



Item No. 10 Town of Atherton

CITY COUNCIL STAFF REPORT – CONSENT AGENDA

**TO: HONORABLE MAYOR AND CITY COUNCIL
GEORGE RODERICKS, CITY MANAGER**

FROM: MONA G. EBRAHIMI, CITY ATTORNEY

DATE: MAY 20, 2020

**SUBJECT: APPROVAL OF CONFLICT WAIVER FOR CIVIC CENTER
COPS/FINANCING**

RECOMMENDATION

Ratify and approve the City Manager's authorization to allow Kronick Moskowitz Tiedemann & Girard (Kronick) to provide legal counsel as the City Attorney to the Town while other attorneys at the firm advise the private lender, Capitol One Public Funding, LLC (Capitol One).

BACKGROUND

As the economy has changed following the COVID-19 pandemic, so has the market for financing the Certificates of Participation for the Town's civic center project. The Town's advisors have proposed, and the City Council has conceptually agreed, to a private placement with Capital One.

Prior to Kronick's retention as City Attorney for the Town, the firm regularly advised and still advises Capital One on all their California transactions.

ANALYSIS

The California State Bar's Rules of Professional Conduct (the "Rules") describe the interests of a lessor and lessee in a transaction as adverse. Under Rule 3-310(C)(3), an attorney may not represent a client in a matter (in this case, Capito One) and at the same time represent a client (in this case, the Town of Atherton, in this and other matters in which Kronick provides legal service to the Town) whose interest in the first matter (the COP/ financing) is adverse to the client (Capitol One) in the first matter, unless both clients give their informed written consent.

In order for me to advise the Town on this matter, I will need the Town's consent and that of Capitol One to Kronick's representation of each of you in this concurrent matter and our

continued representation of Capitol One on unrelated financing matters for California public agencies.

Both the Town's proposed conflict waiver, as well as Capital One's signed waiver are attached. As part of this waiver, the Town is further agreeing that if there is ever litigation between Atherton and Capitol One, Kronick will not be defending Atherton in the litigation. Since the City Council's past direction has been that outside counsel represent the Town in litigation, this should not be an issue.

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 1,600 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but not limited to media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer) and regional elected officials.

ATTACHMENTS

ATTACHMENT 1 – Town of Atherton Conflict Waiver

ATTACHMENT 2 – Capitol One Conflict Waiver



400 Capitol Mall, 27th Floor
Sacramento, CA 95814

T | 916.321.4500
F | 916.321.4555

May 11, 2020

Linda Filardi
Senior Director/Associate General Counsel
Capital One, National Association
299 Park Avenue, 23rd Floor
New York, NY 10171
LegalSupplierManagement@capitalone.com

Re: Conflict Waiver for the Atherton Town Center Financing

Dear Ms. Filardi:

The purpose of this letter is to request a waiver of an actual conflict of interest arising from the proposed representation of the Town of Atherton, California (the "Town") by Kronick, Moskowitz, Tiedemann & Girard, a Professional Corporation ("KMTG"), in connection with a proposed real property abatement lease financing for the Atherton Town Center (the "Engagement"). We seek your assent to such a waiver subject to the following conditions:

1. The Town agrees not to object to KMTG's continued ability to represent Capital One Public Funding, LLC, and/or any of its affiliates (collectively, "Capital One") on existing and future matters.
2. KMTG's representation of the Town will not involve the assertion against Capital One of a claim of fraud, misrepresentation, bad faith or other dishonest conduct. KMTG will not represent the Town in any dispute, litigation or threatened litigation arising from the subject matter of the Engagement (whether the matter is a litigation or non-litigation matter).
3. This request and the terms and conditions under which it is made apply only to the Engagement and do not extend or apply to any other existing or future matter for which KMTG may be asked to provide legal services. KMTG and the Town each understands and acknowledges that Capital One reserves the right to claim a potential or actual conflict of interest and take appropriate action regarding any other matter related to Capital One in which KMTG may be engaged, or representation by KMTG that is broader than described in this letter.
4. KMTG personnel providing services to the Town in connection with the Engagement will not be among those concurrently providing services to Capital One or part of a KMTG team designated to provide services to Capital One. KMTG will establish an "ethical wall" to ensure that confidential Capital One information shall not be shared with any personnel working in connection with the Engagement.

Ms. Linda Filardi
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- 5. KMTG certifies that its representation of the Town in the Engagement, with the consent of Capital One, complies with all applicable codes of professional responsibility and rules of professional conduct.
- 6. The Town has been informed of the terms and conditions under which Capital One is consenting to the Engagement, as set forth in this letter, and has agreed to these terms and conditions by signing below.

Please sign this letter and return it to me if it is acceptable to you.

