

City Council Committee of the Whole Agenda Cover Memorandum

Meeting Date: January 23, 2012

Item Title: Agreement with GovTemps for Human Resource Services

Action Requested:

- Approval
- For discussion
- Feedback requested
- For your information

Staff Contact: Juliana A. Maller, Deputy City Manager
Phone Number: 847/318-5206
Email Address: jmaller@parkridge.us



Background:

Attached is an agreement with GovTemp USA to provide the City with a temporary Human Resources Manager for the period January 24, 2012 to April 27, 2011, with an option to renew for an additional 13 weeks.

The position of Human Resources Manager became vacant on January 13, 2012. Michael Suppan, former Director of Human Resources with the City of Joliet will work on a temporary basis as Human Resources Manager. During this time we will advertise and look to hire a permanent Human Resources Manager.

Recommendation:

Move approval of agreement with GovTemp USA for temporary Human Resources services. Contract amount is \$26,325. City will pay travel expenses outside of the contract.

Budget Implications:

Does Action Require an Expenditure of Funds: Yes No
If Yes, Total Cost: \$27,625
If yes, is this a Budgeted Item: Yes No

Attachments:

- Employment Leasing Agreement
- M. Suppan Resume

EMPLOYEE LEASING AGREEMENT

THIS EMPLOYEE LEASING AGREEMENT (this "Agreement") is made this 23th day of January 2012 ("Effective Date") by and between **GOVTEMPUSA, LLC**, an Illinois limited liability company ("GovTemp"), and **City of Park Ridge** (the "Municipality") (GovTemp and the Municipality may be referred to herein individually as "Party" and collectively as the "Parties").

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 GovTemp to provide, and GovTemp 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 GovTemp and the Municipality. GovTemp shall have the authority to remove the Worksite Employee, upon 5 day's written notice to the municipality provided, however, that immediately upon such removal, the Municipality shall have no further obligation to pay GovTemp any sums under this agreement. The Municipality, may request, in writing, that GovTemp remove or reassign the Worksite Employee upon 5 day's written notice to GovTemps., such request shall not be denied by GovTemp. In the event of the removal of the Worksite Employee, based on the municipality's request, GovTemp shall have the right to provide a replacement with similar qualifications and experience and the obligations of the Municipality pursuant to this agreement shall continue in full force and effect. If such replacement is not provided within the 5 day period or some other agreed upon time frame, the Municipality shall have no further obligations pursuant to this Agreement. 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. GovTemp is and shall remain an independent contractor, and not an employee, agent, partner of, or joint venturer with, the Municipality. GovTemp 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. GovTemp shall 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 GovTemp's standard payroll practices. GovTemp shall withhold from such wages all applicable taxes and other deductions elected by the Worksite Employee. GovTemp shall timely forward all deductions to the appropriate recipient as required by law. The Municipality hereby acknowledges that GovTemp 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, GovTemp shall maintain and administer workers' compensation, safety and health programs. GovTemp 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. GovTemp shall provide to Worksite Employee those employee benefits fully identified on **Exhibit B** hereto. GovTemp 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 the hourly fee payable to GovTemp under Section 3.01 of this Agreement.

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

Section 2.05. Other Obligations of GovTemp. GovTemp 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 GovTemp's internal and external loss control specialists, GovTemp's 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 GovTemp's workers' compensation carrier. GovTemp and GovTemp's 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 GovTemp's rights under this paragraph affect the Municipality's obligations to the Worksite Employees under applicable law or to GovTemp 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

(d) The Municipality shall not have the right to remove or reassign the Worksite Employee 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 GovTemp 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 GovTemp shall follow generally accepted procedures and practices regarding injury claims and reporting including, but not limited to, the conduct of an on-site investigation of the injury; and

(g) The Municipality shall report all on-the-job illnesses, accidents and injuries of the Worksite Employee to GovTemp 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 GovTemp fees for the services provided under this Agreement as follows:

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

Section 3.02. Increase in Fees. GovTemp 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. Following the close of each month during the term of this Agreement, GovTemp shall provide the Municipality a written invoice for the fees owed by the Municipality pursuant to this Agreement for the prior month. Within ten (10) 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 its current Comprehensive (or Commercial) General Liability and Professional Liability (if applicable) insurance policy or policies (the "Policies"). 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 GovTemp 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, GovTemp 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. This Agreement shall become effective on January 24, 2012 and shall continue in effect thereafter for a period of thirteen weeks (April 27, 2012), with an option to renew for up to an additional thirteen weeks (July 27, 2012) as long as there is agreement between the Parties and the Worksite Employee, or until it is terminated in accordance with the remaining provisions of this Section 5. For the purposes of the Agreement, the date on which this Agreement expires and/or is terminated shall be referred to as 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, GovTemp 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, GovTemp 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 6 NON-SOLICITATION

