FINANCIAL SERVICES AGREEMENT

THIS AGREEMENT entered into as of the date hereinafter written by and between KIDWELL & COMPANY INC., a Tennessee Corporation authorized to do business in Tennessee and Georgia, with offices located in Brentwood, Tennessee and Newnan, Georgia (hereinafter referred to as the "Company"), and THE CITY OF CROSSVILLE, TENNESSEE, a State of Tennessee public body (hereinafter referred to as the "City").

WITNESSETH

Whereas, the City desires to employ a municipal advisor for the purposes of providing investment banking/financial advisory services in connection with the financing and refinancing of capital projects of the City; and Whereas, the funding will be accomplished for the to provide funding for the (i) construction of certain new capital projects; (ii) purchase of certain equipment; (iii) refinancing of certain outstanding senior and subordinate lien debt obligations; and (iv) pay legal, fiscal, administrative and other costs incident thereto and incident to the issuance of the Bonds.

Whereas, the Company has demonstrated experience in providing investment banking/financial advisory services and has experience in obtaining commitments for investment and credit arrangements in association with the type of funding contemplated herein; and

Whereas, the City acknowledges that the Company has, and will, devote considerable amounts of time and energy in pursuit of Company Duties for the City.

NOW, THEREFORE, in consideration of the fees to be paid by the City to the Company and the mutual covenants herein contained, the parties agree as follows:

(a) COMPANY DUTIES: Company agrees to use its best efforts to provide investment banking/financial advisory services for the City for the purpose, or purposes, set forth above. Company duties shall include, but not be limited to the following:

1) Researching, analyzing and evaluating the financial condition of the City; and
2) Assisting the City to structure and implement financial initiatives to strengthen underlying credit position and ratings;
3) Assisting City to structure, market, and procure debt and investment funding alternatives from prospective investors, lenders, underwriter's, or other credit providers; and
4) Assisting City to manage competitive processes leading to procurement of depository or investment alternatives from prospective investors, banks, purchasers, or other providers of investment mechanisms; and
5) Assisting City in the development of financial strategies for the overall benefit of City's enterprise.

(b) COMPENSATION: City agrees that it shall pay to Company:

1) a fee equal to one percent (1.00%) of the amount funded to City by lenders, banks, broker dealers, bank dealers, or any other providers of credit or debt funding. The fee shall not be inclusive of other costs of debt issuance. Payment of the fee shall be due and payable upon (i) the closing of the funding transaction or (ii) at such time as it has become apparent to the Company that the City has abandoned its efforts to close transactions after the initial or bond resolutions for such transactions have been approved by the governing body of the City.

(c) TERM & EXCLUSIVITY: The term of this Agreement shall commence upon the execution hereof and the Company shall have the exclusive right to perform the services contemplated by this Agreement for a period of 24 months from the date hereof. Notwithstanding the foregoing, the City shall have the right to terminate this Agreement at anytime for cause if the Company engages in illegal activities or activities deemed by the governing body to damage the good standing of the City. The Company shall have the right to terminate this Agreement upon provision of written notice of termination to the City 90 days prior to the effective date of termination.

(d) ROLE AS AGENT: City agrees that Company shall be its agent for the purpose of obtaining the financing(s) contemplated herein and Company shall manage competitive processes in the development of recommendations pertaining to the selection of all transaction participants. City agrees to provide to Company such information and data which Company should reasonably request and which is to City's knowledge and belief true and correct. Company agrees to keep and protect such information and date in absolute confidence.

(e) FIDUCIARY DUTY: Company shall provide municipal advisory/investment banker services for the City in compliance with proposed Rule G-36 of the Municipal Securities Rulemaking Board ("MSRB") while acting in fiduciary capacity where there are duties to undivided loyalty and care for the City and its interests. Company shall at all times represent the interests of the City with uncompromising rigidity in the execution of Company Duties in the achievement of the financial objectives of the City.

(f) ASSIGNABILITY: City provides that this Agreement takes precedence over any existing agreement(s) with any firm providing Company Duties. In the event the City shall acquire, merge, consolidate, or align business interests with any other provider of water or sewer services within the Service Area the City shall cause for any other agreement entered into by another entity with another firm providing Company Duties to be terminated and the full force and measure of this Agreement shall be effected in whole in application and under existing terms to the surviving entity or association.

