

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
3/1/2022

SUBJECT:	SUBMITTED BY:
Temporary Employee Leasing Agreement	Enza Petrarca Village Attorney

SYNOPSIS

A resolution has been prepared to authorize execution of an employee leasing agreement between the Village of Downers Grove and GovTempsUSA.

STRATEGIC PLAN ALIGNMENT

The 2021-2023 goals provide for *Exceptional Municipal Services*.

FISCAL IMPACT

Fees for these services will be paid on a bi-weekly basis in the amount of \$2,827.20, with an expected term of 10 weeks for a total of \$14,136. A contingency has been added for an additional two weeks in the event it becomes necessary for the temporary assistant to stay longer, which would bring the total amount to \$16,963.20.

RECOMMENDATION

Approval on the March 1, 2022 consent agenda.

BACKGROUND

The Community Development Department has a temporary vacancy in the Administrative Assistant position. Given the heavy workload at this time of year, it is necessary to obtain a temporary replacement for that position. It is expected that the temporary assistant would be needed for 10 weeks, but the agreement has an automatic bi-weekly extension in the event the temp is needed for a longer period of time. The agreement also allows the Village to terminate at any time with two weeks' written notice. The Village has obtained temporary workers from GovTemps in the past and was satisfied with their performance.

ATTACHMENTS

Resolution
Agreement

RESOLUTION NO. _____**A RESOLUTION AUTHORIZING EXECUTION OF AN EMPLOYEE LEASING AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND GOVTEMPSUSA, LLC**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Employee Leasing Agreement (the "Agreement"), between the Village of Downers Grove (the "Municipality") and GovTempsUSA, LLC ("GovTemps"), for temporary administrative assistant services, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. This Agreement includes a two-week contingency in the amount of \$2,827.20, for a total amount for the Agreement of \$16,963.20.

3. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

4. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

5. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

6. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

EMPLOYEE LEASING AGREEMENT

THIS EMPLOYEE LEASING AGREEMENT (this "Agreement") is made this 23rd day of February 2022 ("Effective Date") by and between **GOVTEMPSUSA, LLC**, an Illinois limited liability company ("GovTemps"), and the **VILLAGE OF DOWNERS GROVE, ILLINOIS** (the "Municipality"). GovTemps and the Municipality can be individually identified as a "Party" and collectively as the "Parties". GovTemps and the Municipality agree as follows:

RECITALS

The Municipality desires to lease certain employees of GovTemps to assist the Municipality in its operations and GovTemps desires to lease certain of its employees to the Municipality on the terms and conditions contained herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, and other good and valuable considerations, the receipt and sufficiency of which are mutually acknowledged by the Parties, the Parties hereby agree as follows:

SECTION 1 SCOPE OF AGREEMENT

Section 1.01. Worksite Employee. The Municipality hereby agrees to engage the services of GovTemps to provide, and GovTemps hereby agrees to supply to the Municipality, the personnel fully identified on **Exhibit A** hereto, hereinafter the "Worksite Employee." **Exhibit A** to this Agreement shall further identify the employment position and/or assignment ("Assignment") the Worksite Employee shall fill at the Municipality and shall further identify the base compensation that GovTemps shall receive for each Worksite Employee, as of the effective date of this Agreement. **Exhibit A** may be amended from time to time by a replacement **Exhibit A** signed by both GovTemps and the Municipality. GovTemps shall have the sole authority to assign and/or remove the Worksite Employee, provided, however, that the Municipality may request, in writing, that GovTemps remove or reassign the Worksite Employee. GovTemps will comply with the request as soon as is reasonably possible, but in no event later than 48 hours after being notified. The Parties hereto understand and acknowledge that the Worksite Employee shall be subject to the Municipality's day-to-day supervision.

Section 1.02. Independent Contractor. GovTemps is and shall remain an independent contractor, and not an employee, agent, partner of, or joint venturer with, the Municipality. The Worksite Employee is and shall remain an employee of GovTemps and not of the Municipality. GovTemps shall have no authority to bind the Municipality to any commitment, contract, agreement or other obligation without the Municipality's express written consent.

SECTION 2 SERVICES AND OBLIGATIONS OF GOVTEMPS AND MUNICIPALITY

Section 2.01. Payment of Wages. GovTemps shall timely pay the wages and related payroll taxes of the Worksite Employee from GovTemps's own account in accordance with federal and Illinois law and GovTemps's standard payroll practices. GovTemps shall withhold from such wages all applicable taxes and other deductions elected by the Worksite Employee. GovTemps shall timely forward all deductions to the appropriate recipient as required by law. The Municipality hereby acknowledges that GovTemps may engage a financial entity to maintain its financing and record keeping services, which may include the payment of wages and related payroll taxes in accordance with this Section 2.01. The Municipality agrees to cooperate with any such financial entity to ensure timely payment of (i) compensation to GovTemps under this Agreement, and (ii) Fees pursuant to Section 3.03.

