



MEMORANDUM

TO: Village Administrator Ergo
FROM: Administrative Services Manager Spencer
DATE: June 29, 2020
SUBJECT: Renewing a Contract with GovTemps USA, LLC for the provision of Human Resources Support Services

INTRODUCTION

The purpose of this Resolution is to authorize the Mayor or his designee to renew a contract with GovTemps USA, LLC for the provision of Human Resources Support Services for a period of six (6) additional months.

DISCUSSION

On June 4, 2019, the Village Board entered into a contractual agreement with GovTemps USA, LLC for the provision of Human Resources Support Services for a period of six (6) months, with the option to extend for up to six additional months upon mutual agreement. At this time, I find the addition of the support person to be beneficial to the operation of the HR Department as she prepares payroll, assists in the oversight of all fringe benefit programs, and lends support on more complex projects. She currently works part-time at approximately 22 hours per week; this schedule meets the needs of the staff and department.

FISCAL IMPACT

The budget for the vacant position of HR Manager is sufficient to cover the cost of this contractual arrangement.

STAFF RECOMMENDATION

Staff recommends the item be forwarded to the Committee of the Whole on July 7, 2020 for consideration and approval.

EMPLOYEE LEASING AGREEMENT

THIS EMPLOYEE LEASING AGREEMENT (this "Agreement") is made by GOVTEMPSUSA, LLC, an Illinois limited liability company ("GovTemps"), and the Village of Itasca (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:

SECTION 1 SCOPE OF AGREEMENT

Section 1.01. Worksite Employee. The Municipality will lease certain employees of GovTemps, and GovTemps will lease to the Municipality, the personnel identified in attached Exhibit A, (the "Worksite Employee"). **Exhibit A** identifies the employment position and/or assignment (the "Assignment") the Worksite Employee will fill at the Municipality, and it further identifies the base compensation 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 has 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. Any such request will not be unreasonably withheld by GovTemps. The Parties understand and acknowledge that the Worksite Employee is subject to the Municipality's day-to-day supervision.

Section 1.02. Independent Contractor. GovTemps is and remains an independent contractor, and not an employee, agent, partner of, or joint venturer with, the Municipality. GovTemps has 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 will timely pay the wages and related payroll taxes of the Worksite Employee from GovTemp's own account in accordance with federal and Illinois law and GovTemps' standard payroll practices. GovTemps will withhold from such wages all applicable taxes and other deductions elected by the Worksite Employee. The Municipality 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) wages and related payroll taxes pursuant to this Section 2.01, and (ii) Fees pursuant to Section 3.

Section 2.02. Workers' Compensation. To the extent required by applicable law, GovTemps will maintain in effect workers' compensation coverage covering any Worksite Employee under this Agreement.

Section 2.03. Employee Benefits. GovTemps will provide to Worksite Employee those employee benefits identified in the attached **Exhibit B**. 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 3.1 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 any of the Worksite Employee(s). GovTemps will retain control of such records and make them available for inspection as required by applicable federal, state or local laws.

Section 2.05. Other Obligations of GovTemps. GovTemps will comply with any federal, state and local law applicable to its Worksite Employee(s). GovTemps will comply with the requirements of the federal Patient Protection and Affordable Care Act (ACA).

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 1.1. The Worksite Employee(s) will be supervised, directly and indirectly, and exclusively by the Municipality's supervisory and managerial employees.

Section 2.07. Obligations of the Municipality. Pursuant to this Agreement the Municipality covenants, agrees and acknowledges:

(a) The Municipality will provide the Worksite Employee with a suitable workplace, that complies with US Occupational Safety and Health Administration (“OSHA”) statutes and regulations, and all other health and safety laws, regulations, ordinances, directives, and rules applicable to the Worksite Employee and the Worksite Employee’s workplace. The Municipality agrees to comply, at its expense, with all health and safety directives from GovTemps’ internal and external loss control specialists, GovTemps’ workers’ compensation carrier, or any government agency having jurisdiction over the place of work. The Municipality will provide and ensure use of all functional 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/or its insurance carriers have the right to inspect the Municipality’s premises to ensure that the Worksite Employee is not exposed to an unsafe work place. GovTemps’ rights under this paragraph do not diminish or alter the Municipality’s obligations to the Worksite Employee under applicable law, or its obligations to GovTemps under this Agreement;

(b) With respect to the Worksite Employees, the Municipality will 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 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;

(c) The Municipality retains 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 to comply with any applicable licensure, regulatory or statutory requirements;

(d) The Municipality cannot remove or reassign the Worksite Employee unless mutually agreed to in writing by GovTemps and the Municipality in accordance with Section 1.1 of this Agreement. Municipality will confer with GovTemps regarding any concern or complaint regarding a Worksite Employee's performance or conduct under this Agreement;

(e) The Municipality will not pay wages, salaries or other forms of direct or indirect compensation, including employee benefits, to Worksite Employee. Municipality represents that its actions under this Agreement do not violate its obligations it may have under any collective bargaining agreement;

(f) The Municipality must 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 will follow the procedures and practices regarding injury claims and reporting; and

(g) The Municipality must report all on the job illnesses, accidents and injuries of the Worksite Employee to GovTemps within twenty-four (24) hours following notification of said injury by employee or employee's representative.