(g) ENTIRE UNDERSTANDING: This Agreement sets forth the entire understanding of the parties and supercedes any and all prior agreements, arrangements and understands relating to the subject matter hereof. No representation, promise, inducement, or statement of intention has been made by either party which is not embodied in this Agreement, and neither party shall be bound or be liable for alleged representation, promise, inducement or statement of intention not embodied herein.

(h) APPENDIX A: Appendix A hereto contains disclosures pertaining to proposed MSRB Rule G-36 which requires municipal advisors to make to the issuers of municipal debt prior to the conduct of business between the Company and City. The City affirms Company has made full disclosure under the requirements of the proposed Rule G-36, has provided a copy in full of existing body of such rule, and included Appendix A as an attachment to this Agreement.

(i) CONSTRUCTION: This agreement shall be construed and enforced in accordance to the laws of the State of Tennessee.

(j) ATTORNEY'S FEES: In the event of litigation arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to the relief granted, all costs incurred including a reasonable attorney's fee.

(k) EXCLUSIVE FORUM: The parties agree that the courts of the general jurisdiction of Cumberland County, State of Tennessee, and the appropriate appellate courts shall have exclusive jurisdiction for the resolution of any and all disputes arising under or relating to this Agreement.

IN WITNESS WHEREOF, the parties have executed this contract, this 7th day of March 2012.

KIDWELL & COMPANY INC.

Larry Wayne Kidwell

BY: Larry Wayne Kidwell
President

THE CITY OF CROSSVILLE, TENNESSEE

J. H. Graham III

BY: J. H. GRAHAM, III
TITLE: MAYOR

MSRB NOTICE 2011-48 (AUGUST 23, 2011)

MSRB FILES MUNICIPAL ADVISOR FIDUCIARY DUTY RULE AND INTERPRETIVE NOTICE

On August 23, 2011, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("SEC") a proposed rule change consisting of proposed Rule G-36 (on fiduciary duty of municipal advisors) and a proposed interpretive notice (the "Notice") concerning the application of proposed Rule G-36 to municipal advisors.[1] The MSRB requested that the proposed rule change be made effective on the date that rules defining the term "municipal advisor" under the Securities Exchange Act of 1934 (the "Exchange Act") are first made effective by the SEC or such later date as the proposed rule change is approved by the SEC.

BACKGROUND

With the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act,[2] the MSRB was expressly directed by Congress to protect municipal entities. Accordingly, the MSRB is proposing Rule G-36 and an interpretive notice thereunder to address the fiduciary duty of municipal advisors to municipal entity clients.

SUMMARY OF PROPOSED RULE CHANGE

Rule G-36 (on fiduciary duty of municipal advisors)

In the conduct of its municipal advisory activities on behalf of municipal entity clients, a municipal advisor shall be subject to a fiduciary duty, which shall include a duty of loyalty and a duty of care.

INTERPRETIVE NOTICE ON RULE G-36 FIDUCIARY DUTY OF A MUNICIPAL ADVISOR

Duty of Loyalty. The Notice would provide that the Rule G-36 duty of loyalty would require the municipal advisor to deal honestly and in good faith with the municipal entity and to act in the municipal entity's best interests without regard to financial or other interests of the municipal advisor. It would require a municipal advisor to make clear, written disclosure of all material conflicts of interest, such as those that might impair its ability to satisfy the duty of loyalty, and to receive the written, informed consent of officials of the municipal entity the municipal advisor reasonably believes have the authority to bind the municipal entity by contract with the municipal advisor. Such disclosure would be required to be made before the municipal advisor could provide municipal advisory services to the municipal entity or, in the case of conflicts discovered or arising after the municipal advisory relationship has commenced, before the municipal advisor could continue to provide such services.

The Notice would provide that a municipal advisor may not undertake an engagement if certain unmanageable conflicts exist, including (i) kickbacks and certain fee-splitting arrangements with the providers of investments or services to municipal entities, (ii) payments by municipal advisors made for the purpose of obtaining or retaining municipal advisory business other than reasonable fees paid to a municipal advisor for solicitation activities regulated by the MSRB, and (iii) acting as a principal in matters concerning the municipal advisory engagement (except when providing investments to the municipal entity on a temporary basis to ensure timely delivery for closing; when engaging in activities permitted under Rule G-23; when it is a municipal advisor solely because it recommends investments or municipal financial products provided or offered by it to a municipal entity as a counterparty; or when acting as a swap or security-based counterparty to a municipal entity represented by an "independent representative," as defined in the Commodity Exchange Act or the Exchange Act, respectively.