Section 2.02. Workers' Compensation. To the extent required by applicable law, GovTemps shall maintain and administer workers' compensation, safety and health programs. GovTemps shall maintain in effect workers' compensation coverage covering all Worksite Employee and complete and file all required workers' compensation forms and reports.

Section 2.03. Employee Benefits. GovTemps shall provide to Worksite Employee those employee benefits fully identified on **Exhibit B** hereto. GovTemps may amend or terminate any of its employee benefit plans according to their terms. All employee benefits, including severance benefits for Worksite Employee will be included in Fees payable to GovTemps under Section 3.01 of this Agreement.

Section 2.04. Maintenance and Retention of Payroll and Benefit Records. GovTemps shall maintain complete records of all wages and benefits paid and personnel actions taken by GovTemps in connection with the Worksite Employee, shall retain control of such records at such GovTemps location as shall be determined solely by GovTemps, and shall make such records available as required by applicable federal, state or local laws.

Section 2.05. Other Obligations of GovTemps. GovTemps shall be responsible for compliance with all federal, state and local laws and regulations that may apply to its Worksite Employee(s) including, and without limitation, Title VII of the Civil Rights Act of 1964, as amended, (Title VII), the Americans With Disabilities Act of 1990 (ADA), the Age Discrimination in Employment Act (ADEA), the Equal Pay Act of 1963, the Civil Rights Acts of 1866 and 1871 (42 U.S.C. § 1981), the Family and Medical Leave Act of 1993, the Fair Labor Standards Act of 1938, the National Labor Relations Act, the Employee Retirement Income Security Act of 1974, the Illinois State Constitution, the Illinois Human Rights Act, and any other federal, state or local law, statute, ordinance, order, regulation, policy or decision regulating wages and the

payment of wages, prohibiting employment discrimination or otherwise establishing or relating to rights of employees.

Section 2.06. Direction and Control. The Parties agree and acknowledge that the Municipality has the right of direction and control over the Worksite Employee, including matters of discipline, excluding removal or reassignment, as provided for by Section 1.01. The Worksite Employee shall be supervised, directly and indirectly, and exclusively by the Municipality's supervisory and managerial employees.

Section 2.07. Obligations of the Municipality. As part of the leasing relationship between the Municipality and GovTemps regarding the Worksite Employee, the Municipality hereby covenants, agrees and acknowledges:

(a) The Municipality shall comply with OSHA and all other health and safety laws, regulations, ordinances, directives, and rules applicable to the Worksite Employee or to his or her place of work. The Municipality agrees to comply, at its expense, with all health and safety directives from any government agency having jurisdiction over the place of work. The Municipality shall provide and ensure use of all personal protective equipment as required by any federal, state or local law, regulation, ordinance, directive, or rule or as deemed necessary by GovTemps' workers' compensation carrier. GovTemps and GovTemps' insurance carriers shall have the right to inspect the Municipality's premises to ensure that the Worksite Employee is not exposed to an unsafe work place. In no way shall GovTemps' rights under this paragraph affect the Municipality's obligations to the Worksite Employees under applicable law or to GovTemps under this Agreement;

(b) With respect to the Worksite Employees, the Municipality shall comply with all applicable employment-related laws and regulations, including and, without limitation, Title VII of the Civil Rights Act of 1964, as amended, (Title VII), the Americans With Disabilities Act of 1990 (ADA), the Age Discrimination in Employment Act (ADEA), the Equal Pay Act of 1963, the Civil Rights Acts of 1866 and 1871 (42 U.S.C. § 1981), the Family and Medical Leave Act of 1993, the Fair Labor Standards Act of 1938, the National Labor Relations Act, the Illinois State Constitution, the Illinois Human Rights Act, and any other federal, state or local law, statute, ordinance, order, regulation, policy or decision regulating wages and the payment of wages, prohibiting employment discrimination or otherwise establishing or relating to rights of employees;

(c) The Municipality shall retain the right to exert sufficient direction and control over the Worksite Employee as is necessary to conduct the Municipality's business and operations, without which, the Municipality would be unable to conduct its business, operation or comply with any applicable licensure, regulatory or statutory requirements;

