



ORDINANCE NO. 1781-17

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN UNDERWRITER
ENGAGEMENT AGREEMENT WITH GEORGE K. BAUM & COMPANY

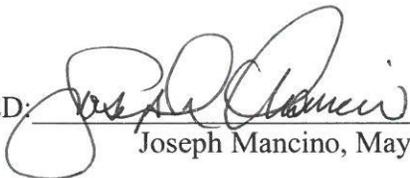
BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Hawthorn Woods, Illinois, that the Mayor is hereby authorized to execute an Underwriter Engagement Agreement with George K. Baum & Company, in substantially the form attached hereto as Exhibit "A", and, by this reference, made a part hereof.

The foregoing Ordinance was adopted by a roll call vote as follows:

AYES: Kaiser, Kosik, Kress, Corrigan, DiMaggio, David

NAYS: Ø

ABSENT AND NOT VOTING: Ø

APPROVED: 
Joseph Mancino, Mayor

ATTEST: 
Donna Lobaito, Village Clerk

ADOPTED: September 25, 2017

APPROVED: September 25, 2017

UNDERWRITER ENGAGEMENT AGREEMENT

This Underwriter Engagement Agreement ("Agreement") is made this 25th day of September, 2017, by and between the **Village of Hawthorn Woods**, Lake County, Illinois ("Issuer"), and **George K. Baum & Company**, located at 1 North LaSalle Street, Suite 1725, Chicago, Illinois 60602 ("GKB").

PURPOSE: The Issuer has identified the need to address certain street and related infrastructure improvement projects within the Village (the "Project"), which may result in the issuance of bonds, notes, refunding bonds and/or the use of other financial instruments (the "Transaction"). The Issuer deems it in its best interest to engage and retain GKB, a qualified investment banking firm, to provide certain services for or related to the Transaction, including but not limited to the following: (1) provide underwriting services, including the preparation of supporting data, underwriting bonds and other financial instruments at the lowest practicable interest rate, and assist in obtaining credit enhancement and ratings; or, (2) to serve as structuring agent for privately placed bonds; and/or (3) to serve as structuring agent for low-interest loans placed with State agencies.

CONSIDERATION: Consideration for this Agreement includes the services, compensation, and mutual exchange of promises of the parties specified herein.

SPECIFIC PROVISIONS

The provisions of the above "Purpose" section shall be material and binding terms of this Agreement.

1. **GKB's Obligations.** GKB shall provide the Issuer with investment banking services for and related to the Transaction, including the analysis of cost factors relative to the underwriting or private placement of bonds and other instruments relative to the financing of the Project, and:
 - A. Work with the Issuer and others as directed by the Issuer, concerning the issuance of debt securities for the Transaction;
 - B. Attend all meetings and be available to the Issuer, its Administration and other agents for consultation and conference at times and places mutually agreed upon throughout the Transaction proceedings;
 - C. Assist the Issuer in the preparation, coordination and distribution of printed matter for or related to the Transaction, including circulars, press releases, special mailings, etc., in order to acquaint the Issuer's population with the benefits and financial considerations of the Transaction;
 - D. Prepare financial information and schedules necessary to acquaint the Issuer with the benefits of the various forms of financing for or related to the Transaction, including interest rates, marketing factors, credit enhancement, and user fee costs;
 - E. Advise the Issuer on underwriting or the direct placement of its bonds for or

related to the Transaction, including but not limited to (1) providing advice as to the structure, timing, terms and other similar matters concerning the Transaction; (2) preparation of ratings strategies and presentations related to the issuance being underwritten; (3) preparation for and assistance with “road shows” and investor discussions related to the issuance being underwritten; (4) advice regarding retail order periods and institutional marketing; (5) assistance in the preparation of the preliminary and final official statements for the municipal securities; (6) assistance with the closing of the issuance of the municipal securities, including negotiation and discussion with respect to all documents, certificates, and opinions need for such closing; (7) coordination with respect to obtaining CUSIP numbers and registration of the issue of municipal securities with the book-entry only system of the Depository Trust Company; (8) preparation of post-sale reports for such municipal securities; (9) structuring of refunding escrow cash flow requirements necessary to provide for the refunding or defeasance of an issue of municipal securities; (10) providing regular updates of bond market conditions, analysis of financial or accounting factors of importance to the proper placement of the bonds for or related to the Transaction, recommendations regarding appropriate bond maturity schedules, call features, registration provisions, paying agency and trusteeship responsibility, user rate covenants, any special sinking fund provisions, flow of tax or user fee funds, interest rate limitations, or bond delivery procedures, for or related to the Transaction;