The Notice would provide that, in certain cases, the compensation received by a municipal advisor could be so disproportionate to the nature of the municipal advisory services performed

that it would be inconsistent with the proposed Rule G-36 duty of loyalty and would represent an unmanageable conflict. The Notice also would provide that a municipal advisor would be required to disclose conflicts associated with various forms of compensation (except where the form of compensation has been required by the municipal entity client), in which case the disclosure need only address that form of compensation. The Notice would also include a form of disclosure of conflicts relating to the forms of compensation to aid advisors in preparing their disclosure. Use of the form would not be required.

Duty of Care. The Notice would provide that the proposed Rule G-36 duty of care would require that a municipal advisor act competently and provide advice to the municipal entity after inquiry into reasonably feasible alternatives to the financings or products proposed (unless the engagement is of a limited nature). The Notice would also require the advisor to make reasonable inquiries into facts necessary to determine the basis for the municipal entity's chosen course of action, as well facts necessary to prepare certificates and to help ensure appropriate disclosures for official statements. The Notice would also permit the municipal advisor to limit the scope of its engagement.

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Questions about this notice should be directed to Peg Henry, General Counsel, Market Regulation, or Karen Du Brul, Associate General Counsel, at 703-797-6600.

August 23, 2011

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TEXT OF PROPOSED RULE CHANGE

Rule G-36 (on fiduciary duty of municipal advisors)

In the conduct of its municipal advisory activities on behalf of municipal entity clients, a municipal advisor shall be subject to a fiduciary duty, which shall include a duty of loyalty and a duty of care.

INTERPRETIVE NOTICE ON RULE G-36 FIDUCIARY DUTY OF A MUNICIPAL ADVISOR

Section 15B(c)(1) of the Securities Exchange Act of 1934 (the "Exchange Act") provides that:

A municipal advisor and any person associated with such municipal advisor shall be deemed to have a fiduciary duty to any municipal entity for whom such municipal advisor acts as a municipal advisor, and no municipal advisor may engage in any act, practice, or course of business which is not consistent with a municipal advisor's fiduciary duty or that is in contravention of any rule of the Board.[1]

Section 15B(b)(2)(L)(i) of the Exchange Act provides that the Municipal Securities Rulemaking Board ("MSRB") shall establish rules with respect to municipal advisors that "prescribe means reasonably designed to prevent acts, practices, and courses of business as are not consistent with a municipal advisor's fiduciary duty to its clients."

In furtherance of this statutory directive, the MSRB promulgated MSRB Rule G-36, on fiduciary duty of municipal advisors, which provides:

In the conduct of its municipal advisory activities on behalf of municipal entity clients, a municipal advisor shall be subject to a fiduciary duty, which shall include a duty of loyalty and a duty of care.

The terms "municipal advisor" and "municipal entity" are defined in Sections 15B(e)(4) and (e)(8), respectively, of the Exchange Act and the rules and regulations promulgated thereunder. The term "municipal advisory activities" is defined by MSRB Rule D-13 to mean the activities described in Section 15B(e)(4)(A)(i) and (ii) of the Exchange Act, whether conducted by a broker,

dealer, or municipal securities dealer ("dealer") that is a municipal advisor within the meaning of Section 15B(e)(4) of the Exchange Act or by a municipal advisor that is not a dealer.

This notice also provides interpretive guidance on the meaning of "fiduciary duty" for purposes of Rule G-36 and describes conduct that would or could breach that Rule G-36 fiduciary duty.[2]

The Rule G-36 fiduciary duty to municipal entity clients goes beyond and encompasses the obligation under MSRB Rule G-17 for municipal advisors, in the conduct of their municipal advisory activities, to deal fairly with all persons and not engage in any deceptive, dishonest, or unfair practice.[3] A violation of Rule G-17 with respect to a municipal entity client, therefore, would necessarily be a violation of Rule G-36.

DUTY OF LOYALTY

As provided in Rule G-36, a municipal advisor's fiduciary duty to its municipal entity client includes a duty of loyalty. That duty requires the municipal advisor to deal honestly and in good faith with the municipal entity and to act in the municipal entity's best interests without regard to financial or other interests of the municipal advisor.

