

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL WORKSHOP
MARCH 25, 2008 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
Contract for Lobbyist	✓ Resolution Ordinance Motion Discussion Only	Cara Pavlicek Village Manager

SYNOPSIS

A resolution has been prepared to authorize the execution of a contract with Nicolay and Dart LLC of Chicago, Illinois, for an amount not to exceed \$36,000 for the purposes of lobbying the Illinois General Assembly and appropriate state agencies relative to funding for the Belmont Underpass project.

STRATEGIC PLAN ALIGNMENT

The Policy Agenda 2007-2008 identifies *Belmont Underpass* as a Top Priority.

FISCAL IMPACT

The FY08 General Fund budget provides the required funds as part of the Manager's Contingency.

RECOMMENDATION

Approval under the Village Attorney's Report following approval of a motion to waive the traditional one-week waiting period on March 25, 2008.

BACKGROUND

In October of 2002, the Village entered into an intergovernmental agreement with the State, the County, the Burlington Northern and Santa Fe Railway Company (BNSF) and Metra regarding the construction of the Belmont Grade Separation Project (Belmont Underpass). That agreement set forth the preliminary funding guidelines and organizational responsibilities for the parties involved in the agreement. The Village's major project responsibilities as outlined in the original agreement were to utilize its eminent domain authority to acquire property for the project which could not be reasonably obtained by Metra. The Village is not responsible for funding any of the projects associated with the Belmont Underpass. At the time the agreement was signed, the funding obligations matched the project cost estimate of \$36.2 million. The current project estimate is \$52.7 million. Funding obligations are less than \$45 million.

A first amendment to the intergovernmental agreement for the Belmont Underpass Project was submitted to the Village by Metra and was approved by the Village Council on October 2, 2007. The amendment updated the funding and project responsibilities for the parties involved in the intergovernmental agreement for the Belmont Underpass. Per the first amendment, the total cost for the project is estimated to be \$52,700,069.

Based on the updated cost estimates outlined in the first amendment, the funding responsibilities of the parties involved in the intergovernmental agreement were also updated. The funding responsibilities as specified in the amendment are:

- The maximum ICC participation will be \$12,000,000
- BNSF will pay 5% of improvement costs, which total \$2,372,503
- The State will pay 50% of the remaining project costs after deducting the ICC and BNSF contributions. The State contributions will not exceed \$16,538,783

- Metra will pay 50% of the remaining project costs after deducting the ICC and BNSF contributions. The Metra contributions will not exceed \$16,538,783

These funding obligations are illustrated in the table below:

Agency	Current Funding Obligations
ICC	\$12,000,000
BNSF	\$ 2,372,503
State of Illinois	\$8,701,250
Metra	\$21,788,783
TOTAL FUNDS	\$44,862,536

The State did not execute the first amendment. All funding parties, except IDOT, have adjusted their contribution to the project. All parties involved in the project are requesting that the State provide IDOT with an additional \$8.5 million to allow the construction to proceed. If not for the absence of State funds, the Belmont Underpass Project could begin immediately.

The proposed contract between the Village and Nicolay and Dart LLC was prepared with the purpose of securing the \$8.5 million from the State via IDOT. Nicolay and Dart is a State registered lobbying entity and will lobby both the General Assembly as well as all appropriate state agencies. Staff feels that contracting with this firm for lobbying efforts provides the following benefits:

- Access to State Legislators – Nicolay and Dart work in Springfield during General Assembly legislative sessions and has direct access to these legislators. The firm has relationships with legislators throughout the State and from both political parties.
- Expertise – Nicolay and Dart are registered lobbyists and specialize in lobbying at the State level and have a proven record of success.
- Time – Staff and the Village Council do not have the significant amount time required for effective lobbying efforts. Further, staff does not have lobbying experience. The contracting of a lobbyist will allow staff to continue to work on the day-to-day issues of operating the Village.

