

June 14, 2021

Spencer Nebel, City Manager
City of Newport
169 SW Coast Highway
Newport, Oregon 97365

Re: Placement Agent Engagement Letter
Water Revenue Bonds to be Sold in 2021 or 2022

Dear Spencer:

This letter confirms the agreement (the "Agreement") between Piper Sandler & Co. ("Piper Sandler" or "we" or "us") and the City of Newport (the "Issuer" or "you") as follows:

1. **Engagement.** The Issuer engages Piper Sandler to act as its exclusive representative to assist you on a best efforts basis in placing the proposed private transaction (the "Transaction") of the above-referenced Securities. You acknowledge and agree that Piper Sandler's engagement hereunder is not an agreement by Piper Sandler or any of its affiliates to underwrite, place or purchase the Securities or otherwise provide any financing to you. We may decline to participate in the Transaction if we reasonably determine that the Transaction has become impractical or undesirable. We accept this engagement upon the terms and conditions set forth in this agreement.

As currently contemplated, the Transaction will be a placement of the Securities with gross proceeds of approximately \$4,500,000. You may in your discretion postpone, modify, abandon or terminate the Transaction prior to closing. Sale and delivery of the Securities by the Issuer and purchase by the purchasers will occur on the day of closing ("Closing Date").

During the term of our engagement, we will as directed by you and as appropriate to the Transaction, provide the following services:

- (a) consult with you in planning and implementing the Transaction;
- (b) assist you in reviewing any transaction materials (the "Transaction Materials") we mutually agree are beneficial or necessary to the consummation of the Transaction;
- (c) assist you in preparing for due diligence conducted by potential investors;
- (d) identify potential investors and use our reasonable commercial efforts to assist in arranging sales of the Securities to investors;
- (e) consult with you in structuring the investment; and
- (f) assist you in negotiating definitive documentation.

2. **Fees and Expenses.**

For our services, you agree to pay us:

- A flat fee of \$30,000 payable by wire transfer of immediately available funds at closing. For avoidance of doubt, the fee shall not be payable in the event a closing of the Transaction does not occur.

3. ***Representations, Warranties and Agreements of the Issuer.***

You represent and warrant to, and agree with us, that:

- (a) the Securities will be sold by you in compliance with the requirements for exemptions from registration or qualification of, and otherwise in accordance with, all federal and state Securities laws and regulations;
- (b) all financial projections that have or will be made available to Piper Sandler by you or any of your representatives in connection with the Transaction (the "Projections") have been and will be prepared in good faith and will be based upon assumptions believed by you to be reasonable (it being understood that projections by their nature are inherently uncertain and no assurances are being given that the results reflected in the Projections will be achieved);
- (c) you will make available to us and each purchaser such documents and other information which we and each purchaser reasonably deem (the "Transaction Materials") appropriate and will provide access to your officers, directors, employees, accountants, counsel and other representatives and will provide each purchaser and us opportunities to ask questions and receive answers from these persons; it being understood that we and each purchaser will rely solely upon such information supplied by you and your representatives without assuming any responsibility for independent investigation or verification thereof;
- (d) you agree to be responsible for the accuracy and completeness of any Transaction Materials to the extent of federal securities laws applicable to the Transaction. You agree to notify us promptly of any material adverse changes, or development that may lead to any material adverse change, in your business, properties, operations, financial condition or prospects and concerning any statement contained in any Transaction Material, or in any other information provided to us, which is not accurate or which is incomplete or misleading in any material respect;
- (e) On the Closing Date, you will deliver or cause to be delivered to the Placement Agent:
 - (1.) The Opinion of Bond Counsel to the Issuer, dated the Closing Date relating to:
 - (i) the validity of the Securities;
 - (ii) exemption from registration and qualification under federal and state securities law; and
 - (iii) the tax-exempt status of the Securities, together with a reliance letter from such counsel, dated the Closing Date and addressed to us and in a form acceptable to us.