Conflicts of Interest

Disclosure Obligations. Under Rule G-36, a municipal advisor must disclose all material conflicts of interest of which it is aware after reasonable inquiry, such as those that might impair its ability to satisfy the duty of loyalty to its municipal entity client.[4] Such conflicts of interest include those existing at the time the engagement is entered into, and those discovered or arising during the course of the engagement. A municipal entity will be considered to be a client of the municipal advisor from the time that the advisor has been engaged to provide municipal advisory services (either pursuant to a written agreement or by informal arrangement) until the time that the agreed upon engagement ends. All disclosures of conflicts, including those discovered or arising during the course of the engagement, must be made in writing to an official of the municipal entity the municipal advisor reasonably believes has the authority to bind the municipal entity by contract with the municipal advisor in a manner sufficiently detailed to inform the municipal entity of the nature and implications of the conflict. The following are examples of the types of conflicts that must be disclosed by the municipal advisor, but this list is not intended to be exhaustive:

(i) payments by municipal advisors made for the purpose of obtaining or retaining municipal advisory business;[5]

(ii) payments from third parties to the municipal advisor in relation to the municipal advisory engagement;[6]

(iii) payments from third parties to enlist the municipal advisor's recommendation of their services to the municipal entity;[7]

(iv) whether the municipal advisor or an affiliate of the municipal advisor is acting as a principal in matters concerning the municipal advisory engagement;[8]

(v) the form of compensation for the municipal advisory engagement;[9] and

(vi) other engagements or relationships that might impair the municipal advisor's ability to act in the best interests of its municipal entity client.

See, however, "Unmanageable Conflicts" for a description of certain conflicts that would preclude a municipal advisor from undertaking an engagement with a municipal entity and with respect to which disclosure of such conflicts would not be effective in permitting such engagement to be undertaken.

Informed Consent. Under Rule G-36, the municipal advisor must receive written consent to its conflicts by an official of the municipal entity that the municipal advisor reasonably believes has the authority to bind the municipal entity by contract with the municipal advisor before the municipal advisory engagement begins or, in the case of conflicts discovered or arising after the municipal advisory engagement has begun, before the municipal advisor may continue to provide such services. For purposes of Rule G-36, a municipal entity will be deemed to have consented to conflicts that are clearly described in its engagement letter or other written contract with the municipal advisor, if the municipal entity expressly acknowledges the existence of such conflicts. If the official of the municipal entity agrees to proceed with the municipal advisory engagement after receipt of the conflicts disclosure but will not provide written acknowledgement of such conflicts, the municipal advisor may proceed with the engagement after documenting with specificity why it was unable to obtain such written acknowledgement.

Disclosure of conflicts, coupled with written consent, will not satisfy the requirements of Rule G-36 in instances in which the municipal advisor has reason to believe that such consent is not informed. In such cases, a municipal advisor must make additional efforts reasonably designed to inform the official of the municipal entity of the nature and implications of the municipal advisor's conflicts. Additionally, disclosures to an official who is a party to the conflict of interest (such as recipients of payments from municipal advisors) will not satisfy the requirements of Rule G-36.

Unmanageable Conflicts. Pursuant to its duty of loyalty under Rule G-36, a municipal advisor must not engage in municipal advisory activities with respect to a municipal entity client if it cannot manage its conflicts in a manner that will permit it to act in the municipal entity's best interests. Some conflicts are not manageable because, when fully informed of the nature and potential consequences of the conflicts, an official of a municipal entity could not provide informed consent.[10] The following are examples of conflicts that fall into this category, but this list is not intended to be exhaustive:

(i) kickback arrangements, or certain fee-splitting arrangements, with the providers of investments or services to municipal entities,[11]

(ii) payments by municipal advisors made for the purpose of obtaining or retaining municipal advisory business other than reasonable fees paid to a municipal advisor described in Section 15B(e)(9) of the Exchange Act,[12] and

(iii) except as provided below, acting as a principal in matters concerning the municipal advisory engagement.[13]

In most cases under Rule G-36, a municipal advisor that acts as a principal with its municipal entity client on the same transaction will be considered to have an unmanageable conflict. This will also be the case if an affiliate of the municipal advisor acts as a principal with the municipal entity on the same transaction. Notwithstanding the foregoing, a municipal advisor will not violate Rule G-36 solely because it acts as principal under any of the following circumstances:

(i) it provides investments to a municipal entity on a temporary basis to ensure the delivery of such securities on the closing date for a bond issue, provided that its compensation attributable to the provision of the securities is limited to the reimbursement of its cost of carry (not including any opportunity cost);

(ii) it engages in an activity permitted under Rule G-23;

(iii) it is a municipal advisor solely because it recommends investments or municipal financial products provided or offered by it to a municipal entity as a counterparty, but is not described in (iv) below; or

(iv) it serves as a counterparty to a municipal entity with respect to a swap or security-based swap transaction in which the municipal entity is represented by an "independent representative" as that term is defined in section 4s(h)(5) of the Commodity Exchange Act or section 15F(h)(5) of the Exchange Act, respectively, and the rules and regulations promulgated thereunder.

