

COUNCIL WORKSHOP ITEM

ITEM: PROFESSIONAL SERVICES FOR 2001 GENERAL OBLIGATION BONDS
DATE: May 14, 2001
PREPARED BY: MARTIN LYONS, DIRECTOR OF FINANCIAL SERVICES
PURPOSE: In order to issue bonds for Phase IV of the CBD Infrastructure project, and Phase I of the Parking Deck project, we need to employ the services of both Bond Counsel, and a Financial Advisor.

DISCUSSION:

At the start of the CBD/TIF reconstruction process, we hired Chapman and Cutler as bond counsel and Northern Trust as our financial advisor. Our goal in hiring these two firms was to insure all of our bonding activity would comply with the often complicated and always changing legislative and financial environment for TIF districts. We have been satisfied with the services provided by both Chapman and Cutler and Northern Trust during the first two bond issuances in 1999 and 2000.

Chapman and Cutler has proposed a fee of \$17,500 and an engagement letter is attached. Northern Trust has also attached their proposal for a fee of \$13,000. Northern Trust has not changed its fee structure since the start of our project.

ATTACHMENT:

Attachment 1: Chapman and Cutler Engagement letter.
Attachment 2: Northern Trust Proposal

RECOMMENDATION:

We recommend hiring Chapman and Cutler and Northern Trust as outlined above.

CHAPMAN AND CUTLER

Theodore S. Chapman
1877-1943
Henry E. Cutler
1879-1959

111 West Monroe Street, Chicago, Illinois 60603
TWX 910-221-2103 Telex 206281
FAX (312) 701-2361
Telephone (312) 845-3000

2 North Central Avenue
Phoenix, Arizona 85004
(602) 256-4060

50 South Main Street
Salt Lake City, Utah 84144
(801) 533-0066

Patricia M. Curtner
(312) 845-3815
(312) 516-1815 Fax
e-mail: curtner@chapman.com

May 10, 2001

VIA E-MAIL AND UPS

Mr. Martin Lyons, Finance Director
Village of Downers Grove
801 Burlington Avenue
Downers Grove, Illinois 60515

Re: Village of Downers Grove, DuPage County, Illinois
General Obligation Tax Increment Bonds, Series 2001B

Dear Marty:

We are pleased to provide an engagement letter for our services as bond counsel for the captioned transaction. You have advised us that the Village expects to issue a series of general obligation tax increment bonds (the "*Bonds*") to pay costs of land acquisition for and certain public capital infrastructure improvements in connection with the Village's downtown redevelopment project, and that we are to be retained for the purpose of rendering our customary approving legal opinion.

I. DESCRIPTION OF SERVICES

As Bond Counsel, we will work with the Village and any parties who may become participants in the financing, including designated Village officers and employees, general counsel to the Village, its financial advisers, the purchasers of the Bonds, and other parties to the transaction and to provide the following services as necessary:

1. Review the proposed timetable and consult with the other parties to the transaction as necessary in order to implement the financing in accordance with that timetable.
2. Review all relevant Illinois statutory and constitutional provisions, including all pending legislation and any other recent developments, relating to the issuance of the Bonds.

3. Obtain detailed information about the proposed bond issue and review the nature of public and private ownership and the operation and use of the facilities being financed with the proceeds of the Bonds (the "*Project*").

4. Consider the issues arising under the Internal Revenue Code of 1986, as amended (the "*Code*"), and all applicable tax regulations relating to the issuance of the Bonds on a tax-exempt basis in view of the use of the Project and prepare all necessary tax compliance certificates.

5. Prepare or review major financing documents, review any bond purchase agreement and draft descriptions of the basic documents as necessary. As Bond Counsel, upon request we will assist the Village in reviewing only those sections of any official statement or any other disclosure document to be disseminated in connection with the sale of the Bonds which involve the description of the Bonds, the security for the Bonds and matters pertaining to tax exemption.

6. Prepare or review all pertinent proceedings to be considered by the Village Council of the Village; confirm the necessary quorum, meeting and notice requirements, and draft pertinent excerpts of minutes of the meetings relating to the financing; and supervise the filing of all necessary state and/or federal reporting or notice requirements for the Bonds.

7. Prepare, revise as necessary and coordinate the distribution and execution of necessary closing documents and certificates, opinions and document transcripts.

8. Attend or host such drafting sessions and other conferences necessary to implement the financing, including the preclosing, if needed, and closing.

9. Render our customary approving legal opinion regarding the validity of the Bonds, the sources of payment therefor and the federal income tax treatment of interest thereon (the "*Bond Opinion*"), which opinion will be delivered by us 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. In rendering the Bond Opinion, we will rely upon the certified proceedings and other certifications of Village officials and other persons furnished to us. We are not engaged and will not provide services intended to verify the truth or accuracy of these proceedings or certifications. We understand that you and other members of the Village staff and other employees of and consultants to the Village will cooperate with us in this regard. 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 result.

