

RESOLUTION NUMBER 18-18

**A RESOLUTION OF THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS, APPROVING A LEGAL SERVICES AGREEMENT (VILLAGE OF EAST DUNDEE MUNICIPAL DUI PROSECUTIONS)**

**WHEREAS**, the Village of East Dundee ("Village") is a home rule unit of local government pursuant to Section 6 of Article VII of the Constitution of the State of Illinois, and has the authority to exercise any power and perform any function pertaining to its government and affairs; and

**WHEREAS**, it is deemed necessary and desirable for the Village to approve and enter into the "Legal Services Agreement (Village of East Dundee Municipal DUI Prosecutions)," attached hereto as **Exhibit A** and made a part hereof ("Agreement"), by and between the Village and the Law Office of Kim M. DiGiovanni, Ltd.;

**NOW THEREFORE BE IT RESOLVED BY THE VILLAGE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS, AS FOLLOWS:**

**SECTION 1: Incorporation.** Each Whereas paragraph above is incorporated by reference into this Section and made a part hereof as material and operative provisions of this Resolution.

**SECTION 2: Approval.** The Village President and Board of Trustees authorize and approve the Agreement. The Village President is authorized and directed to execute the Agreement and such other documents as are necessary to fulfill the Village's obligations under the Agreement.

**SECTION 3: Severability.** If any Section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such Section, paragraph or provision shall not affect any of the remaining provisions of this Resolution.

**SECTION 4: Repeal.** All resolutions, motions or parts thereof in conflict with this Resolution shall be and the same are hereby repealed.

**SECTION 5: Publication.** This Resolution shall be in full force and effect forthwith upon its adoption, approval and publication in pamphlet form as provided by law.

ADOPTED this 1st day of October, 2018, pursuant to a roll call vote as follows:

AYES: Trustees Lynam, Selep, Wood, Hall, Mahony and Andresen,

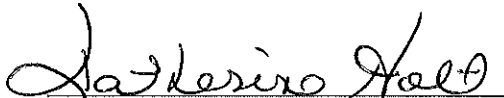
NAYES: Ø

ABSENT: Ø

APPROVED by me this 1st day of October, 2018.

  
\_\_\_\_\_  
Lael Miller, Village President

ATTEST:

  
\_\_\_\_\_  
Katherine Holt, Village Clerk

Published in pamphlet form this 5<sup>th</sup> day of October, 2018, under the authority of the Village President and Board of Trustees.

Recorded in the Village records on October 5<sup>th</sup>, 2018.

**EXHIBIT A**

**LEGAL SERVICES AGREEMENT  
(VILLAGE OF EAST DUNDEE MUNICIPAL DUI PROSECUTIONS)**

(attached)

**LEGAL SERVICES AGREEMENT  
(VILLAGE OF EAST DUNDEE MUNICIPAL DUI PROSECUTIONS)**

THIS LEGAL SERVICES AGREEMENT (Village OF EAST DUNDEE MUNICIPAL DUI PROSECUTIONS) is made and entered into as of the 1<sup>st</sup> day of October, 2018, by and between the VILLAGE OF EAST DUNDEE, an Illinois municipal corporation ("Village"), and LAW OFFICE OF KIM M. DiGIOVANNI, LTD. ("Attorneys").

WHEREAS, the Village desires to engage the Attorneys to furnish certain professional legal services in connection with the prosecution of local driving under the influence charges, upon enactment of an ordinance regarding same ("DUI Prosecutions"); and

WHEREAS, the Attorneys represent that they are, and shall remain, in compliance with all legal requirements regarding registration, ethics and other applicable conditions as attorneys licensed to practice law in the State of Illinois and have the necessary expertise and experience to furnish such services upon the terms and conditions as set forth herein below and have provided the Village evidence unilaterally acceptable to the Village to demonstrate proof thereof, as well as proof of professional liability insurance for any and all claims arising out of the Attorneys representation of the Village;