Compensation

Excessive Compensation. The MSRB recognizes that what is considered reasonable compensation for a municipal advisor will vary according to the municipal advisor's expertise, the complexity of the financing, whether the fee is contingent upon the closing of the transaction, and the length of time spent on the engagement, among other factors. However, in certain cases and depending upon the specific facts and circumstances of the engagement, a municipal advisor's compensation may be so disproportionate to the nature of the municipal advisory services performed as to indicate that the municipal advisor is not acting in the municipal entity's best interests as required by Rule G-36. Such excessive compensation would constitute a violation of the municipal advisor's duty of loyalty, even if such compensation has been disclosed.[14]

Forms of Compensation. The manner in which municipal advisors are compensated varies according to the nature of the engagement and applicable state and local laws and policies. Pursuant to Rule G-36, a municipal advisor must provide written disclosure to its municipal entity client of what the amount (in dollars and to the extent it can be quantified) of its direct compensation and indirect compensation (*e.g.*, amounts paid to affiliates) from the engagement will be, or is projected to be, as well as the scope of services to be provided for that compensation. Additionally, except as provided below, the municipal advisor must provide written disclosure to its client of the conflicts of interest associated with various forms of compensation, including the form of compensation applicable to its engagement. One way in which a municipal advisor may satisfy its obligation to provide written disclosure of the conflicts with various forms of compensation is to provide its client with the document entitled "Disclosure of Conflicts of Interest With Various Forms of Compensation," attached as Appendix A to this notice (the "Compensation Disclosure Document"). The disclosures described in this paragraph must be provided as described above under "Duty of Loyalty/Conflicts of Interest/Disclosure Obligations." Provision by the municipal advisor to its client of the Compensation Disclosure Document will not satisfy the municipal advisor's obligation to disclose conflicts of interest not addressed in the Compensation Disclosure Document, such as payments from third parties. Notwithstanding the foregoing, if the municipal entity client has required that a particular form of compensation be used, the compensation conflicts disclosure provided by the municipal advisor need only address that particular form of compensation.

A municipal advisor's duty of loyalty under Rule G-36 requires it to manage any conflicts of interest that may result from its form of compensation so that it acts in the best interests of its municipal entity client. For example, except as discussed below under "Permissible Limitations on Scope of Engagement," a municipal advisor that reasonably believes that a proposed financing or product is not in its municipal entity client's best interests must so advise the municipal entity pursuant to its duty of loyalty, even if such advice could adversely affect the municipal advisor's compensation.

DUTY OF CARE

As provided in Rule G-36, a municipal advisor's fiduciary duty to its municipal entity client also includes a duty of care. That is, under Rule G-36, a municipal advisor must exercise due care in performing its responsibilities.

Necessary Qualifications

Pursuant to that duty of care required by Rule G-36, the municipal advisor must not undertake a municipal advisory engagement for which the advisor does not possess the degree of knowledge and expertise needed to provide the municipal entity with informed advice.[15] For example, a municipal advisor must not undertake a swap advisory engagement or security-based swap advisory engagement for a municipal entity unless it has sufficient knowledge to evaluate the transaction and its risks, as well as the pricing and appropriateness of the transaction.[16]

Consideration of Alternatives

Unless that duty has been expressly disclaimed as provided below, under Rule G-36, a municipal advisor has a duty to investigate and advise the municipal entity of alternatives to the proposed financing structure or product that are then reasonably feasible based on the issuer's financial circumstances and market conditions at the time, if those alternatives would better serve the interests of the municipal entity.[17]

Duty of Inquiry

Under Rule G-36, a municipal advisor must make a reasonable inquiry as to the facts that are relevant to a municipal entity's determination of whether to proceed with a course of action (*e.g.*, the issuance of municipal securities, entering into a derivative contract, or making an investment). Similarly, when asked to provide a certificate that will be relied upon by the municipal entity or by investors in the municipal entity's securities, the municipal advisor must make a reasonable inquiry as to the pertinent facts.[18] Furthermore, when a municipal advisor participates in the preparation of an official statement for a municipal securities issue, the municipal advisor owes a duty to the municipal entity to make reasonable inquiries in order to help ensure the appropriate disclosures are made in the official statement.[19]

