

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL WORKSHOP
FEBRUARY 12, 2008 AGENDA**

| SUBJECT: | TYPE: | SUBMITTED BY: |
|----------------------|--|-----------------------------------|
| Prosecution Services | ✓ Resolution Ordinance Motion Discussion Only | Enza Petrarca Village Attorney |

SYNOPSIS

A resolution has been prepared authorizing execution of a DUI prosecution agreement with Dolci & McMahon. A resolution has been prepared authorizing execution of an ordinance violation prosecution agreement with Smith, Rickert & Smith.

STRATEGIC PLAN ALIGNMENT

The Five Year Plan and Goals for 2007-2012 include *Exceptional Municipal Organization*. A supporting objective is *Financially Sound and Sustainable Village Government*.

FISCAL IMPACT

Funding for this project has been budgeted into the FY08 General Fund. Prosecution services for ordinance violations is budgeted at \$34,000 and DUI prosecution is budgeted at \$50,000 for FY08.

RECOMMENDATION

Approval on the February 19, 2008 consent agenda.

BACKGROUND

In January 2008, the Village conducted a Request for Proposal process to provide ordinance prosecution and DUI prosecution services. The Village sent out 26 RFPs and received 8 responses from either individual attorneys or law firms.

The lowest proposal received for DUI prosecutions was from the law firm of Dolci & McMahon, which is the current provider of these services. The annual flat fee for DUI prosecutions proposed has been decreased from \$55,000 to \$50,000 due to the decrease in the number of DUIs being written by the Village. Last year the Village issued 248 DUIs as compared to previous years where the numbers were closer to 400. The Legal and Police Departments have indicated that they have a good working relationship with this firm.

Staff is recommending the Village Council approve the law firm of Smith, Rickert & Smith for ordinance violation prosecution, which is the current firm providing this service. The annual flat fee for ordinance violation prosecutions proposed is \$34,000. The Legal, Police and Community Development Departments have indicated that they have a good working relationship with this firm. The prior contract with Smith, Rickert & Smith was for \$30,000 plus \$115 per hour for appearances at the Wheaton court and any outside trial preparation. Unlike DUI prosecution, there has not been a reduction in prosecuted ordinance violation cases.

Staff recommends continuing the services of both of the Village's current prosecutors as they have provided excellent service in the past. A continued ongoing relationship with staff and the prosecutor is essential to effective prosecution in that it fosters familiarity and good communication between the two. Both agreements contain a provision allowing the Village to extend these agreements for an additional two

years pursuant to the same terms and conditions, but also allow the Village the flexibility to terminate the agreements at anytime.

ATTACHMENTS

Bid Tab

Resolution Authorizing Execution of an Agreement for Legal Services With Dolci & McMahon

Resolution Authorizing Execution of an Agreement for Legal Services With Smith, Rickert & Smith

| Attorney | Firm | Address | DUI Prosecution | OV Prosecution | Other |
|--------------------|--------------------|---|--|---|--------------|
| Jim DeAno | Jim DeAno | 2100 Manchester Road, Ste. A101 Wheaton, IL 60187 | \$55,000.00 | No Bid | |
| Michael McMahon | Michael McMahon | 17W662 Butterfield Road, Ste. 304 Oakbrook Terrace, IL 60181 | \$50,000.00 | No Bid | |
| Kenneth T. Kubiesa | Kenneth T. Kubiesa | 105 S. York Street, Ste. 250 Elmhurst, IL 60126 | \$4,500/mo. & \$150 hr. (\$54,000 + costs) | No Bid | |
| Joseph P. Lewand | Joseph P. Lewand | 533 W. North Avenue, Ste. 204 Elmhurst, IL 60126 | \$45,000.00 + \$20 orig. fee for each new case | \$45,000.00 | |
| Michelle Moore | Michelle Moore | 400 S. County Farm Road, Ste. 110 Wheaton, IL 60187 | \$87,500.00 | \$47,500.00 | |
| Cathy Nusgart | Cathy Nusgart | 2 S. 119 Apache Drive Wheaton, IL 60187 | \$60,000.00 | \$30,000 + \$90/hr Wheaton Ct/Trial Prep (\$30,000 + costs) | |
| Karen Wilson | Karen Wilson | 1547 Warren Avenue Downers Grove, IL 60516 | No Bid | \$34,000.00 | |
| Michael G. Philipp | Michael G. Philipp | 4915 Main Street Downers Grove, IL 60515 | \$87,000.00 | \$35,000.00 | |

RESOLUTION NO.