- F. Make recommendations as to the exact amount of the bonds to be issued for and related to the Transaction, maturity schedules, redemption features and provisions, and other related items, in order to formulate the most attractive and appealing investment package to the purchasers of the bonds which will result in the maximum benefit and minimum net effective interest cost to the Issuer;
- G. Assist in the preparation of a credit presentation for bond rating agencies and bond insurance companies;
- H. Collect, format, and prepare information, in cooperation with the Issuer for a Preliminary Official Statement or a Private Placement Memorandum, as appropriate, related contracts or agreements, and bond proceedings for or related to the Transaction, all of which shall be appropriately executed and satisfactory to the Issuer;
- I. Engage in pre-marketing activities to announce and promote the sale of Project bonds for and related to the Transaction;
- J. Distribute the Preliminary Official Statement to potential investors;
- K. Provide for a pricing conference call, during which the related pricing levels for the Project bonds will be established prior to the offering of a purchase contract agreement;
- L. Arrange for closing and delivery of the Project bonds;

- M. Prior to the offering of any of the Project bonds or debt securities for sale, provide an estimate to the Issuer of all underwriting or structuring agent profits and interest rates, and upon completion of the sale, provide the Issuer with a detailed accounting of actual total profits and expenses;
 - N. It is expressly understood and agreed that this Agreement does not intend, and is not under any circumstances to be construed as requiring GKB to perform services which may constitute the practice of law. GKB is retained and engaged in an expert financial capacity only;
 - O. It is expressly understood and agreed that GKB will not limit its work to the steps outlined but will extend its services as necessary to ensure that all appropriate underwriting services for and related to the Transaction are provided to or on behalf of the Issuer in a professional and satisfactory manner.
2. **Issuer's Obligations.** The Issuer's obligations shall include the following:
- A. Retain GKB as its investment banker to act as bond underwriter, structuring agent or placement agent for and related to the Transaction;
 - B. Cooperate with GKB in the proper development of the Transaction and provide all pertinent information needed to support successfully underwritten or privately placed bonds or loan(s) on behalf of the Issuer;
 - C. Retain a nationally recognized firm of bond attorneys and utilize the services of the Issuer's attorney;
 - D. Pay for, or arrange for the payment of, all costs of legal advice, printed matter (informational brochures, bond printing, Preliminary and Final Official Statements), advertising, engineering, bond ratings, bond insurance premium, required audits and other professional services;
 - E. Reimburse GKB for all reasonable costs and expenses incurred by GKB that are related to the Transaction, including but not limited to the costs of DTC, CUSIP, and day loan, reasonable travel expenses to meet with the Issuer, or rating agencies, if any;
 - F. Pay GKB, or arrange for the payment to GKB of an underwriting fee, structuring agent fee or placement agent fee for and related to the Transaction of 1.00% of the total production of the Project bonds issued.
3. **Term.** The term of this Agreement shall commence on the date of this agreement and shall expire on the completion of the Transaction, subject to the termination provisions in Section 4 below.
4. **Termination.** Either party shall have the right to terminate this Agreement in full for any reason by providing written notice to the other party at least ninety (90) days prior to the

stated termination date. In the event of any violation or default of the terms of this Agreement by GKB, the Issuer shall provide written notice to GKB of any such violation or default, and GKB shall have thirty (30) days to cure such default. If GKB is not able to cure the default to the Issuer's satisfaction by the end of such cure period, the Issuer thereafter shall have the right to immediately terminate this Agreement. At the termination of this Agreement, in any such manner, the Issuer shall reimburse GKB such reasonable costs and expenses incurred to the date of such termination, and pay GKB such compensation earned to the date of such termination, which payment shall be in full satisfaction of all claims against the Issuer under this Agreement.