NOW, THEREFORE, it is hereby agreed by and between the Village and the Attorneys that the Village does hereby retain the Attorneys for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is hereby acknowledged to perform the services relating to DUI Prosecutions as described herein, subject to the following terms, conditions and stipulations, to wit:

**I. SCOPE OF SERVICES**

- A. All work hereunder shall be performed under the direction of the Village/Village President's Office, or his or her successor or designee.
- B. The Attorneys shall provide all necessary services to represent the Village as the Village's attorney of record in the prosecution of all local DUI arrests pursuant to the State of Illinois Vehicle Code. Representation of the Village by the Attorneys shall include all aspects of DUI Prosecutions, including, but not limited to, pre-trial proceedings, discovery, plea negotiations, trials and appeals.
- C. The Attorneys and their staff shall prepare all files, tender all correspondence, discovery requests, witness notifications, trial notices and subpoenas, and shall take all other steps necessary to complete the DUI Prosecutions.
- D. The Attorneys and their staff shall provide a quarterly report to the Village's Police Department summarizing the disposition and fine amounts of each closed case.

- E. That the Attorneys shall provide two (2) training sessions to the Village's Police Department per calendar year. The Attorneys shall provide one (1) additional training session, for a maximum of three (3) per calendar year, if requested by the Village. The additional training sessions shall be on an as-needed basis upon the request of the designated contact for the Village. In addition, training sessions shall not exceed ninety (90) minutes per session and shall be scheduled upon the availability of the Attorneys and the Village. The training sessions shall address issues regarding the DUI Prosecutions, detection and apprehension of offenders, preparation of reports, courtroom presentation and most relevant case-law updates. Training sessions shall begin no later than November 15, 2018 and there shall be a minimum of two (2) training sessions before the month of April of 2019. There will be no additional fees paid by the Village to the Attorneys for said training sessions, as they are included with, and made a part of the Agreement herein.
- F. Attorney Kimberly DiGiovanni shall serve as the primary prosecuting attorney for the Village, pursuant to this Agreement. Attorney Kimberly DiGiovanni may, upon prior approval of the Village, employ the services of affiliated-associate attorneys in furtherance of the DUI Prosecutions on an interim and infrequent basis. No affiliated-associate Attorneys shall be permitted which poses a conflict of interest for the Village. No affiliated-associate Attorneys shall provide in-court services on a regular or continuing basis without the prior approval of the Village President, or his or her designee. The Village President, or his or her designee, may direct that any affiliated-associate Attorneys not provide DUI Prosecutions for the Village, by notifying Attorney Kimberly DiGiovanni.
- G. In the provision of DUI Prosecutions services under this Agreement, the Attorneys shall perform in a manner consistent with that degree of care and skill ordinarily exercised by Attorneys practicing under similar circumstances.

## **II. TERM**

The term of this Agreement shall commence on October 1, 2018 and subject to the termination procedure set forth below, shall continue until September 30, 2021.

## **III. PAYMENTS TO THE ATTORNEYS**

- A. As compensation to the Attorneys for DUI Prosecutions services to be provided pursuant to this Agreement, upon the enactment of a Village Ordinance permitting same, the Village shall pay to the Attorneys a graduated per case fee as follows:

- a. *\$350.00 per case for one year (Commencing October 1, 2018 through September 30, 2019)*
- b. *\$367.50 per case commencing(October 1, 2019 through September 30, 2020); and*
- c. *\$385.88 per case commencing (October 1, 2020 through September 30, 2021).*
- d. *A one-time fee of \$750.00 in the event that a trial is held.*

In consideration of the initial transition phase to convert DUI Prosecutions from being prosecuted by the State to the Village, the Attorneys agree to waive DUI Prosecutions fees for the first two (2) months of service after the Village's enactment, or amendment, of a Village ordinance allowing for the DUI Prosecutions to occur.

