

RESOLUTION NO. 071315-1

A RESOLUTION APPROVING A FINANCIAL SERVICES AGREEMENT WITH PIPER JAFFRAY & CO. FOR FINANCIAL SERVICES RELATED TO THE ISSUANCE OF SERIES 2015-A GENERAL OBLIGATION BOND AND SERIES 2015-B GENERAL OBLIGATION REFUNDING BONDS OF THE CITY OF ABILENE, KANSAS

WHEREAS, the City of Abilene desires to enter into an Agreement with Piper Jaffray & Co., as attached hereto as **Exhibit A**, for financial services related to the issuance of Series 2015-A General Obligation Bonds and Series 2015-B General Obligation Refunding Bonds of the City of Abilene.

NOW, THEREFORE BE IT RESOLVED, by the City Commission of the City of Abilene, as follows:

SECTION ONE. Agreement. That an Agreement with Piper Jaffray & Co. is hereby adopted as attached hereto as **Exhibit A**.

SECTION TWO. Implementation. The Mayor is hereby authorized to execute the aforementioned Agreement, and the City Manager shall be authorized to enforce the provisions as provided therein and in applicable resolutions, ordinances, and laws.

SECTION THREE. Effective Date. That the effects of this Resolution shall be in full force after its approval by the City Commission.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 13th day of July, 2015.



ATTEST:


Penny Soukup, CMC
City Clerk

CITY OF ABILENE, KANSAS

By: 
Dennis P. Weishaar, Mayor

EXHIBIT A

Agreement for Financial Services

with

Piper Jaffray & Co.

July 13, 2015

FINANCIAL SERVICES AGREEMENT

This Financial Services Agreement, (the Agreement) is entered into the 23rd day of June, 2015, by and between the City of Abilene, Kansas (the "Issuer") and Piper Jaffray & Co. (the "Financial Services Provider").

RECITALS

WHEREAS, the Issuer requires the provision of financial services in connection with the issuance by the Issuer of Series 2015-A General Obligation Bonds and Series 2015-B General Obligation Refunding Bonds (the "Project") and any new issues of municipal bonds as identified from time to time in a separate, subsequent letter amendment to this Agreement (each a Project, and collectively, the "Projects") in substantially the form attached as Exhibit A to this Agreement, which are incorporated herein (each, a Project Amendment, and, collectively, the Project Amendments).

WHEREAS, the Issuer desires to engage the Financial Services Provider to render the services.

WHEREAS, the Issuer has selected Triplett, Woolf & Garretson LLC as bond counsel ("Bond Counsel") and has not relied on Financial Services Provider for any assistance selecting Bond Counsel, Financial Services Provider is not party to the engagement agreement between Issuer and Bond Counsel, including having a working knowledge of any limitations under said agreement; and Financial Services Provider shall assume no responsibility for the work or opinions provided by Bond Counsel;

NOW THEREFORE, in consideration of the mutual covenants and stipulations hereinafter set forth, the parties agree as follows:

Section 1. Scope of Services. The Scope of Services shall include assistance in the following areas with respect to each Project or Projects identified in a Project Amendment.

- a) Develop and recommend a timeline for the Project
- b) Provide alternative debt retirement schedules including relevant cash flows
- c) Comment on the value and use of credit ratings or credit enhancement; coordinate the process securing credit rating or credit enhancement
- d) Propose relevant bond terms appropriate for the type of security being sold
- e) Review the Preliminary and final Official Statement.
- f) If a portion of any financing considered includes an advance refunding, subscribe for SLGS.
- g) Upon completion of the official statement by the Issuer, distribute the Issuer's official statement to potential bidders.
- h) Assist the Issuer in the Issuer's conduct of the competitive bid process by evaluating and recommending the bids received to the Commission of the Issuer for consideration
- i) Coordinate the closing of the transaction

Extent of Duties Arising under this Agreement

The Issuer and the Financial Services Provider intend and agree that, to the extent the performance of services by the Financial Services Provider with respect to a Project constitutes municipal advisory activities within the meaning of proposed rule 15Ba1 of the Securities Exchange Act of 1934 or otherwise creates a duty of the Financial Services Provider under Section 15B(c)(1) of the Securities Exchange Act of 1934 or Rule G-23 of the Municipal Securities Rulemaking Board, such duty does not extend beyond the services to be provided with respect to that Project and such duty does not extend to or to any other contract, agreement, relationship, or understanding of any nature between the Issuer and the Financial Services Provider.

