

Agenda Item No: Consent Agenda - e.
Meeting Date: August 9, 2021

Subject: Consent Agenda Item

City Staff Member: A.J. Euckert, City Manager

e. Resolution 21-55, approving an Underwriter Engagement Letter with Piper Sandler

This engagement letter is for underwriting of Certificates of Participation (COP) related to property acquisition and improvements. Certificates of Participation ("COPs") are a specialized subset of lease-purchase contracts sold as securities resembling bonds. Typically, a trustee issues securities that represent a percentage interest in the right to receive payments from the local government under the lease-purchase contract. Although the same state and federal restrictions apply to COPs as apply to other lease-purchase financings, the COPs financing is more complex and generally resembles bond financing. An underwriter or placement agent of the COPs will be required, as will various fiscal agents.

The fees being charged for services will be paid from proceeds at closing. If closing does not occur, for some reason, no fees will be paid to Piper Sandler.

Piper Sandler was the underwriter for construction of the new City annex building and remodeling of City Hall and Police Department project.

RESOLUTION NO. 21-55

**A RESOLUTION APPROVING AN UNDERWRITING ENGAGEMENT LETTER
WITH PIPER SANDLER**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DACONO,
COLORADO:**

Section 1. The Letter by and between the City of Dacono and Piper Sandler for representation to provide underwriting related services is hereby approved in essentially the same form as the copy of such Letter accompanying this Resolution.

Section 2. The Mayor is hereby authorized to sign the Letter and is further authorized to negotiate and approve on behalf of the City such revisions to the Letter as the Mayor determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Letter are not altered.

INTRODUCED, READ, and ADOPTED this 9th day of August, 2021.

CITY OF DACONO, COLORADO

Joe Baker, Mayor

ATTEST:

Valerie Taylor, City Clerk

AJ Euckert, City Manager
City of Dacono
512 Cherry Ave.
P.O. Box 186
Dacono, CO 80514

July 28, 2021

Re: Underwriter Engagement Letter
Lease Purchase Certificates of Participation (COP), Series 2021 (the "Securities")

Dear AJ:

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

1. **Engagement.** The Issuer hereby engages Piper Sandler to serve as an underwriter for the Securities. As currently contemplated, the transaction will be an underwriting of the Securities with gross proceeds of approximately \$5,700,000. Sale and delivery of the Securities by the Issuer will occur on the day of closing ("Closing Date").
2. **Scope of Services.** Piper Sandler agrees, as appropriate and directed by you, to provide the following services.
 - (a) Develop a financing plan for the Securities;
 - (b) Provide advice concerning structure, timing, terms and other similar matters concerning the Securities, including recommendations as to maturities, interest rates, structure, security, timing, and amount of proceeds needed to implement your project;
 - (c) Review and make comments with respect to sale documents, as applicable, including Explanatory Statements, Authorizing Bond Resolutions, bond declarations and indentures and other underlying documents relating to the Securities;
 - (d) Develop a sale schedule that incorporates all aspects of bringing Securities to market and arranging for a successful closing of the transaction;
 - (e) Assist in the preparation of the preliminary and final Official Statements to be issued by you relating to the Securities for final approval by you and your agents, including bond counsel;
 - (f) Assist in making presentations to rating agencies with respect to the Securities;
 - (g) Evaluate and make recommendations concerning the use of bond insurance and any other available credit enhancements;
 - (h) Distribute preliminary and final Official Statements and other documents to a broad list of institutions, banks, trusts, insurance companies, professional investment advisors, and other prospective investors in Securities;
 - (i) Develop a marketing plan for the offering, including identification of potential investors;
 - (j) Negotiate the pricing, including the interest rate, and other terms of Securities;
 - (k) Obtain CUSIP number(s) for Securities and arranging for their DTC book-entry eligibility as required;
 - (l) Provide a final schedule of debt service payments for Securities;
 - (m) Review and make comments with respect to closing documents prepared by Bond Counsel;
 - (n) Plan and arrange for the closing and settlement of the issuance and the delivery of Securities;

Fees and Expenses.

- (a) ***Underwriter Fee.*** For our services, you agree to pay us: an underwriting discount not to exceed \$9.50/\$1,000 (.950%) of the proceeds received by you on the sale of the Securities payable from proceeds at closing. For avoidance of doubt, the fee shall not be payable in the event a closing of the Securities does not occur.
 - (b) ***Expenses.*** Upon receipt of an invoice, you agree to reimburse us from bond proceeds for our reasonable expenses incurred in preparing to market and marketing the Securities, including, but not limited to, fees and disbursements of underwriter's counsel (\$10,000), printing and distribution of Transaction Materials, and expenses to close the transaction.
3. ***Other Matters Relating to Our Engagement.*** The parties agree that we are not making a final commitment to underwrite securities until certain events have occurred including among other things, a successful authorizing bond election, satisfactory completion and execution of all final documentation for an offering including all terms and conditions and credit approval by Piper Sandler's internal credit approval process. This Agreement is therefore not a final commitment by us express or implied, to underwrite or purchase any securities. If you elect to conduct a public offering of the Securities, you and Piper Sandler will enter into a definitive bond purchase Agreement which shall supersede the provisions of this Agreement in any conflicting respects, except that the parties agree that the fee provisions set forth in Section 3 will continue to apply.


