

VILLAGE OF DOWNERS GROVE
Report for the Village
3/15/2022

SUBJECT:	SUBMITTED BY:
A resolution amending the agreement between the Village of Downers Grove and Brycer, LLC	Scott Spinazola Fire Chief

SYNOPSIS

A resolution has been prepared authorizing the agreement between the Village of Downers Grove and Brycer, LLC.

STRATEGIC PLAN ALIGNMENT

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

FISCAL IMPACT

N/A

RECOMMENDATION

Approval on the March 15, 2022, consent agenda.

BACKGROUND

In July of 2012, the Village entered into an agreement with Brycer to maintain a database that stores all required life safety inspection reports. This service results in a more accurate and efficient system of tracking the inspections, as the reports are automatically uploaded into the database by the inspection companies as opposed to staff manually entering the data and preparing notices for overdue or deficient inspections.

The revised agreement provides for an additional call center service, which will include phone calls to the property owners that have overdue life safety inspections and it will automatically track all outstanding deficiencies. All scripts for the phone calls will be reviewed and approved by Village staff. The total cost for this service is a \$15 fee for each report, which represents a \$3.00 increase. This service has no cost to the Village and the fee is paid directly to Brycer by the service providers.

Key terms of the agreement include:

- Brycer shall create and maintain a database that includes all inspection results
- Brycer shall notify the Village of any violations or deficiencies in the inspection results
- Brycer shall charge service providers \$15 per report
- The term of the agreement is three years, which will automatically renew
- The Village shall own all data in the database

ATTACHMENTS

Resolution
 Agreement

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT BETWEEN
THE VILLAGE OF DOWNERS GROVE AND BRYCER, 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 Agreement (the “Agreement”), between the Village of Downers Grove (“Village”) and Brycer, LLC (“Brycer”), for an electronic database system “The Compliance Engine” related to filing Fire Prevention required reports, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village approved Resolution No. 2012-55 on July 17, 2012 approving execution of a Compliance Engine Agreement with Brycer, LLC for electronic database services and approved Resolution No. 2018-18 on March 13, 2018 authorizing an amendment to that agreement, and, as such, these Agreements will be declared null and void upon execution of this Agreement; and

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.

5. 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.

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

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

 Mayor

Passed:

Attest: _____
 Village Clerk

The Compliance Engine Agreement

This Agreement ("Agreement") is made and effective this _____ day of _____, 2022, by and between **Brycer, LLC** ("Brycer") and the **Village of Downers Grove** ("Village").

1. **Term:** Brycer is the owner of a prototype solution referred to as "The Compliance Engine" (the "Solution"), which provides the Village with information in an agreed upon format. Brycer will provide the Village with the Solution for three years, commencing _____ (the "Initial Term"). Thereafter, the Term shall automatically renew for successive three year period unless terminated by Brycer or the Village in writing at least 90 days prior to the expiration of the then current Term (each, a "Renewal Term" and together with the Initial Term, the "Term"). Following the expiration or termination of the Term, the Village shall stop using the Solution; provided, however, Brycer shall make available, and the Village shall have the right to download, Client's data from the Solution for a period of 30 days after the expiration or termination of the Term. The Village shall have the right to terminate this Agreement at any time upon a ninety (90) day written notice to Brycer.

2. **Fees:** The Village shall not pay any fees for use of the Solution. The fee of \$15 per fire protection system, per premises, per the frequency required by the Village, will remain at said fee unless otherwise authorized in writing by the Village Manager and Brycer. All fees will be paid by inspection, testing and maintenance contractors.

3. **Brycer Responsibilities:** During the Term, Brycer shall be responsible for the following in connection with the Village's use of the Solution:

- **Availability.** Brycer shall make the Solution available to the Village twenty-four (24) hours per day on each business day during the term of this Agreement. The Solution shall be fully functional, timely and accessible by the Village at least 99.5% of the time or better and Brycer shall use reasonable efforts to provide the Village with advance notice of any unscheduled downtime.
- **Service Level.** Brycer shall provide commercially reasonable levels of customer service with respect to the Solution to all third parties who transact business with the Village and access the Solution. Brycer shall respond to telephone calls from the Village within two hours of the call and/or message and all emails from the Village within two hours of the receipt of the email. Customer support hours are from 8:00AM to 6:00PM CST, five (5) business days a week, excluding holidays. The toll free number is 1-855-279-2371. Brycer will assign the Village a dedicated customer representative with direct access to their email, work number and cell phone.
- **Backup.** Brycer shall backup the database used in connection with the Solution to a separate server located within the same web hosting firm which the Solution is being hosted on a real time basis. Upon request by the Village (which can be no more than once a month) or made prior to or within sixty (60) days after the effective date of termination of the Term, Brycer will make available to the Village a complete and secure (i.e. encrypted and appropriately authenticated) download file of the Village data in XML format including all schema and transformation definitions with attachments in their native format. Brycer shall maintain appropriate administrative, physical and technical safeguards for

