

CITY OF BENSON CITY COUNCIL OCTOBER 29, 2020 – 5:00 P.M. SPECIAL MEETING

A SPECIAL MEETING OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
WILL BE HELD ON OCTOBER 29, 2020 AT 5:00 P.M.,
AT THE BENSON COMMUNITY CENTER,
705 W. UNION STREET, BENSON, ARIZONA

BECAUSE OF THE CURRENT COVID – 19 PUBLIC HEALTH EMERGENCY, THE BENSON COMMUNITY CENTER WILL HAVE LIMITED OCCUPANCY FOR COUNCIL MEETINGS. HOWEVER, THE LIVE MEETING MAY BE WATCHED VIA FACEBOOK ONLINE AT <HTTPS://WWW.FACEBOOK.COM/BENSONAZ/> (NO FACEBOOK ACCOUNT IS NEEDED) OR LISTENED TO BY CALLING THE PHONE NUMBER PROVIDED ON THE MEETING AGENDA. FOR THIS MEETING, THAT NUMBER IS 267-930-4000 PARTICIPANT ID# 567090498.

FOR HELP WITH TECHNICAL DIFFICULTIES, PLEASE CALL 520-720-6331.

Vicki L. Vivian, CMC, City Clerk

AGENDA

The Council may discuss, direct, consider and take possible action as indicated below pertaining to the following:

CALL TO ORDER: The Call to Order will consist of the Mayor calling the Council to order. The Mayor or his designee shall then lead those present in the Pledge of Allegiance before introducing the invocation speaker, who will offer the invocation.

ROLL CALL: The City Clerk shall call the roll of the members, and the names of those present shall be entered in the minutes.

NEW BUSINESS:

1. Discussion and possible action regarding a Financial Advisory Services Agreement with Piper Sandler & Co. – **Vicki Vivian, CMC, City Manager/City Clerk ***

ADJOURNMENT

POSTED this 28th day of October, 2020

Material related to the City Council meeting is available for public review the day before and the day of the meeting, during office hours, at the City Clerk's Office located at 120 W. 6th Street, Benson, Arizona, 520-586-2245 x 2011.

All facilities are handicapped accessible. If you have a special accessibility need, please contact Vicki L. Vivian, City Clerk, at (520) 586-2245 or TDD: (520) 586-3624, no later than eight (8) hours before the scheduled meeting time.

Any invocation that may be offered before the start of regular Council business shall be the voluntary offering of a private citizen, for the benefit of the Council and the citizens present. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the Council, and the Council does not endorse the religious beliefs or views of this, or any other speaker.

Executive Sessions – Upon a vote of the majority of the City Council, the council may enter into Executive Sessions pursuant to Arizona Revised Statutes §38-431.03 (A)(3) to obtain legal advice on matters listed on the Agenda.

* Denotes an Exhibit in addition to the Council Communication

** Call to the Public

Arizona Revised Statutes §38-431.01(H) provides that “A public body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions to allow individuals to address the public body on any issue within the jurisdiction of the public body. At the conclusion of an open call to the public, individual members of the public body may respond to criticism made by those who have addressed the public body, may ask staff to review a matter

or may ask that a matter be put on a future agenda. However, members of the public body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action.” As such, a Call to the Public, if on the agenda, is provided as a courtesy.

In order to speak during the Call to the Public, please complete the Call to the Public form requesting to do so.

*** Consent Agenda

The Consent Agenda will be the first item under New Business and shall list separately distinct items requiring action by the City Council that are generally routine items not requiring Council discussion. A single motion will approve all items on the Consent Agenda, including any resolutions or ordinances, or claims/invoices that are of a routine nature. A Councilmember may remove any issue from the Consent Agenda, and that issue will be discussed and voted upon separately, immediately following the Consent Agenda under its proper regular category of New Business.

NOTICE TO PARENTS: Parents and legal guardians have the right (with certain exceptions) to consent before the City of Benson makes a video or voice recording of a minor child. A.R.S. §1-602(A)(9). Regular and Special Meetings of the Mayor and Council for the City of Benson are recorded, and that recording is usually posted on the City’s website. If you permit your child to participate in a Regular or Special Meeting of the Mayor and Council for the City of Benson, a recording will be made. If your child is seated in the audience your child may be recorded, but you may request that your child be seated in a designated area to avoid recording. Please submit your request to the City Clerk.

City of Benson City Council Communication

Special Meeting

October 29, 2020



To: Mayor and Council

Agenda Item # 1

From: Vicki Vivian, CMC, City Manager/City Clerk

Subject:

Discussion and possible action regarding a Financial Advisory Services Agreement with Piper Sandler & Co.

Discussion:

In issuing municipal bonds, there are many roles in the process. One of those roles is that of a municipal Financial Advisor. The Government Finance Officers Association (GFOA) recommends the use of a municipal Financial Advisor for the issuance of municipal bonds unless enough expertise exists on the issuer's staff and there is access to the bond market for information on pricing and selling the bonds.

While the issuer retains ultimate control over the financing, the involvement of a Financial Advisor provides the issuer with outside expertise to help evaluate decisions that will need to be made throughout the debt issuance process.

The role of the Financial Advisor is distinguished from other members of the project team in that they have a fiduciary responsibility to the issuer. This responsibility means they must always act in the best interests of the issuer and that they possess the expertise needed to execute a deal.

