

RESOLUTION NO. 2017-122

RESOLUTION BY THE FINANCE AND HUMAN RESOURCES COMMITTEE AUTHORIZING THE TRANSFER OF \$56,000.00 WITHIN THE HUMAN SERVICES DEPARTMENT 2018 BUDGET AND AUTHORIZING A FIVE-YEAR CONTRACT WITH SKILLSMART INC FOR A SOFTWARE SUBSCRIPTION FOR THE YEARS OF 2018 THROUGH 2022

To the Honorable Members of the Racine County Board of Supervisors:

BE IT RESOLVED by the Racine County Board of Supervisors that the transfer of funds within the Human Services Department 2018 Budget as set forth in Exhibit "A" which is attached hereto is authorized and approved.

BE IT FURTHER RESOLVED by the Racine County Board of Supervisors that the Platform Subscription Agreement between Racine County and SkillSmart, Inc. as set forth in Exhibit "B" which is attached hereto is authorized and approved.

BE IT FURTHER RESOLVED by the Racine County Board of Supervisors that pursuant to Sec. 7-302 of the Racine County Code of Ordinances, any and all bidding requirements are waived.

BE IT FURTHER RESOLVED by the Racine County Board of Supervisors that any two of the County Clerk, the County Executive, or the County Board Chairman are authorized to execute any contracts, agreements or other documents necessary to carry out the intent of this resolution.

Respectfully submitted,

1st Reading _____

FINANCE AND HUMAN RESOURCES COMMITTEE

2nd Reading _____

BOARD ACTION

Q.A. Shakoor, II, Chairman

Adopted _____

For _____

Against _____

Absent _____

Robert N. Miller, Vice-Chairman

VOTE REQUIRED: 2/3 M.E.

Thomas Pringle, Secretary

Prepared by:
Corporation Counsel

Janet Bernberg

John A. Wisch

Donnie Snow

Brett A. Nielsen

3
4 **The foregoing legislation adopted by the County Board of Supervisors of
5 Racine County, Wisconsin, is hereby:**

6 **Approved:** _____

7 **Vetoed:** _____

8
9 **Date:** _____,

10
11 _____
12 **Jonathan Delagrave, County Executive**

13
14
15 **INFORMATION ONLY**

16
17
18 **WHEREAS**, Racine County is presented with a unique and unprecedented opportunity
19 to substantially grow its workforce and economy through the continuing growth and success of
20 our long-term employers, expanding economy, public sector infrastructure and development,
21 and ultimately Foxconn; and

22
23 **WHEREAS**, to meet this need, the Human Services Department Director is proposing
24 that Racine County take the lead to align the necessary stakeholders to lead a coordinated
25 community response to proactively address the community; and

26
27 **WHEREAS**, Racine County requires a centralized, scalable, and accessible strategy to
28 align the hiring needs of its local employers with residents to identify jobs of interest, assess
29 skills that residents possess, and those that will be needed for the jobs in demand; and

30
31 **WHEREAS**, SkillSmart is an online tool which will enable Racine County residents to
32 register for interest in local employment opportunities, initially focused on construction; and

33
34 **WHEREAS**, this tool was successfully utilized and highly recommended by the
35 Milwaukee Bucks which used this in the construction of their new arena in Milwaukee; and

36
37 **WHEREAS**, in Racine County's extensive research, the Human Services Department
38 did not find a tool comparable to SkillSmart that meets the demands of the under-
39 represented/Uplift 900 target population as well as the other residents of Racine County whom
40 may have interest in seeking employment.

Effective Date: 12 March 2018

PLATFORM SUBSCRIPTION AGREEMENT

BETWEEN:

Legal Company Name: SkillSmart, Inc. Contact Person: Michael Knapp Address: 20251 Century Blvd Germantown, MD 20875 Telephone: 301-250-1015 Fax: Email: mknapp@skillsmart.us (“SkillSmart”)	And:	Legal Company Name: Racine County, Wisconsin Contact Person: Brian Nelson Address: 1717 Taylor Avenue, Racine, WI 53403 Telephone: 262.638.6695 Fax: Email: brian.nelson@racinecounty.com (“Customer”)
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This Cover Page and the attached Terms and Conditions are incorporated into and made a part of this Agreement as of the Effective Date set forth above. Additional documents, schedules, exhibits, addenda and amendments may be incorporated into and made a part of this Agreement upon the written consent of the parties.