II. LIMITATIONS

Our duties as Bond Counsel are limited to those expressly set forth above in this letter. Among other things, our duties *do not* include:

1. Except as described in Paragraph 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 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;
2. Preparing requests for tax rulings from the Internal Revenue Service (the "Service");
3. Preparing blue sky or investment surveys with respect to the Bonds;
4. Drafting state legislative amendments;
5. Pursuing test cases or other litigation;
6. Making an investigation or expressing any view as to the creditworthiness of the Village or of the Bonds;
7. Opining on a continuing disclosure undertaking pertaining to the Bonds and, after the execution and delivery of the Bonds, providing advice concerning any actions necessary to assure compliance with any continuing disclosure undertaking;
8. Responding to Service audits or Securities and Exchange Village investigations;
9. 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 excluded from gross income for federal income tax purposes, e.g., we will not undertake rebate calculations for the Bonds without a separate engagement for that purpose;
10. Providing any advice, opinion or representation as to the financial feasibility or the fiscal prudence of issuing the Bonds or of the Project or to any other aspect of the financing, such as the investment of proceeds of the Bonds or the use of the Project; or
11. Any other matter not specifically set forth above that is not required to render the Bond Opinion.

The Bond Opinion represents our legal judgment based upon our review of the law and the facts that we deem relevant to render such opinion. No assurances can be given as to whether or not the Service will commence an audit of the Bonds, or as to whether the Service would agree with the Bond Opinion. If an audit is commenced, the Service will treat the Village as the taxpayer, and the bondholders may have no right to participate in such procedure. As Bond Counsel we are neither obligated to defend the tax-exempt status of the Bonds nor responsible to pay or reimburse the costs of the Village or the bondholders with respect to any audit or litigation relating to the Bonds.

III. ATTORNEY-CLIENT RELATIONSHIP

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 to those as set forth in this engagement letter, and the Village's execution of this engagement letter will constitute an acknowledgment of those limitations. We will not act as an intermediary among the parties to the transaction.

This engagement letter will also serve to give express written notice to the Village that (a) from time to time we represent in a variety of capacities and/or consult with most underwriters, investment bankers, financial advisors and other persons active in Illinois public finance on a wide range of issues, (b) we act as general counsel to the Harris Trust & Savings Bank (the "*Bank*"), and (c) prior to your execution of this engagement letter, we may have consulted with a number of such firms regarding the Bonds. Neither our representation of the Village nor such additional relationships or prior consultations will affect, however, our responsibility to render an objective bond counsel Bond Opinion. By executing this letter the Village will have consented to our representation of the Bank and will be deemed to have waived any conflict of interest claims you may have arising from our relationship with the Bank.

We assume that the Village will have its general counsel available as needed to provide advocacy in the Bond transaction and that all other parties to the transaction will retain such counsel as they deem necessary and appropriate to represent their interests. 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 transcript of proceedings pertaining to the Bonds and, at your direction or request, make certain that a Federal Information Reporting Form 8038-G is filed for the Bonds.

IV. FEES

As is customary, we will bill our fees as Bond Counsel on a transactional basis instead of hourly. Disbursements are typically itemized and billed separately. Factors which affect our billing include: (a) our estimate of the risk involved in our writing our normal "unqualified" approving Bond Opinion (risk is related to the size, complexity and tax questions in the transaction); (b) an estimate of the time necessary to do the work; (c) the complexity of the issue

(number of parties, timetable, type of financing and so forth); (d) recognition of the partially contingent nature of our fee, since it is customarily the case that if no financing is ever completed, we render a reduced statement of charges (the amount of reduction depends upon a number of factors, including the point at which the financing is cancelled and the amount of work and disbursements to the date we are notified that the issue will not go forward); 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 understanding that (i) the principal amount of the Bonds will be approximately \$9,500,000, (ii) that the proceeds of the Bonds will be used to pay costs of the Project and related costs of issuance, (iii) that the Bonds will be issued in one series, and (iv) that the Bonds will be secured by the full faith and credit of the Village and, ratably and equally with the Series 1999 Bonds and the Series 2000 Bonds, certain incremental tax revenues derived from the downtown redevelopment project area, we expect our aggregate fees as Bond Counsel to be approximately \$17,500. 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 fee is customarily paid at Closing, and we generally do not submit any statement for fees until the Closing, except in instances where there is a substantial delay from the expected timetable for the financing. In such instance, we reserve the right to present an interim statement of charges. We may submit a statement for charges following the Closing. If, for any reason, the financing is not consummated or is completed without the rendition of our Bond Opinion as bond counsel, or our services are otherwise terminated, we will expect to be compensated at our normal hourly rates and for client disbursements actually incurred to the date of termination. The undersigned will act as your primary contact for this issue, with assistance as needed from other members of our bond and tax departments.