Piper Sandler & Co. is on the SAVE cooperative purchasing contract. After contacting Mr. Michael Vasquez of Piper Sandler & Co. whom our Financial Consultant Pat Walker recommended, an agreement was brought to Council for your consideration. After the Council discussion, both the City Attorney and I were directed to contact Piper Sandler to negotiate a revised agreement and have the agreement back before Council as soon as possible. The requested discussion occurred on Tuesday and the revised agreement is now being presented to Council.

Staff Recommendation:

Approval of the Financial Advisory Services Agreement with Piper Sandler & Co.

Ms. Vicki Vivian
City Manager
120 W. 6th Street
P.O. Box 2223
Benson, Arizona 85602

Re: Financial Advisory Services Agreement

Dear Ms. Vivian:

This Financial Advisory Services Agreement (the “Agreement”) is entered into on October 30, 2020 by and between the City of Benson, Arizona (the “City”) and Piper Sandler & Co. (“Piper Sandler” or the “Financial Advisor”). This Agreement will serve as our mutual agreement with respect to the terms and conditions of our engagement as your financial advisor, effective on the date this Agreement is executed (the Effective Date).

I. Scope of Services.

- (A) **Services to be provided.** Piper Sandler is engaged by the City to provide services with respect to the planned issuance of the City’s Pledged Revenue and Revenue Refunding Obligations, Series 2020 and any additional issues during the term of this Agreement (the Issues).
- (B) **Scope of Services.** The Scope of Services to be provided respecting the Issues may consist of the following, if directed by the City:
1. Evaluate options or alternatives with respect to the proposed new Issue(s),
 2. Assist the City and the City’s Bond or Special Counsel with election services, including aiding in preparation of the voter information pamphlet
 3. Consult with and/or advise the City on actual or potential changes in market place practices, market conditions or other matters that may have an impact on the Issues or Products.
 4. Assist the City in establishing a plan of financing
 5. Assist the City in establishing the structure, timing, terms and other similar matters concerning the Issue
 6. Prepare the financing schedule
 7. Attend meetings of the City’s governing body, as requested
 8. Advise the City on the manner of sale of the Issue
 9. Make arrangements for printing, advertising and other vendor services necessary or appropriate in connection with the Issue
 10. Advise the City with regard to continuing disclosure matters, as requested
 11. At the time of sale, provide the City with relevant data on comparable issues recently or currently being sold nationally and by comparable cities/issuers.
 12. In a negotiated sale, coordinate pre-pricing discussions, supervise the sale process, advise the City on matters relating to retail or other order periods and syndicate priorities, review the order book, and if directed by the City, advise on the acceptability of the underwriter’s pricing and offer to purchase
 13. Assist the City in identifying an underwriter in a negotiated sale or other deal participants such as an escrow agent, accountant, feasibility consultant, etc. to work on the Issue

14. Respond to questions from underwriters
15. Arrange and facilitate visits to, prepare materials for, and make recommendations to the City in connection with credit ratings agencies, insurers and other credit or liquidity providers
16. Coordinate working group sessions, closing, delivery of the new Issue and transfer of funds
17. Prepare a closing memorandum or transaction summary

For Services Respecting Official Statement. Piper Sandler will assemble the preliminary and final official statement from information received from you, third parties and your agents, such as bond counsel. Piper Sandler will rely on you to provide us with accurate and complete information, access to relevant personnel and agents, and your final approval to the distribution and use of the preliminary and final official statements to carry out these duties. In addition, you agree to allow us to rely on any opinion or representation of you or your counsel as to the accuracy or completeness of the preliminary and final official statement. See also Section IV, Compensation, below.

II. Limitations on Scope of Services. In order to clarify the extent of our relationship, Piper Sandler is required under MSRB Rule G-42¹ to describe any limitations on the scope of the activities to be performed for you. Accordingly, the Scope of Services are subject to the following limitations:

The Scope of Services is limited solely to the services described herein and is subject to limitations set forth within the descriptions of the Scope of Services. Any duties created by this Agreement do not extend beyond the Scope of Services or to any other contract, agreement, relationship, or understanding, if any, of any nature between the City and the Financial Advisor.

Unless explicitly directed by you in writing, the Scope of Services does not include evaluating advice or recommendations received by you from third parties.

The Scope of Services does not include tax, legal, accounting or engineering advice with respect to any Issue or Product or in connection with any opinion or certificate rendered by counsel or any other person at closing.

III. Amending Scope of Services. The Scope of Services may be changed only by written amendment or supplement. The parties agree to amend or supplement the Scope of Services promptly to reflect any material changes or additions to the Scope of Services.

IV. Compensation. The Financial Advisor shall be compensated a total fixed fee of \$40,000.00 for services rendered on the City's Pledged Revenue and Revenue Refunding Obligations, Series 2020. This total fee is comprised by a \$30,000 fee for Financial Advisory Services and a \$10,000 fee for the preparation and printing of the official statement. The total fee is contingent on closing. The total fee is payable, in immediately available funds, at closing.

V. IRMA Matters. If the City has designated Piper Sandler as its independent registered municipal advisor ("IRMA") for purposes of SEC Rule 15Ba1-1(d)(3)(vi) (the "IRMA exemption"), the extent of the IRMA exemption is limited to the Scope of Services and any limitations thereto. Any reference to Piper Sandler, its personnel and its role as IRMA in the written representation of the City contemplated under SEC Rule 15Ba1-1(d)(3)(vi)(B) is subject to prior approval by Piper Sandler and City agrees not to represent, publicly or to any specific person, that Piper Sandler is City's IRMA with respect to any aspect of municipal financial products or the issuance of municipal securities, or with respect to any specific municipal financial product or any specific issuance of municipal securities, outside the Scope of Services without Piper Sandler's prior written consent.

