

**VILLAGE OF DOWNERS GROVE**  
**REPORT FOR THE VILLAGE COUNCIL WORKSHOP**  
**MARCH 24, 2009 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Contract for Lobbyist	✓ Resolution Ordinance Motion Discussion Only	Dave Fieldman 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 representing the Village before the Illinois General Assembly and with appropriate state agencies and officials with the primary goal of securing Federal and/or State stimulus funding and/or other funding for local capital improvements.

**STRATEGIC PLAN ALIGNMENT**

The Policy Agenda 2008-2009 identifies *Capital Projects: Long Range Funding, Implementation Strategy and Public Information* as a Top Priority.

**FISCAL IMPACT**

There are sufficient funds for this contract in the Capital Improvement Fund and Stormwater Improvement Fund.

**RECOMMENDATION**

Approval on the April 7, 2009 consent agenda.

**BACKGROUND**

The Village previously hired Nicolay & Dart in 2008 to assist in securing funding for the Belmont Underpass project. The firm was very successful in that endeavor and the Village feels that additional assistance during the 2009 legislative session will assist in securing State and/or Federal funding for additional capital improvements.

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 representing the Village of Downers Grove before the Illinois General Assembly in an attempt to secure Federal and/or State stimulus funding, 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.

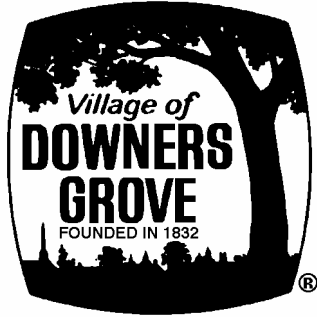
4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

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



**AGREEMENT FOR PROFESSIONAL LOBBYING SERVICES**

**THIS AGREEMENT** is hereby entered into by the Village of Downers Grove (“Village”) and Nicolay & Dart LLC (“N&D”) this \_\_\_\_\_ day of \_\_\_\_\_, 2009. The Village and N&D hereby agree as follows:

**Terms and Conditions:**

**1. Nature of Engagement:**

Village is the client of N&D and not any specific employee, officer or affiliate of the Village unless expressly agreed to by the Village and N&D. The scope of this engagement will be to represent the Village before the Illinois General Assembly and with appropriate state agencies and officials with the primary goal of securing Federal and/or State stimulus funding and/or other funding for local capital improvements. N&D will represent the Village in all meetings regarding such and with various legislators and staff and will provide information to the Village regarding such stimulus funding or other funding through out the term of this Agreement. N&D will also represent the Village before the Illinois General Assembly on other bills of interest to the Village, as directed by the Village.

**2. Term and Fees:**

The term of this Agreement shall be one year, and fees hereunder shall not exceed \$36,000.00 (thirty six thousand dollars) payable in 12 monthly installments of \$3,000.00 (three thousand dollars). The fees provided for hereunder shall be inclusive of nominal costs incurred in providing services, such as normal long distance telephone charges, legislative session related travel, first class mail and incidental copying. Extraordinary charges such as messenger service, specialized telecommunications, or non-legislative session travel will be billed at cost to the Village.

**3. Documents:**

N&D will maintain any necessary documents (including any electronic copies) relating to this matter in our client files. At the conclusion of the matter, or earlier if appropriate, it is the Village’s obligation to advise N&D which documents it wishes to have made available. These documents will be delivered by N&D within a reasonable time after receipt of payment for outstanding fees and costs, subject to applicable rules of attorney conduct. N&D will retain any remaining documents for a certain period of time, after which they will be destroyed in accordance with the applicable record retention program.

**4. Village Ordinances:**

N&D will strictly comply with all ordinances of the Village of Downers Grove and laws of the State of Illinois.

**5. Use of Village's Name:**

N&D is specifically denied the right of using in any form or medium the name of the Village for public advertising unless express permission is granted by the Village.

**6. Indemnity and Hold Harmless Agreement:**

To the fullest extent permitted by law N&D shall indemnify, keep and save harmless the Village and its agents, officers, and employees, against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses, which may arise directly or indirectly from any negligence or from the reckless or willful misconduct of N&D, its employees, or its subcontractors, and the N&D, its employees, or its subcontractors, and N&D shall at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against the Village in any such action, the N&D shall, at its own expense, satisfy and discharge the same. This Agreement shall not be construed as requiring N&D to indemnify the Village for its own negligence. N&D shall indemnify, keep and save harmless the Village only where a loss was caused by the negligent, willful or reckless acts or omissions of the N&D, its employees, or its Subcontractors.

**7. Nondiscrimination:**

N&D shall, as a party to a public contract:

- (a) Refrain from unlawful discrimination in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination;
- (b) By submission of this proposal, the N&D certifies that he is an "equal opportunity employer" as defined by Section 2000(e) of Chapter 21, Title 42, U.S. Code Annotated and Executive Orders #11136 and #11375, which are incorporated herein by reference. The Equal Opportunity clause, Section 6.1 of the Rules and Regulations of the Department of Human Rights of the State of Illinois, is a material part of any contract awarded on the basis of this proposal.

It is unlawful to discriminate on the basis of race, color, sex, national origin, ancestry, age, marital status, physical or mental handicap or unfavorable discharge for military service. N&D shall comply with standards set forth in Title VII of the Civil Rights Act of 1264, 42 U.S.C. Secs. 2000 et seq., The Human Rights Act of the State of Illinois, 775 ILCS 5/1-101et. seq., and The Americans With Disabilities Act, 42 U.S.C. Secs. 12101 et. seq.