(d) The Municipality shall not have the right to remove or reassign the Worksite Employee unless mutually agreed to in writing by GovTemps and the Municipality in accordance with Section 1.01;

(e) The Municipality agrees that the Municipality shall pay no wages, salaries or other forms of direct or indirect compensation, including employee benefits, to Worksite Employee;

(f) The Municipality shall report to GovTemps any injury to any Worksite Employee of which it has knowledge within twenty-four (24) hours of acquiring such knowledge. If a Worksite Employee is injured in the course of performing services for the Municipality, the Municipality and GovTemps shall follow the procedures and practices regarding injury claims and reporting, as determined by GovTemps. Upon receipt of notification from GovTemps or its insurance carrier that an injured Worksite Employee is able to return to work and perform "light duty," the Municipality, in its sole discretion, will determine if there is light duty work available for the Worksite Employee to the extent required or permitted by any applicable law; and

SECTION 3 FEES PAYABLE TO GOVTEMPS

Section 3.01. Fees. The Municipality hereby agrees to pay GovTemps fees for the services provided under this Agreement as follows:

(a) The base compensation as fully identified on **Exhibit A**, as amended, only upon written agreement of the parties; plus

(b) Any employee benefits GovTemps paid to the Worksite Employee as identified on **Exhibit B** hereto, including, but not limited to, salary; wages; commissions; bonuses; sick pay; workers' compensation, health and other insurance premiums; payroll, unemployment, FICA and other taxes; vacation pay; overtime pay; severance pay; monthly automobile allowances, and any other compensation or benefits payable under any applicable GovTemps pension and welfare benefit plan or federal, state or local laws covering the Worksite Employee.

Section 3.02. Increase in Fees. GovTemps may increase fees to the extent and equal to any mandated tax increases, e.g. FICA, FUTA, State Unemployment taxes when they become effective.

Section 3.03. Payment Method. Every two (2) weeks during the term of this Agreement, GovTemps will invoice in writing the Client for the fees owed under this Agreement. Within thirty (30) days following receipt of such invoice, the Client must pay all invoiced amounts by check, wire transfer or electronic funds transfer to

GovTemps to an account or lockbox as designated on the invoice. Late payments will be subject to all applicable interest payments or service charges provided by state or local law. In addition to charging interest or service charges provided by applicable law, GovTemps may, upon written notice to Client, suspend performance of services under this Agreement while any amount due is past due and remains unpaid.

SECTION 4 INSURANCE

Section 4.01. General and Professional Liability Insurance. The Municipality shall maintain in full force and effect at all times during the term of this Agreement a Comprehensive (or Commercial) General Liability and Professional Liability (if applicable) insurance policy or policies (the "Policies"), with minimum coverage in the amount of \$1,000,000 per occurrence, \$3,000,000 aggregate. At a minimum, the Policies shall insure against bodily injury and property damage liability caused by on-premises business operations, completed operations and/or products or professional service and non-owned automobile coverage. The Municipality can fulfill this requirement with self-insurance.

Section 4.02. Certificate of Insurance. Upon request, the Municipality shall provide GovTemps with one or more Certificates of Insurance, verifying the Municipality's compliance with the provisions of Section 4.01.

Section 4.03. Automobile Liability Insurance. If the Worksite Employee drives a Municipal or personal vehicle for any reason in connection with his or her Assignment, the Municipality shall maintain in effect automobile liability insurance which shall insure the Worksite Employee, GovTemps and the Municipality against liability for bodily injury, death and property damage.

SECTION 5 DURATION AND TERMINATION OF AGREEMENT

Section 5.01. Effective and Termination Dates. The period during which the Worksite Employee works at the Municipality is defined as the "Term" of this Agreement. The Term commences on the Effective Date and will continue for the period identified on the attached Exhibit A, or until it is terminated in accordance with the remaining provisions of this Section 5. For the purposes of this Agreement, the date on which this Agreement expires and/or is terminated is the "Termination Date".

Section 5.02. Termination of Agreement for Failure to Pay Fees. If the Municipality fails to timely pay the fees required under this Agreement, GovTemps may give the Municipality notice of its intent to terminate this Agreement for such failure and if such failure is remedied within ten (10) days, the notice shall be of no further effect. If such failure is not remedied within the ten (10) day period, GovTemps shall have the right to terminate the Agreement upon expiration of such remedy period.