SkillSmart Platform	Fees
Seeker Platform	As set forth on Schedule B.

The parties hereby acknowledge that they have read and understand this Agreement and all exhibits and addenda hereto, and agree to all terms and conditions stated herein and attached hereto.

SKILLSMART, INC.:

RACINE COUNTY, WISCONSIN:

By: _____
Signature

By: _____
Signature

MICHAEL J. KNAPP
Printed Name

BRIAN J. NELSON
Printed Name

PRESIDENT AND CEO
Title

FISCAL MANAGER
Title

TERMS AND CONDITIONS

1. DEFINITIONS

1.1 “Admin User” means an employee of Customer or its Affiliates authorized by Customer or such Affiliate to access and use the SkillSmart Platform on behalf of Customer and its Affiliates, subject to the limits on numbers of such users as set forth herein.

1.2 “Affiliate” means a corporation, partnership, or other entity that controls, is controlled by or is under common control with, the Customer and has been authorized by Customer to Use the SkillSmart Platform.

1.3 “Cover Page” means the first page of this Agreement.

1.4 “End User Terms of Service” means the terms of service which SkillSmart requires Public Users to accept, from time to time, in order to utilize the SkillSmart Platform.

1.5 “Public User” means any individual who accesses or uses the SkillSmart Platform who is not an Admin User or an employee or contractor of SkillSmart.

1.6 “SkillSmart Platform” means the current release and version of each SkillSmart platform listed on the Cover Page, together with all related documentation, updates, revisions, error corrections and enhancements thereof which are provided by SkillSmart to Customer.

1.7 “Site” means a physically contiguous facility of Customer or its Affiliates at which Customer’s or its’ Affiliates job opportunities are to be integrated with use of the SkillSmart Platform, as authorized hereunder.

1.8 “Term” means the term of the license granted under this Agreement, commencing on the Effective Date and continuing in effect until terminated as provided in Section 10.

1.9 “Use” means remote access to and use of the SkillSmart Platform, as hosted by SkillSmart (or its agent).

1.10 “User” means any Public User or Admin User.

2. SUBSCRIPTION AND USERS

2.1 Subscription. Subject to the terms of this Agreement, and provided Customer is not in default hereunder, SkillSmart hereby grants to Customer a non-exclusive, non-transferable (except as provided in Section 11.2) right (the “Subscription”) to permit Users to Use the SkillSmart Platform, solely in the manner described in this Agreement during the Term for (i) Admin Users to Use the SkillSmart Platform on behalf of Customer and its Affiliates and (ii) Public Users to access the SkillSmart Platform for the purpose of obtaining and providing information regarding opportunities at the Site and for their own personal use whether or not related to Customer or its Affiliates. During the term of the Subscription, SkillSmart will promote to the general public

the utility of the SkillSmart Platform for achieving careers with the Customer.

2.2 Admin Users. SkillSmart will make the SkillSmart Platform available to Admin Users, as nominated by Customer or its Affiliates from time to time, during the term of the Subscription; provided that such Admin Users will be required to agree to SkillSmart’s End User Terms of Service, subject in all respects to the terms and conditions of this Agreement. Admin Users will be required to register on the SkillSmart Platform in order to Use much of the functionality thereof. Customer is responsible for all acts and omissions of its Admin Users in connection with the SkillSmart Platform.

2.3 Public Users. SkillSmart will make the SkillSmart Platform available to Public Users during the Subscription; provided that such Public Users will be required to agree to SkillSmart’s End User Terms of Service. Public Users will be required to register on the SkillSmart Platform in order to Use the key functionality thereof.