Very truly yours,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD,
a Professional Corporation

By: Jonathan P. Cristy
 Name: Jonathan P. Cristy
 Title: Shareholder

Received and agreed to:

CAPITAL ONE PUBLIC FUNDING, LLC

TOWN OF ATHERTON

By: _____
 Name:
 Title:

By: [Signature]
 Name: George Kossick
 Title: CITY MANAGER





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Sacramento, CA 95814

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Mona G. Ebrahimi
mebrahimi@kmtg.com

May 11, 2020

VIA ELECTRONIC MAIL ONLY

George Rodericks, City Manager
Town of Atherton
150 Watkins Avenue
Atherton, CA 94027
E-Mail: grodericks@ci.atherton.ca.us

Re: Request for Consent to Kronick's Representation of
Capital One Public Funding, LLC (Waiver of Conflict of Interest)

Dear Mr. Rodericks:

I, and other attorneys in my firm, Kronick, Moskowitz, Tiedemann & Girard, a Professional Corporation ("KMTG"), currently provide legal services to the Town of Atherton (the "City") as City Attorney. Jon Cristy from my office regularly provides legal services to Capital One Public Funding, LLC ("COPF"), which will be funding the financing of the City's construction of the civic center project. COPF has asked that Jon Cristy provide legal services to COPF in connection with the lease financing; however, it is also anticipated that Constantine Baranoff from my office will also assist Mr. Cristy.

The California State Bar's Rules of Professional Conduct (the "Rules") describe the interests of a lessor and lessee in a transaction as adverse. Under Rule 3-310(C)(3), an attorney may not represent a client in a matter (in this case, COPF) and at the same time represent a client (in this case, the City, in this and other matters in which KMTG provides legal services to the City) whose interest in the first matter (the COP/ financing) is adverse to the client (COPF) in the first matter, unless both clients give their informed written consent. KMTG is asking your consent and that of COPF to KMTG's representation of each of you in this concurrent matter and our continued representation of COPF on unrelated financing matters for California public agencies.

The conflict in this instance is mitigated by the fact that I do not work on COPF's matters, nor will any of KMTG's personnel who work on City matters work on this civic center financing transaction on behalf of COPF.

KMTG is obliged to protect the City's confidences under the provisions of Section 6068, subdivision (e), of the California Business and Professions Code. If you consent to this representation, KMTG will implement certain procedures to ensure that confidential information concerning the City is not revealed to the firm's lawyers working for COPF on this transaction.

In this regard, KMTG will set in place certain procedures to maintain confidentiality. These will include the formation of an "ethical wall" between Mr. Cristy on behalf of COPF and Constantine

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Baranoff and me. To prevent any inadvertent disclosure or use of confidential information of COPF, a "screen" or "ethical wall" will be established. The elements of the screen include the physical separation of attorneys, protections against inadvertent disclosure or use of confidential information, and procedures preventing access to confidential information and files.

With regard to each of the elements, KMTG provides you with the following information:

1. Neither of the attorneys involved share an office or a common wall between offices. Both attorneys have single occupancy, private offices with doors and interior space that can be secured.

2. I will scrupulously refrain from any and all discussions about confidential information concerning the City with Mr. Cristy or Mr. Baranoff. These matters will not be discussed at any firm meetings or gatherings at which either of us is present. All paralegals, secretaries and other staff will be informed of their obligation not to share information in regard to the screened matters.

3. Confidential City papers, information and files will not be circulated within the firm or be accessible to any KMTG personnel. Access to those files will only be allowed to KMTG personnel authorized by me.

4. Access to all relevant computer files is restricted. They cannot be retrieved by any attorney or staff member who is not authorized to retrieve such files, as set forth herein.

Please note that the consent of COPF is subject to the condition that we will not, without the future consent of COPF, represent the City in any litigation, arbitration or other adverse proceeding or claim that might arise between the COPF (or any subsidiary or affiliate or related entity of the COPF) and the City, in connection with the transaction contemplated herein. In the event of any such litigation, arbitration or other adverse proceeding or claim, KMTG will not represent the City unless the COPF gives KMTG a new written consent at that time to represent the City. Given the nature of this relationship and the parties, I believe that litigation, while always possible, is unlikely.

If you agree that our representation of the City will not preclude KMTG's representing COPF in its lease/leaseback financing, in which COPF will lease property from and back to the City along with other unrelated financings, please sign the consent below and return a copy of it to me.



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If you have any questions concerning any of the foregoing or the consent form below, please call me.

Very truly yours,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation



MONA G. EBRAHIMI

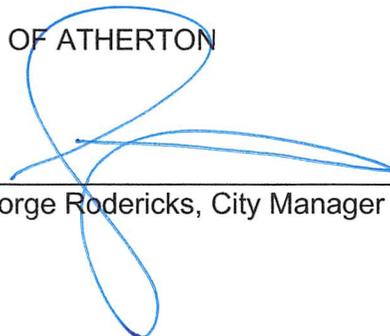
MGE

CONSENT TO REPRESENTATION

The Town of Atherton hereby consents to the representation of Capital One Public Funding, LLC, by the firm of Kronick, Moskovitz, Tiedemann & Girard, a professional corporation, in the matter of the lease financing of civic center improvements and other unrelated financings for California public agencies as referred to above.

Dated: 5-11-20

TOWN OF ATHERTON

By: 
George Rodericks, City Manager

