

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

_____ Resolution or Ordinance (Blue) _____ *Waiver of First Requested*
_____ Recommendations of Boards, Commissions & Committees (Green)
 X Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: Scott Niehaus, Village Manager

DATE: March 23, 2022 (COW)(B of T) April 7, 2022

TITLE: Motion to Waive Bids and Authorize the Village Manager or Human Resources Director to Contract with GovTemps, USA for Temporary Employee Services as Needed, NTE \$120,000 Annually for the Next (3) Three Years

SUBMITTED BY: Kathleen Dunne, HR Director

FISCAL IMPACT:

Amount of Award: NTE \$120,000 per year (101.120.510.75350)

BACKGROUND/POLICY IMPLICATIONS:

GovTemps, USA is currently providing coverage to the Human Resources, Clerk's Office and Community Development Departments. These agreements will need to be extended in order to continue services from GovTemps, USA. We are requesting to have Board authority to spend up to \$120,000 annually for temporary services that we can utilize for all departments if needed throughout the year. This would allow all departments to seek temporary coverage if needed during the year dues to staffing issues.

RECOMMENDATION:

Staff recommends the Village Board of Trustees authorize the Village Manager or Human Resources Director to contract with GovTemps, USA for temporary employee services as needed, NTE \$120,000 annually for the next (3) three years

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X Scott Niehaus _____ Date 3/30/22

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



MEMO TO: Scott Niehaus
Village Manager

FROM: Kathleen Dunne
Director of Human Resources

DATE: March 23, 2022

SUBJECT: GovTemps, USA Agreements

The Village has been utilizing the services of GovTemps, USA for several years. They have provided excellent assistance for the Village when we have vacant positions. Outsourced placements provide the Village the flexibility to utilize professionals that are employed by GovTempsUSA. These individuals are placed in a local government position, but are retained as employees of GovTempsUSA. This option eliminates many of the expenses associated with retaining public sector employees. Previously selected candidates may be placed, or the firm can assist the local government through a targeted outreach to locate the right candidate to perform specified work. This option eliminates both the administrative process, and costs associated with the recruitment and selection process.

Interim staffing has played a critical role in filling the workload gaps for the Village of Lombard. This temporary staffing solution has allowed management time to strategically reorganize certain positions due to technology improvements implemented over the past 5 to 10 years. In some instances, the Village has hired the temporary employee after determining that the employee made a good fit with the necessary skills within the division.

GovTemps, USA is currently providing coverage to the Human Resources, Clerk's Office and Community Development departments. These agreements will need to be extended in order to continue services from GovTemps, USA. In addition, the Village is finding it difficult to fill positions with quality candidates due to competition from other municipalities and the private sector. HR departments are fighting employee burnout, resignations for a variety of reasons, and accelerated retirement rates.

The Village of Lombard saved a total of \$36,064 over the past two years (2020 and 2021) by not immediately filling open positions and using GovTemp employees to provide support. However, GovTemp employees worked approximately 804 less hours than budgeted for the positions covered. If the GovTemp employees had worked the 804 hours, it would have cost the Village an additional \$38,281.62 (approx. \$2.2K more than the total saved). Therefore, the use of this interim staffing has had no negative impact on the

Village budget each year. The primary benefit for the Village to use GovTemp employees is the flexibility and staffing assistance, and the time needed to review operations and positions when vacancies arise.

Due to the reasons discussed in this memo, we are requesting to have Board authority to spend up to \$120,000 annually for temporary staffing services that we can utilize for all departments if needed throughout the year. This would allow all departments to seek temporary coverage if needed during the year due to staffing issues.

Thank you in advance for your consideration. If you should have any questions, or would like additional information, please do not hesitate to contact me.

EMPLOYEE LEASING AGREEMENT

THIS EMPLOYEE LEASING AGREEMENT (this "Agreement") is made by **GOVTEMPSUSA, LLC**, an Illinois limited liability company ("GovTemps"), and **THE VILLAGE OF LOMBARD** (the "Municipality"). GovTemps and the Municipality can be individually identified as a ("Party") and collectively as the ("Parties"). GovTemps and the Client agree as follows:

RECITALS

The Municipality desires to lease certain employees of GovTemp to assist the Municipality in its operations and GovTemp 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 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, such request shall not be unreasonably withheld by GovTemps. 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. 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 GOVTEMP AND MUNICIPALITY

Section 2.01. Payment of Wages. GovTemps shall timely pay the wages and related payroll taxes of the Worksite Employee from GovTemps' own account in accordance with federal and Illinois law and GovTemps 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) wages and related payroll taxes pursuant to this Section 2.01, 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 any of 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 any federal, state and local law that may apply to its Worksite Employee(s).