3. OWNERSHIP; INTELLECTUAL PROPERTY RIGHTS; RESTRICTIONS

3.1 Ownership of Intellectual Property. Customer acknowledges and agrees that this Agreement conveys a limited right to Use the SkillSmart Platform and does not convey title or ownership of the SkillSmart Platform to Customer. The SkillSmart Platform and related source code, and any and all materials relating thereto, including all associated intellectual property rights, shall remain at all times the sole, exclusive property of SkillSmart or its licensors. All Customer data and/or content, including all associated intellectual property rights, shall remain at all times the sole, exclusive property of Customer and shall be Confidential Information as defined in Section 9.1; provided that (i) all information provided by Public Users is the property of such Public Users and subject to separate terms and conditions between SkillSmart and such Public Users and (ii) Customer agrees that SkillSmart may aggregate and/or anonymize information regarding job opportunities and the skills associated with such opportunities and use and disclose that aggregated and/or anonymized information for the purposes of provision of the SkillSmart Platform to its users. Customer agrees and acknowledges that the SkillSmart Platform contains the valuable trade secrets and proprietary information of SkillSmart and its suppliers.

3.2 Suggestions. If Customer provides any suggestions for improvements or customizations to the SkillSmart Platform, Customer hereby grants to SkillSmart a perpetual, irrevocable, royalty-free, fully-paid, transferable, sublicensable (through one or more tiers) worldwide license to use, disclose and exploit those suggestions without restriction.

3.3 Restrictions. Customer shall not allow any Admin User to use any SkillSmart Platform in any manner which is not expressly authorized by this Agreement or which violates any applicable law. Customer shall not (i) copy or reproduce the SkillSmart Platform in whole or in part; (ii) modify, translate or create derivative works of the SkillSmart Platform; (iii) reverse engineer, decompile, disassemble or otherwise reduce the SkillSmart Platform to source code form; (iv) distribute, sublicense, assign, share, timeshare, sell, rent, lease, grant a security interest in, use for service bureau purposes or otherwise transfer the SkillSmart Platform or Customer's right to Use the SkillSmart Platform; or (v) remove or modify any copyright, trademark or other proprietary notice of SkillSmart or its suppliers affixed to the media containing the SkillSmart Platform or contained within the SkillSmart Platform. ALL RIGHTS NOT EXPRESSLY GRANTED HEREUNDER ARE RESERVED TO SKILLSMART.

3.4 Relief. Because unauthorized use or transfer of the SkillSmart Platform is likely to diminish substantially the value of such SkillSmart Platform and irreparably harm SkillSmart and will not be susceptible of cure by the payment of monetary damages, if Customer breaches the provisions of Section 3 of this Agreement, SkillSmart shall be entitled to injunctive and/or other equitable relief, in addition to other remedies afforded by law, to prevent or restrain a breach of Section 3 of this Agreement.

4. FEES, PAYMENT, AND TAXES

4.1 Fees. Customer shall pay the fees set forth on Schedule B for the rights to Use the SkillSmart Platform and Services set forth herein, in the manner set forth on Schedule B.

4.2 Invoices. All invoices shall be due and payable in full within thirty (30) days from the date the invoice is received. SkillSmart may charge a late fee on all past due amounts at the rate of 1.5% per month or, if lower, the maximum rate permitted by applicable law. Customer shall pay all of SkillSmart's costs and expenses (including reasonable attorneys' and auditors' fees) if legal action is required to collect outstanding balances or to enforce any of SkillSmart's other rights hereunder or at law.

4.3 Payment Terms; Taxes. All fees are payable in U.S. Dollars. Fees are exclusive of any applicable taxes, including without limitation, sales, use, value-added, and withholding taxes, and Customer shall pay all such taxes when due (other than taxes on SkillSmart's net income).

5. SERVICES

SkillSmart will perform services as set forth on in the Statement of Work (Schedule A) in a professional and workmanlike manner during the term of this

Agreement. Such services are subject to the fees set forth on Schedule B hereto.

6. LIMITED WARRANTY; DISCLAIMER OF WARRANTY

6.1 Limited Warranty. SkillSmart warrants to Customer that the SkillSmart Platform shall substantially conform to SkillSmart's then-current documentation. If Customer believes that any SkillSmart Platform does not materially conform with the above limited warranty, Customer shall promptly notify SkillSmart in writing and provide SkillSmart with sufficient documentation of such nonconformity to enable SkillSmart to reproduce and verify the same. SkillSmart's sole obligation with respect to any claims of nonconformance with the above limited warranty shall be (i) to provide Customer with instructions for curing such nonconformity, (ii) to make accessible to Customer an updated version of such item which is free of such nonconformity, or (iii) in the event SkillSmart is unable to accomplish any of the above after using its commercially reasonable efforts, terminate the Agreement and refund to Customer the fees paid for the non-conforming SkillSmart Platform from the date of Customer's initial notification thereof. The remedies set forth in this Section 6.1 shall constitute SkillSmart's sole obligation, and Customer's sole remedy, for any breach of warranty by SkillSmart.