- B. For appellate representation on any and all matters arising from DUI Prosecutions, an hourly fee of \$75.00 per hour will be charged, in tenth of an hour increments, for legal research, writing, and preparation of briefs for the Illinois Supreme and Appellate Courts, motions, and oral arguments, upon approval by the Village President, or his or her designee. In the event that the Attorneys were to recommend an appeal, the Village reserves the right to do a cost-benefit analysis before an appeal is authorized and the Attorneys shall first seek and receive approval from the Village President, or his or her designee, before pursuing an appeal.
- C. The Village shall reimburse the Attorneys for any actual out-of-pocket costs incurred in the facilitation of DUI Prosecution services, such as filing fees, service fees, costs for transcripts or court reporting services, docketing fees, and the like, upon presentation of proof of payment for same and not to exceed \$300.00 per quarter.
- D. The Village shall make monthly payments to the Attorneys during the term of this Agreement, upon receipt and approval of an invoice for services rendered and costs incurred as set forth in the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1, *et seq.*

#### **IV. INVOICES**

- A. The Attorneys shall submit monthly invoices in a format approved by the Village.
- B. The Attorneys shall maintain records showing actual time devoted and costs incurred for each monthly billing period. The Attorneys shall permit the Village President, or his or her designee, to inspect and audit all data and records of the Attorneys for work performed under this Agreement.

The Attorneys shall make these records available at reasonable times during the Agreement period and for one (1) year after termination of this Agreement.

**V. CONFIDENTIAL INFORMATION**

All confidential communications between the Village and the Attorneys, whether oral or written, and all documentation whether prepared by the Attorneys or the Village shall be, to the full extent permitted by law, considered to be an attorney-client privileged communication and shall not be disclosed except upon the written consent of the Village/Village President, his successor or designee.

**VI. CONFLICTS OF INTEREST**

In the event the Attorneys must withdraw from the prosecution of a DUI case due to a conflict of interest, the Attorneys shall be authorized to amend any DUI citation to allege an offense against the People of the State of Illinois, and refer further prosecution of same to the Office of the State's Attorney of Kane County or the County to which the DUI arrest originated in, and shall notify the Village /Village President, or his successor or designee, in writing of said conflict of interest within ten (10) days of the Attorneys becoming aware of said conflict.

The Attorneys do not currently maintain any client relationships with persons or entities involved in litigation with the Village. Additionally, we have instituted a strict client intake policy wherein any potential client is required to identify the arresting agency and adverse parties to support staff, prior to speaking with an attorney. The Attorneys will not engage in any defense case in which the Village is the arresting agency throughout the term of this agreement. It is understood that that the Village is a client of the Attorneys and any litigation wherein the Attorneys would be the Plaintiff against the Village would be strictly forbidden.

**VII. TERMINATION OF AGREEMENT**

Notwithstanding any other provision hereof, the Village may terminate this Agreement at any time, by giving (thirty) 30 days written notice to the Attorneys. In the event that this Agreement is so terminated, the Attorneys shall be paid for services actually performed and reimbursable expenses actually incurred prior to termination, except that reimbursement shall not exceed amounts set forth under Paragraph III, above.

**VIII. BREACH OF CONTRACT**

If either party violates or breaches any term of this Agreement, such violation or breach shall be deemed to constitute a default, and the other party has the right to seek such administrative, contractual or legal remedies as may be

suitable to the violation of breach; and, in addition, if the Village, by reason of any default, fails within thirty (30) days after notice thereof by the Attorneys to comply with the conditions of the Agreement, the Attorneys may terminate this Agreement. Notwithstanding the foregoing, or anything else to the contrary in this Agreement, with the sole exception of an action to recover the monies the Village has agreed to pay to the Attorneys pursuant to Paragraph III hereof, no action shall be commenced by the Attorneys against the Village for monetary damages, nor would they represent any other entity in the bringing of any type of lawsuit, nor participate in any litigation thereof. The Attorneys hereby further waive any and all claims or rights to interest on money claimed to be due pursuant to this Agreement, and waive any and all such rights to interest which it claims it may otherwise be entitled pursuant to law, including, but not limited to, the Local Government Prompt Payment Act (50 ILCS 505/1, *et seq.*), as amended, or the Illinois Interest Act (815 ILCS 205/1, *et seq.*), as amended. The parties hereto further agree that any action by the Attorney arising out of this Agreement must be filed within one (1) year of the date the alleged cause of action arose or the same will be time-barred. The provisions of this paragraph shall survive any expiration, completion and/or termination of this Agreement.