A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT FOR PROSECUTION SERVICES WITH DOLCI & MCMAHON

BE IT RESOLVED by the Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a proposed Agreement (the "Agreement") between the Village of Downers Grove (the "Village"), and Dolci & McMahon providing for services related to the prosecution of DUI violations for the Village in the courts of DuPage County, Illinois, for the Village, and other matters related thereto, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

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

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

Passed: _____

Mayor

Attest: _____
Village Clerk

AN AGREEMENT FOR PROSECUTION SERVICES

This agreement dated this _____ day of _____, 20__ is made between the Village of Downers Grove (the "Village") and Dolci & McMahon, 17W662 Butterfield Road, Suite 304, Oakbrook Terrace, Illinois, 60181.

WHEREAS, the Village is desirous of having a qualified attorney represent the Village for DUI violation cases prosecuted in the Courts of DuPage County, Illinois.

NOW, THEREFORE, in consideration of the mutual undertakings and promises contained herein, the parties agree to as follows.

Section 1. DOLCI & McMAHON, Attorneys as Law, shall prosecute DUI violations of the Village of Downers Grove and shall represent the Village at regular Court sessions held at the Wheaton County Courthouse designated for said Village's cases during the terms of this Agreement.

Section 2. The Village shall pay DOLCI & McMAHON a flat fee of Fifty Thousand Dollars (\$50,000.00) over a twelve (12) equal month period commencing February 1st and ending January 31st of the following year. Said fee shall be payable in twelve (12) equal monthly installments. That this fee shall include compensation for in-court time, preparation, travel time and any and all administrative costs in connection with prosecuting DUI cases.

Section 3. The Village may designate that individual DUI ordinance violation cases be prosecuted by its Village attorneys.

Section 4. This Agreement will be effective February 1, 2008 through January 31, 2009 and will be automatically extended for two (2) subsequent annual terms. The first extension shall commence February 1, 2009, ending January 31, 2010. The second extension shall commence February 1, 2010, resulting in a final termination date of January 31, 2011. Any other amendment shall be in writing and shall be signed by all parties.

Section 5. A Campaign Disclosure Certificate is required pursuant to the Village of Downers Grove Council Policy on Ethical Standards and is applicable to those campaign contributions made to any member of the sitting Village Council and is provided as an attachment to this Agreement.

Said Campaign Disclosure Certificate requires any individual or entity doing business with the Village to disclose campaign contributions, as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4), made to current members of the Village Council within the five (5) year period preceding the date of the bid or proposal release.

By signing the documents, DOLCI & MCMAHON agrees to refrain from making any campaign contributions as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4) to any current Village Council member and any challengers seeking to serve as a member of the Downers Grove Village Council.

Notwithstanding any provision contained herein to the contrary, this Agreement may be terminated by either party at any time. But, DOLCI & McMAHON agrees to give sixty (60) days prior written notice to the Village of Downers Grove.

Dated this _____ day of _____, 20__.

VILLAGE OF DOWNERS GROVE

Village Manager

DOLCI & McMAHON

Michael F. McMahon, Attorney at Law

Attest:

Village Clerk

CAMPAIGN DISCLOSURE CERTIFICATE

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

The Campaign Disclosure Certificate is required pursuant to the Village of Downers Grove Council Policy on Ethical Standards and is applicable to those campaign contributions made to any member of the Village Council.

Said Campaign Disclosure Certificate requires any individual or entity bidding to disclose campaign contributions, as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4), made to current members of the Village Council within the five (5) year period preceding the date of the bid or proposal release.

By signing the bid documents, contractor/proposer/bidder/vendor agrees to refrain from making any campaign contributions as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4) to any Village Council member and any challengers seeking to serve as a member of the Downers Grove Village Council.

Under penalty of perjury, I declare:

Bidder/vendor has not contributed a campaign contribution to a current member of the Village Council within the last five (5) years.

