

VILLAGE OF DOWNERS GROVE  
COUNCIL ACTION SUMMARY

INITIATED: Director of Finance DATE: February 17, 2009  
(Name)

RECOMMENDATION FROM: \_\_\_\_\_ FILE REF: \_\_\_\_\_  
(Board or Department)

**NATURE OF ACTION:**

**STEPS NEEDED TO IMPLEMENT ACTION:**

- Ordinance
- Resolution
- Motion
- Other

Motion to authorize a Letter of Engagement with Chapman and Cutler, Chicago, Illinois, for proposed 2009 General Obligation Bond Refunding Services in an Amount Not to Exceed \$24,000.

**SUMMARY OF ITEM:**

Adoption of this motion shall authorize execution of a Letter of Engagement with Chapman and Cutler, Chicago, Illinois, for 2009 General Obligation Bond Refunding services in an amount not to exceed \$24,000.

**RECORD OF ACTION TAKEN:**

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February 12, 2009

VIA UPS

Ms. Judy Buttny  
Village of Downers Grove  
801 Burlington Avenue  
Downers Grove, Illinois 60515

Re: Village of Downers Grove, DuPage County, Illinois,  
Proposed General Obligation Refunding Bonds, Series 2009

Dear Judy:

We are pleased to provide an engagement letter for our services as bond counsel for the series of bonds in reference (the "*Bonds*"). For convenience and clarity, we may refer to the Village in its corporate capacity and to you, the Village officers (including the Village Council of the Village), employees, and general and special counsel to the Village, collectively as "*you*" (or the possessive "*your*"). You have advised us that the purpose of the issuance of the Bonds, briefly stated, is to currently refund outstanding bonds of the Village. You are retaining us for the limited purpose of rendering our customary approving legal opinion as described in detail below.

A. DESCRIPTION OF SERVICES

As Bond Counsel, we will work with you and the following persons and firms: the underwriters or other bond purchasers who purchase the Bonds from the Village (all of whom are referred to as the "*Bond Purchasers*") and counsel for the Bond Purchasers, financial advisors, trustee, paying agent and bond registrar and their designated counsel (you and all of the foregoing persons or firms, collectively, the "*Participants*"). We intend to undertake each of the following as necessary:

1. Review relevant Illinois law, including pending legislation and other recent developments, relating to the legal status and powers of the Village or otherwise relating to the issuance of the Bonds.

Ms. Judy Buttny  
February 12, 2009  
Page -2-

2. Obtain information about the Bond transaction and the nature and use of the facilities or purposes to be financed (the "*Project*") or, for any portion of the Bonds to be issued for refunding purposes, the facilities or purposes financed with the proceeds of the bonds to be refunded (the "*Prior Project*").

3. Review the proposed timetable and consult with the Participants as to issuance of the Bonds in accordance with the timetable.

4. Consider the issues arising under the Internal Revenue Code of 1986, as amended, and applicable tax regulations and other sources of law, relating to the issuance of the Bonds on a tax-exempt basis; these issues include, without limitation, ownership and use of the Project or Prior Project, use and investment of Bond proceeds prior to expenditure, and security provisions or credit enhancement relating to the Bonds.

5. Prepare or review major Bond documents, including tax compliance certificates, review the bond purchase agreement, if applicable, and, at your request, draft descriptions of the documents which we have drafted. We understand that the Bonds are presently expected to be sold at negotiated sale and that the Bond Purchasers will undertake independently to perform their due diligence investigation with respect to the Bonds. As Bond Counsel, we assist you in reviewing only those sections of the official statement or any other disclosure document to be disseminated in connection with the sale of the Bonds involving the description of the Bonds, the security for the Bonds, and the description of the federal tax exemption of interest on the Bonds and, if applicable, the "bank-qualified" status of the Bonds.

6. Prepare or review all pertinent proceedings to be considered by the Council of the Village; confirm that the necessary quorum, meeting and notice requirements are contained in the proceedings, and draft pertinent excerpts of minutes of the meetings relating to the financing.

