



## Item No. 10 Town of Atherton

### **CITY COUNCIL STAFF REPORT – CONSENT AGENDA**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: ROBERT BARRON III, FINANCE DIRECTOR**

**DATE: APRIL 15, 2020**

**SUBJECT: ADOPTION OF A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON ADOPTING DISCLOSURE POLICIES AND PROCEDURES RELATED TO INITIAL AND CONTINUING DISCLOSURE OBLIGATIONS ENTERED INTO IN CONNECTION WITH THE ISSUANCE OR INCURRENCE OF DEBT**

### **RECOMMENDATION**

Adopt a resolution adopting Disclosure Policies and Procedures for the Town of Atherton related to initial and continuing disclosure obligations entered into in connection with the issuance or incurrence of debt by the Town of Atherton.

### **BACKGROUND**

At the March 4, Study Session, staff advised that the Council would be adopting Disclosure Documents, Debt Management Policy and a Signature Authority Ordinance for adoption in connection with the issuance of Certificates of Participation (COPs).

Staff has set the closing and sale of financing for late May to mid-June 2020. Additional items that will need to be approved include an authorizing resolution, site lease, lease agreement, and trust agreement. These will proceed at the May 20 Council Meeting. The decision to initiate the sale would be reviewed by staff and the Ad-hoc Committee of Mayor, Vice Mayor and the Chair of the Finance Committee prior to issuance.

### **ANALYSIS**

#### **Disclosure Policies and Procedures**

In connection with the execution and delivery of the COPs, the Town is required to comply with federal securities laws that govern the type of information that must be disclosed in connection with the offering of the COPs. The underwriter of the COPs will require that the Town undertake to provide investors with annual reports and notices of certain events periodically so long as the

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COPs are outstanding. The Securities and Exchange Commission (SEC) advises that issuers of municipal bonds adopt policies and procedures to govern compliance with respect to their initial disclosure and continuing disclosure undertakings. In response to the SEC's advice and in order to better monitor compliance with its disclosure undertakings, the City Council will need to adopt Disclosure Policies and Procedures. The Disclosure Policies and Procedures are intended to ensure that the Town complies with all federal and state securities laws.

The Disclosure Policies and Procedures names the Finance Director as the Disclosure Coordinator (DC) of the Town and includes the following:

- A. Review and approval of Official statements – the DC shall review any Official Statement prepared in connection with any debt issuance by the Town to ensure there are no misstatements or omissions of material information. As part of the review process, the Official Statements shall be submitted to the City Council for approval. To fulfill its responsibilities under applicable federal and state securities law, the Disclosure Coordinator (DC) shall consult with the Town's Disclosure Counsel (Jones Hall) to the extent considered appropriate.
- B. Continuing Disclosure Filings – Under SEC Rule 15c 2-12, dealers, when underwriting certain types of municipal securities, are required to ensure that the state or local government issuing the bonds enters into an agreement to provide certain information to the Municipal Securities Rulemaking Board (MSRB) It must determine that an issuer or obligated person has entered into a continuing disclosure agreement. A continuing disclosure agreement commits an issuer and/or obligated person to provide certain information to the MSRB on an ongoing basis concerning the occurrence of specified events pertaining to the issuer or the securities. In connection with the execution and delivery of the COPs, the DC will be required to file annual reports with the MSRB Electronic Municipal Market Access (EMMA) system. Reports will be required to include certain updated financial and operating information, as well as the Town's audited financial statements. The Town will use Urban Futures as disclosure agent for making "EMMA" filings. The Disclosure Policy provides a framework for the Town to comply with its continuing disclosure obligations in the future.
- C. Public Statements Regarding Financial Information – the Town is obligated to ensure such statements and information are complete, true, and accurate in all material aspects. Town Staff along with COP Financing filing team will ensure information is complete and accurate in all respects.
- D. Training -The DC shall ensure that those involved in the continuing disclosure process are properly trained to understand and perform their responsibilities regarding continuing disclosure for debt obligations.