Section 2. Compensation.

The compensation for providing the services set forth under this agreement shall be based on the following schedules:

General Obligation Bonds:

When the Issuer elects to use the Financial Services Provider for its General Obligation Bonds which are to be sold through a competitive sale, the following fee schedule will apply.

GENERAL OBLIGATION BONDS

<u>If the amount of Bonds Issued is equal To or more than</u>	<u>And not more than</u>	<u>Then the fee shall be</u>
\$ 0	\$1,000,000	\$10,000
1,000,001	3,000,000	20,000
3,000,001	5,000,000	35,000
5,000,001	7,000,000	45,000
7,000,001	10,000,000	55,000

It is understood that no compensation is due to Financial Services Provider unless and until the issue is completed. If for any reason the issue is not completed, no fee is payable to Financial Services Provider.

Furthermore, if the issue takes a form other than a general obligation bond or note issue, we reserve the right to negotiate a fee with the Issuer.

Section 3 Expenses: The Financial Services Provider will be responsible for all of the Financial Services Provider's out-of-pocket expenses, including communication, cost of financial analysis and reports prepared in fulfilling its duties outlined herein. The Issuer will be responsible for the payment of all fees and expenses commonly known as Costs of Issuance, including but not limited to: publication expenses, local legal counsel, bond counsel, ratings, credit enhancement, printing of bonds, printing and distribution of required disclosure documents, trustee fees, paying agent fees, CUSIP registration and the like. Our fee for preparation and distribution of the preliminary and final official statement for each series of bonds will be \$5,000.

Section 4. Term of Agreement. The term of this Agreement shall begin on the date of execution set forth above or on the date of any amendment hereto respecting a Project and shall terminate on the close and delivery of the bonds issued to finance the Project.

The Issuer or the Financial Services Provider may terminate this Agreement at any time on written notice to the other party and all fees due to the Financial Services Provider shall be due and payable upon termination by the Issuer. Should this Agreement contemplate multiple Projects, unless earlier terminated, the obligations of the Financial Services Provider with respect to any Project shall terminate immediately upon the closing or settlement of securities issued to finance the Project and the Financial Services Provider shall thereafter have no continuing fiduciary or other duties to the Issuer under this Agreement and specifically the Project Amendment to this Agreement in connection with that Project. The provisions of Sections 3, 10, 11, 14 and 15 shall survive termination of this Agreement.

Section 5. Independent Contractor. The Financial Services Provider is an independent contractor and nothing herein contained shall constitute or designate the Financial Services Provider or any of its employees or agents as employees or agents of the Issuer.

Section 6. Assignment. Neither the Financial Services Provider nor the Issuer shall have the right or power to assign this Agreement or parts thereof, or its respective duties, without the express written consent of the other party. Acquisition of the Financial Services Provider by a third party firm shall not constitute an assignment of this Agreement.

Section 7. Entire Agreement/Amendments. This Agreement, including any amendments hereto which are expressly incorporated herein, constitute the entire Agreement between the parties hereto and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be modified except by a writing executed by both the Financial Services Provider and the Issuer.

Section 8. Not Liable for Advice of Third Party Financial Services Providers: Should the Issuer seek advice from third party financial services providers, bankers or legal advisors or others providing guidance similar in scope to that contemplated herein, the Issuer agrees that the Financial Services Provider shall not be held liable for advice or recommendations made to the Issuer by third party financial services providers, bankers or legal advisors.