SECTION 3 FEES PAYABLE TO GOVTEMPS

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

(a) The base compensation as fully identified on **Exhibit A**, as amended; plus

(b) Any employee benefits GovTemps paid to the Worksite Employee as identified on **Exhibit B** (if applicable), 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. GovTemps may also adjust employer benefit contribution amounts by providing the Municipality with a written thirty (30) day notice, provided, such changes in employer benefit contribution amounts apply broadly to all GovTemps employees.

Section 3.03. Payment Method. Every two (2) weeks during the term of this Agreement, GovTemps will invoice in writing the Municipality for the fees owed under this Agreement. Within thirty (30) days following receipt of such invoice, the Municipality 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 Municipality, 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 must 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. In the alternative, as applicable, the Municipality may maintain in full force and effect at all times during the term of this Agreement a self-insured retention ("SIR") which provides the same minimum coverage limits as set forth above. In the event such SIR exists and applies to this Agreement, the Municipality agrees to fully discuss the SIR's parameters with GovTemps and its relationship to the Policies. At a minimum, the Policies must 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.

Section 4.02. Certificate of Insurance. Upon request, the Municipality will promptly issue to GovTemps 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 their Assignment, the Municipality must maintain in effect automobile liability insurance which insuring 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. Term and Effective Date. The Effective Date of this Agreement is the date that this Agreement is last signed by GovTemps on the signature page (the "Effective

Date”). The period during which the Worksite Employee works at the Municipality is defined as the (“Term”). 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 will be of no further effect. If such failure is not remedied within the ten (10) day period, GovTemps has 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 must give the breaching Party written notice of its intent to terminate this Agreement for such breach and if such breach is remedied within ten (10) days, the notice will be of no further effect. If such breach is not remedied within the ten (10) day period, the non-breaching Party has the right to immediately terminate the Agreement upon expiration of such remedy period.

Section 5.04. 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 (2) weeks of the Worksite Employee’s gross salary to GovTemps no later than thirty (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 will not solicit, request, entice or induce Worksite Employee to terminate their employment with GovTemps, and the Municipality will not hire Worksite Employee as an employee. If a Temp-to-Hire option provided for in Section 5.04 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 is entitled to equitable relief, including a temporary restraining order and preliminary and permanent injunctive relief, to prevent or enjoin a breach of Section 6.1 of this Agreement. The Municipality also understands and agrees that any such equitable relief is in addition to, and not in substitution for, any other relief to which GovTemps can recover.

Section 6.03. Survival. The provisions of Section 6 survive the expiration or 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 GovTemps 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, and (c) arising from any act or omission on the part of the Municipality or any of the Municipality Parties.

Section 7.03. Indemnification Procedures. The Party seeking indemnity (the "Indemnified Party") from the other Party (the "Indemnifying Party") pursuant to this Section 7, must 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 demonstrates 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 must 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 is 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 will 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 was materially prejudiced by the Indemnified Party's failure to timely give such notice.

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

SECTION 8 MISCELLANEOUS 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 the Parties to this Agreement, except for changes to the fees as set forth in Section 3.

Section 8.02. Binding Effect. This Agreement inures to the benefit of and binds the Parties and their respective heirs, successors, representatives and assigns. Neither Party may assign its rights or delegate its duties under this Agreement without the express written consent of the other Party, which consent will not be unreasonably withheld.

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

Section 8.04. Entire Agreement. This Agreement constitutes the entire agreement between the Parties regarding GovTemps; placement of the Worksite Employee with 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 Effective Date of this Agreement not specifically identified and incorporated in writing into this Agreement. No agent or representative of either Party has the authority to make, and the Parties will not be bound by or liable for, any statement, representation, promise, or agreement not specifically set forth in this Agreement.

Section 8.05. Further Assurances. The Parties will execute and deliver any and all additional papers, documents, and other assurances and do any and all acts and things reasonably necessary in connection with the performances of their obligations under this Agreement.

Section 8.06. Gender. Whenever the context herein so requires, the masculine, feminine or neuter gender and the singular and plural number include the other.

Section 8.07. Section Headings. Section and other headings contained in this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement.

Section 8.08. 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 will continue to be effective as though such void, invalid or inoperative part, clause or condition had not been made.

Section 8.09. 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 8.10. Confidentiality. Each Party will protect the confidentiality of the other's records and information and must not disclose confidential information without the prior written consent of the other Party. Each Party must reasonably cooperate with the other Party regarding any Freedom of Information Act (FOIA) request calling for production of documents related to this Agreement.

Section 8.11. Governing Law. This Agreement will 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.

Section 8.12. Force Majeure. GovTemps will not be responsible for failure or delay in assigning its Worksite Employee to Municipality if the failure or delay is caused by labor disputes and strikes, fire, riot, terrorism, acts of nature or of God, or any other causes beyond the control of GovTemps.