Section 5.03. Termination of Agreement for Material Breach. If either Party materially breaches this Agreement, the non-breaching Party shall give the breaching Party notice of its intent to terminate this Agreement for such breach and if such breach is remedied within ten (10) days, the notice shall be of no further effect. If such breach is not remedied within the ten (10) day period, the non-breaching Party shall have the right to immediately terminate the Agreement upon expiration of such remedy period.

Section 5.04. Termination for Convenience. The Municipality may terminate this Agreement for convenience before the expiration of the Term provided that the Municipality has notified GovTemps at least 14 days before the date that such termination for convenience shall take effect. The Municipality shall be required to pay GovTemps for all amounts due up to and including the Termination Date.

Section 5.05. Termination of Agreement to execute Temp-to Hire Option. At the end of the Term, the Municipality may hire the Worksite Employee as a permanent employee. If this option is exercised by the Municipality, the Municipality must pay two weeks of the Worksite Employee's gross salary to GovTemps no later than 30 days after the date the Worksite Employee begins permanent employment at the Municipality.

SECTION 6 NON-SOLICITATION

Section 6.01. Non-Solicitation. The Municipality acknowledges GovTemps' legitimate interest in protecting its business for a reasonable time following the termination of this Agreement. Accordingly, the Municipality agrees that during the term of this Agreement and for a period of two (2) years thereafter, the Municipality shall not solicit, request, entice or induce Worksite Employee to terminate his or her employment with the GovTemps, nor shall the Municipality hire Worksite Employee as an employee. If a Temp-to-Hire option provided for in Section 5.05 is properly exercised by the Municipality then this Section 6.01 will not apply.

Section 6.02. Injunctive Relief. The Municipality recognizes that the rights and privileges granted by this Agreement are of a special, unique, and extraordinary character, the loss of which cannot reasonably or adequately be compensated for in damages in any action at law. Accordingly, the Municipality understands and agrees that GovTemps shall be entitled to equitable relief, including a temporary restraining order and preliminary and permanent injunctive relief, to prevent or enjoin a breach of Section 6.01 this Agreement. The Municipality also understands and agrees that any such equitable relief shall be in addition to, and not in substitution for, any other relief to which the GovTemps may be entitled.

Section 6.03. Survival. The provision of this Section 6 shall survive any termination of this Agreement.

SECTION 7 DISCLOSURE AND INDEMNIFICATION PROVISIONS

Section 7.01. Indemnification by GovTemps. GovTemps agrees to indemnify, defend and hold the Municipality and its related entities or their agents, representatives or employees (the "Municipality Parties") harmless from and against all claims, liabilities, damages, attorney's fees, costs and expenses ("Losses") (a) arising out of GovTemps' breach of its obligations under this Agreement, (b) related to the actions or conduct of GovTemps and its related business entities, their agents, representatives, and employees (the "GovTemps Parties"), taken or not taken with respect to the Worksite Employees that relate to events or incidents occurring prior or subsequent to the term of this Agreement, and (c) arising from any act or omission on the part of GovTemps or any of the GovTemps Parties.

Section 7.02. Indemnification by the Municipality. The Municipality agrees to indemnify, defend and hold the GovTemp Parties harmless from and against all Losses (a) arising out of the Municipality's breach of its obligations under this Agreement, (b) relating to any activities or conditions associated with the Assignment, including without limitation, the Worksite Employee workers' compensation claims, provided however the Municipality shall have the right to participate in determining appropriate medical care and any potential settlement amounts, and (c) arising from any act or omission on the part of the Municipality or any of the Municipality Parties. Notwithstanding the foregoing, the Municipality shall have no obligations to the GovTemp Parties under this Section with respect to Losses arising out of events or incidents occurring before or after the term of this Agreement.

Section 7.03. Indemnification Procedures. The Party that is seeking indemnity (the "Indemnified Party") from the other Party (the "Indemnifying Party") pursuant to this Section 7, shall give the Indemnifying Party prompt notice of any such claim, allow the Indemnifying Party to control the defense or settlement of such claim and cooperate with the Indemnifying Party in all matters related thereto; provided however that, prior to the Indemnifying Party assuming such defense and upon the request of the Indemnified Party, the Indemnifying Party shall demonstrate to the reasonable satisfaction of the Indemnified Party that the Indemnifying Party (a) is able to fully pay the reasonably anticipated indemnity amounts under this Section 7 and (b) takes steps satisfactory to the Indemnified Party to ensure its continued ability to pay such amounts. In the event the Indemnifying Party does not control the defense, the Indemnified Party may defend against any such claim at the Indemnifying Party's cost and expense, and the Indemnifying Party shall fully cooperate with the Indemnified Party, at no charge to the Indemnified Party, in defending such potential Loss, including, without limitation, using reasonable commercial efforts to keep the relevant Worksite Employee available. In the event the Indemnifying Party controls the defense, the Indemnified Party shall be entitled, at its own expense, to participate in, but not control, such defense. The failure to promptly notify the Indemnifying Party of any claim pursuant to this Section shall not

relieve such Indemnifying Party of any indemnification obligation that it may have to the Indemnified Party, except to the extent that the Indemnifying Party demonstrates that the defense of such action has been materially prejudiced by the Indemnified Party's failure to timely give such notice.