**8. Sexual Harassment Policy:**

N&D, as a party to a public contract, shall have a written sexual harassment policy that:

Notes the illegality of sexual harassment; sets forth the State law definition of sexual harassment; describes sexual harassment utilizing examples; describes N&D's internal complaint process including penalties; describes the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission and how to contact these entities; and describes the protection against retaliation afforded under the Illinois Human Rights Act.

**9. Equal Employment Opportunity:**

In the event of N&D's non-compliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights ("Department") N&D may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this contract, N&D agrees as follows:

That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, sexual orientation, sexual identity or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.

That, if it hires additional employees in order to perform this contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.

That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military services.

That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of N&D's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with N&D in its efforts to comply with such Act and Rules and Regulations, the N&D will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.

That it will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the contracting

agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations.

That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purpose of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.

That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this contract, N&D will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, N&D will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivision or municipal corporations.

**10. Drug Free Workplace:**

N&D, as a party to a public contract, certifies and agrees that it will provide a drug free workplace by:

Publishing a statement: (1) Notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, including cannabis, is prohibited in the Village's or N&D's workplace. (2) Specifying the actions that will be taken against employees for violations of such prohibition. (3) Notifying the employee that, as a condition of employment on such contract or grant, the employee will: (A) abide by the terms of the statement; and (B) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

Establishing a drug free awareness program to inform employee's about: (1) the dangers of drug abuse in the workplace; (2) the Village's or N&D's policy of maintaining a drug free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; (4) the penalties that may be imposed upon employees for drug violations.

Providing a copy of the statement required above to each employee engaged in the performance of the contract or grant and to post the statement in a prominent place in the workplace.

Notifying the contracting or granting agency within ten (10) days after receiving notice of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction from an employee or otherwise receiving actual notice of such conviction.

Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by section 5 of the Drug Free Workplace Act.

Assisting employees in selecting a course of action in the event drug counseling, treatment and rehabilitation is required and indicating that a trained referral team is in place.

Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

**11. Patriot Act Compliance:**

N&D represents and warrants to the Village that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person. N&D further represents and warrants to the Village that N&D and its principals, shareholders, members, partners, or affiliates, as applicable are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person.

N&D hereby agrees to defend, indemnify and hold harmless the Village, and its elected or appointed officers, employees, agents, representatives, engineers and attorneys, from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorney's fees and costs) arising from or related to any breach of the foregoing representations and warranties.

**12. Campaign Contribution Disclosure**

N&D has executed the attached Campaign Disclosure Certificate.

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.

N&D 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.

**13. Subletting of Contract:**

No contract awarded by the Village shall be assigned or any part sub-contracted without the written consent of the Village Manager.

**14. Termination:**

In the event of N&D's nonperformance, breach of the terms of the Agreement, or for any other reason, the Agreement may be canceled, in whole or in part, upon the Village's written notice to the N&D. The Village will pay N&D's costs actually incurred as of the date of receipt of notice

of default. Upon termination, N&D will deliver all documents and products of whatever kind, and their reproducible originals related to the project, which have been produced to the date of the notice of default.

**15. Billing and Payment:**

Payment will be made upon receipt of an invoice referencing Village purchase order number. Once an invoice and receipt of materials or service have been verified, the invoice will be processed for payment in accordance with the Village payment schedule. The Village will comply with the Local Government Prompt Payment Act, 50 ILCS 505/1 et seq., in that any bill approved for payment must be paid or the payment issued to N&D within 60 days of receipt of a proper bill or invoice. If payment is not issued to N&D within this 60 day period, an interest penalty of 1.0% of any amount approved and unpaid shall be added for each month or fraction thereof after the end of this 60 day period, until final payment is made.

The Village shall review in a timely manner each bill or invoice after its receipt. If the Village determines that the bill or invoice contains a defect making it unable to process the payment request, the Village shall notify N&D requesting payment as soon as possible after discovering the defect pursuant to rules promulgated under 50 ILCS 505/1 et seq. The notice shall identify the defect and any additional information necessary to correct the defect.

Please send all invoices to the attention of Village of Downers Grove, Accounts Payable, 801 Burlington, Downers Grove, IL 60510.

**16. Relationship:**

The relationship between the Village and N&D is that of a buyer and seller of professional services and it is understood that the parties have not entered into any joint venture or partnership with the other.

**17. Governing Law:**

This Agreement will be governed by and construed in accordance with the laws of the State of Illinois without regard for the conflict of laws provisions. Venue is proper only in the County of DuPage and the Northern District of Illinois.

**18. Waiver:**

The waiver by one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof will be limited to the particular instance and will not operate or be deemed to waive any future breaches of this Agreement and will not be construed to be a waiver of any provision except for the particular instance.

**19. Amendment:**

This Agreement will not be subject to amendment unless made in writing and signed by all parties.

**20. Severability:**



Village of Downers Grove

If any provisions of this Agreement are held to contravene or be invalid under the laws of any state, country or jurisdiction, contravention will not invalidate the entire Agreement, but it will be construed as if not containing the invalid provision and the rights or obligations of the parties will be construed and enforced accordingly.

**21. Notice:**

Any notice will be in writing and will be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party at the party's place of business. Notices shall be addressed to the Village as follows:

**Village Manager  
Village of Downers Grove  
801 Burlington Ave.  
Downers Grove, IL 60515**

And to N&D:

**Nicolay & Dart LLC  
33 North Dearborn  
Suite 2200  
Chicago, Illinois 60802-3857**

**NICOLAY & DART LLC:**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**VILLAGE OF DOWNERS GROVE:**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Signature of Village Clerk

\_\_\_\_\_  
Date

**CAMPAIGN DISCLOSURE CERTIFICATE**

Any contractor, N&D, N&D 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

Village of Downers Grove

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/N&D/N&D/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:

N&D/vendor has not contributed to any elected Village position within the last five (5) years.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

N&D/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