V. RECORDS

After Closing we will prepare and send to you in CD-Rom format what we have assembled as the financing transcript. In addition, 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 property, and these materials, including lawyer work product pertaining to the transaction, will be retained or discarded by us at our sole discretion.

Mr. John J. Madden
November 30, 1999
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If the foregoing terms are acceptable to you, please so indicate by returning the enclosed copy of this engagement letter and dated and signed by an authorized officer, retaining the originals for your files. I look forward to working with you, Dan and the Village again and to another successful transaction.

Very truly yours,

CHAPMAN AND CUTLER

By Patricia M. Curtner
Patricia M. Curtner

PMC/rao

cc: Allan Ambrose

Accepted and Approved:

By: _____

Title: Mayor
Village of Downers Grove, DuPage County, Illinois

Date: May ____, 2001

Northern Trust Corporation
50 South La Salle Street
Chicago, Illinois 60675
(312) 630-6000



Northern Trust

May 11, 2001

Mr. Marty Lyons
Senior Director of Finance and
Administrative Services
Village of Downers Grove
801 Burlington
Downers Grove, Illinois 60515

Dear Mr. Lyons:

The Northern Trust Company (the "Northern") is pleased to present our terms to the Village of Downers Grove (the "Village") as financial advisor for the sale of the Village's proposed bond issue (the "Bonds").

Subject to satisfactory due diligence and our agreement with the Village, our role shall include: (i) completing appropriate financial related due diligence; (ii) determining, along with the Village's administration, the optimal funding alternative for the Bonds, (iii) preparing offering materials; (iv) evaluating and designating potential investors; (v) coordinating sale of the Bonds with Bond Counsel; (vi) assisting in the negotiation of final terms of the financing; and (vii) assisting in the documentation and closing of the transaction.

Northern will have an exclusive right as financial advisor to arrange the financing of the proposed \$9,500,000 TIF Bonds (the "Term"). The Term will run from the date hereof to the close of the transaction.

Northern's fee for services hereunder will be based on a competitive offering by the Village. Northern would conduct all services as above and our fee for this service would be \$3,500 plus 0.10% of the par amount of the Bonds offered. **Northern has maintained the same fee arrangement with the Village for the last four years.** Expenses incurred by Northern related to the New York-Moody's presentation, if necessary, are to be reimbursed by the Village (i.e. transportation, lodging and meals).

Northern's fees are exclusive of any expenses charged by third parties. Northern shall have no authority, without the Village's consent, to obligate the Village to any fees and expenses charged by third parties.

In connection with our activities on behalf of the Village, Northern will assist the Village in the preparation of materials which may describe the Village, and its assets, operations, management, and financial status. These materials may also incorporate other information furnished by the Village (the "Information"). The Village recognizes that Northern: (a) will use and rely primarily on the Information and on information available from generally recognized public sources in performing the services contemplated by this letter without having independently verified the same; and (b) does not assume responsibility for the accuracy or completeness of the Information.



Northern Trust

Mr. Marty Lyons

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The Village agrees to indemnify Northern and its affiliates and its respective directors, officers, employees, agents, and controlling persons (each such person being an "Indemnified Party") from and against any and all losses, claims, damages and liabilities, joint and several, to which such Indemnified Party may become subject under any applicable federal or state law, or otherwise, relating to or arising out of any untrue statement of material fact contained in the Information, as defined above, furnished by Northern to potential investors or any of their representatives or the omission to state therein a material fact necessary in order to make the statements therein not misleading in the light of the circumstances under which they were made and will reimburse any Indemnified Party for reasonable expenses (including reasonable fees and expenses for a single common counsel) as they are incurred in connection with the investigation of, preparation for, or defense of any pending or threatened claims or any action or proceeding arising therefrom, whether or not such Indemnified Party is a party.

Notwithstanding anything contained herein to the contrary, Northern acknowledges that the Village retains the unconditional right to approve all offering materials and other written communications to be used by Northern. No offering materials will be delivered to any offeree unless the offering materials have been approved by the Village.

This agreement will extend to and bind the parties and their respective successors and assigns. The Village and Northern each represent and warrant to the other that each is authorized to enter into this Agreement and to undertake the transaction described herein. This Agreement contains the entire agreement between the parties hereto and may be modified only by a written agreement signed by both parties. This Agreement shall be interpreted and governed by the laws of the State of Illinois.

Northern looks forward to working with you on this transaction. For your reference, we have enclosed a presentation of Northern and its services. If the foregoing correctly sets forth the terms of our agreement, please confirm by executing the originals and returning one of them to us.

Sincerely,

THE NORTHERN TRUST COMPANY

Allan R. Ambrose
Vice President

Accepted and agreed to as of
the date set forth above:

VILLAGE OF DOWNERS GROVE

By: _____
Title: _____