4. ***Other Matters Relating to Our Engagement.*** You acknowledge that you have retained us solely to provide the services to you as set forth in this agreement. As placement agent, Piper Sandler may provide advice concerning the structure, timing, terms, and other similar matters concerning the Transaction. You acknowledge and agree that: (i) the primary role of Piper Sandler as a placement agent, is to place securities to investors in an arms-length commercial transaction and that Piper Sandler has financial and other interests that differ from your interests (ii) Piper Sandler is not acting as a municipal advisor, financial advisor or fiduciary to you or any other person or

entity and has not assumed any advisory or fiduciary responsibility to you with respect to the transaction contemplated herein and the discussions, undertakings and proceedings leading thereto (irrespective of whether Piper Sandler has provided other services or is currently providing other services to you on other matters) (iii) the only obligations Piper Sandler has to you with respect to the transaction contemplated hereby expressly are set forth in this agreement and (iv) you have consulted your own legal, accounting, tax, financial and other advisors, as applicable, to the extent deemed appropriate in connection with the transaction contemplated herein.

5. **Disclosure.** Attached to this letter are regulatory disclosures required by the Securities and Exchange Commission and the Municipal Securities Rulemaking Board to be made by us at this time because of this engagement. We may be required to send you additional disclosures regarding the material financial characteristics and risks of such transaction or describing those conflicts. At that time, we also will seek your acknowledgement of receipt of any such additional disclosures. It is our understanding that you have the authority to bind the Issuer by contract with us, and that you are not a party to any conflict of interest relating to the Securities. If our understanding is incorrect, please notify the undersigned immediately.
6. **Termination.** You or we may terminate our engagement under this agreement, with or without cause, upon ten days' written notice to the other party. The fee, expense reimbursement, your representations, warranties and agreements and miscellaneous provisions of this agreement will survive any termination of our engagement under this agreement.
7. **Section Headings.** Section headings contained herein are for convenience of reference only and are not part of this agreement.
8. **Amendment.** This agreement may be amended only by a written instrument executed by each of the Parties. The terms of this agreement may be waived only by a written instrument executed by the party waiving compliance.
9. **Entire Agreement.** This agreement embodies the entire agreement and understanding between you and us and supersedes all prior agreements and understandings relating to the subject matter of this agreement.
10. **No Assignment.** This agreement has been made by the Issuer and Piper Sandler, and no other person shall acquire or have any right under or by virtue of this agreement.
11. **Governing Law.** This agreement, and all claims or causes of action (whether in contract or tort) that may be based upon, arise out of or relate to this agreement or the negotiation, execution or performance of this agreement, will be governed by and construed in accordance with the laws of Oregon, without regard to conflict of law principles, and must be brought in the appropriate court of the State of Oregon. You and we hereby waive all right to trial by jury in any action, proceeding, or counterclaim (whether based upon contract, tort or otherwise) in connection with any dispute arising out of this agreement or any matters contemplated by this agreement.
12. **Service of Process.** Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 16. Nothing in this agreement will affect the right of any party to this agreement to serve process in any other manner permitted by law.
13. **Effectiveness.** This agreement shall become effective upon its execution by duly authorized officials of all parties hereto and shall be valid and enforceable from and after the time of such execution.
14. **Severability.** In the event any provision of this agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. You and us will endeavor in good faith negotiations to replace the

invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid or unenforceable provisions.


15. **Counterparts.** This agreement may be executed in several counterparts (including counterparts exchanged by email in PDF format), each of which shall be an original and all of which shall constitute but one and the same instrument.
16. **Notices.** Any notice required or permitted to be given under this agreement shall be given in writing and shall be effective from the date sent by registered or certified mail, by hand, facsimile or overnight courier to the addresses set forth on the first page of this agreement with a copy sent to the General Counsel of such Party.
17. THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

Please confirm that the foregoing correctly and completely sets forth our understanding by signing and returning to us the enclosed duplicate of this engagement agreement.