**IX. INDEMNIFICATION**

To the fullest extent permitted by law, the Attorneys agree to and shall indemnify, defend and hold harmless the Village, its officers, employees, agents, boards and commissions from and against any and all claims, suits, judgments, costs, attorneys' fees, damages or other relief, including, but not limited to, worker's compensation claims, in any way resulting from or arising out of a breach of this Agreement by the Attorneys and/or negligent actions or omissions of the Attorneys in connection herewith, including negligence or omissions of the Attorneys, members, employees or agents of the Attorneys arising out of the performance of this Agreement. The provisions of this paragraph shall survive any expiration, completion and/or termination of this Agreement.

**X. NO PERSONAL LIABILITY**

No official, director, officer, agent or employee of the Village shall be charged personally or held contractually liable under any term of provision of this Agreement or because of their execution, approval or attempted execution of this Agreement.

**XI. INSURANCE**

The Attorneys and each of the individual Attorneys performing services pursuant to this Agreement shall purchase and maintain during the term of this Agreement insurance coverage which will satisfactorily insure the Attorneys, the individual Attorneys, and, where appropriate, the Village against claims and liabilities which arise out of the work of DUI Prosecutions. Such insurance



shall be issued by companies authorized to do business in the State of Illinois and approved by the Village. The insurance coverage shall include, but not necessarily be limited to, professional liability insurance with limits of not less than \$1,000,000.00 per claim covering the Attorneys and the individual Attorneys providing services pursuant to this Agreement against all sums which the Attorneys may become obligated to pay on account of any liability arising out of the performance of the professional services for the Village under this Agreement when caused by any negligent act, error, or omission of the Attorneys or any of the individual Attorneys, or others for which whose actions the Attorneys are legally liable. The professional liability insurance shall remain in full force for a period of not less than four (4) years after the completion of the services to be performed by the Attorneys under this Agreement.

**XII. NONDISCRIMINATION**

In all hiring or employment made possible or resulting from this Agreement, there shall be no discrimination against any employee or applicant for employment because of sex, age, race, color, creed, national origin, marital status, of the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification, and this requirement shall apply to, but not be limited to, the following: employment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, age except minimum age and retirement provisions, marital status or the presence of any sensory, mental or physical handicap. Any violation of this provision shall be considered a violation of a material provision of this Agreement and shall be grounds for cancellation, termination or suspension, in whole or in part, of the Agreement by the Village.

**XIII. ASSIGNMENT**

Neither this Agreement, nor any part, right or interest hereof, may be assigned to any other person, firm or corporation.

**XIV. NO CO-PARTNERSHIP OR AGENCY; INDEPENDENT CONTRACTOR RELATIONSHIP ESTABLISHED**

This Agreement shall not be construed so as to create a partnership, joint venture, employment or other agency relationship between the parties hereto. The parties intend that this Agreement shall be construed as establishing an independent contractor relationship between the Attorneys and the Village

**XV. SEVERABILITY**

The parties intend and agree that, if any paragraph, sub-paragraph, phrase, clause or other provision of this Agreement, or any portion thereof, shall be held to be void or otherwise unenforceable, all other portions of this Agreement shall remain in full force and effect.

**XVI. HEADINGS**

The headings of the several paragraphs of this Agreement are inserted only as a matter of convenience and for reference and in no way are they intended to define, limit, or describe the scope of intent of any provision of this Agreement, nor shall they be construed to effect in any manner the terms and provisions hereof or the interpretation or construction thereof.

**XVII. MODIFICATION OR AMENDMENT**

This Agreement constitutes the entire Agreement of the parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written amendment duly executed by the parties. Each party agrees that no representations or warranties shall be binding upon the other party unless expressed in writing herein or in a duly executed amendment hereof, or change order as herein provided.