You acknowledge that you have retained us solely to provide the services to you as set forth in this Agreement. As underwriter, 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 an underwriter, is to sell 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.

4. ***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.
5. ***Termination.*** You or we may terminate our engagement under this Agreement, with or without cause, upon ten (10) days' written notice to the other party.
6. ***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.

7. **Entire Agreement.** This Agreement embodies the entire Agreement and understanding between you and us and supersedes any prior Agreements and understandings relating to the subject matter of this Agreement.
8. **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.
9. **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 the state of Colorado.
10. **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.
11. **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.
12. **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.
13. **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.

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

Sincerely,



Nate Eckloff
Managing Director, Public Finance Investment Banking
Piper Sandler & Co.
1200 17th Street, Suite 1250
Denver, CO 80202
303 405-0844
nate.eckloff@psc.com

Acknowledgement and Approval of Engagement
and Receipt of Appendix A Disclosures

Joe Baker, Mayor
City of Dacono

Date: _____

Appendix A – G-17 Disclosure

We are writing to provide you with certain disclosures relating to the Bonds, as required by the Municipal Securities Rulemaking Board (MSRB) Rule G-17 in accordance with MSRB Notice 2012-25 (May 7, 2012). Under federal regulations, all underwriters are required to send the following disclosures to you (as the Issuer of the Bonds) in order to clarify with you the role of an underwriter and other matters relating to an underwriting of the Bonds.

Piper Sandler intends to serve as an underwriter respecting the Bonds and not as a financial advisor or municipal advisor. As part of our services as an underwriter, Piper Sandler may provide advice concerning the structure, timing, terms, and other similar matters concerning an issue of municipal securities that Piper Sandler is underwriting.

Piper Sandler has been engaged to act as your underwriter in a negotiated underwriting, and by engaging Piper Sandler as your underwriter, you determined to sell the Bonds by negotiated sale. A negotiated sale is the sale of a new issue of municipal securities by an issuer directly to an underwriter or underwriting syndicate selected by the issuer. A negotiated sale is distinguished from a sale by competitive bid, which requires public bidding by the underwriters. Piper Sandler did not advise you as to what method of sale (competitive or negotiated sale) you used for this issuance of municipal securities.

Our Role as Underwriter:

In serving as underwriter for the Bonds, these are some important disclosures that clarify our role and responsibilities:

- (i) MSRB Rule G-17 requires an underwriter to deal fairly at all times with both municipal issuers and investors;
- (ii) The underwriter's primary role is to purchase securities with a view to distribution in an arm's-length commercial transaction with the Issuer and it has financial and other interests that differ from those of the Issuer;
- (iii) Unlike a municipal advisor, the underwriter 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;
- (iv) The underwriter has a duty to purchase securities from the Issuer at a fair and reasonable price, but must balance that duty with its duty to sell municipal securities to investors at prices that are fair and reasonable; and
- (v) The underwriter will review the official statement for the Issuer's securities in accordance with, and as part of, its responsibilities to investors under the federal securities laws, as applied to the facts and circumstances of the transaction.¹

Our Compensation:

The underwriter will be compensated by a fee and/or an underwriting discount that will be set forth in the bond purchase agreement to be negotiated and entered into in connection with the issuance of the Bonds. Payment or receipt of the underwriting fee or discount will be contingent on the closing of the transaction and the amount of the fee or discount 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 underwriter 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.

¹ Under federal securities law, an issuer of securities has the primary responsibility for disclosure for investors. The review of the official statement by the underwriter is solely for purposes of satisfying the underwriter's 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.

Conflicts of Interest:

We have entered into a separate agreement with Charles Schwab & Co., Inc. that enables Charles Schwab & Co., Inc. to distribute certain new issue municipal securities underwritten by or allocated to us which could include the Bonds. Under that agreement, we will share with Charles Schwab & Co., a portion of the fee or commission paid to us.

Risk Disclosures:

In accordance with the requirements of MSRB Rule G-17, attached as Appendix B is a description of the material aspects of a typical fixed rate offering, including the Bonds. This letter may be later supplemented if the material terms of the Bonds change from what is described here.