protection of the security, confidentiality and integrity of the Village data. Brycer shall not (a) modify the Village data (b) disclose the Village's data except as required by law.

- ***Retention of Information.*** Brycer will maintain active all information entered into the database by third party inspectors for at least five (5) years from the time such information is entered into the database. It is expressly understood that Brycer will not destroy any Village information unless directed to do so by the Village in writing.
- ***Notices.*** Brycer will be responsible for generating and delivering the following notices to third parties in connection with the Solution: (a) reminders of upcoming inspections that are due; (b) notices that an inspection is past due; and (c) notices of completed inspection reports which contain one or more deficiencies.
- ***Call Center.*** Phone calls by Brycer on behalf of the Client to the property for each life-safety system overdue for service based upon dates automatically tracked with the TCE database. Brycer is not an agent of the Village and all scripts for the overdue calls will be approved by the Village.
- ***Updates and Enhancements.*** In the event Brycer releases any updates, corrections, or enhancements to the Solution during the Term, Brycer shall promptly provide such updates or corrections to the Village free of any charge or fee.

4. **Village Responsibilities:** During the Term, the Village shall be responsible for the following in connection with the Village's use of the Solution:

- ***Operating System.*** The Village shall be solely responsible for providing a proper operating environment, including computer hardware or other equipment and software, for any portion of the Solution installed on the Village's equipment (the "Client Access Software") and for the installation of network connections to the Internet. In addition to any other Client Access Software requirements, the Village must use version Internet Explorer 7.0, Firefox version 3, Chrome 2 or Safari 4 (or more recent versions), in addition to having a .pdf reader installed on machines to view attachments.
- ***Training.*** The Village shall allow Brycer at the Village's facilities to train all applicable personnel of the Village on the use of the Solution.
- ***Information.*** The Village shall promptly provide Brycer with all appropriate information necessary for Brycer to create the database for the Solution, including without limitation: (a) all commercial building addresses within Downers Grove for Brycer's initial upload; and (b) quarterly updates in a format acceptable to Brycer in its discretion.
- ***Ordinances.*** The Village shall take all actions necessary to amend all ordinances, codes, regulations and other applicable laws to require the use of the Solution by third party inspectors.

5. **Ownership of Data.** Village owns all the data provided by the Village and received from third party contractors for Village. Brycer shall maintain appropriate administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of Village's data.
6. **Use of Logos.** During the term of this Agreement, Brycer shall have the right to use the Village's logos for the sole purpose of providing the Solution to the Village.
7. **Brycer Warranty.** Brycer represents and warrants to the Village that Brycer has all rights necessary in and to any patent, copyright, trademark, service mark or other intellectual property right used in, or associated with, the Solution, and that Brycer is duly authorized to enter into this Agreement and provide the Solution to Client pursuant to this Agreement.
8. **Notices.** All notices required in the Agreement shall be effective: (a) if given personally, upon receipt; (b) if given by facsimile or electronic mail, when such notice is transmitted and confirmation of receipt obtained; (c) if mailed by certified mail, postage prepaid, to the last known address of each party, three business days after mailing; or (d) if delivered to a nationally recognized overnight courier service, one business day after delivery.
9. **Assignment.** The Agreement may not be assigned or transferred by either party without the prior written of the other party and any purported transfer in violation of this section shall be null and void. The Agreement shall be binding upon and inure to the benefit of the parties thereto and their respective successors and representatives.
10. **Independent Contractor.** Nothing in the Agreement may be construed or interpreted as constituting either party hereto as the agent, principal, employee or joint venturer of the other. Brycer is an independent contractor. Neither may assume, either directly or indirectly, any liability of or for the other party. Neither party has the authority to bind or obligate the other party and neither party may represent that it has such authority.
11. **Jurisdiction and Venue.** The agreement shall be governed by, construed and interpreted in accordance with, and enforceable under, the laws of the state of Illinois applicable to contracts made in Illinois and that are to be wholly performed in Illinois without reference to the choice-of-law principles of Illinois. The parties irrevocably agree that all actions or proceedings in any way, manner or respect arising out of or from or related to the agreement shall be litigated only in courts located within the County of DuPage, State of Illinois. The parties hereby waive any rights they may have to transfer or change venue of any such action or proceeding arising out of or relating to this agreement.
12. **Amendment.** The Agreement may not be altered or modified, except by written amendment which expressly refers to the Agreement and which is duly executed by authorized representatives of both parties. The waiver or failure by either party to exercise or enforce any right provided for in the Agreement shall not be deemed a waiver of any further right under the Agreement. Any provision of the Agreement held to be invalid under applicable law shall not render the Agreement invalid as a whole, and in such an event, such provision shall be interpreted so as to best accomplish the intent of the parties within the limits of applicable law. The Agreement may be executed by facsimile and in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
13. **Expiration.** The rights and obligations contained in these Terms and Conditions shall survive any expiration or termination of the Agreement.