Section 9. Legal Advice. The Financial Services Provider is not legal counsel or an accountant and is not providing legal or accounting guidance. None of the Services contemplated in this Agreement shall be construed as or a substitute for legal services.

Section 10. Indemnification To the extent the Issuer is authorized by law to indemnify the Financial Services Provider, the Issuer will indemnify and hold harmless the Financial Services Provider, each individual, corporation, partnership, trust, association or other entity controlling the Financial Services Provider, any affiliate of the Financial Services Provider or any such controlling entity and their respective directors, officers, employees, partners, incorporators, shareholders, servants, trustees and agents (hereinafter the "Indemnitees") against any and all liabilities, penalties, suits, causes of action, losses, damages, claims, costs and expenses (including, without limitation, fees and disbursements of counsel) or judgments of whatever kind or nature (each a "Claim"), imposed upon, incurred by or asserted against the Indemnitees arising out of or based upon the Issuer's gross negligence or wilfull acts, errors or omissions in the performance of its obligations under this Agreement or any other resolution, document or covenant with respect to the Bonds issued by the Issuer as contemplated herein.

The Issuer acknowledges and understands that state and federal laws relating to disclosure in connection with municipal securities, including but not limited to the Securities Act of 1933 and Rule 10b-5 promulgated under the Securities Exchange Act of 1934, may apply to the Issuer and that the failure of the Financial Services Provider to advise the Issuer respecting these laws shall not constitute a breach by the Financial Services Provider or any of its duties and responsibilities under this Agreement.

Section 11. Notices. Any written notice or communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either party hereto, by the other party shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is addressed or in lieu of such personal services, when deposited in the United States' mail, first-class postage prepaid, addressed to the Issuer at:

City of Abilene, Kansas
419 N Broadway
Abilene, Kansas 67401

or to the Financial Services Provider at:

Piper Jaffray & Co.
Attn: Public Finance Department
11635 Rosewood Street
Leawood, Kansas 66211

Section 12. Consent to Jurisdiction; Service of Process. . The parties each hereby (a) submits to the jurisdiction of any Minnesota State Court or Federal court sitting in Kansas with respect to any actions and proceedings arising out of or relating to this Agreement, (b) agrees that all claims with respect to such actions or proceedings may be heard and determined in such court, (c) waives the defense of an inconvenient forum, (d) agrees not to commence any action or proceeding relating to this Agreement other than in a Minnesota State Court or Federal court sitting in Kansas and (e) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 13. Counterparts; Severability. This Agreement may be executed in two or more separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

Section 14. Parties in Interest. This Agreement, including rights to indemnity and contribution hereunder, shall be binding upon and inure solely to the benefit of each party hereto, any Indemnitee and their respective successors, heirs and assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 15. Waiver of Jury Trial. THE PARTIES EACH HEREBY AGREES TO WAIVE ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTERCLAIM OR ACTION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

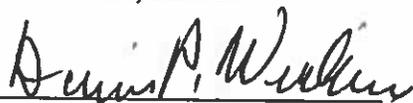
Section 16. General

The failure of either of the parties to enforce any right or provision under this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by such party in writing. No waiver shall be implied from a failure of either party to exercise a right or remedy. In addition, no waiver of a party's right or remedy will affect the other provisions of this Agreement.

The captions in this Agreement are included for convenience of reference only and are in no way meant to define or limit any of the provisions contained in this Agreement or otherwise affect their construction or effect. When a word or phrase is enclosed in parenthesis and quotation marks, i.e., ("Word"), then that word or phrase shall be interpreted as if fully written out in the following format: "(hereinafter referred to as the 'Word');" and thereafter in this Agreement, that word or phrase shall stand as an abbreviation of the longer phrase to which it relates.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written. By the signature of its representative below, each party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

City of Abilene, Kansas

By: 

Title: Mayor

Piper Jaffray & Co.