VI. Piper Sandler's Regulatory Duties When Servicing the City. MSRB Rule G-42 requires that Piper Sandler undertake certain inquiries or investigations of and relating to the City in order for Piper Sandler to fulfill certain aspects of the fiduciary duty owed to the City. Such inquiries generally are triggered: (a) by the requirement that Piper Sandler know the essential facts about the City and the authority of each person acting on behalf of the City so as to effectively service the relationship with the

¹ See MSRB Rule G-42(c)(v).

City, to act in accordance with any special directions from the City, to understand the authority of each person acting on behalf of the City, and to comply with applicable laws, regulations and rules; (b) when Piper Sandler undertakes a determination of suitability of any recommendation made by Piper Sandler to the City, if any or by others that Piper Sandler reviews for the City, if any; (c) when making any representations, including with regard to matters pertaining to the City or any Issue or Product; and (d) when providing any information in connection with the preparation of the preliminary or final official statement, including information about the City, its financial condition, its operational status and its municipal securities or municipal financial products. Specifically, City agrees to provide to Piper Sandler any documents on which the City has relied in connection with any certification it may make with respect to the accuracy and completeness of any Official Statement for the Issue.

The City agrees to cooperate, and to cause its agents to cooperate, with Piper Sandler in carrying out these duties to inquire or investigate, including providing to Piper Sandler accurate and complete information and reasonable access to relevant documents, other information and personnel needed to fulfill such duties.

In addition, the City agrees that, to the extent the City seeks to have Piper Sandler provide advice with regard to any recommendation made by a third party, the City will provide to Piper Sandler written direction to do so as well as any information it has received from such third party relating to its recommendation.

VII. Expenses. Piper Sandler will be responsible for all of Piper Sandler's out-of-pocket expenses unless otherwise agreed upon or if travel is directed by City. If travel is directed by the City, the City will reimburse Piper Sandler for their expenses. In the event a new issue of securities is contemplated by this Agreement, City will be responsible for the payment of all fees and expenses commonly known as costs of issuance, including but not limited to: publication expenses, legal counsel, bond counsel, ratings, credit enhancement, travel associated with securing any rating or credit enhancement, printing of bonds, printing and distribution of required disclosure documents, trustee fees, paying agent fees, CUSIP registration, and the like.

VIII. Term of Agreement. The term of this Agreement will be for three (3) years from the Effective Date, unless extended or earlier terminated as provided for herein. The City will have the option to renew this contract for a maximum of two (2) additional one-year periods resulting in a contract that will not exceed five (5) years.

This Agreement may be terminated with or without cause by either party upon the giving of at least thirty (30) days prior written notice to the other party of its intention to terminate, specifying in such notice the effective date of such termination. All fees due to Piper Sandler shall be due and payable upon termination. Upon termination, the obligations of Piper Sandler under this Agreement, including any amendment shall terminate immediately and Piper Sandler shall thereafter have no continuing fiduciary or other duties to the City. The provisions of Sections IV, VII, XII, XIV, XV and XVII shall survive termination of this Agreement.

This Agreement is subject to cancellation under A.R.S. § 38-511, the terms of which are incorporated herein.

VIII. Independent Contractor. The Financial Advisor is an independent contractor and nothing herein contained shall constitute or designate the Financial Advisor or any of its employees or agents as employees or agents of the City.

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

X. Required Disclosures. MSRB Rule G-42 requires that Piper Sandler provide you with disclosures of material conflicts of interest and of information regarding certain legal events and disciplinary history.

Such disclosures are provided in Piper Sandler's Disclosure Statement attached as Appendix A to this Agreement.

XI. Indemnification. Unless prohibited by law, the City hereby indemnifies and holds harmless the Financial Advisor, each individual, corporation, partnership, trust, association or other entity controlling the Financial Advisor, any affiliate of the Financial Advisor or any such controlling entity and their respective directors, officers, employees, partners, incorporators, shareholders, trustees and agents (hereinafter the "Indemnitees") against any and all liabilities, penalties, suits, causes of action, losses, damages, claims, costs and expenses (including, without limitation, fees and disbursements of counsel) or judgments of whatever kind or nature (each a "Claim"), imposed upon, incurred by or asserted against the Indemnitees arising out of or based upon (i) any allegation that any information in the Preliminary Official Statement or Final Official Statement contained (as of any relevant time) an untrue statement of a material fact or omitted (as of any relevant time) or omits to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

XII. Official Statement. The City acknowledges and understands that state and federal laws relating to disclosure in connection with municipal securities, including but not limited to the Securities Act of 1933 and Rule 10b-5 promulgated under the Securities Exchange Act of 1934, may apply to the City and that the failure of the Financial Advisor to advise the City respecting these laws shall not constitute a breach by the Financial Advisor or any of its duties and responsibilities under this Agreement. The City acknowledges that any Official Statement distributed in connection with an issuance of securities are statements of the City and not of Piper Sandler.