Section 7.04. Survival of Indemnification Provisions. The provisions of this Section 7 shall survive the expiration or other termination of this Agreement.

SECTION 8 ADDITIONAL PROVISIONS

Section 8.01. Amendments. This Agreement may be amended at any time and from time to time, but any amendment must be in writing and signed by all of the Parties to this Agreement.

Section 8.02. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective heirs, successors, representatives and assign. Neither Party may assign its rights or delegate its duties hereunder without the express written consent of the other Party, which consent shall not be unreasonably withheld.

Section 8.03. Counterpart Execution. This Agreement may be executed and delivered in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered via facsimile.

Section 8.04. Definitions. Terms and phrases defined in any part of this Agreement shall have the defined meanings wherever used throughout the Agreement. The terms "hereunder" and "herein" and similar terms used in this Agreement shall refer to this Agreement in its entirety and not merely to the section, subsection or paragraph in which the term is used.

Section 8.05. Entire Agreement. This Agreement and attached addendum constitutes the entire agreement between the Parties regarding GovTemps' provision of Worksite Employee to the Municipality, and contains all of the terms, conditions, covenants, stipulations, understandings and provisions agreed upon by the Parties. This Agreement supersedes and takes precedence over all proposals, memorandum agreements, tentative agreements, and oral agreements between the Parties, made prior to and including the date hereof, and not specifically identified and incorporated in writing into this Agreement. No agent or representative of either Party hereto has authority to make, and the Parties shall not be bound by or liable for, any statement, representation, promise, or agreement not specifically set forth in this Agreement.

Section 8.06. Further Assurances. Each of the Parties shall execute and deliver any and all additional papers, documents, and other assurances and shall do any and all

acts and things reasonably necessary in connection with the performances of their obligations hereunder and to carry out the intent of the parties hereto.

Section 8.07. Gender. Whenever the context herein so requires, the masculine, feminine or neuter gender and the singular and plural number shall each be deemed to include the other.

Section 8.08. Notices. Notices given under this Agreement shall be in writing and shall either be served personally or delivered by certified first class U.S. Mail, postage prepaid and return receipt requested or by overnight delivery service. Notices also may effectively be given by transmittal over electronic transmitting devices such as Telex or facsimile machine if the Party to whom the notice is being sent has such a device in its office, provided that a complete copy of any notice shall be mailed in the same manner as required for a mailed notice.

Notices shall be deemed received at the earlier of actual receipt or three days from mailing date. Notices shall be directed to the Parties at their respective addresses shown below. A Party may change its address for notice by giving written notice to the other Party in accordance with this Section:

If to GovTemps:	GOVTEMPSUSA, LLC 630 Dundee Road, Suite 225 Northbrook, IL 60062 Attention: Michael Earl Telephone: 224-261-8366 Email: mearl@govhrusa.com
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If to the Municipality:	Village of Downers Grove 801 Burlington Ave Downers Grove, IL 60515 Attention: Lauren Linares Telephone: 630-434-5538 E-Mail: llinares@downers.us
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Section 8.09. Section Headings. Section and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 8.10. Severability. If any part or condition of this Agreement is held to be void, invalid or inoperative, such shall not affect any other provision hereof, which shall continue to be effective as though such void, invalid or inoperative part, clause or condition had not been made.

Section 8.11. Waiver of Provisions. The failure by one Party to require performance by the other Party shall not be deemed to be a waiver of any such breach,


nor of any subsequent breach by the other Party of any provision of this Agreement. Such waiver shall not affect the validity of this Agreement, nor prejudice either Party's rights in connection with any subsequent action. Any provision of this Agreement may be waived if, but only if, such waiver is in writing signed by the Party against whom the waiver is to be effective.

Section 8.12. Confidentiality. Each Party shall protect the confidentiality of the other's records and information and shall not disclose confidential information without the prior written consent of the other Party. Each Party shall reasonably cooperate with the other Party regarding any Freedom of Information Act (FOIA) request calling for production of documents related to this Agreement.