Advisor Not a Guarantor

The duty of care under Rule G-36 requires only that the municipal advisor act competently and provide advice to the municipal entity after making reasonable inquiry into the representations of the municipal entity's counterparties, as well as then reasonably feasible alternatives to the financings or products proposed that might better serve the interests of its municipal entity client. However, a municipal advisor's duty of care does not make the municipal advisor a guarantor of a successful financing or a guarantor that there are no facts material to a municipal entity's decisionmaking process other than the ones known by the municipal advisor and disclosed to the municipal entity.

PERMISSIBLE LIMITATIONS ON SCOPE OF ENGAGEMENT

Municipal advisors may be retained by municipal entity clients for limited engagements and may, accordingly, limit the scope of the engagement to which their fiduciary duty applies.[20] In some cases, a municipal entity may have already reached a decision that a particular type of financing or financial product is appropriate for it and not find it necessary for the advisor to advise it on appropriateness. In that case, under Rule G-36 the advisor's engagement must reflect the limitations on its role. If there is no engagement letter, the advisor must be specific about that limitation in a written communication to the municipal entity. In either case, these limitations must be disclosed prior to the commencement of the engagement. If the advisor has taken these steps and does not by course of conduct cause the municipal entity to expect that the advisor will be advising on appropriateness,[21] the fact that the transaction thereafter proves to have been inappropriate for the municipal entity will not mean that the advisor has breached its fiduciary duty to the municipal entity under Rule G-36.

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[1] The fiduciary duty in Section 15B(c)(1) of the Exchange Act is in addition to any state or other fiduciary duty laws.

[2] This notice cites cases and administrative proceedings involving breach of fiduciary duty under the Investment Advisers Act (the "Advisers Act") and state fiduciary duty laws, as well as violations of Section 17(a) of the Securities Act of 1933 (the "Securities Act") and Section 10(b) of the Exchange Act concerning the fraudulent behavior of fiduciaries. These citations are included only for purposes of illustration of the conduct that would be considered a breach by a municipal advisor of its Rule G-36 fiduciary duty, which is an independent duty created by Section 15B(c)(1) of the Exchange Act.

[3] The MSRB notes that the Commission has brought enforcement actions concerning financial advisors for violations of Rule G-17. *See, e.g., In the Matter of Lazard Freres and Merrill Lynch*, SEC Rel. No. 34-36419 (Oct. 26, 1995) (settlement in connection with alleged violation of Rule G-17 for failure of underwriter and financial advisor to disclose payments made by underwriter to financial advisor); *In re Wheat, First Securities, Inc.*, SEC Initial Dec. Rel. No. 155 (Dec. 17, 1999) (administrative law judge found violation of Rule G-17 and Florida fiduciary duty law for financial advisor's false disclosure to municipal entity that it had not employed a lobbyist to secure its advisory contract with the county and that it had not entered into an arrangement with a third party to make payments contingent upon its securing the advisory contract); *In re Pryor, McClendon, Counts & Co., Inc. et al.*, Exchange Act Release No. 48095 (Jun. 26, 2003) (settlement in connection with alleged violation of Rule G-17 for financial advisor's failure to disclose payment to government official made to secure advisory assignment).

[4] *See, e.g., Securities and Exchange Commission v. Capital Gains*, 375 U.S. 180 (1963) (adviser breached fiduciary duty under Advisers Act by failing to act in his clients' best interests and failing to disclose the short-term profits it made, and the impact of his actions on the clients, by recommending certain securities to his clients after purchasing them for his own account, a practice known as "scalping").

[5] *See, e.g., Monetta Financial Services, Inc. v. Securities and Exchange Commission*, 390 F.3d 952 (7th Cir. 2004) (investment adviser breached fiduciary duty under Advisers Act by failing to disclose allocation of valuable IPO shares to directors of its investment company clients); *In re Wheat, First Securities, Inc.* and *In re Pryor, McClendon, Counts & Co., Inc., supra*.