Sincerely,


Lauren MacMillan, Managing Director
Piper Sandler & Co.

Acknowledgement and Approval of Engagement
and Receipt of Appendix A Disclosures


Spencer Nebel, City Manager
City of Newport

Date: 06-25-21

Appendix A – G-17 Disclosure

Thank you for engaging Piper Sandler & Co. to serve as your placement agent. We are writing to provide you with certain disclosures relating to the captioned bond issue (Bonds), as required by Municipal Securities Rulemaking Board (MSRB) Rule G-17 as set forth in MSRB Notice 2019-20 (Nov. 8, 2019).¹

Piper Sandler intends to serve as a placement agent respecting the Bonds and not as a financial advisor or municipal advisor to you. As part of our services as a placement agent, we may provide advice concerning the structure, timing, terms, and other similar matters concerning the issuance of the Bonds.

Standard Disclosures

- **Disclosures Concerning the Placement Agent Role:**
 - MSRB Rule G-17 requires us to deal fairly at all times with both municipal issuers and investors.
 - Our primary role in this transaction is to facilitate the sale and purchase of municipal securities between you and one or more investors for which we will receive compensation.
 - Unlike a municipal advisor, a placement agent does not have a fiduciary duty to the Issuer under the federal securities laws and is, therefore, not required by federal law to act in the best interests of the Issuer without regard to its own financial or other interests.
 - The placement agents have a duty to purchase the Bonds from the Issuer at a fair and reasonable price, but must balance that duty with their duty to sell the Bonds to investors at prices that are fair and reasonable.
 - In the event an official statement is prepared, the placement agent will review the official statement for the Bonds in accordance with, and a part of, their respective responsibilities to investors under the federal securities laws, as applied to the facts and circumstances of this transaction.²
- **Disclosures Concerning the Placement Agent's Compensation:**
 - The placement agent will be compensated by a fee that was negotiated and entered into in connection with the issuance of the Bonds. Payment or receipt of the placement agent fee will be contingent on the closing of the transaction and the amount of the fee may be based, in whole or in part, on a percentage of the principal amount of the Bonds. While this form of compensation is customary in the municipal securities market, it presents a conflict of interest since the placement agent may have an incentive to recommend to the Issuer a transaction that is unnecessary or to recommend that the size of the transaction be larger than is necessary.

If you or any other Issuer officials have any questions or concerns about these disclosures, please make those questions or concerns known immediately to the undersigned. In addition, you should consult with the Issuer's own financial and/or municipal, legal, accounting, tax and other advisors, as applicable, to the extent you deem appropriate.

Please note that nothing in this letter should be viewed as a commitment by the placement agent to purchase or sell all the Bonds and any such commitment will only exist upon the execution of any bond

¹ Revised Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities (effective Mar. 31, 2021).

² Under federal securities law, an issuer of securities has the primary responsibility for disclosure to investors. The review of the official statement by the underwriters is solely for purposes of satisfying the underwriters' obligations under the federal securities laws and such review should not be construed by an issuer as a guarantee of the accuracy or completeness of the information in the official statement.

purchase agreement or similar agreement and then only in accordance with the terms and conditions thereof.

You have been identified by the Issuer as a primary contact for the Issuer's receipt of these disclosures, and that you are not a party to any disclosed conflict of interest relating to the subject transaction. If our understanding is incorrect, please notify the undersigned immediately. We are required to seek your acknowledgement that you have received this letter. Accordingly, please send me an email to that effect, or sign and return the enclosed copy of this letter to me at the address set forth above. Otherwise, an email read receipt from you or automatic response confirming that our email was opened by you will serve as an acknowledgment that you received these disclosures.