Pursuant to Section 2.42 of the Municipal Code, the Village Manager has the authority under the definition of “professional service” to negotiate a contract not subject to competition given that the service sought requires a high degree of skill or expertise which is in its nature unique.

ATTACHMENTS

Resolution
Contract

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND NICOLAY & DART, LLC.

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

1. That the form and substance of a certain Agreement (the “Agreement”), between the Village of Downers Grove (the “Village”) and Nicolay & Dart, LLC (“N&D”), for professional governmental legal services in connection with the Belmont Underpass Project, 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

JOHN D. NICOLAY
TIMOTHY J. DART

Telephone (312) 701-0221
Facsimile (312) 658-0464
www.nicolaydart.com

March 18, 2008

VIA ELECTRONIC MAIL

Ms. Cara L. Pavlicek
Village Manager
Village of Downers Grove
801 Burlington Avenue
Downers Grove, Illinois 60515-4776

Re: Engagement of Nicolay & Dart LLC – Governmental Legal Services

Dear Ms. Pavlicek:

Thank you for choosing Nicolay & Dart LLC (“N&D”) to represent the Village of Downers Grove (“the Village”) in governmental legal issues. This letter agreement sets forth the proposed terms under which this engagement will commence. Our policy at the outset of an engagement is to outline not only the nature of the engagement but also the basis on which N&D will provide services and bill for them.

1. Nature of Engagement. Our client will be the Village, and not any employee or affiliate of the Village unless expressly agreed to by the Village and N&D. The scope of our engagement will be to represent the Village in the Illinois General Assembly and with appropriate state agencies in order to secure additional funding for the Belmont Underpass Project (“Project”). Specifically, we will represent the Village in meetings with the Illinois Department of Transportation and various legislators and staff, and will provide information regarding potential capital legislation during the legislative session. In addition, we will facilitate meetings and accompany Village officials during the April 8-9 legislative visits in Springfield. In the event of passage of a capital bill, we will work with the Office of the Governor and the Illinois Department of Transportation to facilitate timely funding of the Project, and will monitor its progress.

2. Term and Fees. The term of this agreement shall be one year, and fees shall not exceed \$36,000 (Thirty-Six Thousand Dollars), payable in 12 equal monthly installments of \$3,000 (Three Thousand Dollars) per month. In the event that no capital bill which contains funding for the Project passes the Illinois General Assembly during its 2008 Regular Session, the Village will have the right to terminate the engagement upon written notice to Nicolay & Dart LLC.

You are engaging the firm to provide services in connection with this specific matter. At the completion of a matter changes may occur in the applicable laws and regulations that could have an impact on your future liabilities. Unless you actually engage us after the closing of this specific matter, the firm has no continuing obligation to advise you with respect to future developments.

NICOLAY & DART LLC

Village of Downers Grove

March 18, 2008

Page 2

3. Costs. Nominal costs incurred in the course of providing services, such as normal long-distance telephone charges, first-class mail and incidental copying, are included in our fee and will not be charged separately. Extraordinary charges, such as messenger service, specialized telecommunications, or non-legislative session travel will be billed to you at our cost. Normal travel to and from Springfield during the legislative session is included in our fee.

4. Client Documents. We will maintain any necessary documents (including any electronic copies) relating to this matter in our client files. At the conclusion of this matter (or earlier, if appropriate), it is your obligation to advise us as to which, if any, of the documents in our files you wish us to make available to you. These documents will be delivered to you within a reasonable time after receipt of payment for outstanding fees and costs, subject to applicable rules of attorney conduct. We will retain any remaining documents in our files for a certain period of time, after which we will destroy them in accordance with our record retention program.

We trust that you will find these terms and conditions acceptable, and we look forward to working with you toward a successful resolution of this issue. At your earliest convenience, please sign a hard copy of this engagement letter and return it to my attention via U.S. Mail. If you have any questions, please contact me at the above number.

Very truly yours,



John D. Nicolay

APPROVED AND AGREED:

VILLAGE OF DOWNERS GROVE

By: _____

Its: _____

Date: _____