5. **Additional Transactions.** It is expressly understood and agreed that in addition to and separate and apart from the Transaction, during the Term of this Agreement, the Issuer may decide to consider and/or pursue other, additional or phased financing for or related to the Project and/or other separate or particular projects to be identified by the Issuer from time-to-time, which may require or result in the issuance of bonds, notes, refunding bonds and the use of other financial instruments ("Additional Transactions"). In that event, the parties understand and agree that the Issuer may retain and engage GKB as its investment banker to provide underwriting or placement agent services for or related to any Additional Transactions. In that event, the parties will execute separate written engagement agreements for each of any such Additional Transactions. Until such a separate additional agreement is in place, the parties understand and agree that GKB will not provide any advice or recommendations to the Issuer regarding any such Additional Transactions.
6. **Execution.** This Agreement may be executed in multiple counterparts and together such counterparts will be deemed an original.

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Underwriter Engagement Agreement

IN WITNESS WHEREOF, the parties here have executed this Agreement the day and year first above written.

AGREED TO AND ACCEPTED:

George K. Baum & Company

By: William S. Hofherr

Printed Name: William G. Hofherr

Title: Senior Vice President

Village of Hawthorn Woods

By: Joseph Mancino

Printed Name: JOSEPH MANCINO

Title: MAYOR

**Underwriter Engagement Agreement
Supplemental Disclosures
For
New Issues of Municipal Securities**

The Municipal Securities Rulemaking Board (“MSRB”) issued an interpretive notice (“Notice”) relating to Rule G-17, effective August 2, 2012. The Notice requires that Underwriters must provide certain additional disclosures to Issuers of municipal securities as part of the dealer’s fair dealing obligations under Rule G-17 when acting as an Underwriter for a negotiated underwriting of an Issuer’s new issue of municipal securities.

George K. Baum & Company’s Role as Underwriter

- (1) MSRB Rule G-17 requires the Underwriter to deal fairly at all times with both municipal issuers and investors.
- (2) One of the Underwriter’s primary roles will be to purchase bond issues with a view to distribution in an arm’s-length commercial transaction with the Issuer, and the Underwriter has and will have financial and other interests that differ from the Issuer’s interests.
- (3) Unlike a municipal advisor, the Underwriter does not have a fiduciary duty to the Issuer under the federal securities laws. The Underwriter, therefore, is not required by federal law to act in the Issuer’s best interests without regard to the Underwriter’s own financial or other interests.
- (4) The Underwriter has a duty to purchase securities from the Issuer at a fair and reasonable price, but must balance that duty with its duty to sell bond issues to investors at prices that are fair and reasonable.
- (5) For the Issuer’s bond issues that the Underwriter underwrites, the Underwriter will review the Issuer’s official statement, in accordance with, and as part of, the Underwriter’s responsibilities to investors under the federal securities laws, as applied to the facts and circumstances of the transaction.

The Underwriter also must not recommend that the Issuer not retain a municipal advisor.

The Underwriter’s Compensation

The Underwriter’s compensation for serving as the underwriter for the Issuer’s bond issuances will be contingent on the closing of the transaction and at least a portion of that compensation will be based on the size of the bond issue. The rules of the MSRB require the Underwriter to inform the Issuer that compensation that is contingent on the closing of a transaction or the size of a transaction presents a conflict of interest, because it may cause the Underwriter to recommend a transaction that it is unnecessary or to recommend that the size of the transaction be larger than is necessary.

Bond Issuances Present Risks to the Issuer

As with any bond issue, the Issuer’s obligation to pay principal and interest will be a contractual obligation that will require the Issuer to make these payments no matter what budget constraints the Issuer encounters. Furthermore, to the extent that the Issuer agrees in a bond issue to rate covenants, additional bond tests or other financial covenants, these may constrain the Issuer’s ability to operate and to issue additional debt, and if the Issuer does not comply with these covenants, they can result in a default under a bond issue. Depending on the terms of a bond issue, if the Issuer fails to make a payment of principal or interest or if the Issuer otherwise fails

Underwriter Engagement Agreement

to comply with its covenants under the bond issue, the trustee may have the right to accelerate all of the payment of principal on the bond issue, which means that the Issuer may be required to pay all of the principal of the bond issue at that time.

George K. Baum & Company will provide additional disclosures to the Issuer from time to time, as may be required by the provisions of MSRB Rule G-17.

George K. Baum & Company

William G. Hofherr
Printed Name of Authorized Person

William G. Hofherr
Signature

Senior Vice President
Title

10/6/17
Date

RECEIPT ACKNOWLEDGED BY THE ISSUER

Village of Hawthorn Woods

JOSEPH MANCINO
Printed Name of Authorized Person

Joseph Mancino
Signature

MAYOR
Title

9/25/17
Date