6.2 Limitation. The limited warranty set forth in this Section 6 shall not be applicable in the event that any nonconformity arises from (i) any modification to the SkillSmart Platform not made by SkillSmart, (ii) use of the SkillSmart Platform in a manner not described in the related documentation or this Agreement, (iii) use of the SkillSmart Platform in any unlawful, improper or inappropriate manner or for any unlawful, improper or inappropriate purpose, or (iv) as a result of the negligence or intentional misconduct of any user of the SkillSmart Platform.

6.3 Viruses. SkillSmart represents that it has used reasonable procedures to scan for known computer viruses, worms and other malicious code in the SkillSmart Platform, as delivered to Customer. SkillSmart has not knowingly included any computer viruses, worms or other malicious code in the SkillSmart Platform.

6.4 Exclusions. SkillSmart does not warrant that the SkillSmart Platform will be uninterrupted or error free. SkillSmart shall not be liable for any loss or corruption of Customer's data caused by unauthorized use of or access to any SkillSmart Platform.

6.5 DISCLAIMER OF WARRANTIES. EXCEPT AS STATED IN THIS SECTION 6, SKILLSMART DISCLAIMS ALL WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED PROGRAMS, INCLUDING ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, OR

ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. SKILLSMART SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE FUNCTIONS CONTAINED IN THE LICENSED PROGRAMS WILL MEET CUSTOMER'S REQUIREMENTS OR WILL OPERATE IN COMBINATIONS OR IN A MANNER SELECTED FOR USE BY CUSTOMER, OR THAT THE OPERATION OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.

7. LIMITATION OF LIABILITY

7.1 LIMITATION OF LIABILITY. CUSTOMER'S EXCLUSIVE REMEDY AND SKILLSMART'S SOLE LIABILITY WITH RESPECT TO ANY CLAIMS ARISING OUT OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, SHALL BE GOVERNED BY THIS AGREEMENT, AND IN ALL CASES SKILLSMART'S LIABILITY SHALL BE LIMITED TO THE FEES ACTUALLY RECEIVED BY SKILLSMART UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

7.2 EXCLUSION OF CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL SKILLSMART BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS BY CUSTOMER. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY DAMAGES RESULTING FROM LOSS OF DATA, LOST PROFITS, LOSS OF USE OF EQUIPMENT OR LOST CONTRACTS OR FOR ANY SPECIAL INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE LICENSED PROGRAMS OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED, EVEN IF SUCH PARTY HAS BEEN MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION DOES NOT APPLY TO DAMAGES ARISING FROM CUSTOMER'S BREACH OF SECTIONS 2, 3 AND 10.

7.3 Acknowledgment. Customer acknowledges and agrees that the level of the fees under this Agreement has been set based on the application of the limitations described in Sections 7.1 and 7.2 above.

8. INFRINGEMENT INDEMNIFICATION

8.1 By SkillSmart. SkillSmart shall defend Customer, at SkillSmart's expense, in any third-party suit, claim, or proceeding arising from a claim that Customer's use of the SkillSmart Platform as authorized under this Agreement infringes or violates any currently existing United States patent, copyright, trademark or trade secret of any third party, and SkillSmart will indemnify Customer for all damages, settlements, costs and expenses (including reasonable attorneys' fees) awarded against Customer as a

result of such claims by a court of competent jurisdiction or in a settlement approved by SkillSmart; provided, however, that Customer (i) promptly notifies SkillSmart in writing of such suit, claim or proceeding, (ii) gives SkillSmart reasonable information, assistance and cooperation required to defend such suit, claim or proceeding, and (iii) allows SkillSmart (or its licensor) to control the defense of any such action and all negotiations for its settlement or compromise. Customer may be represented in the defense of any such claim, at Customer's expense, by counsel of Customer's selection. SkillSmart shall have no liability for settlements made or costs incurred without its consent.