SECTION 9 DISPUTE RESOLUTION

Section 9.01. Good Faith Attempt to Settle. The Parties will attempt to settle any dispute arising out of or relating to this Agreement, or the breach thereof, through good faith negotiation between the Parties.

Section 9.02. Governing Law/Jurisdiction. If a dispute cannot be settled through good faith negotiation within thirty (30) days after the initial receipt by the allegedly offending party of written notice of the dispute, then the controversy or claim may be adjudicated by a federal or state court sitting in Cook County, Illinois. Venue and jurisdiction for any action under this Agreement is Cook County, Illinois. This Agreement and any amendments hereto will be governed by and construed in accordance with the laws of the State of Illinois.

Section 9.03. Attorneys' Fees. The Parties agree that, in the event of litigation under this Agreement, each Party is liable for only those attorneys' fees and costs incurred by that Party.

SECTION 10 NOTICES

Section 10.01. Notices. All Notices given under this Agreement must be written and may be given by personal delivery, first class U.S. Mail, registered or certified mail return receipt requested, overnight delivery service, or electronic mail.

Notices will be deemed received at the earlier of actual receipt or three (3) days from mailing date. Notices must be sent 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.

If to GovTemps:

GOVTEMPSUSA, LLC
630 Dundee Road Suite 130
Northbrook, Illinois 60062
Attention: Michael J. Earl
Telephone: 224-261-8366
Electronic Mail: mearl@govhrusa.com

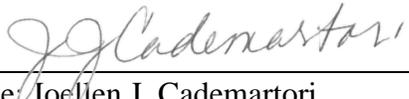
If to the Municipality:

VILLAGE OF ITASCA
550 W. Irving Park Rd.
Itasca, Illinois 60143
Attention: Carie Anne Ergo
Telephone: 224-330-5263
Electronic Mail: cergo@itasca.com

[Signatures on following page]

IN WITNESS WHEREOF, the Parties executed this Agreement on the Effective Date, which is the date this Agreement is last signed by GovTemps.

GOVTEMPSUSA, LLC,
an Illinois limited liability company

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

Effective Date: July 22, 2020

MUNICIPALITY

By _____
Name: _____
Title: _____

EXHIBIT A
Worksite Employee and Base Compensation

WORKSITE EMPLOYEE: Kathy Katz

POSITION/ASSIGNMENT: Interim HR Manager

POSITION TERM: July 22, 2020 – January 22, 2021. Assignment may be extended for up to an additional six (6) months (July 23, 2021) based on mutual agreement of affected parties.

BASE COMPENSATION: \$56 per hour only for hours worked. Hours per week will vary and are estimated at 16-24 hours. The Municipality agrees to notify GovTemps of hours worked via email at payroll@govtempusa.com by the close of business on the Monday following the prior work week.

GOVTEMPSUSA, LLC.:

MUNICIPALITY:

By: 

By: _____

Date: 6/30/2020

Date: _____

This Exhibit A-1 fully replaces all Exhibits A-1 dated prior to the date of the Company's signature above.

EXHIBIT B
Summary of Benefits

Does Not Apply

RESOLUTION NO. 1220-20

A RESOLUTION EXTENDING THE EXISTING AGREEMENT WITH GOVTEMPSUSA FOR TEMPORARY HUMAN RESOURCES SUPPORT SERVICES

WHEREAS, the Village of Itasca (“Village”) requires outside professional assistance with human resource services and has been using GovTempsUSA to provide such services since June 2019 (Resolution No. 1124-19); and

WHEREAS, the Village is satisfied with the services from GovTempsUSA and wants to extend the existing agreement with GovTempsUSA until January 31, 2021,

NOW, THEREFORE, BE IT RESOLVED by the President and the Board of Trustees of the Village of Itasca, DuPage County, Illinois, as follows:

SECTION ONE: The corporate authorities of the Village of Itasca hereby authorize an extension of the existing contract with GovTempsUSA until January 31, 2021.

SECTION TWO: The Village President, or his designee, is hereby authorized to execute any documents necessary to extend the existing contract with GovTempsUSA until January 31, 2021.

SECTION THREE: SEVERABILITY. If any section, paragraph, or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision shall not affect any of the remaining provisions of this Resolution.

SECTION FOUR: REPEAL OF PRIOR RESOLUTIONS. All prior Resolutions and Ordinances in conflict or inconsistent herewith are hereby expressly repealed only to the extent of such conflict or inconsistency.

SECTION FIVE: EFFECTIVE DATE. This Resolution shall be in effect immediately from and after its passage and approval.

AYES: _____

NAYES: _____

ABSENT: _____

ABSTAIN: _____

APPROVED and ADOPTED by the Village President and Board of Trustees of the Village of Itasca this 21st day of July 2020.

APPROVED:

ATTEST:

Village President Jeffery J. Pruyn

Village Clerk Jody Conidi