Section 8.13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois applicable to contracts made and to be performed entirely within such state, except the law of conflicts.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

GOVTEMPSUSA, LLC,
an Illinois limited liability company

By: 
Name: Joellen J. Cadematori
Title: President and Co-Owner

MUNICIPALITY

By: _____
Name: David Fieldman
Title: Village Manager

EXHIBIT A
Worksite Employee and Base Compensation

WORKSITE EMPLOYEE: Angelica Zdarowski

POSITION/ASSIGNMENT: Temporary Admin Assistant – Community Development

TERM OF POSITION: March 7, 2022 – May 13, 2022

The agreement will automatically be extended on a bi-weekly basis unless given written notice.

Either party may terminate the agreement by providing two weeks advance written notice.

BASE COMPENSATION: \$35.34/hour. Hours worked and work schedule may vary. It is anticipated the employee will work 40 hours/week. Employee will be paid only for hours

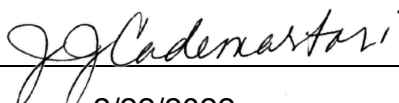
worked. Hours should be reported via email to payroll@govtempsusa.com on the

Monday after the prior work week. The Client will be invoiced every other week for hours

worked.

GOVTEMPSUSA, LLC:

MUNICIPALITY:

By: 

By: _____

Date: 2/22/2022

Date: _____

This Exhibit A fully replaces all Exhibits A dated prior to the Effective Date of this Agreement.

EXHIBIT B
Summary of Benefits

Not Applicable

**ADDENDUM TO AGREEMENT BETWEEN
THE VILLAGE OF DOWNERS GROVE
AND GOVTEMPSUSA, LLC**

Unless otherwise addressed in whole or in part in the Agreement, the following additional terms shall apply to the Agreement between the Village of Downers Grove and GovTempsUSA, LLC (“Provider”) (proposal dated March 7, 2022) to provide diversity, equity and inclusion consulting services and training:

1. VILLAGE ORDINANCES

1.1 The successful Provider will strictly comply with all ordinances of the Village of Downers Grove and laws of the State of Illinois.

2. USE OF VILLAGE'S NAME

2.1 The Provider is specifically denied the right of using in any form or medium the name of the Village for public advertising unless express permission is granted by the Village.

3. INDEMNITY AND HOLD HARMLESS AGREEMENT

3.1 To the fullest extent permitted by law, the Provider shall indemnify, keep and save harmless the Village and its agents, officers, and employees, against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses, which may arise directly or indirectly from any negligence or from the reckless or willful misconduct of the Provider, its employees, or its subcontractors, and the Provider shall at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against the Village in any such action, the Provider shall, at its own expense, satisfy and discharge the same. This agreement shall not be construed as requiring the Provider to indemnify the Village for its own negligence. The Provider shall indemnify, keep and save harmless the Village only where a loss was caused by the negligent, willful or reckless acts or omissions of the Provider, its employees, or its subcontractors.

4. NONDISCRIMINATION

4.1 Provider shall, as a party to a public contract:

(a) Refrain from unlawful discrimination in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination;

(b) By submission of this Proposal, the Provider certifies that it is an "equal opportunity employer" as defined by Section 2000(e) of Chapter 21, Title 42, U.S. Code Annotated and Executive Orders #11246 and #11375, which are incorporated herein by reference. The Equal Opportunity clause, Section 6.1 of the Rules and Regulations of the Department of Human Rights of the State of Illinois, is a material part of any contract awarded on the basis of this Proposal.

4.2 It is unlawful to discriminate on the basis of race, color, sex, national origin, ancestry, age,

marital status, physical or mental handicap or unfavorable discharge for military service. Provider shall comply with standards set forth in Title VII of the Civil Rights Act of 1964, 42 U.S.C. Secs. 2000 et seq., The Human Rights Act of the State of Illinois, 775 ILCS 5/1-101et. seq., and The Americans With Disabilities Act, 42 U.S.C. Secs. 12101 et seq.

5. SEXUAL HARASSMENT POLICY

5.1 The Provider, as a party to a public contract, shall have a written sexual harassment policy that:

- 5.1.1 Notes the illegality of sexual harassment;
- 5.1.2 Sets forth the State law definition of sexual harassment;
- 5.1.3 Describes sexual harassment utilizing examples;
- 5.1.4 Describes the Provider's internal complaint process including penalties;
- 5.1.5 Describes the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission and how to contact these entities; and
- 5.1.6 Describes the protection against retaliation afforded under the Illinois Human Rights Act.