7. Attend or host such drafting sessions and other conferences as may be necessary, including a preclosing, if needed, and closing; and prepare and coordinate the distribution and execution of closing documents and certificates, opinions and document transcripts.

8. Render our legal opinion regarding the validity of the Bonds, the source of payment for the Bonds, and the federal income tax treatment of interest on the Bonds, which opinion (the "*Bond Opinion*") will be delivered in written form on the date the Bonds are exchanged for their purchase price (the "*Closing*"). The Bond Opinion will be based on facts and law existing as of its date. Please see the discussion below at part D. Please note that our opinion represents our legal judgment based upon our review of the law and the facts so supplied to us that we deem relevant and is not a guarantee of a result.

Ms. Judy Buttny  
February 12, 2009  
Page -3-

B. LIMITATIONS; SERVICES WE DO NOT PROVIDE

Our duties as Bond Counsel are limited as stated above. Consequently, unless otherwise agreed pursuant to a separate engagement letter, our duties *do not* include:

1. Giving any advice, opinion or representation as to the financial feasibility or the fiscal prudence of issuing the Bonds or any other aspect of the Bond transaction, including, without limitation, the investment of Bond proceeds, the making of any investigation of or the expression of any view as to the creditworthiness of the Village, of the Project or Prior Project or of the Bonds, or the form, content, adequacy or correctness of the financial statements of the Village.

2. Except as described in Paragraph (A)(5) above, assisting in the preparation or review of an official statement or any other disclosure document with respect to the Bonds or performing an independent investigation to determine the accuracy, completeness or sufficiency of any such document or rendering any advice, view or comfort that the official statement or other disclosure document (which may be referred to as the "*Official Statement*") does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading. Please see our comments below at paragraphs (D)(5) and (D)(6).

3. Supervising any state, county or local filing of any proceedings held by the Council of the Village incidental to the Bonds.

4. Preparing any of the following — requests for tax rulings from the Internal Revenue Service, blue sky or investment surveys with respect to the Bonds, state legislative amendments, or pursuing test cases or other litigation.

5. Opining on securities laws compliance or as to the continuing disclosure undertaking pertaining to the Bonds; and, after the execution and delivery of the Bonds, providing advice as to any Securities and Exchange Commission investigations or concerning any actions necessary to assure compliance with any continuing disclosure undertaking.

6. After Closing, providing continuing advice to the Village or any other party concerning any actions necessary to assure that interest paid on the Bonds will continue to be tax-exempt; *e.g.*, we will not undertake rebate calculations for the Bonds without a separate engagement for that purpose, we will not monitor the investment, use or expenditure of Bond proceeds or the use of the Project or Prior Project, and we are not retained to respond to Internal Revenue Service audits.

7. Any other matter not specifically set forth above in Part A.

Ms. Judy Buttny  
February 12, 2009  
Page -4-

C. ATTORNEY-CLIENT RELATIONSHIP; REPRESENTATION OF OTHERS

Upon execution of this engagement letter, the Village will be our client, and an attorney-client relationship will exist between us. However, our services as Bond Counsel are limited as set forth in this engagement letter, and your execution of this engagement letter will constitute an acknowledgment of those limitations. Also please note that the attorney-client privilege, normally applicable under State law, may be diminished or non-existent for written advice delivered with respect to Federal tax law matters.

This engagement letter will also serve to give you express written notice that from time to time we represent in a variety of capacities and consult with most underwriters, investment bankers, credit enhancers such as bond insurers or issuers of letters of credit, ratings agencies, investment providers, brokers of financial products, financial advisors, banks and other financial institutions, and other persons who participate in the public finance market on a wide range of issues. We may represent the Bond Purchasers in other matters not related to the Bond transaction. Prior to execution of this engagement letter, we may have consulted with one or more of such firms regarding the Bonds including, specifically, the Bond Purchasers. We are advising you, and you understand that the Village consents to our representation of it in this matter, notwithstanding such consultations, and even though parties whose interests are or may be adverse to the Village in this transaction are clients in other unrelated matters. Your acceptance of our services constitutes consent to these other engagements. Neither our representation of the Village nor such additional relationships or prior consultations will affect, however, our responsibility to render an objective Bond Opinion.