14. **Campaign Disclosure.** Brycer shall execute the Campaign Disclosure Certificate, attached hereto as Exhibit A. 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. 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.

By signing the bid documents, contractor/Contractor/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.

15. **Patriot Act Compliance.** Brycer 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. Brycer further represents and warrants to the Village that Brycer 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 Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person. Brycer 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.

16. **Nondiscrimination.**

Brycer 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) Brycer certifies that he 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.

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. Contractor 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 5/1-101 et. seq., and The Americans With Disabilities Act, 42 U.S.C. Secs. 12101 et. seq.

17. **Sexual Harassment Policy.**

Brycer, as a party to a public contract, shall have a written sexual harassment policy that:

- 14.1.1 Notes the illegality of sexual harassment;
- 14.1.2 Sets forth the State law definition of sexual harassment;
- 14.1.3 Describes sexual harassment utilizing examples;
- 14.1.4 Describes Brycer's internal complaint process including penalties;
- 14.1.5 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
- 14.1.6 Describes the protection against retaliation afforded under the Illinois Human Rights Act.

18. **Equal Employment Opportunity.**

In the event of Brycer'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"), Brycer 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, Brycer agrees as follows:

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 handicap unrelated to ability, 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.

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.

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 handicap unrelated to ability, or an unfavorable discharge from military services.

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 Contractor'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 Contractor in its efforts to comply with such Act and Rules and Regulations, the Contractor will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.

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.

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.

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 Contractor 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 Contractor 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 subdivision or municipal corporations.

19. **Drug Free Work Place.**

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

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 Contractor'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.

Establishing a drug free awareness program to inform employee's about: (1) the dangers of drug abuse in the workplace; (2) the Village's or Contractor'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.

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.

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 no later than five (5)

days after such conviction from an employee or otherwise receiving actual notice of such conviction.

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.

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.

Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

20. **Entire Agreement.** The Agreement sets out the entire agreement between the parties relative to the subject matter hereof and supersedes all prior or contemporaneous agreements or representations, oral or written.

IN WITNESS WHEREOF, the parties hereto have executed this Compliance Engine Agreement as of the date first above written.

VILLAGE OF DOWNERS GROVE

BRYCER

BY: _____
Village Manager

BY: Matthew B. T. 2

ATTEST:

Village Clerk

ATTEST:


I:\mw agr 22\Brycer

EXHIBIT A
CAMPAIGN DISCLOSURE CERTIFICATE

Any contractor, Contractor, bidder or vendor who responds by submitting a bid or proposal to the Village of Downers Grove shall be required to submit with its bid submission, an executed Campaign Disclosure Certificate, attached hereto.

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.

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.

By signing the bid documents, contractor/Contractor/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.

Under penalty of perjury, I declare:

- Bidder/vendor has not contributed to any elected Village position within the last five (5) years.

Matthew B. Rice

Signature

Matthew B. Rice

Print Name

- Bidder/vendor has contributed a campaign contribution to a current member of the Village Council within the last five (5) years.

Print the following information:

Name of Contributor: _____
(company or individual)

To whom contribution was made: _____

Year contribution made: _____ Amount: \$ _____

Signature

Print Name