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

City of Benson
120 W. 6th Street
P.O. Box 2223
Benson, Arizona 85602
Vicki Vivian, City Manager
(520) 720-6311
vvivian@bensonaz.gov

Or to the Financial Advisor at:

Piper Sandler & Co.
2525 E. Camelback Road, Suite 950
Phoenix, AZ 85016-4244

Michael Vásquez, Senior Vice President
(602) 808-5405
michael.vasquez@psc.com

With a copy to:

Piper Sandler & Co.
Legal Department
800 Nicollet Mall, Suite 1000
Minneapolis, MN 55402

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

XIV. Choice of Law. This Agreement shall be construed and given effect in accordance with the laws of the state of Arizona.

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

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

XVII. No Third Party Beneficiary. This Agreement is made solely for the benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

XVIII. Authority. The undersigned represents and warrants that they have full legal authority to execute this Agreement on behalf of the City. The following individual(s) at the City have the authority to direct Piper Sandler's performance of its activities under this Agreement:

Ms. Vicki Vivian, City Manager

The following individuals at Piper Sandler have the authority to direct Piper Sandler's performance of its activities under this Agreement:

Michael Vásquez, Senior Vice President

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

PIPER SANDLER & CO.

By: 

Michael Vásquez
Its: Senior Vice President

Date: October 30, 2020

ACCEPTED AND AGREED:

CITY OF BENSON, ARIZONA

By: _____
Vicki Vivian
Its: City Manager

Date: _____

Piper Sandler & Co. is registered with the U.S. Securities and Exchange Commission and the Municipal Securities Rulemaking Board ("MSRB"). A brochure is posted on the website of the MSRB, at www.msrb.org that describes the protections that may be provided by MSRB rules and how to file a complaint with an appropriate regulatory authority.

APPENDIX A – DISCLOSURE STATEMENT

Municipal Securities Rulemaking Board Rule G-42 (the Rule) requires that Piper Sandler provide you with the following disclosures of material conflicts of interest and of information regarding certain legal events and disciplinary history. Accordingly, this Appendix A provides information regarding conflicts of interest and legal or disciplinary events of Piper Sandler required to be disclosed to pursuant to MSRB Rule G-42(b) and (c)(ii).

(A) **Disclosures of Conflicts of Interest.** The Rule requires that Piper Sandler provide to you disclosures relating to any actual or potential material conflicts of interest, including certain categories of potential conflicts of interest identified in the Rule, if applicable. If no such material conflicts of interest are known to exist based on the exercise of reasonable diligence by us, Piper Sandler is required to provide a written statement to that effect.

Accordingly, we make the following disclosures with respect to material conflicts of interest in connection with the Scope of Services under the Agreement, together with explanations of how we address or intend to manage or mitigate each conflict. To that end, with respect to all of the conflicts disclosed below, we mitigate such conflicts through our adherence to our fiduciary duty to you in connection with municipal advisory activities, which includes a duty of loyalty to you in performing all municipal advisory activities for the City. This duty of loyalty obligates us to deal honestly and with the utmost good faith with you and to act in your best interests without regard to our financial or other interests. In addition, as a broker dealer with a City oriented business, our success and profitability over time is based on assuring the foundations exist of integrity and quality of service. Furthermore, Piper Sandler's supervisory structure, utilizing our long-standing and comprehensive broker-dealer supervisory processes and practices, provides strong safeguards against individual representatives of Piper Sandler potentially departing from their regulatory duties due to personal interests. The disclosures below describe, as applicable, any additional mitigations that may be relevant with respect to any specific conflict disclosed below.

Compensation-Based Conflicts. The fees due under the Agreement are in a fixed amount established at the outset of the Agreement. The amount is usually based upon an analysis by the City and Piper Sandler of, among other things, the expected duration and complexity of the transaction and the Scope of Services to be performed by Piper Sandler. This form of compensation presents the appearance of a conflict or a potential conflict of interest because, if the transaction requires more work than originally contemplated, Piper Sandler may suffer a loss. Thus, Piper Sandler may have an incentive to recommend less time-consuming alternatives, or fail to do a thorough analysis of alternatives. In addition, contingent-based compensation, i.e. based upon the successful delivery of the Issue while customary in the municipal securities market, may present the appearance of a conflict or the potential for a conflict because it could create an incentive for Piper Sandler to recommend unnecessary financings or financings that are disadvantageous to the City. This conflict of interest is mitigated by our duty of care and fiduciary duty and the general mitigations related to our duties to you, as described above.

Transactions in City's Securities. As a municipal advisor, Piper Sandler cannot act as an underwriter in connection with the same issue of bonds for which Piper Sandler is acting as a municipal advisor. From time to time, Piper Sandler or its affiliates may submit orders for and acquire your securities issued in an Issue under the Agreement from members of the underwriting syndicate, either for its own trading account or for the accounts of its customers. Again, while we do not believe that this activity creates a material conflict of interest, we note that to mitigate any perception of conflict and to fulfill Piper Sandler's regulatory duties to the City, Piper Sandler's activities are engaged in on customary terms through units of Piper Sandler that operate independently from Piper Sandler's municipal advisory business, thereby eliminating the likelihood that such investment activities would have an impact on the services provided by Piper Sandler to you under the Agreement.

(B) **Disclosures of Information Regarding Legal Events and Disciplinary History.** The Rule requires that all municipal advisors provide to their clients certain disclosures of legal or disciplinary events material to a client's evaluation of the municipal advisor or the integrity of the municipal advisor's management or advisory personnel. Accordingly, Piper Sandler sets out below required disclosures and related information in connection with such disclosures.