8.2 By Customer. Customer shall defend SkillSmart, at Customer's expense, in any third-party suit, claim, or proceeding arising from Customer's use of the SkillSmart Platform or any of Customer's interactions with Public Users through the SkillSmart Platform, except for any claims that are the subject of SkillSmart's obligations in Section 8.1 above, and Customer will indemnify SkillSmart for all damages, settlements, costs and expenses (including reasonable attorneys' fees) awarded against SkillSmart as a result of such claims by a court of competent jurisdiction or in a settlement approved by Customer; provided, however, that SkillSmart (i) promptly notifies Customer in writing of such suit, claim or proceeding, (ii) gives Customer reasonable information, assistance and cooperation required to defend such suit, claim or proceeding, and (iii) allows Customer to control the defense of any such action and all negotiations for its settlement or compromise. SkillSmart may be represented in the defense of any such claim, at SkillSmart's expense, by counsel of SkillSmart's selection. Customer shall have no liability for settlements made or costs incurred without its consent.

8.3 Injunctive Relief. In the event that an injunctive restraint is obtained against Customer's use of any SkillSmart Platform by reason of infringement or violation of any patent, copyright, trademark or trade secret, or if in SkillSmart's opinion a SkillSmart Platform is likely to become the subject of such an injunction, SkillSmart shall have the right, at its option, to do one of the following: (i) procure for Customer the right to continue to use the SkillSmart Platform as provided in this Agreement, (ii) replace or modify the SkillSmart Platform so that it becomes non-infringing (so long as the functionality of the SkillSmart Platform is not materially impaired), or (iii) if neither of the preceding clauses (i) and (ii) is reasonably practicable, terminate this Agreement and the license with respect to such infringing SkillSmart Platform and refund to Customer the fees paid to SkillSmart by Customer in respect of such SkillSmart Platform from the date any such injunction has entered into force.

8.4 Exclusions. The provisions of Section 8.1 and 8.2 notwithstanding, SkillSmart shall not have any liability to Customer, and Customer shall indemnify SkillSmart, to

the extent that any claim is based upon (i) use of the SkillSmart Platform in conjunction with any data, equipment or software not provided by SkillSmart, where the SkillSmart Platform alone would not be infringing or otherwise be the subject of the claim, (ii) any modification to the SkillSmart Platform not made by or at the direction of SkillSmart, (iii) use of the SkillSmart Platform in any unlawful manner or in any manner not authorized under this Agreement, or (iv) any claim of infringement or violation of any patent, copyright, trademark or trade secret in which Customer or any Affiliate or has a pecuniary or other material interest, or (v) any portion of the SkillSmart Platform which SkillSmart designed in accordance with specifications provided by Customer.

8.5 Exclusive Remedy. The indemnification remedies set forth in this Section 8 shall constitute the exclusive remedies of Customer, Affiliates and Approved Entities and the sole liability of SkillSmart with respect to claims of intellectual property infringement or violation.

9. CONFIDENTIALITY AND PROPRIETARY INFORMATION

9.1 Non-Disclosure Obligations. Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, plans, customers, technology, and products, and other information held in confidence by the other party ("Confidential Information"). Confidential Information will include all information in tangible or intangible form that is marked or designated as confidential or that, under the circumstances of its disclosure, should be considered confidential. Each party shall not use in any way, for its own account or the account of any third party, except as expressly permitted by, or required to achieve the purposes of, this Agreement, nor disclose to any third party (except to that party's attorneys, accountants and other advisors as reasonably necessary), any of the other party's Confidential Information and shall use at least the same degree of care in safeguarding the other party's Confidential Information as it uses in safeguarding its own Confidential Information of like importance, subject to a minimum standard of reasonable diligence and protection.

9.2 Exceptions. Information will not be deemed Confidential Information hereunder if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party. The receiving party may disclose Confidential Information if required to comply with applicable laws or regulations, or with a valid order of a court or other governmental body of the United States or

any political subdivisions thereof, but only to the extent and for the purposes of such required disclosure and provided that such party takes all reasonable actions to obtain confidential treatment for such disclosure and, if possible, to minimize the extent of such disclosure, and promptly notifies the other party in order to provide such other party an opportunity to contest such disclosure.