Depending on the structure of the transaction that the Issuer decides to pursue, or if additional actual or potential material conflicts are identified, we may be required to send you additional disclosures regarding the material financial characteristics and risks of such transaction and/or describing those conflicts. At that time, we also will seek your acknowledgement of receipt of any such additional disclosures.

Appendix B – Capital Appreciation Bonds

The following is a general description of the financial characteristics of Capital Appreciation Bonds (CABs), as well as a general description of certain financial risks that are known to us and reasonably foreseeable at this time and that you should consider before deciding whether to issue CABs. If you have any questions or concerns about these disclosures, please make those questions or concerns known immediately to us. In addition, you should consult with your financial and/or municipal, legal, accounting, tax, and other advisors, as applicable, to the extent you deem appropriate.

Financial Characteristics

CABs are bonds that are typically sold at a price less than their par amount (i.e., an “*original issue discount*”). The difference between the sales price and the par amount is considered the original issue discount. CABs typically do not pay interest periodically like traditional Current Interest Bonds (“CIBs”), but rather pay interest only at maturity. CABs accrete in value at a stated yield as interest accrues, regardless of the current market rate. At maturity, investors receive an amount equal to the initial principal invested plus the interest earned, compounded at the stated yield.

Convertible CABs are a hybrid structure in which the bonds accrete in value while in the CAB mode and then pay annual principal and semi-annual interest as a traditional CIB after the conversion date. The interest and principal paid after the conversion date is based on the accreted value of the bonds at the conversion date instead of the original par value.

CABs may be attractive to issuers because they defer debt service payments until maturity and relieve pressure on an issuer’s annual debt service budget. They may also allow issuers to smooth out debt service payments in their annual budgets by issuing CABs structured or scheduled to mature in years in which other series of bonds do not mature, or in the years between the last serial bond and the start of mandatory term bond calls.

Financial Risk Considerations

Certain risks may arise in connection with your issuance of CABs, including some or all the following (generally, the obligor, rather than the issuer, will bear these risks for conduit revenue bonds):

Issuer Default Risk. Depending on how the CABs are structured, the maturity value may be a substantial amount. You may be in default if the funds pledged to secure your CABs are not enough to pay debt service on the CABs when due. The consequences of a default may be serious for you and, depending on applicable state law and the terms of the authorizing documents, the holders of the bonds, the trustee and any credit support provider may be able to exercise a range of available remedies against you. For example, if the CABs are secured by a general obligation pledge, you may be ordered by a court to raise taxes. Other budgetary adjustments also may be necessary to enable you to provide sufficient funds to pay debt service on the CABs. If the bonds are revenue bonds, you may be required to take steps to increase the available revenues that are pledged as security for the bonds. A default may negatively impact your credit ratings and may effectively limit your ability to publicly offer bonds or other securities at market interest rate levels. Further, if you are unable to provide sufficient funds to remedy the default, subject to applicable state law and the terms of the authorizing documents, you may find it necessary to consider available alternatives under state law, including (for some issuers) state-mandated receivership or bankruptcy. A default also may occur if you are unable to comply with covenants or other provisions agreed to in connection with the issuance of the bonds.

This description is only a summary of issues relating to defaults and is not intended as legal advice. You should consult with your bond counsel for further information regarding defaults and remedies.

Redemption Risk. Your ability to redeem the CABs prior to maturity may be limited, depending on the terms of any optional redemption provisions. CABs are generally not subject to optional redemption by issuers until the maturity date thereof. If interest rates in the market decline, you may be unable to take advantage of the lower interest rates to reduce debt service if the CABs cannot be redeemed.

Refinancing Risk. If your financing plan contemplates refinancing some or all the CABs at maturity, market conditions or changes in law may limit or prevent you from refinancing those CABs when required. Further, limitations in the federal tax rules on advance refunding of bonds (an advance refunding of bonds occurs when tax-exempt bonds are refunded more than 90 days prior to the date on which those bonds may be retired) may restrict your ability to refund the CABs to take advantage of lower interest rates.