As contemplated under the Disclosure Policies and Procedures, on Friday March 27, the City Manager and the Finance Director took part in disclosure training with the firm of Jones Hall (the Town's Bond and Disclosure Counsel). This included a discussion of the requirements of federal and state securities laws.

Staff recommends the adoption of the attached Disclosure Policy and Procedures and the

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Resolution. The adoption of the Disclosure Policy and Procedures is part of the financing schedule process for the COPs. Next month, staff will return to the City Council with the approval of the financing documents for the COPs and authorization of the sale of the COPs.

### **POLICY ISSUES**

As previously described, the SEC advises that issuers of municipal bonds adopt policies and procedures to govern compliance with respect to their initial disclosure and continuing disclosure undertakings in connection with debt issuances, such as the COPs. In response to the SEC's advise and in order to better monitor compliance with its disclosure undertakings, the City Council is being asked to consider adopting Disclosure Policies and Procedures.

### **FISCAL IMPACT**

None.

### **PUBLIC NOTICE**

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials. The Town maintains an active and up to date Project Website at <http://ca-atherton.civicplus.com/index.aspx?NID=290>.

### **ATTACHMENTS**

Attachment 1: Resolution Adopting Town Disclosure Policy

Attachment 2: Disclosure Policy and Procedures

RESOLUTION NO. 20-\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE  
TOWN OF ATHERTON ADOPTING DISCLOSURE POLICIES AND PROCEDURES**

**WHEREAS**, the Securities and Exchange Commission (the “SEC”) recommends that issuers of municipal bonds adopt policies and procedures to govern compliance and implement training with respect to their initial disclosure and continuing disclosure undertakings; and

**WHEREAS**, in response to the SEC’s recommendations and in order to better monitor compliance with its disclosure undertakings, the Town of Atherton finds it desirable to adopt and maintain disclosure policies and procedures; and

**WHEREAS**, there has been presented to this meeting a proposed form of disclosure policies and procedures (the “Procedures”);

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the Town of Atherton as follows:

**Section 1.** The City Council hereby approves and adopts the Procedures presented to the meeting at which this resolution is adopted.

**Section 2.** This resolution shall take effect from and after the date of its passage and adoption.

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**PASSED, APPROVED AND ADOPTED** at a regular meeting of the City Council of the Town of Atherton on the 15th day of April 2020, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Rick DeGolia, Mayor

**ATTEST:**

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Anthony Suber, City Clerk

## TOWN OF ATHERTON

### Disclosure Policies and Procedures

#### **Article I** ***General***

These Disclosure Policies and Procedures (the “**Disclosure Procedures**”) of the Town of Atherton (the “**Town**”) are intended to ensure that the Town is in compliance with all applicable federal and state securities laws.

#### **Article II** ***Disclosure Coordinator***

The Finance Director of the Town shall be the disclosure coordinator of the Town (the “**Disclosure Coordinator**”).

#### **Article III** ***Review and Approval of Official Statements***

The Disclosure Coordinator shall review any Official Statement prepared in connection with any debt issuance by the Town in order to ensure there are no misstatements or omissions of material information in any sections that contain descriptions of information prepared by the Town.

In connection with its review of the Official Statement, the Disclosure Coordinator shall consult with third parties, including outside professionals assisting the Town, and all members of Town staff, to the extent that the Disclosure Coordinator concludes they should be consulted so that the Official Statement will include all “material” information (as defined for purposes of federal securities law).

As part of the review process, the Disclosure Coordinator shall submit all Official Statements to the City Council for approval. The cover letter used by the Disclosure Coordinator to submit the Official Statements shall be in substantially the form of Exhibit A.

The approval of an Official Statement by the City Council shall be docketed as a new business matter and shall not be approved as a consent item. The City Council shall undertake such review as deemed necessary by it, following consultation with the Disclosure Coordinator, to fulfill the City Council’s responsibilities under applicable federal and state securities laws. In this regard, the Disclosure Coordinator shall consult with the Town’s disclosure counsel to the extent the Disclosure Coordinator considers appropriate.