- I. **Material Legal or Disciplinary Event.** There are no legal or disciplinary events that are material to the City's evaluation of Piper Sandler or the integrity of Piper Sandler's management or advisory personnel disclosed, or that should be disclosed, on any Form MA or Form MA-I filed with the SEC.
- II. **Most Recent Change in Legal or Disciplinary Event Disclosure.** Piper Sandler has not made any material legal or disciplinary event disclosures on Form MA or any Form MA-I filed with the SEC.

(C) **How to Access Form MA and Form MA-I Filings.** Piper Sandler's most recent Form MA and each most recent Form MA-I filed with the SEC are available on the SEC's EDGAR system at <http://www.sec.gov/edgar/searchedgar/companysearch.html>. The Form MA and the Form MA-I include information regarding legal events and disciplinary history about municipal advisor firms and their personnel, including information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation. The SEC permits certain items of information required on Form MA or MA-I to be provided by reference to such required information already filed by Piper Sandler in its capacity to the City as a broker-dealer on Form BD or Form U4 or as an investment adviser on Form ADV, as applicable. Information provided by Piper Sandler on Form BD or Form U4 is publicly accessible through reports generated by BrokerCheck at <http://brokercheck.finra.org>, and Piper Sandler's most recent Form ADV is publicly accessible at the Investment Adviser Public Disclosure website at <http://www.adviserinfo.sec.gov>. For purposes of accessing such BrokerCheck reports or Form ADV, Piper Sandler's CRD number is 665.

(D) **Future Supplemental Disclosures.** As required by the Rule, this Section 5 may be supplemented or amended, from time to time as needed, to reflect changed circumstances resulting in new conflicts of interest or changes in the conflicts of interest described above, or to provide updated information with regard to any legal or disciplinary events of Piper Sandler. Piper Sandler will provide you with any such supplement or amendment as it becomes available throughout the term of the Agreement.

Ms. Vicki Vivian
 City Manager
 120 W. 6th Street
 P.O. Box 2223
 Benson, Arizona 85602

Re: Financial Advisory Services Agreement

Dear Ms. Vivian:

This Financial Advisory Services Agreement (the “Agreement”) is entered into on October 26³⁰, 2020 by and between the City of Benson, Arizona (the “City”) and Piper Sandler & Co. (“Piper Sandler” or the “Financial Advisor”). This Agreement will serve as our mutual agreement with respect to the terms and conditions of our engagement as your financial advisor, effective on the date this Agreement is executed (the Effective Date).

I. Scope of Services.

(A) **Services to be provided.** Piper Sandler is engaged by the City to provide services with respect to the planned issuance of the City’s Pledged Revenue and Revenue Refunding Obligations, Series 2020 and any additional issues during the term of this Agreement (the Issues).

(B) **Scope of Services.** The Scope of Services to be provided respecting the Issues may consist of the following, if directed by the City:

1. Evaluate options or alternatives with respect to the proposed new Issue(s),
2. Assist the City and the City’s Bond or Special Counsel with election services, including aiding in preparation of the voter information pamphlet
3. Consult with and/or advise the City on actual or potential changes in market place practices, market conditions or other matters that may have an impact on the Issues or Products.
4. Assist the City in establishing a plan of financing
5. Assist the City in establishing the structure, timing, terms and other similar matters concerning the Issue
6. Prepare the financing schedule
7. Attend meetings of the City’s governing body, as requested
8. Advise the City on the manner of sale of the Issue
9. Make arrangements for printing, advertising and other vendor services necessary or appropriate in connection with the Issue
10. Advise the City with regard to continuing disclosure matters, as requested
11. At the time of sale, provide the City with relevant data on comparable issues recently or currently being sold nationally and by comparable cities/issuers.
12. In a negotiated sale, coordinate pre-pricing discussions, supervise the sale process, advise the City on matters relating to retail or other order periods and syndicate priorities, review the order book, and if directed by the City, advise on the acceptability of the underwriter’s pricing and offer to purchase
13. Assist the City in identifying an underwriter in a negotiated sale or other deal participants such as an escrow agent, accountant, feasibility consultant, etc. to work on the Issue

14. Respond to questions from underwriters
15. Arrange and facilitate visits to, prepare materials for, and make recommendations to the City in connection with credit ratings agencies, insurers and other credit or liquidity providers
16. Coordinate working group sessions, closing, delivery of the new Issue and transfer of funds
17. Prepare a closing memorandum or transaction summary

For Services Respecting Official Statement. Piper Sandler will assemble the preliminary and final official statement from information received from you, third parties and your agents, such as bond counsel. Piper Sandler will rely on you to provide us with accurate and complete information, access to relevant personnel and agents, and your final approval to the distribution and use of the preliminary and final official statements to carry out these duties. In addition, you agree to allow us to rely on any opinion or representation of you or your counsel as to the accuracy or completeness of the preliminary and final official statement. See also Section IV, Compensation, below.

II. Limitations on Scope of Services. In order to clarify the extent of our relationship, Piper Sandler is required under MSRB Rule G-42¹ to describe any limitations on the scope of the activities to be performed for you. Accordingly, the Scope of Services are subject to the following limitations:

The Scope of Services is limited solely to the services described herein and is subject to limitations set forth within the descriptions of the Scope of Services. Any duties created by this Agreement do not extend beyond the Scope of Services or to any other contract, agreement, relationship, or understanding, if any, of any nature between the City and the Financial Advisor.

