, and after expiration of the cure period set forth above, the vehicle subject to this Agreement shall be surrendered and delivered to Lessor, and Lessor may take possession of the vehicle wherever it may be found, and for that purpose may enter on the premises of Lessee provided there is no breach of peace. If allowed by applicable law or upon abandonment of the vehicle by Lessee, the Lessor's right to take possession of the vehicle may be without process of law. On default, Lessee and Lessee's successor in interest, whether by operation of law or otherwise, shall have no right, title, or interest in the vehicle subject to this Agreement, or the possession or use of such vehicle, and Lessor shall retain all rents and other sums paid by Lessee under this Agreement with respect to said vehicle. The rights and remedies of Lessor under this Agreement are not exclusive, but cumulative and in addition to all other rights and remedies provided by law. Lessor shall be entitled to collect from Lessee the costs and expenses, including reasonable attorneys fees, in connection with any matters concerning the default of Lessee and the repossession of the vehicle.

SECTION 23
AUXILIARY

THIS SECTION INTENTIONALLY LEFT BLANK

SECTION 24
Waiver

Failure of Lessor in any one or more instances to insist on the performance of any of the terms of this Agreement, or to exercise any right or privilege conferred herein, or the waiver of any breach of any terms of this Agreement shall not thereafter be construed as a waiver of such terms, which shall continue in force as if no such waiver had occurred.

SECTION 25

Lease Only

This Agreement is one of leasing only and Lessee shall not acquire hereby any right, title, or interest to vehicle leased hereunder other than that of Lessee. Lessee acknowledges that Lessor owns (subject to IDOT lien) the vehicle subject to the Agreement. Nothing herein shall affect Lessor's absolute ownership of any title to said vehicle.

SECTION 26

Notices

Notices provided for under this Agreement shall be deemed given when mailed certified mail to the addresses of the Lessor and Lessee, as set forth below:

IF TO LESSOR: Community Development Director
 City of Freeport
 230 West Stephenson Street
 Freeport IL 61032

IF TO LESSEE: Pretzel City Transit LLC
 50 W. Douglas St.
 Freeport, IL 61032

SECTION 27

Right to Repossess

Upon failure of Lessee to return or deliver the vehicle subject to the terms hereof as directed by Lessor, or if Lessee fails to use, repair, or maintain the vehicle as required herein, Lessee shall permit Lessor, without demand, legal process, or a breach of the peace, to enter any premises where the vehicle are or may be located to take possession of and remove the vehicle. Lessee shall not prosecute or assist in the prosecution of any claim, suit, action or other proceeding arising out of any such repossession by Lessor. Lessee shall reimburse Lessor for any and all costs including reasonable attorneys' fees, incurred by Lessor in connection with actions taken by Lessor pursuant to this section.

SECTION 28

Inspection of Vehicle

Lessor and/or representatives of IDOT and the FTA, and all designees, shall have the right to inspect the respective vehicle during reasonable business hours, or cause the vehicle to be inspected at any time, with or without prior notice to Lessee. Lessor shall also have the right to demand from time to time a written statement from Lessee setting forth the condition of the vehicle or any parts thereof. Lessee shall furnish such a statement to Lessor within ten (10) days after receipt of Lessor's demand therefore. Should Lessor or its designee determine, in its sole discretion, that the vehicle has not been maintained in accordance with this Agreement, Lessor or its designee shall report all deficiencies to Lessee in writing. Except for safety related deficiencies, which shall be

corrected as soon as reasonably possible and prior to placing the vehicle in service, Lessee shall have thirty (30) days to correct the reported deficiencies.

SECTION 29
Return of Vehicle

Immediately following termination of this Agreement, whether by completion of the term or any reason, Lessee shall surrender and deliver to Lessor the vehicle and related records, unless the right is waived at Lessor's sole discretion.

SECTION 30
Succession

This Agreement shall be binding on and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties to this Agreement.

SECTION 31
Amendment

This Agreement may not be amended or altered in any manner unless such amendment or alteration is in writing and signed on behalf of the parties.

SECTION 32
Liability for Contents

Lessor shall not be liable for loss of or damage to any property left, stored, loaded, or transported in or upon the vehicle furnished by Lessor to Lessee pursuant to this Agreement, whether or not due to the negligence of Lessor, its agents or employees.

Lessee shall hold Lessor, its agents and employees, harmless from and indemnify them from and against all claims based on or arising out of such loss or damage.

No right of Lessor under this section may be waived except by agreement in writing signed by an executive officer of Lessor.

SECTION 33
Attorneys Fees

Except as provided for in Section 22, concerning default of Lessee, the prevailing party shall be entitled to reimbursement from the losing party for costs and expenses including reasonable attorneys fees incurred in enforcing the terms and provisions of this Agreement and in the defending and proceeding to which Lessor or Lessee is made a party to any legal proceedings as a result of acts or omissions of the other party.

SECTION 34
Governing Law

This Agreement shall be governed by the laws of the State of Illinois and constitutes the entire Agreement between Lessor and Lessee.

IN WITNESS THEREOF, the parties have executed this Agreement as of the day and year first-above written.

LESSOR:

City of Freeport, Illinois

By: _____

George W. Gaulrapp
Mayor

Date: _____

ATTEST:

Martha E. Zuravel

City Clerk

LESSEE:

Pretzel City Transit LLC

By: _____

Print Name: _____

Title _____

Date: _____

ATTEST:

Print Name: _____

Its _____