[6] *See, e.g., In re O'Brien Partners, Inc.,* Exchange Act Release No. 7594 (Oct. 27, 1998) (settlement in connection with alleged breach of fiduciary duty under Advisers Act, California law, Wisconsin law, and New York law by investment adviser for failure to disclose to state and municipal clients that it received "referral fees" from a finder that assisted in the reinvestment of municipal bond proceeds in guaranteed investment contracts, repurchase agreements and forwards; referral fees allegedly totaled $450,000 and represented 50-60% of finder commission); *In the Matter of Mark S. Ferber*, Exchange Act Release No. 38102 (Dec. 31, 1996) (settlement in connection with alleged breach of fiduciary duty by financial advisor for failure to disclose to state and municipal clients payments from broker-dealer totaling almost $6 million over two years in exchange for recommendations that his clients select that broker-dealer as underwriter or provider of other financial services, including interest rate swaps); *In the Matter of Arthurs Lestrange & Co., Inc. and Michael Bova*, SEC Release Nos. 33-7775, 34-42148 (Nov. 17, 1999) (settlement in connection with alleged breach of fiduciary duty by financial advisor for failure to disclose true nature of fee splitting arrangement; financial advisor allegedly contributed its financial advisory fee of $210,000 to pool of advisory and brokerage service compensation, received $1.5 million from the investment broker, and paid $500,000 to a finder); *In the Matter of William R. Hough & Co.*, SEC Release Nos. 33-7826, 34-42632 (Apr. 6, 2000) (settlement in connection with alleged breach of fiduciary duty by financial advisor for failure to disclose excessive mark-ups and fee-splitting with investment providers; in one case, financial advisor allegedly received $35,000 for its financial advisory services and $400,000 from the investment provider; in the other, financial advisor allegedly received $300,000 from a forward supply contract provider for "developing a forward supply assignment program"); *In the Matter of John S. Reger and Business & Financial Advisors, Inc.,* SEC Rel. No. 33-7973 (Apr. 23, 2001) (settlement in connection with alleged breach of fiduciary duty by financial advisor for failure to disclose to issuer that it received $129,000 kickback from escrow securities provider, representing 40% of escrow provider's profit; financial advisor also participated in preparation of official statement and allegedly violated Sections 17(a)(2) and (3) of the Securities Act by failing to disclose the payments).

[7] *See, e.g., Securities and Exchange Commission v. DiBella*, 587 F.3d 553 (2d Cir. 2009) (investment adviser breached fiduciary duty under Advisers Act by failing to disclose payment to state senator on state pension fund investment advisory board made to influence state treasurer's decision to invest state pension fund moneys with adviser); *U.S. v. deVegter*, 198 F. 3d 1324 (11th Cir. 1999) (financial advisor breached fiduciary duty to issuer by accepting payments from underwriter to manipulate competitive bidding process for refunding of bonds; financial advisor

incorporated underwriter's comments in order to make request for proposals more favorable for underwriter, sent bids of other competitors to underwriter, and ordered bids to be re-ranked so underwriter was highest ranked bidder).

[8] *See, e.g., Securities and Exchange Commission v. Rauscher Pierce Refsnes, Inc.*, 17 F. Supp. 2d 985 (D. Ariz. 1998) (financial advisor breached its fiduciary duty under Arizona law by making false statements in tax certificate for advance refunding bonds, failing to disclose that its government securities desk was acting as a principal in the provision of escrow securities, and failing to disclose excessive mark-ups).

[9] *See* "Compensation/Forms of Compensation" herein.

[10] *See, e.g.*, Prohibition on the Use of Brokerage Commissions to Finance Distribution, SEC Rel. No. 26591 (Sept. 2, 2004), at Section VII.E (explaining that the Commission's adoption in 2004 of Investment Company Act Rule 12b-1(h), which, among other things, prohibits a fund from using brokerage commissions to pay for the distribution of the fund's shares, was based on a conclusion that the practice of trading brokerage business for sales of fund shares poses conflicts of interest that the Commission believed to be "largely unmanageable").

[11] *See, e.g.*, the cases at note 6, *supra*. Rule G-36 does not preclude a municipal advisor from receiving payment for its municipal advisory services from a third party, as long as the municipal advisor discloses, and the municipal entity provides its informed written consent to, such payment arrangement and the amount of such payment. As with the disclosure of other conflicts of interest, such disclosure must be made before the municipal advisory engagement is entered into, or at the time the conflict is discovered or arises, if later.