Signature

Print Name

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

Print the following information:

Name of Contributor: _____
(company or individual)

To whom contribution was made: _____

Year contribution made: _____ Amount: \$ _____

Signature

Print Name

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN
AGREEMENT FOR LEGAL SERVICES WITH SMITH, RICKERT & SMITH**

BE IT RESOLVED by the Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a proposed Agreement (the "Agreement") between the Village of Downers Grove (the "Village"), and Smith, Rickert & Smith providing for services related to the prosecution of traffic citations and ordinance violations for the Village in the courts of DuPage County, Illinois, for the Village, and other matters related thereto, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

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

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

Mayor

Passed:

Attest: _____
Village Clerk

AN AGREEMENT FOR PROSECUTION SERVICES

This agreement dated this _____ day of _____, 2008 is made between the Village of Downers Grove (the "Village") and Smith, Rickert & Smith, 1547 Warren Avenue, Downers Grove, Illinois 60515-3438.

WHEREAS, the Village is desirous of having a qualified attorney represent the Village for local ordinance violation cases prosecuted in the Downers Grove Field Court.

NOW, THEREFORE, in consideration of the mutual undertakings and promises contained herein, the parties agree to as follows.

Section 1. SMITH, RICKERT & SMITH, Attorneys as Law, shall prosecute local ordinance violations of the Village of Downers Grove and shall represent the Village at regular Court sessions held at the Downers Grove Field Court designated for said Village's cases during the terms of this Agreement.

Section 2. The Village shall pay SMITH, RICKERT & SMITH a flat fee of Thirty Four Thousand Dollars (\$34,000.00) over a twelve (12) equal month period commencing February 1st and ending January 31st the following year. Said fee shall be payable in twelve (12) equal monthly installments. That this fee shall include compensation for in-court time, preparation, travel time, attendance at meetings with Village staff, telephone conferences, and any and all administrative costs in connection with prosecuting ordinance violation cases.

Section 3. The Village may designate that individual ordinance violation cases be prosecuted by its Village attorneys.

Section 4. This Agreement will be effective February 1st, 2008 through January 31st, 2009 and will be automatically extended for two (2) subsequent annual terms. The First Extension shall commence February 1, 2009, ending January 31, 2010. The second extension shall commence February 1, 2010, resulting in a final termination date of January 31, 2011. Any other amendment shall be in writing and shall be signed by all parties.

Section 5. A Campaign Disclosure Certificate is required pursuant to the Village of Downers Grove Council Policy on Ethical Standards and is applicable to those campaign contributions made to any member of the sitting Village Council and is provided as an attachment to this Agreement.

Said Campaign Disclosure Certificate requires any individual or entity doing business with the Village to disclose campaign contributions, as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4), made to current members of the Village Council within the five (5) year period preceding the date of the bid or proposal release.

By signing the documents, SMITH, RICKERT & SMITH agrees to refrain from making any campaign contributions as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4) to any Village Council member and any challengers seeking to serve as a member of the Downers Grove Village Council.

Notwithstanding any provision contained herein to the contrary, this Agreement may be terminated by either party at any time. But, SMITH, RICKERT & SMITH agrees to give sixty (60) days prior written notice to the Village of Downers Grove.

Dated this _____ day of _____, 2008.

VILLAGE OF DOWNERS GROVE

Village Manager

SMITH, RICKERT & SMITH

Attorney at Law

Attest:

Village Clerk

CAMPAIGN DISCLOSURE CERTIFICATE

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

The Campaign Disclosure Certificate is required pursuant to the Village of Downers Grove Council Policy on Ethical Standards and is applicable to those campaign contributions made to any member of the Village Council.

Said Campaign Disclosure Certificate requires any individual or entity bidding to disclose campaign contributions, as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4), made to current members of the Village Council within the five (5) year period preceding the date of the bid or proposal release.

By signing the bid documents, contractor/proposer/bidder/vendor agrees to refrain from making any campaign contributions as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4) to any Village Council member and any challengers seeking to serve as a member of the Downers Grove Village Council.

Under penalty of perjury, I declare:

- Bidder/vendor has not contributed to a current member of the Village Council within the last five (5) years.

Signature

Print Name

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

Print the following information:

Name of Contributor: _____
(company or individual)

To whom contribution was made: _____

Year contribution made: _____ Amount: \$ _____

Signature

Print Name