Section 6.01. Non-Solicitation. The Municipality acknowledges GovTemp's 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 GovTemp, 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 GovTemp 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 GovTemp. GovTemp 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 GovTemp's breach of its obligations under this Agreement, (b) related to the actions or conduct of GovTemp 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 GovTemp or any of the GovTemp 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, 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, 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 GovTemp's 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 GovTemp:

GOVTEMPUSA, LLC
500 Lake Cook Road
Suite 350
Deerfield, Illinois 60015
Attention: Joellen C. Earl
Telephone: 847-580-4246
Facsimile: 847-256-7298

If to the Municipality:

City of Park Ridge
505 Butler Place
Park Ridge, IL 60068
Attention: James D. Hock
Telephone: 847-318-5205
Facsimile: 847/318-5300

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.

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 Lake 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 C. Earl
Title: President/Co-owner

MUNICIPALITY

By _____
Name: James D. Hock
Title: City Manager

EXHIBIT A
Worksite Employee and Base Compensation

WORKSITE EMPLOYEE: Michael D. Suppan

POSITION/ASSIGNMENT: Interim Human Resources Manager

COMPENSATION: \$54.00 per hour, based on 37.5 hours per week or
\$2,025 per week. This shall be the full amount owed by the Municipality and
shall include any and all GovTemp fees and benefits. The number of hours may
be reduced by the City with written notice to GovTempsUSA, LLC via
email at payroll@govtempusa.com by the close of business on the Monday after
the prior work week. Employee will be paid weekly for hours worked only,
weekly salary will be reduced for City holidays and other requested time off by
the Employee and approved by the City. City agrees to notify GovTemps
USA, LLC of any reduction in hours as outlined in this paragraph; otherwise,
Employee will be paid for a full work week. City will be invoiced every other
week for hours worked.

GOVTEMPUSA, INC.:

MUNICIPALITY:

By: _____

By: _____

Date: _____

Date: _____

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

RESUME FOR MICHAEL D. SUPPAN

EMPLOYMENT RECORD

Director of Human Resources Feb. 1998 – Feb. 2010 City of Joliet

Responsibilities: Oversee the entire Human Resources function for the City of Joliet. These responsibilities include administration of policies and procedures for 905 full time employees and 130 part time employees. Included in these responsibilities is the function of risk Management, the Copy Center, Building and Grounds maintenance, the Information Desk, Personnel, Payroll, Recruitment, Fire and Police Board, Training, and negotiation and maintenance of six labor agreements representing 700 full time employees.

Manager of Employment and Labor Relations 1989 – 1998 City of Springfield, Illinois.

Responsibilities: Handle all facets of labor relations including chief negotiator of Union contracts, arbitrations and grievance hearings, contract interpretation and labor board hearings. The position administered 23 different labor agreements including police, fire, craft, clerical and security. The position also administered the Risk Management Department and group health, casualty and liability. The position was also responsible for training of supervisors and other personnel matters for the City.

Previous Positions:

Manager of Labor Relations for City, Water, Light and Power 1983-1988.
Commercial Office Manager for City, Water, Light and Power 1979-1983.

EDUCATION:

Master's Degree – Business Administration (1987)
University of Illinois

Bachelor's Degree – Business Administration (1976)
University of Illinois

ORGANIZATIONAL INVOLVEMENT:

National and State of Illinois Public Employer Labor Relations Associations (NPLERA and IPLERA). Previously State President and Chairman of the Board; and National President and Chairman of the Board.

Illinois Municipal Retirement Fund (IMRF) Trustee. (2009)

Past member of the Curriculum Advisory Board for the University of St. Francis.

Training Committee Trainer and committee member for the NPELRA and IPELRA Associations' Labor Relations Academy and Training Committee.

Previously an Adjunct Instructor for Lincoln Land Community College teaching Aviation ground school. (1993-1997)

Proven leadership and organizational qualities. Experienced manager and instructor with the ability to deal effectively with people. Areas of interest and hobbies include Flight instruction, sport running, scuba diving and biking.