10. TERM AND TERMINATION

10.1 Term. This Agreement and the Subscription granted hereunder shall commence on the Effective Date and continue until the first anniversary thereof, unless sooner terminated pursuant to Section 10.2. This Agreement shall automatically renew for successive one (1) year periods upon each expiration of the then-current term, unless either party provides notice of non-renewal to the other party at least sixty (60) days prior to such renewal.

10.2 Termination. Either party may terminate this Agreement and the Subscription granted herein by written notice if the other party:

(a) commits a material breach of this Agreement which is not cured within thirty (30) days after written notice thereof is given by the non-defaulting party; or

(b) if the other party is liquidated or dissolved, or suffers a receiver or trustee to be appointed for it, or makes a general assignment for the benefit of its creditors or institutes or has instituted against it any proceedings under any law relating to bankruptcy or relief of debtors, and such filing is not dismissed within sixty (60) days.

10.3 Effect of Termination. Immediately upon any termination of this Agreement, the Subscription granted hereunder shall terminate. In such event, Customer shall, and shall cause all Admin Users to, cease Using the SkillSmart Platform. Upon any termination of this Agreement, Customer shall remove all of its information and data residing on any server operated by SkillSmart (or its agent) within ten (10) business days after receiving written notice of termination. SkillSmart shall provide Customer a file containing information regarding Public Users from Racine County including name, contact information and other related information, at no charge.

10.4 Survival. The parties' rights and obligations under Sections 1, 3, 4, 6.6, 7, 8, 9, 10.3, 10.4 and 11, as well as any obligations to make payments of fees and other amounts accrued prior to termination, shall survive any termination of this Agreement.

10.5 Termination with respect to Affiliates or Approved Entities. If SkillSmart considers that an Affiliate is violating any of the provisions of this Agreement or applicable law, SkillSmart shall notify Customer, including details of the alleged violation. If such violation is genuine and is continuing thirty (30) days after Customer's receipt of such notice from SkillSmart, SkillSmart, in addition to SkillSmart's other rights hereunder and at law, including

its right to terminate this Agreement, may immediately terminate such Affiliate's access to, and rights with respect to, the SkillSmart Platform.

11. GENERAL PROVISIONS

11.1 Governing Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to its choice of law rules other than New York General Obligations Law Sections 5-1401 and 5-1402, and excluding any application of the United Nations Convention on Contracts for the International Sale of Goods. The state and federal courts located in New York, New York shall have non-exclusive jurisdiction over any proceeding to enforce the rights of any party under this Agreement, and each party waives all rights to object to the jurisdiction of such courts because of inconvenience of forum.

11.2 Assignment. Neither this Agreement nor the licenses granted herein are transferable by Customer without the prior written consent of SkillSmart, such consent not to be unreasonably withheld, and any attempted transfer without such consent shall be void and have no force or effect. SkillSmart may assign this Agreement, in whole or in part, upon written notice to Customer. Without limiting the generality of the foregoing, SkillSmart may fulfill any of its obligations under this Agreement by engaging the services of any independent third party, provided SkillSmart remains responsible for such performance. For purposes of this Section, a merger, acquisition or change of control of Customer shall be deemed to be an assignment. This Agreement shall inure to the benefit of the parties and their permitted successors and assigns.

11.3 Amendments; Waivers. This Agreement may be amended or modified only by a writing signed by both parties. Any waiver by a party of any breach of any provision of this Agreement by the other party must be in writing to be effective and shall not constitute a waiver of any subsequent breach of the same or any other provision.

11.4 Complete Agreement. The parties agree that this Agreement (including the Cover Page, the General Terms and Conditions, and all applicable Schedules) is the complete and exclusive statement regarding the subject matter hereof and supersedes all prior agreements, understandings and communications, oral or written, between the parties regarding the subject matter of this Agreement. Except as otherwise provided herein, additional or conflicting terms contained in any standardized form or correspondence of or from Customer are expressly unenforceable under this Agreement unless such terms and conditions are contained in an amendment to this Agreement duly executed by both parties hereto.