6. EQUAL EMPLOYMENT OPPORTUNITY

6.1 In the event of the Provider's non-compliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), the Provider may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this Contract, the Provider agrees as follows:

- 6.1.1 That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental disability unrelated to ability, military status, order of protection status, sexual orientation, sexual identity or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
- 6.1.2 That, if it hires additional employees in order to perform this Contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- 6.1.3 That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin

or ancestry, age, physical or mental disability unrelated to ability, military status, order of protection status, sexual orientation, or an unfavorable discharge from military services.

- 6.1.4 That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Provider's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Provider in its efforts to comply with such Act and Rules and Regulations, the Provider will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
- 6.1.5 That it will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations.
- 6.1.6 That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purpose of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.
- 6.1.7 That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this Contract, the Provider will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, the Provider will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

7. DRUG FREE WORK PLACE

Provider, as a party to a public contract, certifies and agrees that it will provide a drug free workplace by:

- 7.1 Publishing a statement: (1) Notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, including cannabis, is prohibited in the Village's or Provider's workplace. (2) Specifying the actions that will be taken against employees for violations of such prohibition. (3) Notifying the employee that, as a condition of employment on such contract or grant, the employee will: (A) abide by the terms of the statement; and (B) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such

conviction.

- 7.2 Establishing a drug free awareness program to inform employees about: (1) the dangers of drug abuse in the workplace; (2) the Village's or Provider's policy of maintaining a drug free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; (4) the penalties that may be imposed upon employees for drug violations.
- 7.3 Providing a copy of the statement required above to each employee engaged in the performance of the contract or grant and to post the statement in a prominent place in the workplace.
- 7.4 Notifying the contracting or granting agency within ten (10) days after receiving notice of any criminal drug statute conviction for a violation occurring in the workplace from an employee or otherwise receiving actual notice of such conviction.
- 7.5 Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted as required by section 5 of the Drug Free Workplace Act.
- 7.6 Assisting employees in selecting a course of action in the event drug counseling, treatment and rehabilitation is required and indicating that a trained referral team is in place.
- 7.7 Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

8. PATRIOT ACT COMPLIANCE

- 8.1 The Provider represents and warrants to the Village that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person. The Provider further represents and warrants to the Village that the Provider and its principals, shareholders, members, partners, or affiliates, as applicable are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Contract on behalf of any person or entity named as a Specially Designated National and Blocked Person. The Provider hereby agrees to defend, indemnify and hold harmless the Village, and its elected or appointed officers, employees, agents, representatives, engineers and attorneys, from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorney's fees and costs) arising from or related to any breach of the foregoing representations and warranties.

9. INSURANCE REQUIREMENTS

- 9.1 The Provider shall be required to obtain, from a company or companies lawfully authorized to do business in the jurisdiction in which the project is located, such general liability insurance which, at a minimum, will protect the Provider from the types of claims set forth below which may arise out of or result from the Provider's operations under this Contract

and for which the Provider may legally liable:

- 9.1.1 Claims under workers compensation, disability benefit and other similar employee benefit acts which are applicable to the operation to be performed;
 - 9.1.2 Claims for damages resulting from bodily injury, occupational sickness or disease, or death of the Provider's employees;
 - 9.1.3 Claims for damages resulting from bodily injury, sickness or disease, or death of any person other than the Provider's employees;
 - 9.1.4 Claims for damages insured by the usual personal injury liability coverage which are sustained: (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Provider, or (2) by another person;
 - 9.1.5 Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
 - 9.1.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
 - 9.1.7 Claims for damages as a result of professional or any other type of negligent action by the Provider or failure to properly perform services under the scope of the agreement between the Provider and the Village.
- 9.2 The Provider shall demonstrate having insurance coverage for a minimum of \$2 million for professional liability (errors and omissions).
- 9.3 As evidence of said coverages, Provider shall provide the Village with certificates of insurance naming the Village of Downers Grove as an additional insured and include a provision for cancellation only upon at least 30 days prior notice to the Village.

10. COPYRIGHT/PATENT INFRINGEMENT

- 10.1 The Provider agrees to indemnify, defend, and hold harmless the Village against any suit, claim, or proceeding brought against the Village for alleged use of any equipment, systems, or services provided by the Provider that constitutes a misuse of any proprietary or trade secret information or an infringement of any patent or copyright.