Interest Rate Penalty. While CABs may allow you to defer interest payments until maturity of the bond, investors require significantly higher yield to forgo traditional semi-annual interest payments. The higher yields, together with the potential of reduced flexibility to optionally redeem the CABs prior to maturity, may result in higher total debt costs than if you had issued CIBs. This may be exacerbated if the financial assumptions underlying the issuance of CABs are ultimately incorrect.

Interest Payment Deferral. As the interest rates on CABs is generally higher than CIBs and accretes over the life of the CABs, you must prepare for an even higher debt service that will be due and payable at the stated maturity of CABs. Rather than paying the remaining principal and the final semi-annual coupon payment at maturity for traditional long-term fixed rate bonds, you will be required to pay all the principal and all of the interest that will have compounded from the issuance date through maturity. Convertible CABs carry the inherent risk that, upon conversion from CABs to CIBs, the CIBs will require semi-annual interest payments.

Limited Investor Base. Due to the unique characteristics of CABs, there may be a limited universe of potential investors. This could lead the underwriters to have difficulty selling the CABs, and which could result in higher yields and higher total debt costs. Additionally, you should consider that CABs may price at a substantial yield concession to current interest fixed rate bonds as investors value the structure relative to other product alternatives.

Reinvestment Risk. You may have proceeds of the CABs to invest prior to the time that you are able to spend those proceeds for the authorized purpose. Depending on market conditions, you may not be able to invest those proceeds at or near the yield on the CABs, which is referred to as "negative arbitrage."

Tax Compliance Risk. The issuance of tax-exempt bonds is subject to several requirements under the U.S. Internal Revenue Code, as enforced by the Internal Revenue Service (IRS). You must take certain steps and make certain representations prior to the issuance of tax-exempt bonds. You also must covenant to take certain additional actions after issuance of tax-exempt bonds. A breach of your representations or your failure to comply with certain tax-related covenants may cause the interest on the CABs (if issued as tax-exempt obligations) to become taxable retroactively to the date of issuance of the CABs, which may result in an increase in the interest rate that you pay on the CABs. The IRS also may audit you or your CABs or other bonds, in some cases on a random basis and in other cases targeted to specific types of bond issues or tax concerns. If the CABs are declared taxable, or if you are subject to audit, you may be unable to

remarket or refinance the CABS. Further, your ability to issue other tax-exempt bonds also may be limited.

This description of tax compliance risks is not intended as legal advice and you should consult with your bond counsel regarding the tax implications of issuing CABS.

Melanie Nelson

From: Michael Murzynsky
Sent: Thursday, June 24, 2021 11:11 AM
To: Melanie Nelson
Subject: FW: Updated Piper Sandler engagement letter
Attachments: Engagement Letter - Newport - 2021-2022 Water REV.pdf

Mel,

Here is the final approval from David.

Mike

Michael A Murzynsky
Finance Director
City of Newport
169 SW Coast Highway
Newport, OR 97365

Phone: 541-574-0610

-----Original Message-----

From: David Allen
Sent: Monday, June 14, 2021 9:22 PM
To: Michael Murzynsky <M.Murzynsky@NewportOregon.gov>; Spencer Nebel <S.Nebel@NewportOregon.gov>
Cc: Peggy Hawker <P.Hawker@NewportOregon.gov>
Subject: Re: Updated Piper Sandler engagement letter

Yes, the additional language in section 11 (governing law) as to consent to Oregon jurisdiction should cover it so as to move forward with the attached engagement letter ... thanks. --David

From: Michael Murzynsky
Sent: Monday, June 14, 2021 3:32 PM
To: David Allen
Subject: Updated Piper Sandler engagement letter

David,

Here is a revised version with your suggestion language, is this okay to move forward? Let me know.

Mike

Michael A Murzynsky
Finance Director
City of Newport
169 SW Coast Highway
Newport, OR 97365

Phone: 541-574-0610