11.5 Notices. Any notice by a party under this Agreement shall be in writing and either personally delivered, delivered by facsimile or sent via reputable overnight courier (such as Federal Express) or certified

mail, postage prepaid and return receipt requested, addressed to the other party at the address specified on the Cover Page or such other address of which either party may from time to time notify the other in accordance with this Section 11.5. All notices shall be in English and shall be deemed effective on the date of personal delivery, upon confirmation of a facsimile transmission, one day after deposit with an overnight courier, or five days after deposit in the mail.

11.6 Compliance with Laws. Customer shall comply with (i) all applicable United States laws and regulations which may govern the use of software by entities or persons located abroad, including without limitation the Export Administration Act of 1979, as amended (the "Act"), any successor legislation and the Export Administration Regulations issued by the Department of Commerce under the Act, and (ii) all applicable foreign laws and regulations, including, without limitation, laws with respect to the privacy and transmission of information and data.

11.7 Commercial Software. If any SkillSmart Platform is acquired by or on behalf of a unit or agency of the United States government, the government agrees that such SkillSmart Platform is "commercial computer software" or "commercial computer software documentation" and that, absent a written agreement to the contrary, the government's rights with respect to such SkillSmart Platform is limited by the terms of this Agreement, pursuant to FAR § 12.212(a) and/or DFARS § 227.7202-1(a), as applicable.

11.8 Publicity. Each party may issue press releases announcing the relationship contemplated by this Agreement, subject to the prior approval of the other party in such other party's sole discretion. Such approval shall not be unreasonably withheld. SkillSmart shall be entitled to refer publicly to Customer as one of its licensees of the SkillSmart Platform.

11.9 Counterpart and Facsimile Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and each of which together shall constitute a single instrument. This Agreement may be executed by facsimile signature.

11.10 Force Majeure. Except for the obligation to make payments, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet, provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. If SkillSmart is unable to provide service(s) required hereunder for a period of thirty (30) consecutive days as a result of a continuing force majeure event, Customer may cancel the affected service(s).

SCHEDULE A

Statement of Work

1. SkillSmart Platform

1.1 Platform Access. SkillSmart, for the Term of the Subscription Period, will provide access to an online platform with a unique URL for Racine County to post up to twenty-five (25) unique jobs (additional jobs may be posted pursuant to Section 1.5 below) and provide access for Public Users to develop individual profiles, search jobs, evaluate skills, match open positions, and educational resources. The platform will also provide an opportunity for Public Users to apply for open positions posted by Racine County and its authorized participants.

1.2 Subscription Period. The Subscription Period has been defined as the time period beginning as of the Effective Date and concluding Dec. 31, 2018. The contract includes four (4) one-year renewal terms, pursuant to the payment terms outlined in Schedule B.

1.3 Software Updates. During the Subscription Period and from time to time, SkillSmart will make product refinements and enhancements to the SkillSmart Platform.

1.4 Post implementation. SkillSmart shall provide product refinements and enhancements to the SkillSmart Platform and support for regular updates to the data to ensure that those education providers and local community service providers identified and implemented during the implementation period can access the system to provide information regarding courses and activities.

1.5 Extension of Service. Customer agrees that should the number of job postings per month exceed 25, then an additional fee of \$500 per year/per job will be assessed. Further, prior to the conclusion of the Subscription Period, SkillSmart and Racine County may discuss terms of extension or expansion to include the posting of additional jobs beyond the initial 25 and/or to support additional Public Users.

2. Implementation. As of the Effective Date, SkillSmart and Racine County will identify up to 25 jobs associated primarily with public sector infrastructure construction jobs to develop the appropriate skillsets and prepare the Racine County Jobs Platform. In cooperation with Racine County, SkillSmart will develop an implementation timeline to effectuate the SkillSmart Platform for use for the entirety of the Subscription Period.

The implementation plan shall include, but not be limited to: identifying the specific skills associated with each job opportunity and job category; identifying web URLs for the Racine County Job Platform; developing outreach strategies to facilitate use of the Racine County Jobs Platform by potential employee candidates; and providing the “Train the Trainer” activities for community partners.