[12] *See* the cases at note 5, *supra*. Municipal advisors that are described in Section 15B(e)(9) of the Exchange Act because they solicit business from municipal entities on behalf of other municipal advisors are subject to all MSRB rules for municipal advisors.

[13] *See, e.g., Securities and Exchange Commission v. Rauscher Pierce Refsnes, Inc., supra*; *In the Matter of Lazard Freres & Co.*, SEC Rel. Nos. 33-7671, 34-41318 (Apr. 21, 1999) (settlement in connection with financial advisor alleged to have failed to disclose excessive mark-ups on escrow securities it provided as principal; financial advisor alleged to have received $700,000 on the sale of the Treasuries, in addition to its $200,000 advisory fee).

[14] Payments from third parties are included in determining whether compensation is excessive. *See, e.g.*, the cases at note 6, *supra*, for examples of excessive compensation arrangements. Municipal advisors subject to hourly billing arrangements must not submit bills that do not accurately reflect the nature of the services performed and the personnel performing them. Similarly, municipal advisors must not submit inflated expenses.

[15] *See, e.g.*, the cases at note 18, *infra*.

[16] Section 4s(h)(5) of the Commodity Exchange Act requires that a swap dealer with a special entity client (including states, local governments, and public pension funds) must have a reasonable basis to believe that the special entity has an independent representative that satisfies these criteria, among others. Section 15F(h)(5) of the Exchange Act imposes the same requirements with respect to security-based swaps.

[17] *See, e.g., O'Brien Partners, supra* (duty to advise issuer on whether to invest bond proceeds and whether to invest in securities); *In re* Lazard Freres, *supra* (duty to investigate whether advisory client could obtain a more favorable price than the one offered by financial advisor for escrow securities).

[18] *See, e.g., In the Matter of Dwight Allen*, SEC Rel. Nos. 33-7456, 34-39122 (Sept. 24, 1997) (settlement in connection with independent financial consultant alleged to have violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act by acting recklessly in certifying that certain municipal obligations met a "minimum credit requirement" based on the value to lien

ratio calculated on the value of land; lacking experience with these types of obligations, calculating the value to lien ratio, or the land appraisal process, he allegedly simply relied on one appraisal of the land, which was based on the estimated build-out value if the land was fully developed and did not reflect current market value); *In re Milbrodt*, SEC Rel. Nos. 33-7455, 34-39121 (Sept. 24, 1997) (settlement in connection with financial advisor alleged to have certified that land-based bonds to be acquired by pool bond issuer met minimum credit requirements despite the lack of an independent appraisal of the current market value of the land and without reviewing the governing documents, the governing test for investments of pool bond issuers, or the official statements of land-based bond issuers); *In the Matter of the County of Nevada (McKay)*, SEC Rel. Nos. 33-7556, 34-40225 (July 17, 1998) (settlement in connection with appraiser in *Dwight Allen* and *Milbrodt* cases alleged to have failed to exercise due care in its appraisals used in official statements and violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act).

[19] *See, e.g., In the Matter of County of Nevada (Virginia Horler)*, SEC Init. Dec. Rel. No. 153 (Oct. 29, 1999) (administrative law judge found financial advisor tasked with preparation of official statement for Mello-Roos issue stepped into the shoes of the underwriter and violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act by failing to exercise due diligence and inquire into the finances or personal financial condition of developers and financial condition of development company, which was experiencing negative cash flow and failed to pay taxes in 1990, ultimately leading to bankruptcy).

[20] *See, e.g., Joyce v. Morgan Stanley*, 538 F. 3d 797 (10th Cir. 2008) (claim by shareholder denied because financial advisor had limited its fiduciary duty to the corporation itself and its engagement letter had expressly disclaimed the duty to advise on the possible change in value of stock of the acquiring corporation in the period between announcement of the merger and the closing).

[21] *See, e.g., In re Daisy Systems Corp.* (97 F. 3d 1171 (9th Cir. 1996) (financial advisor's engagement letter not dispositive of scope of financial advisory relationship because it did not expressly limit the nature of the advice to be provided).

* * * * *

APPENDIX A

DISCLOSURE OF CONFLICTS OF INTEREST WITH VARIOUS FORMS OF COMPENSATION

The Municipal Securities Rulemaking Board 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 unless you have required that a particular form of compensation be used. You should select a form of compensation that best meets your 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.

THE CITY OF CROSSVILLE, TENNESSEE

By: _____

Name: J. H. Graham, III
Title: Mayor
Date: March 7, 2012