Your consent does not extend to any conflict that is not subject to waiver under applicable Rules of Professional Conduct (including Circular 230 discussed below), or to any matter that involves the assertion of a claim against the Village or the defense of a claim asserted by the Village. In addition, we agree that we will not use any confidential non-public information received from you in connection with this engagement to your material disadvantage in any matter in which we would be adverse to you.

Further, this engagement letter will also serve to give you express notice that we represent many other municipalities, school districts, park districts, counties, townships, special districts and units of local government both within and outside of the State of Illinois and also the State itself and various of its agencies and authorities (collectively, the "*governmental units*"). Most but not all of these representations involve bond or other borrowing transactions. We have assumed that there are no controversies pending to which the Village is a party and is taking any position which is adverse to any other governmental unit, and you agree to advise us promptly if this assumption is incorrect. In such event, we will advise you if the other governmental unit is our client and, if so, determine what actions are appropriate. Such actions could include seeking waivers from both the Village and such other governmental unit or withdrawal from representation.

Ms. Judy Buttny  
February 12, 2009  
Page -5-

The Village will have its general or special counsel available as needed to provide advocacy in the Bond transaction and has had the opportunity to consult with such counsel concerning the conflict consents and other provisions of this letter; and that other Participants will retain such counsel as they deem necessary and appropriate to represent their interests.

D. OTHER TERMS OF THE ENGAGEMENT; CERTAIN OF YOUR UNDERTAKINGS

Please note our understanding with respect to this engagement and your role in connection with the issuance of the Bonds.

1. In rendering the Bond Opinion and in performing any other services hereunder, we will rely upon the certified proceedings and other certifications you and other persons furnish to us. Other than as we may determine as appropriate to rendering the Bond Opinion, we are not engaged and will not provide services intended to verify the truth or accuracy of these proceedings or certifications. We do not ordinarily attend meetings of the Council at which proceedings related to the Bonds are discussed or passed unless special circumstances require our attendance.

2. The factual representations contained in those documents which are prepared by us, and the factual representations which may also be contained in any other documents that are furnished to us by you are essential for and provide the basis for our conclusions that there is compliance with State law requirements for the issue and sale of valid Bonds and with the Federal tax law for the tax exemption of interest paid on the Bonds. Accordingly, it is important for you to read and understand the documents we provide to you because you will be confirming the truth, accuracy and completeness of matters contained in those documents at the issuance of the Bonds.

3. If the documents contain incorrect or incomplete factual statements, you must call those to our attention. We are always happy to discuss the content or meaning of the transaction documents with you. Any untruth, inaccuracy or incompleteness may have adverse consequences affecting either the tax exemption of interest paid on the Bonds or the adequacy of disclosures made in the Official Statement under the State and Federal securities laws, with resulting potential liability for you. During the course of this engagement, we will further assume and rely on you to provide us with complete and timely information on all developments pertaining to any aspect of the Bonds and their security. We understand that you will cooperate with us in this regard.

4. You should carefully review all of the representations you are making in the transaction documents. We are available and encourage you to consult with us for explanations as to what is intended in these documents. To the extent that the facts and representations stated in the documents we provide to you appear reasonable to us, and are not corrected by you, we are then relying upon your signed certifications for their truth, accuracy and completeness.

Ms. Judy Buttny  
February 12, 2009  
Page -6-

5. Issuing the Bonds as "securities" under State and Federal securities laws and on a tax-exempt basis is a serious undertaking. As the issuer of the Bonds, the Village is obligated under the State and Federal securities laws and the Federal tax laws to disclose all material facts. The Village's lawyers, financial advisors and bankers can assist the Village in fulfilling these duties, but the Village in its corporate capacity, including your knowledge, has the collective knowledge of the facts pertinent to the transaction and the ultimate responsibility for the presentation and disclosure of the relevant information. Further, there are complicated Federal tax rules applicable to tax-exempt bonds. The Internal Revenue Service has an active program to audit such transactions. The documents we prepare are designed so that the Bonds will comply with the applicable rules, but this means you must fully understand the documents, including the representations and the covenants relating to continuing compliance with the federal tax requirements. Accordingly, we want you to ask questions about anything in the documents that is unclear.