Dusti Aray

Managing Director

DISCLOSURE OF CONFLICTS OF INTEREST WITH VARIOUS FORMS OF COMPENSATION

The Municipal Securities Rulemaking Board (MSRB) requires us, as your municipal advisor, to provide written disclosure to you about the actual or potential conflicts of interest presented by various forms of compensation. We must provide this disclosure even if you have already chosen a particular form of compensation. The municipal advisor's client should select a form of compensation that best meets its needs and the agreed upon scope of services.

Forms of Compensation; Potential Conflicts. The forms of compensation for municipal advisors vary according to the nature of the engagement and requirements of the client, among other factors. Various forms of compensation present actual or potential conflicts of interest because they may create an incentive for an advisor to recommend one course of action over another if it is more beneficial to the advisor to do so. This document discusses various forms of compensation and the timing of payments to the advisor.

Fixed fee. Under a fixed fee form of compensation, the municipal advisor is paid a fixed amount established at the outset of the transaction. The amount is usually based upon an analysis by the client and the advisor of, among other things, the expected duration and complexity of the transaction and the agreed-upon scope of work that the advisor will perform. This form of compensation presents a potential conflict of interest because, if the transaction requires more work than originally contemplated, the advisor may suffer a loss. Thus, the advisor may recommend less time-consuming alternatives, or fail to do a thorough analysis of alternatives. There may be additional conflicts of interest if the municipal advisor's fee is contingent upon the successful completion of a financing, as described below.

Hourly fee. Under an hourly fee form of compensation, the municipal advisor is paid an amount equal to the number of hours worked by the advisor times an agreed-upon hourly billing rate. This form of compensation presents a potential conflict of interest if the client and the advisor do not agree on a reasonable maximum amount at the outset of the engagement, because the advisor does not have a financial incentive to recommend alternatives that would result in fewer hours worked. In some cases, an hourly fee may be applied against a retainer (e.g., a retainer payable monthly), in which case it is payable whether or not a financing closes. Alternatively, it may be contingent upon the successful completion of a financing, in which case there may be additional conflicts of interest, as described below.

Fee contingent upon the completion of a financing or other transaction. Under a contingent fee form of compensation, payment of an advisor's fee is dependent upon the successful completion of a financing or other transaction. Although this form of compensation may be customary for the client, it presents a conflict because the advisor may have an incentive to recommend unnecessary financings or financings that are disadvantageous to the client. For example, when facts or circumstances arise that could cause the financing or other transaction to be delayed or fail to close, an advisor may have an incentive to discourage a full consideration of such facts and circumstances, or to discourage consideration of alternatives that may result in the cancellation of the financing or other transaction.

Fee paid under a retainer agreement. Under a retainer agreement, fees are paid to a municipal advisor periodically (e.g., monthly) and are not contingent upon the completion of a financing or other transaction. Fees paid under a retainer agreement may be calculated on a fixed fee basis (e.g., a fixed fee per month regardless of the number of hours worked) or an hourly basis (e.g., a minimum monthly payment, with additional amounts payable if a certain number of hours worked is exceeded). A retainer agreement does not present the conflicts associated with a contingent fee arrangement (described above).

Fee based upon principal or notional amount and term of transaction. Under this form of compensation, the municipal advisor's fee is based upon a percentage of the principal amount of an issue of securities (e.g., bonds) or, in the case of a derivative, the present value of or notional amount and term of the

derivative. This form of compensation presents a conflict of interest because the advisor may have an incentive to advise the client to increase the size of the securities issue or modify the derivative for the purpose of increasing the advisor's compensation.

Acknowledgement

The undersigned hereby acknowledges that he/she has received this disclosure and that he/she has been given the opportunity to raise questions and discuss the foregoing matters with the advisor.

City of Abilene, Kansas

By: Dennis P. Weishaar

Name: Dennis P. Weishaar

Title: Mayor

Date: 07/13/2015