**XVIII. APPLICABLE LAW**

This Agreement shall be deemed to have been made in, and shall be construed in accordance with the laws of the State of Illinois. Venue for resolution of any disputes or the enforcement of any rights pursuant to this Agreement shall be in the Circuit Court of the Sixteenth Judicial Circuit Court, Kane County, Illinois.

**XVIII. WAIVER**

Any failure of either the Village or the Attorneys to strictly enforce any term, right, or condition of this Agreement shall not be construed as a waiver of such term, right, or condition.

**XIX. NEWS RELEASES**

The Attorneys shall not issue any news releases nor make statements to the media without prior approval from the Village President, or his or her designee.

**XX. INTERFERENCE WITH PUBLIC CONTRACTING**

The Attorneys certify hereby that they are not barred from submitting a proposal on this Agreement as a result of a violation of 720 ILCS 5/33E, et seq. or any similar state or federal statute regarding bid rigging.

**XXI. SEXUAL HARASSMENT**

As a condition of this contract, the Attorneys shall have written sexual harassment policies that include, at a minimum, the following information:

- A. the illegality of sexual harassment;
- B. the definition of sexual harassment under State law;
- C. a description of sexual harassment, utilizing examples;
- D. the vendor's internal complaint process including penalties;
- E. the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights ("Department"), and the Illinois Human Rights Commission ("Commission");
- F. directions on how to contact the Department and Commission; and
- G. protection against retaliation as provided by Section 6-101 of the Human Rights Act.

A copy of the policies shall be provided by the Attorneys to the Department upon request, pursuant to 775 ILCS 5/2-105.

**XXII. SUBCONTRACT**

No portion of the work to be provided by the Attorneys shall be subcontracted without the prior written approval of the Village President, or his or her designee.

**XXIII. FREEDOM OF INFORMATION ACT**

The Attorneys shall, within twenty-four (24) hours of the Village's request, provide any documents in the Attorneys' possession related to the Agreement which the Village is or becomes required to disclose to a requestor under the Illinois Freedom of Information Act.

**XXIV. NOTICES**

All notices, reports and documents required under this Agreement (unless otherwise noted) shall be in writing and shall be mailed by First Class Mail, postage prepaid, or by e-mail, addressed as follows:

A. As to the Village:

George Carpenter  
Chief of Police  
115 E 3rd Street  
East Dundee, Illinois 60118  
E-Mail: [gcarpenter@eastdundee.net](mailto:gcarpenter@eastdundee.net)

B. As to the Attorneys:

Kim DiGiovanni  
Law Office of Kim M. DiGiovanni, Ltd. 400 S. County Farm Road, Suite 330  
Wheaton, Illinois 60187  
E-mail: [kim@kmdlegal.com](mailto:kim@kmdlegal.com)

**XXV. COMPLIANCE WITH LAWS**

Notwithstanding any other provision of this Agreement, it is expressly agreed and understood that in connection with the performance of this Agreement that the Attorneys shall comply with all applicable federal, state, Village and other requirements of law.

**XXVI. EXECUTION IN COUNTER-PARTS**

This Agreement may be executed in counter-parts. Signatures transmitted by facsimile or email shall have the same legal effect as original signatures.

IN WITNESS WHEREOF, the parties hereto have entered into and executed this agreement effective as of the 1<sup>st</sup> day of October, 2018.


**VILLAGE OF EAST DUNDEE**



\_\_\_\_\_  
Village President

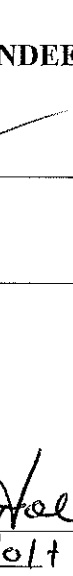
10/4/18  
\_\_\_\_\_  
Date

**LAW OFFICE OF KIM M.  
DIGIOVANNI, LTD.**

  
\_\_\_\_\_  
Kim DiGiovanni

10/25/18  
\_\_\_\_\_  
Date

**ATTEST:**



\_\_\_\_\_  
Name: Katherine Holt

10/4/18  
\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Date