6. As noted, the members of the Council also have duties under the State and Federal securities and tax laws with respect to these matters and should be knowledgeable as to the underlying factual basis for the bond issue size, use of proceeds and related matters.

7. We are also concerned about the adoption by the Village of the gift ban provisions of the State Officials and Employees Ethics Act, any special ethics or gift ban ordinance, resolution, bylaw or code provision, any lobbyist registration ordinance, resolution, bylaw or code provision, or any special provision of law or ordinance, resolution, bylaw or code provision relating to disqualification of counsel for any reason. We are aware of the provisions of the State Officials and Employees Ethics Act and will assume that you are aware of these provisions as well and that the Village has adopted proceedings that are only as restrictive as such Act. However, if the Village has stricter provisions than appear in such Act or is subject to or has adopted such other special ethics, lobbyist or disqualification provisions, we assume and are relying upon you to advise of same.

#### E. FEES

As is customary, we will bill our fees as Bond Counsel on a transactional basis instead of hourly. Disbursements and other non-fee charges are billed separately and in addition to our fees for professional services. Factors which affect our billing include: (a) the amount of the Bonds; (b) an estimate of the time necessary to do the work; (c) the complexity of the issue (number of parties, timetable, type of financing, legal issues and so forth); (d) recognition of the partially contingent nature of our fee, since it is customary that in the case no financing is ever completed, we render a greatly reduced statement of charges; and (e) a recognition that we carry the time for services rendered on our books until a financing is completed, rather than billing monthly or quarterly.

Based upon our present understanding of the terms, structure, size and schedule of the proposed financing, the duties we will undertake pursuant to this engagement letter, the time we

Ms. Judy Buttny  
February 12, 2009  
Page -7-

estimate will be necessary to effectuate the transaction and the responsibilities we will assume, we expect our fees for professional services will be \$24,000, plus the disbursements and non-fee charges noted above. If the Village determines to increase the par amount of the Bond issue in order to include a refunding component, we would expect to revise our fee estimate accordingly and will send you an addendum to this letter.

If, at any time, we believe that circumstances require an adjustment of our original fee estimate, we will consult with you and prepare an amendment to this engagement letter. Our statement of charges is customarily rendered and paid at Closing, or in some instances upon or shortly after delivery of the bond transcripts; we generally do not submit any statement for fees prior to the Closing, except in instances where there is a substantial delay from the expected timetable. In such instances, we reserve the right to present an interim statement of charges. If, for any reason, the Bonds are not issued or are issued without the rendition of our Bond Opinion as bond counsel, or our services are otherwise terminated, we expect to negotiate with you a mutually agreeable compensation.

The undersigned will be the attorney primarily responsible for the firm's services on this Bond issue, with assistance as needed from other members of our bond, securities and tax departments.

F. RISK OF AUDIT BY INTERNAL REVENUE SERVICE

The Internal Revenue Service (the "Service") has an ongoing program of auditing tax-exempt obligations to determine whether, in the view of the Service, interest on such tax-exempt obligations is excludable from gross income of the owners for federal income tax purposes. We can give no assurances as to whether the Service might commence an audit of the Bonds or whether, in the event of an audit, the Service would agree with our opinions. If an audit were to be commenced, the Service may treat the Village as the taxpayer of purposes of the examination. As noted in paragraph 6 of Part B above, the scope of our representation does not include responding to such an audit. However, if we were separately engaged at the time, and subject to the applicable rules of professional conduct, we may be able to represent the Village in the matter.