Unless explicitly directed by you in writing, the Scope of Services does not include evaluating advice or recommendations received by you from third parties.

The Scope of Services does not include tax, legal, accounting or engineering advice with respect to any Issue or Product or in connection with any opinion or certificate rendered by counsel or any other person at closing.

III. Amending Scope of Services. The Scope of Services may be changed only by written amendment or supplement. The parties agree to amend or supplement the Scope of Services promptly to reflect any material changes or additions to the Scope of Services.

IV. Compensation. The Financial Advisor shall be compensated a total fixed fee of \$40,000.00 for services rendered on the City's Pledged Revenue and Revenue Refunding Obligations, Series 2020. This total fee is comprised by a \$30,000 fee for Financial Advisory Services and a \$10,000 fee for the preparation and printing of the official statement. The total fee is contingent on closing. The total fee is payable, in immediately available funds, at closing.

V. IRMA Matters. If the City has designated Piper Sandler as its independent registered municipal advisor ("IRMA") for purposes of SEC Rule 15Ba1-1(d)(3)(vi) (the "IRMA exemption"), the extent of the IRMA exemption is limited to the Scope of Services and any limitations thereto. Any reference to Piper Sandler, its personnel and its role as IRMA in the written representation of the City contemplated under SEC Rule 15Ba1-1(d)(3)(vi)(B) is subject to prior approval by Piper Sandler and City agrees not to represent, publicly or to any specific person, that Piper Sandler is City's IRMA with respect to any aspect of municipal financial products or the issuance of municipal securities, or with respect to any specific municipal financial product or any specific issuance of municipal securities, outside the Scope of Services without Piper Sandler's prior written consent.

VI. Piper Sandler's Regulatory Duties When Servicing the City. MSRB Rule G-42 requires that Piper Sandler undertake certain inquiries or investigations of and relating to the City in order for Piper Sandler to fulfill certain aspects of the fiduciary duty owed to the City. Such inquiries generally are triggered: (a) by the requirement that Piper Sandler know the essential facts about the City and the authority of each person acting on behalf of the City so as to effectively service the relationship with the

¹ See MSRB Rule G-42(c)(v).

City, to act in accordance with any special directions from the City, to understand the authority of each person acting on behalf of the City, and to comply with applicable laws, regulations and rules; (b) when Piper Sandler undertakes a determination of suitability of any recommendation made by Piper Sandler to the City, if any or by others that Piper Sandler reviews for the City, if any; (c) when making any representations, including with regard to matters pertaining to the City or any Issue or Product; and (d) when providing any information in connection with the preparation of the preliminary or final official statement, including information about the City, its financial condition, its operational status and its municipal securities or municipal financial products. Specifically, City agrees to provide to Piper Sandler any documents on which the City has relied in connection with any certification it may make with respect to the accuracy and completeness of any Official Statement for the Issue.

The City agrees to cooperate, and to cause its agents to cooperate, with Piper Sandler in carrying out these duties to inquire or investigate, including providing to Piper Sandler accurate and complete information and reasonable access to relevant documents, other information and personnel needed to fulfill such duties.

In addition, the City agrees that, to the extent the City seeks to have Piper Sandler provide advice with regard to any recommendation made by a third party, the City will provide to Piper Sandler written direction to do so as well as any information it has received from such third party relating to its recommendation.

VII. Expenses. Piper Sandler will be responsible for all of Piper Sandler's out-of-pocket expenses unless otherwise agreed upon or if travel is directed by City. If travel is directed by the City, the City will reimburse Piper Sandler for their expenses. In the event a new issue of securities is contemplated by this Agreement, City will be responsible for the payment of all fees and expenses commonly known as costs of issuance, including but not limited to: publication expenses, legal counsel, bond counsel, ratings, credit enhancement, travel associated with securing any rating or credit enhancement, printing of bonds, printing and distribution of required disclosure documents, trustee fees, paying agent fees, CUSIP registration, and the like.

VIII. Term of Agreement. The term of this Agreement will be for three (3) years from the Effective Date, unless extended or earlier terminated as provided for herein. The City will have the option to renew this contract for a maximum of two (2) additional one-year periods resulting in a contract that will not exceed five (5) years.

This Agreement may be terminated with or without cause by either party upon the giving of at least thirty (30) days prior written notice to the other party of its intention to terminate, specifying in such notice the effective date of such termination. All fees due to Piper Sandler shall be due and payable upon termination. Upon termination, the obligations of Piper Sandler under this Agreement, including any amendment shall terminate immediately and Piper Sandler shall thereafter have no continuing fiduciary or other duties to the City. The provisions of Sections IV, VII, XII, XIV, XV and XVII shall survive termination of this Agreement.

This Agreement is subject to cancellation under A.R.S. § 38-511, the terms of which are incorporated herein.

VIII. Independent Contractor. The Financial Advisor is an independent contractor and nothing herein contained shall constitute or designate the Financial Advisor or any of its employees or agents as employees or agents of the City.

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

X. Required Disclosures. MSRB Rule G-42 requires that Piper Sandler provide you with disclosures of material conflicts of interest and of information regarding certain legal events and disciplinary history.