SkillSmart will then make the Racine County Jobs Platform publicly accessible. Once the Racine County Jobs Platform is publicly accessible, SkillSmart will provide support for regular updates to the data to ensure that education partners can access the system to provide updated course information.

3. Consulting Services. Racine County may elect to engage with SkillSmart for additional consulting services, which could include the following: Job Fair Activities; community outreach and coordination; statistical analysis; education partner coordination. Such consulting services would be provided for a separately negotiated fee.

4. Client Support. SkillSmart provides access to a variety of levels of client support ranging from on-line Frequently Asked Questions (FAQs) that are available on the SkillSmart platform to email support that can be accessed via info@skillsmart.us.

5. Account Manager. SkillSmart has identified John Dillow to be the Account Manager responsible to work with Racine County to ensure the provision of overall project goals and deliver excellent customer service to the Customer in accordance with the Statement of Work.

SCHEDULE B

Fees and Payment Terms

RACINE COUNTY JOBS PORTAL ANNUAL ACCESS FEE (Billed Annually in Advance)

\$15,000*

Provide access to the SkillSmart platform to Racine County, public users and partners. Includes skills identification of up to 25 unique job descriptions

*The contract includes four (4) one-year renewal terms. Each renewal term consists of the annual access fee for the 25 jobs, and should include annual increases of 3% as follows:

- o 2019: \$15,450
- o 2020: \$15,914
- o 2021: \$16,391
- o 2022: \$16,883

IMPLEMENTATION FEE (One Time Fee Payable Upon Execution of the Agreement)

\$35,000

This includes defining the skills for up to 25 unique job descriptions, software modifications to meet Racine County requirements, and linking education partners courses and training activities to the various identified positions

EDUCATIONAL PARTNERS

INCLUDED

Integration of 5 (five) Educational Partners as identified by the Racine County to include:

WRTP/Big Step (small program)
First Choice (small program)
Gateway Technical College
Racine Unified School District (RUSD)
University of Wisconsin – Parkside

With consultation and agreement between SkillSmart and Racine County, up to an additional 3 (three) small Education Partners with limited programs like First Choice and WRTP/Big Step may be included for the initial Implementation Fee. Any Education Partners not meeting those specifications will be addressed as outlined below.

Additional education alignment beyond initial 5 Education Partners
\$3,000/partner

SOFTWARE DEVELOPMENT, CONSULTING OR OTHER ADDITIONAL SERVICES

Any additional software development, consulting or other services not identified in the Scope of Work of this agreement will be identified, priced and billed separately from this agreement.

TRAVEL

Standard and reasonable travel costs to support these activities must be pre-approved by Racine County, and are to be invoiced upon trip completion.

PAYMENT TERMS

Racine County will provide payment to SkillSmart of the Implementation Fee (\$35,000) and Annual Access Fee (\$15,000) upon execution of the agreement.

ACCOUNT NAME	ACCOUNT NUMBER	CURRENT BUDGET	CURRENT BALANCE	TRANSFER	BUDGET AFTER TRANSFER	BALANCE AFTER TRANSFER
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HUMAN SERVICES

USE OF RESERVES	4000000.599999	(659,921)	(659,921)	(56,000)	(715,921)	(715,921)
TOTAL SOURCES				(56,000)		

HUMAN SERVICES - ENHANCED WORK RELATED SERVICES

2018 BUDGET PAGES 35-22

CONTRACTED SERVICES	4511600.404500	72,344	68,879	35,000	107,344	103,879
SOFTWARE SUBSCRIPTION	4511600.428500	0	0	15,000	15,000	15,000
TRAVEL	4511600.438000	0	0	6,000	6,000	6,000
TOTAL USES				56,000		
				0		

Sole Source for SkillSmart is on file this service/product.

Years of Services 2018 - 2022

Software Subscription:

2018	15,000
2019	15,450
2020	15,914
2021	16,391
2022	16,883

Implementation Fee: 2018 35,000

FINANCE COMMITTEE RECOMMENDATION

After reviewing the Resolution/Ordinance and fiscal information supplied, your Finance Committee recommends FOR--AGAINST adoption.

REASONS

FOR	AGAINST