11. CAMPAIGN DISCLOSURE

- 11.1 Any contractor, Provider, bidder or vendor who responds by submitting a bid or proposal to the Village of Downers Grove shall be required to submit with its submission, an executed Campaign Disclosure Certificate, attached hereto.
- 11.2 The Campaign Disclosure Certificate is required pursuant to the Village of Downers Grove Council Policy on Ethical Standards and is applicable to those campaign contributions made to any member of the Village Council.

- 11.3 Said Campaign Disclosure Certificate requires any individual or entity bidding to disclose campaign contributions, as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4), made to current members of the Village Council within the five (5) year period preceding the date of the bid or proposal release.
- 11.4 By signing the bid or proposal documents, contractor/Provider/bidder/vendor agrees to refrain from making any campaign contributions as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4) to any Village Council member and any challengers seeking to serve as a member of the Downers Grove Village Council.

12. SUBLETTING OF CONTRACT

- 12.1 No contract awarded by the Village shall be assigned or any part subcontracted without the written consent of the Village Manager. In no case shall such consent relieve the Contractor from their obligation or change the terms of the contract.

All approved subcontracts shall contain language which incorporates the terms and conditions of this Contract.

13. TERMINATION OF CONTRACT

- 13.1 The Village reserves the right to terminate the whole or any part of this Contract, upon written notice to the Contractor, for any reason and/or in the event that sufficient funds to complete the Contract are not appropriated by the Village.
- 13.2 The Village further reserves the right to terminate the whole or any part of this Contract, upon written notice to the Contractor, in the event of default by the Contractor. Default is defined as failure of the Contractor to perform any of the provisions of this Contract or failure to make sufficient progress so as to endanger performance of this Contract in accordance with its terms. In the event that the Contractor fails to cure the default upon notice, and the Village declares default and termination, the Village may procure, upon such terms and in such manner as the Village may deem appropriate, supplies or services similar to those so terminated. The Contractor shall be liable for any excess costs for such similar supplies or services unless acceptable evidence is submitted to the Village that failure to perform the Contract was due to causes beyond the control and without the fault or negligence of the Contractor. Any such excess costs incurred by the Village may be offset against any monies due and owed to the Contractor by the Village.

14. RELATIONSHIP BETWEEN THE PROVIDER AND THE VILLAGE

- 14.1 The relationship between the Village and the Provider is that of a buyer and seller of professional services and it is understood that the parties have not entered into any joint venture or partnership with the other.

15. STANDARD OF CARE

- 15.1. Services performed by Provider under this Contract will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other

representations express or implied, and no warranty or guarantee is included or intended in this Contract, or in any report, opinions, and documents or otherwise.

16. GOVERNING LAW

16.1 This Contract will be governed by and construed in accordance with the laws of the State of Illinois without regard for the conflict of laws provisions. Venue is proper only in the County of DuPage and the Northern District of Illinois.

17. SUCCESSORS AND ASSIGNS

17.1 The terms of this Contract will be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided, however, that neither party will assign this Contract in whole or in part without the prior written approval of the other. The Provider will provide a list of key staff, titles, responsibilities, and contact information to include all expected subcontractors.

18. WAIVER OF CONTRACT BREACH

18.1 The waiver by one party of any breach of this Contract or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof will be limited to the particular instance and will not operate or be deemed to waive any future breaches of this Contract and will not be construed to be a waiver of any provision except for the particular instance.

19. AMENDMENT

19.1 This Contract will not be subject to amendment unless made in writing and signed by all parties.

20. NOT TO EXCEED CONTRACT

20.1 The contract price is a "not-to-exceed" cost. At any time additional work is necessary or requested, and the not-to-exceed price is increased thereby, any change, addition or price increase must be agreed to in writing by all parties who have executed the initial contract.

21. SEVERABILITY OF INVALID PROVISIONS

21.1 If any provisions of this Contract are held to contravene or be invalid under the laws of any state, country or jurisdiction, contravention will not invalidate the entire Contract, but it will be construed as if not containing the invalid provision and the rights or obligations of the parties will be construed and enforced accordingly.

22. NOTICE

22.1 Any notice will be in writing and will be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party at the party's place of business. Notices shall be addressed to the Village as follows:

**Village Manager
Village of Downers Grove
801 Burlington Ave.
Downers Grove, IL 60515**

GovTempsUSA, LLC

23. COOPERATION WITH FOIA COMPLIANCE

- 23.1 Contractor acknowledges that the Freedom of Information Act may apply to public records in possession of the Contractor or a subcontractor. Contractor and all of its subcontractors shall cooperate with the Village in its efforts to comply with the Freedom of Information Act. 5 ILCS 140/1 et seq.