Such disclosures are provided in Piper Sandler's Disclosure Statement attached as Appendix A to this Agreement.

~~**XI. — Limitation of Liability.** In the absence of willful misconduct, bad faith, gross negligence or reckless disregard of obligations or duties hereunder on the part of Piper Sandler or any of its associated persons, Piper Sandler and its associated persons shall have no liability to the City for any act or omission in the course of, or connected with, rendering services hereunder, or for any error of judgment or mistake of law, or for any loss arising out of any issuance of municipal securities, any municipal financial product or any other investment, or for any financial or other damages resulting from the City's election to act or not to act, as the case may be, contrary to any advice or recommendation provided by Piper Sandler to the City. No recourse shall be had against Piper Sandler for loss, damage, liability, cost or expense (whether direct, indirect or consequential) of the City arising out of or in defending, prosecuting, negotiating or responding to any inquiry, questionnaire, audit, suit, action, or other proceeding brought or received from the Internal Revenue Service in connection with any Issue or Product, if any, or otherwise relating to the tax treatment of any Issue or Product if any, or in connection with any opinion or certificate rendered by counsel or any other party. Notwithstanding the foregoing, nothing contained in this paragraph or elsewhere in this Agreement shall constitute a waiver by the City of any of its legal rights under applicable U.S. federal securities laws or any other laws whose applicability is not permitted to be contractually waived, nor shall it constitute a waiver or diminution of Piper Sandler's fiduciary duty to the City under Section 15B(e)(1), if applicable, of the Securities Exchange Act of 1934, as amended, and the rules thereunder.~~

XII-XI. Indemnification. Unless prohibited by law, the City hereby indemnifies and holds harmless the Financial Advisor, each individual, corporation, partnership, trust, association or other entity controlling the Financial Advisor, any affiliate of the Financial Advisor or any such controlling entity and their respective directors, officers, employees, partners, incorporators, shareholders, trustees and agents (hereinafter the "Indemnitees") against any and all liabilities, penalties, suits, causes of action, losses, damages, claims, costs and expenses (including, without limitation, fees and disbursements of counsel) or judgments of whatever kind or nature (each a "Claim"), imposed upon, incurred by or asserted against the Indemnitees arising out of or based upon (i) any allegation that any information in the Preliminary Official Statement or Final Official Statement contained (as of any relevant time) an untrue statement of a material fact or omitted (as of any relevant time) or omits to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

XIII-XII. Official Statement. The City acknowledges and understands that state and federal laws relating to disclosure in connection with municipal securities, including but not limited to the Securities Act of 1933 and Rule 10b-5 promulgated under the Securities Exchange Act of 1934, may apply to the City and that the failure of the Financial Advisor to advise the City respecting these laws shall not constitute a breach by the Financial Advisor or any of its duties and responsibilities under this Agreement. The City acknowledges that any Official Statement distributed in connection with an issuance of securities are statements of the City and not of Piper Sandler.

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

City of Benson
120 W. 6th Street
P.O. Box 2223
Benson, Arizona 85602
Vicki Vivian, City Manager
(520) 720-6311
vvivian@bensonaz.gov

Or to the Financial Advisor at:

Piper Sandler & Co.
2525 E. Camelback Road, Suite 950
Phoenix, AZ 85016-4244

Michael Vásquez, Senior Vice President
(602) 808-5405
michael.vasquez@psc.com

With a copy to:

Piper Sandler & Co.
Legal Department
800 Nicollet Mall, Suite 1000
Minneapolis, MN 55402

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

XV.XIV. Choice of Law. This Agreement shall be construed and given effect in accordance with the laws of the state of Arizona.

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

XVII.XVI. Waiver of Jury Trial. THE PARTIES EACH HEREBY AGREES TO WAIVE ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTERCLAIM OR ACTION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE RELATIONSHIP BETWEEN THE PARTIES. PARTIES AGREE TO WAIVE ~~CONSEQUENTIAL AND PUNITIVE DAMAGES.~~

~~XVIII.XVII.~~ **No Third Party Beneficiary.** This Agreement is made solely for the benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

~~XIX.XVIII.~~ **Authority.** The undersigned represents and warrants that they have full legal authority to execute this Agreement on behalf of the City. The following individual(s) at the City have the authority to direct Piper Sandler's performance of its activities under this Agreement:

Ms. Vicki Vivian, City Manager

The following individuals at Piper Sandler have the authority to direct Piper Sandler's performance of its activities under this Agreement:

Michael Vásquez, Senior Vice President

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

PIPER SANDLER & CO.

By: 

Michael Vásquez
Its: Senior Vice President

Date: October 26~~30~~, 2020

ACCEPTED AND AGREED:

CITY OF BENSON, ARIZONA

By: _____
Vicki Vivian
Its: City Manager

Date: _____

Piper Sandler & Co. is registered with the U.S. Securities and Exchange Commission and the Municipal Securities Rulemaking Board ("MSRB"). A brochure is posted on the website of the MSRB, at www.msrb.org that describes the protections that may be provided by MSRB rules and how to file a complaint with an appropriate regulatory authority.

APPENDIX A – DISCLOSURE STATEMENT

Municipal Securities Rulemaking Board Rule G-42 (the Rule) requires that Piper Sandler provide you with the following disclosures of material conflicts of interest and of information regarding certain legal events and disciplinary history. Accordingly, this Appendix A provides information regarding conflicts of interest and legal or disciplinary events of Piper Sandler required to be disclosed to pursuant to MSRB Rule G-42(b) and (c)(ii).