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 employee leasing relationship, 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 GovTemps internal and external loss control specialists, GovTemps workers' compensation carrier, or 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 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 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 shall immediately make available an appropriate light duty work assignment for such Worksite Employee to the extent required or permitted by any applicable law; and

(g) The Municipality shall 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 GOVTEMP**

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; 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. 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. Following the close of each month during the term of this Agreement, GovTemps shall provide the Municipality a written invoice for the fees owed by the Municipality pursuant to this Agreement for the prior month. Within thirty (30) days following receipt of such invoice, the Municipality shall pay all invoiced amounts by check, wire transfer or electronic funds transfer to GovTemp to an account or lockbox as designated on the invoice.

**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.

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 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 Assigned Employee works at the Client 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 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 of Agreement to execute Temp-to-Hire Arrangement. At the end of the term of the agreement, as outlined in Section 5.01, the Municipality may hire the Employee as a permanent employee of the Municipality. If the Municipality exercises this option, the sum of two weeks gross salary is payable to GovTempsUSA, LLC within thirty (30) days of the permanent employment date. If the Municipality does not exercise the Temp-to-Hire Arrangement by the end of the contract, as outlined in Section 5.01, it agrees not to extend an offer of employment to the Employee for two years after the conclusion of this agreement. If an offer is made within two years after the conclusion of this agreement, as outlined in Section 5.01, then the two weeks gross salary fee is payable to GovTempsUSA, LLC within thirty (30) days of the permanent employment date.

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.

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 GovTempss 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 GovTemp 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 GovTempss. 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 GovTempss and its related business entities, their agents, representatives, and employees (the "GovTemp 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 GovTemp 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, including without limitation, the Worksite Employee workers' compensation claims, 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 GovTemps 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, except for changes to the fees as set forth in Section 3.

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 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.

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.

Section 8.14. Arbitration.


(a) Negotiation/Arbitration Process. 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. If settlement cannot be reached through good faith negotiation within thirty (30) days after the initial receipt by the allegedly offending party of written notice of the dispute, the controversy or claim shall be settled by binding arbitration conducted before a single arbitrator who is knowledgeable in employment law. Either party may submit the dispute to arbitration. The arbitration will be conducted in accordance with the then applicable rules and regulations of the American Arbitration Association ("AAA"). The arbitration will be held in Cook County, Illinois. The arbitrator shall be mutually agreed upon by the parties, but if they are unable to agree on an arbitrator, the arbitrator shall be appointed by AAA. All arbitration proceedings shall be closed to the public and confidential. All records relating thereto shall be permanently sealed, except as necessary to obtain court confirmation of the arbitrator's decision.

(b) Arbitration Award. The arbitrator will be bound by the terms and conditions of this Agreement and shall have no power, in rendering his or her award, to alter or depart from any express provision of this Agreement, and his or her failure to observe this limitation shall constitute grounds for vacating the award. Except as otherwise provided in this Agreement, the arbitrator shall apply the law specified in Section 8.3. The arbitrator will not be empowered to award punitive damages except for willful misconduct. The award of the arbitrator shall be final and binding upon the parties and judgment upon the award may be entered in any court having jurisdiction thereof.

[Signatures on following page]

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

GOVTEMPUSA, LLC,
an Illinois limited liability company

By 
Name: Joellen J. Cademartori
Title: President/Co-owner

EFFECTIVE DATE: February 28, 2022

MUNICIPALITY

By _____
Name: _____
Title: _____

EXHIBIT A
Worksite Employee and Base Compensation

WORKSITE EMPLOYEE: Kathleen Tomazin

POSITION/ASSIGNMENT: Interim Admin. Assistant

POSITION TERM: February 28, 2022 – July 29, 2022

The agreement will continue in two-week increments until December 2, 2022 unless either party provides two week's advance written notice to terminate the agreement.

BASE COMPENSATION: \$44.10/hour. Hours per week will vary and are estimated at 20 hours/ week. Worksite employee shall be paid only for hours worked. Hours should be reported via email to payroll@GovTempssusa.com on the Monday after the prior work week.

The Municipality will be invoiced every other week for hours worked.

GOVTEMPUSA, INC.:

By: 

Date: February 25, 2022

MUNICIPALITY:

By: _____

Date: _____

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

EXHIBIT B
Summary of Benefits

Not applicable.