



Meeting: Village Board
Meeting Date: 12/12/11
Agenda Item: 6b

Mission Statement
Delivering quality services in a courteous, cost-effective and efficient manner.

VILLAGE BOARD MEETING STAFF REPORT

REPORT TO: Burt R. McIntyre, President
Village Board of Trustees

REPORT FROM: Paul F. Evert, Village Administrator

AGENDA ITEM: Review and take action on the contract with Village Attorney Dennis Duffy

ACTION REQUESTED: ___Ordinance ___Resolution X Motion ___Receive/File

POLICY ISSUE

Should the Village Board approve the 2012-13 contract with Village Attorney Dennis Duffy?

BACKGROUND INFORMATION

Dennis Duffy has served as the Village Attorney since 1988. In December of 2009, the Village entered into a two-year agreement ending in 2011 with Mr. Duffy to provide general legal advice as well as municipal prosecution at a rate of \$132.61. Attached to this report is another two-year agreement that provides for Mr. Duffy to continue as Village Attorney with the term of the contract ending on December 31, 2013. The hourly rate under the agreement remains at the current rate of \$132.61, a recognition by Mr. Duffy of the general fiscal difficulty municipalities are dealing with due to the down turn in the economy. It is difficult to imagine the Village receiving a lower bid for an equally qualified municipal attorney if the service were put out for bids.

Mr. Duffy is obviously one of the most seasoned municipal attorneys in the state. His multiple representation of several local municipalities has been a benefit to the Village due to the fact it has reduced the Village's cost when he is working on matters such as the contract between local municipalities and the Brown County Solid Waste Department. In addition, municipal court has been running smoothly with his office prosecuting all cases.

I do hope my own legal background will help staff reduce reliance on Mr. Duffy for routine questions; therefore, the line item for legal services was reduced in the 2012 budget. In 2009 legal cost were \$57,552.59, 2010 \$70,548.54, and in 2011 \$75,175.32. When the work performed by Mr. Duffy is for the benefit of one of the Village's utilities, the utility is charged for the expense.

FISCAL IMPACT:

- | | |
|------------------------------|------------------------------------|
| 1. Is There A Fiscal Impact? | <u>Yes</u> |
| 2. Is it Currently Budgeted? | <u>Yes</u> |
| 3. If Budgeted, Which Line? | <u>Legal Services for \$55,000</u> |

PREVIOUS ACTION

The Village Board approved the 2010-2011 contract with Village Attorney Dennis Duffy for an hourly rate of \$132.61.

RECOMMENDED ACTION

Village staff recommends the Village Board approve the 2012-2013 contract with Mr. Duffy. If the Village Board is in favor of this action, the following motion may be made:

“Motion to approve the 2012-13 contract with Village Attorney Dennis Duffy.”

ATTACHED INFORMATION

- I. A copy of the 2012-13 retainer agreement with Attorney Dennis Duffy

RETAINER AGREEMENT
2012-2013

AGREEMENT made between the Village of Howard, a municipal corporation, acting by and through its duly authorized officers, and located in the County of Brown, State of Wisconsin, hereinafter referred to as "Village", and Dennis M. Duffy, of 716 Pine Street, City of Green Bay, County of Brown, State of Wisconsin, hereinafter referred to as "Attorney".

SECTION I. NATURE OF EMPLOYMENT

Village hereby retains and employs, pursuant to the authority conferred by it and its duly authorized officers according to Chapter 61, Wis. Stats., its general police powers and Section 2-419, Chapter 2 – Administration, Municipal Code of Howard, Wisconsin, said Attorney Dennis M. Duffy, to act as Attorney for the Village and to render to the Village and its duly authorized officers all legal advice and to represent Village and its duly authorized officers in all matters which may be pending or which may hereinafter be instituted in any of the Courts in the State of Wisconsin and before all administrative agencies and departments of government by or against the Village, during and throughout the continuance of this agreement; and

To render legal opinions, municipal court prosecution and all other legal services as Village or any of its duly authorized officers may request or require.

SECTION II. ACCEPTANCE OF EMPLOYMENT

Attorney hereby accepts the employment and promises and will render to the best of his ability the services described herein during the continuance of this agreement.

SECTION III. TERM

This contract is for a term of twenty-four (24) months January 1, 2012 through December 31, 2013.

SECTION IV. COMPENSATION

As compensation in full for all services to be rendered by Attorney herein, the Village shall pay to Attorney for his services the sum of One Hundred Thirty-Two Dollars and Sixty-One (\$132.61) Dollars per hour for the term of this contract. It is understood that the hourly time charges include but are not limited to, attendance at meetings, pre-trials, court appearances, telephone conferences, office conferences, legal research, travel, depositions, review of file materials and documents sent and received, preparation for hearings and conferences, drafting of pleadings or instruments and office memorandums and correspondence. Monthly billings will be submitted and will itemize the services performed and the time spent and shall be due and payable upon receipt unless otherwise stated.

The Village agrees to assume and pay for all out-of-pocket disbursements incurred and authorized in connection with the counsel's representation of the Village which shall include but not be limited to publication fees, filing fees, witness fees, travel, sheriff's fees, expenses of depositions, investigative expenses and other incidental expenses.

SECTION V. OFFICE ARRANGEMENT AND STAFF SUPPORT

It is expressly understood by and between the Village and Attorney that Attorney shall maintain a separate office with paralegal and clerical staff support at 716 Pine Street, City of Green Bay, Brown County, Wisconsin and further Attorney shall maintain a legal library at his business

address. The Village will not be responsible for furnishing full or part-time clerical support to Attorney. The Village will furnish office space as may be required for pre-trial conferences for municipal court prosecution.

The Village authorizes the Attorney to designate another Attorney under the supervision of the Village Attorney to handle prosecution and other matters relating to the Village of Howard Municipal Court.

SECTION VI. TERMINATION

A. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the right of the Village Board to terminate the services of Attorney at any time, subject only to the provisions set forth in paragraph B of this section and the requirement that such termination is approved by a two-thirds vote of the full Village Board, taken in a closed session convened for the purpose of considering termination of the services of the Attorney, during a regularly scheduled meeting of the Village Board, upon at least two weeks prior notice to each Village Trustee and the Attorney. The Attorney may attend and participate in the closed session upon approval of the Village Board.

B. In the event the Attorney is terminated by the Village Board before expiration of the aforesaid term of employment and during such time Attorney is willing and able to perform his duties under this agreement, the Village of Howard shall pay Attorney an aggregate severance in the sum equal to the total of attorneys fees billed to the Village during the six month period immediately preceding the date of severance, provided, however, that in the event Attorney is terminated because of his conviction of a felony, disbarment or a finding of gross misconduct by a unanimous vote of the Village Board, then, in that event, the Village of Howard shall have no obligation to pay the aggregated severance sum designated in this paragraph.

C. In the event Attorney voluntarily resigns his position with the Village of Howard before expiration of the aforesaid term of his employment, the Attorney shall give the Village of Howard three (3) months notice in advance, unless the parties otherwise agree.

SECTION VII. EVALUATION

A. The Village Attorney shall be evaluated by the Village Board on an annual basis according to an evaluation process mutually agreed upon by the Village Board and the Village Attorney.

VILLAGE OF HOWARD

Dated this _____ day of _____, 2011.

Burt R. McIntyre, Village President

Christopher Haltom, Village Clerk

Dated this _____ day of _____, 2011.

Dennis M. Duffy, Attorney at Law

**(Approved by the Village Board of the
Village of Howard on _____, 2011)**