**Article IV**  
***Continuing Disclosure Filings***

Under the continuing disclosure undertakings that the Town has entered into in connection with its debt offerings, the Town is required each year to file annual reports with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access ("EMMA") system in accordance with such undertakings. Such annual reports are required to include certain updated financial and operating information, and the Town's audited financial statements.

The Town is also required under its continuing disclosure undertakings to file notices of certain events with EMMA.

The Disclosure Coordinator is responsible for establishing a system (which may involve the retention or one or more consultants) by which:

- (i) the Town will make the annual filings required by its continuing disclosure undertakings on a complete and timely basis, and
- (ii) the Town will file notices of enumerated events on a timely basis.

**Article V**  
***Public Statements Regarding Financial Information***

Whenever the Town makes statements or releases information relating to its finances to the public that are reasonably expected to reach investors and the trading markets, the Town is obligated to ensure that such statements and information are complete, true, and accurate in all material respects.

**Article VI**  
***Training***

The Disclosure Coordinator shall ensure that the members of the Town's staff involved in the initial or continuing disclosure process and the City Council are properly trained to understand and perform their responsibilities.

The Disclosure Coordinator shall arrange for disclosure training sessions conducted by the Town's disclosure counsel. Such training sessions shall include education on these Disclosure Procedures, the Town's disclosure obligations under applicable federal and state securities laws and the disclosure responsibilities and potential liabilities of members of the Town's staff and members of the City Council. Such training sessions may be conducted using a recorded presentation.

EXHIBIT A

Form of Staff Report

To: Members of the City Council

From:

Date: \_\_\_\_\_

This Staff Report relates to the proposed issuance of \_\_\_\_\_ (the “Obligations”) by the Town. The City Council is asked to approve issuance of the Obligations and all related documents. The near-final versions of these documents are attached.

The attached Preliminary Official Statement has been reviewed and approved for transmittal to the City Council by the Town’s financing team. The distribution of the Preliminary Official Statement by the Town is subject to federal securities laws, including the Securities Act of 1933 and the Securities Exchange Act of 1934. These laws require the Preliminary Official Statement to include all facts that would be material to an investor in the Obligations. Material information is information that there is a substantial likelihood would have actual significance in the deliberations of the reasonable investor when deciding whether to buy or sell the Obligations. If the City Council concludes that the Preliminary Official Statement includes all facts that would be material to an investor in the Obligations, it must adopt a resolution that authorizes staff to execute a certificate to the effect that the Preliminary Official Statement has been “deemed final.”

The Securities and Exchange Commission (the “SEC”), the agency with regulatory authority over the Town’s compliance with the federal securities laws, has issued guidance as to the duties of the City Council with respect to its approval of the Preliminary Official Statement. In its “Report of Investigation in the Matter of County of Orange, California as it Relates to the Conduct of the Members of the Board of Supervisors” (Release No. 36761 / January 24, 1996) (the “Release”), the SEC indicated that, if a member of the City Council has knowledge of any facts or circumstances that an investor would want to know about prior to investing in the Obligations, whether relating to their repayment, tax-exempt status, undisclosed conflicts of interest with interested parties, or otherwise, he or she should endeavor to discover whether such facts are adequately disclosed in the Preliminary Official Statement. In the Release, the SEC indicated that the steps that a member of the City Council could take include becoming familiar with the Preliminary Official Statement and questioning staff and consultants about the disclosure of such facts.

Set forth below is a summary of the financing, including cross-references to specific sections of the Preliminary Official Statement.

Section 1. *Purpose of Financing.*

Section 2. *Documents for Approval; Security for the Obligations.*

Section 3. *Risks Relating to Repayment and Tax-Exempt Status of the Obligations.*

Section 4. *Requested Approvals.*