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

Appendix B – Risk Disclosures

The following is a general description of the financial characteristics and security structures of fixed rate municipal bonds (“Fixed Rate Bonds”), as well as a general description of certain financial risks that you should consider before deciding whether to issue Fixed Rate Bonds.

Financial Characteristics

Maturity and Interest. Fixed Rate Bonds are interest-bearing debt securities issued by state and local governments, political subdivisions and agencies and authorities. Maturity dates for Fixed Rate Bonds are fixed at the time of issuance and may include serial maturities (specified principal amounts are payable on the same date in each year until final maturity), one or more term maturities (specified principal amounts are payable on each term maturity date), a combination of serial and term maturities, or bullet maturities, in which all the Bonds mature on a single maturity date. The final maturity date typically will range between 10 and 30 years from the date of issuance. Interest on the Fixed Rate Bonds typically is paid semiannually at a stated fixed rate or rates for each maturity date.

Redemption. Fixed Rate Bonds may be subject to optional redemption, which allows you, at your option, to redeem some or all of the bonds on a date prior to scheduled maturity, such as in connection with the issuance of refunding bonds to take advantage of lower interest rates. Fixed Rate Bonds will be subject to optional redemption only after the passage of a specified period of time, often approximately ten years from the date of issuance, and upon payment of the redemption price set forth in the bonds, which may include a redemption premium. You will be required to send out a notice of optional redemption to the holders of the bonds, usually not less than 30 days prior to the redemption date. Fixed Rate Bonds with term maturity dates also may be subject to mandatory sinking fund redemption, which requires you to redeem specified principal amounts of the bonds annually in advance of the term maturity date. The mandatory sinking fund redemption price is 100% of the principal amount of the bonds to be redeemed.

Security

Lease-Purchase Certificates of Participation (COPs) in Colorado are subject to annual appropriation, are debt-like securities that are payable from an issuer’s general fund and, are not secured by a specific tax levy like a general obligation bond or a specific revenue pledge like a revenue bond.

Financial Risk Considerations

Certain risks may arise in connection with your issuance of Fixed Rate Bonds, including some or all of the following:

Risk of Default and Fiscal Stress

You may be in default if the funds pledged to secure your bonds are not sufficient to pay debt service on the securities when due. The consequences of a default may be serious for you and may include the exercise of available remedies against you on behalf of the holders of the securities. Depending on state law, if the securities are secured by a general obligation pledge, you may be ordered by a court to raise taxes or other budgetary adjustments may be necessary to enable you to provide sufficient funds to pay debt service on the bonds. If the securities are revenue bonds, subject to applicable state law and the terms of the authorizing documents, you may be required to take steps to increase the available revenues that are pledged as security for the bonds.

Bonds payable from the general fund, particularly bonds without a defined revenue stream identified to pay debt service, reduce your flexibility to balance the general fund. Because a fixed

debt service payment is required to be paid regardless of how your general fund is impacted by revenue losses or by increased expenses, you have less flexibility in the options available to you in assuring a balanced budget for your general fund.

In Colorado, lease obligations are subject to annual appropriation. If your governing body decides not to appropriate payments for debt service or lease payments, your credit ratings, if any, may be negatively impacted and you may be forced to pay a higher interest rate on future debt issuance or may be unable to access the market for future debt issuance.

Likewise, a default also may effectively limit your ability to publicly offer 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, it may be necessary for you to consider available alternatives under state law. 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 securities.

Redemption Risk

Your ability to redeem the bonds prior to maturity may be limited, depending on the terms of any optional redemption provisions. In the event that interest rates decline, you may be unable to take advantage of the lower interest rates to reduce debt service.

Refinancing Risk

If the financing plan contemplates refinancing some or all of the securities at maturity (for example, if there are term maturities, bullet maturities or if a shorter final maturity is chosen than might otherwise be permitted under the applicable federal tax rules), market conditions, changes to the credit of the securities or changes in law may limit, make more expensive or prevent the refinancing of those securities when required.

Reinvestment Risk

You may have proceeds of the securities 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 rate of interest that you are paying on the securities, which is referred to as “negative arbitrage”.

Tax Compliance Risk

The issuance of tax-exempt securities is subject to a number of requirements under the United States 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 securities. You also must covenant to take certain additional actions after issuance of the tax-exempt securities. A breach of your representations or your failure to comply with certain tax-related covenants may cause the interest on the securities to become taxable retroactively to the date of issuance of the securities, which may result in an increase in the interest rate that you pay on the securities or the mandatory redemption of the securities. The IRS also may audit you or your securities, in some cases on a random basis and in other cases targeted to specific types of securities or tax concerns. If the securities are declared taxable, or if you are subject to audit, the market price of your securities may be adversely affected. Further, your ability to issue other tax-exempt securities also may be limited.