(A) **Disclosures of Conflicts of Interest.** The Rule requires that Piper Sandler provide to you disclosures relating to any actual or potential material conflicts of interest, including certain categories of potential conflicts of interest identified in the Rule, if applicable. If no such material conflicts of interest are known to exist based on the exercise of reasonable diligence by us, Piper Sandler is required to provide a written statement to that effect.

Accordingly, we make the following disclosures with respect to material conflicts of interest in connection with the Scope of Services under the Agreement, together with explanations of how we address or intend to manage or mitigate each conflict. To that end, with respect to all of the conflicts disclosed below, we mitigate such conflicts through our adherence to our fiduciary duty to you in connection with municipal advisory activities, which includes a duty of loyalty to you in performing all municipal advisory activities for the City. This duty of loyalty obligates us to deal honestly and with the utmost good faith with you and to act in your best interests without regard to our financial or other interests. In addition, as a broker dealer with a City oriented business, our success and profitability over time is based on assuring the foundations exist of integrity and quality of service. Furthermore, Piper Sandler's supervisory structure, utilizing our long-standing and comprehensive broker-dealer supervisory processes and practices, provides strong safeguards against individual representatives of Piper Sandler potentially departing from their regulatory duties due to personal interests. The disclosures below describe, as applicable, any additional mitigations that may be relevant with respect to any specific conflict disclosed below.

Compensation-Based Conflicts. The fees due under the Agreement are in a fixed amount established at the outset of the Agreement. The amount is usually based upon an analysis by the City and Piper Sandler of, among other things, the expected duration and complexity of the transaction and the Scope of Services to be performed by Piper Sandler. This form of compensation presents the appearance of a conflict or a potential conflict of interest because, if the transaction requires more work than originally contemplated, Piper Sandler may suffer a loss. Thus, Piper Sandler may have an incentive to recommend less time-consuming alternatives, or fail to do a thorough analysis of alternatives. In addition, contingent-based compensation, i.e. based upon the successful delivery of the Issue while customary in the municipal securities market, may present the appearance of a conflict or the potential for a conflict because it could create an incentive for Piper Sandler to recommend unnecessary financings or financings that are disadvantageous to the City. This conflict of interest is mitigated by our duty of care and fiduciary duty and the general mitigations related to our duties to you, as described above.

Transactions in City's Securities. As a municipal advisor, Piper Sandler cannot act as an underwriter in connection with the same issue of bonds for which Piper Sandler is acting as a municipal advisor. From time to time, Piper Sandler or its affiliates may submit orders for and acquire your securities issued in an Issue under the Agreement from members of the underwriting syndicate, either for its own trading account or for the accounts of its customers. Again, while we do not believe that this activity creates a material conflict of interest, we note that to mitigate any perception of conflict and to fulfill Piper Sandler's regulatory duties to the City, Piper Sandler's activities are engaged in on customary terms through units of Piper Sandler that operate independently from Piper Sandler's municipal advisory business, thereby eliminating the likelihood that such investment activities would have an impact on the services provided by Piper Sandler to you under the Agreement.

(B) **Disclosures of Information Regarding Legal Events and Disciplinary History.** The Rule requires that all municipal advisors provide to their clients certain disclosures of legal or disciplinary events material to a client's evaluation of the municipal advisor or the integrity of the municipal advisor's management or advisory personnel. Accordingly, Piper Sandler sets out below required disclosures and related information in connection with such disclosures.

- I. **Material Legal or Disciplinary Event.** There are no legal or disciplinary events that are material to the City's evaluation of Piper Sandler or the integrity of Piper Sandler's management or advisory personnel disclosed, or that should be disclosed, on any Form MA or Form MA-I filed with the SEC.
- II. **Most Recent Change in Legal or Disciplinary Event Disclosure.** Piper Sandler has not made any material legal or disciplinary event disclosures on Form MA or any Form MA-I filed with the SEC.

(C) **How to Access Form MA and Form MA-I Filings.** Piper Sandler's most recent Form MA and each most recent Form MA-I filed with the SEC are available on the SEC's EDGAR system at <http://www.sec.gov/edgar/searchedgar/companysearch.html>. The Form MA and the Form MA-I include information regarding legal events and disciplinary history about municipal advisor firms and their personnel, including information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation. The SEC permits certain items of information required on Form MA or MA-I to be provided by reference to such required information already filed by Piper Sandler in its capacity to the City as a broker-dealer on Form BD or Form U4 or as an investment adviser on Form ADV, as applicable. Information provided by Piper Sandler on Form BD or Form U4 is publicly accessible through reports generated by BrokerCheck at <http://brokercheck.finra.org>, and Piper Sandler's most recent Form ADV is publicly accessible at the Investment Adviser Public Disclosure website at <http://www.adviserinfo.sec.gov>. For purposes of accessing such BrokerCheck reports or Form ADV, Piper Sandler's CRD number is 665.

(D) **Future Supplemental Disclosures.** As required by the Rule, this Section 5 may be supplemented or amended, from time to time as needed, to reflect changed circumstances resulting in new conflicts of interest or changes in the conflicts of interest described above, or to provide updated information with regard to any legal or disciplinary events of Piper Sandler. Piper Sandler will provide you with any such supplement or amendment as it becomes available throughout the term of the Agreement.