G. TREASURY CIRCULAR 230

We wish to call to your attention the publication by the U.S. Department of the Treasury ("*Treasury*") of certain amendments to Circular 230, rules of professional conduct governing the practice of attorneys and other tax advisors before the Internal Revenue Service. Certain of these rules became effective September 26, 2007, June 21, 2005, and earlier (collectively, the "*Final Regulations*"). A portion of these rules relating to tax-exempt or tax-credit bonds remain in proposed form (the "*Proposed Regulations*"). The Final Regulations specifically exclude "state or local bond opinions" (as defined in Notice 2005-47, issued June 7, 2005) from the specific



Ms. Judy Buttny  
February 12, 2009  
Page -8-

content requirements of the Final Regulations, but only until the Proposed Regulations are made final and become effective.

As noted, the Proposed Amendments with respect to "state or local bond opinions" have not been finalized by Treasury. They will not be applicable until 120 days after they are made final and published. We are unable to predict when the Proposed Amendments may be made final or what they may require. We are following actions with respect to the Proposed Regulations, and are happy to discuss their status and possible impact on your proposed transaction with you.

In addition to governing the form and content of written tax advice, the Final Regulations provide rules for tax practitioners regarding conflicts of interest and related consents that in some respects are stricter than applicable state rules of professional conduct which otherwise apply. In particular, the Final Regulations require your consent to conflicts of interest to be given in writing within 30 days of the date of this letter. If we have not received all of the required written consents by this date, we may be required under the Final Regulations to "promptly withdraw from representation" of the Village in this matter.

#### H. END OF ENGAGEMENT AND POST ENGAGEMENT; RECORDS

Our representation of the Village and the attorney-client relationship created by this engagement letter will be concluded upon the issuance of the Bonds. Nevertheless, subsequent to the Closing, we will prepare and provide a bond transcript in a CD-ROM format pertaining to the Bonds and make certain that a Federal Information Reporting Form 8038-G is filed.

Please note that you are engaging us as special counsel to provide legal services in connection with a specific matter. After the engagement, changes may occur in the applicable laws or regulations, or interpretations of those laws or regulations by the courts or governmental agencies, that could have an impact on your future rights and liabilities. Unless you engage us specifically to provide additional services or advice on issues arising from this matter, we have no continuing obligation to advise you with respect to future legal developments.

This will be true even though as a matter of courtesy we may from time to time provide you with information or newsletters about current developments that we think may be of interest to you. While we would be pleased to represent you in the future pursuant to a new engagement agreement, courtesy communications about developments in the law and other matters of mutual interest are not indications that we have considered the individual circumstances that may affect your rights or have undertaken to represent you or provide legal services.

At your request, to be made at or prior to Closing, any other papers and property provided by the Village will be promptly returned to you upon receipt of payment for our outstanding fees and client disbursements. All other materials shall thereupon constitute our own files and

Ms. Judy Buttny  
February 12, 2009  
Page -9-

property, and these materials, including lawyer work product pertaining to the transaction, will be retained or discarded by us at our sole discretion.

We call your attention to the Village's own record keeping requirements as required by the Internal Revenue Service. Answers to frequently asked questions pertaining to those requirements can be found on the IRS website under frequently asked questions related to tax-exempt bonds at [www.irs.gov](http://www.irs.gov) (click on "Tax Exempt Bond Community", then "Frequently Asked Questions"), and it will be your obligation to comply for at least as long as any of the Bonds (or any future bonds issued to refund the Bonds) are outstanding, plus three years.

I. YOUR SIGNATURE REQUIRED

If the foregoing terms are acceptable to you, please so indicate by returning the enclosed copy of this engagement letter dated and signed by an authorized officer not later than the date which is 30 days after the date of this letter, retaining the original for your files. We will provide copies of this letter to certain of the Participants to provide them with an understanding of our role. We look forward to working with you.

Very truly yours,

CHAPMAN AND CUTLER LLP

By Patricia M. Curtner  
Patricia M. Curtner

Accepted and Approved:  
VILLAGE OF DOWNERS GROVE,  
DUPAGE COUNTY, ILLINOIS

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2009.

Special Note: This letter must be signed and returned within 30 days of the date of this letter.