

CITY OF HERCULES

DISCLOSURE PROCEDURES

PURPOSE

The purpose of these Disclosure Procedures (the “Procedures”) is to memorialize various procedures to be followed in connection with the public offering of obligations, including notes, bonds and certificates of participation, by the City of Hercules (the “City”) so as to ensure that the City continues to comply with all applicable disclosure obligations and requirements under the federal securities laws.

BACKGROUND

The City from time to time causes bonds, notes or other obligations to be issued and certificates of participation to be executed and delivered (collectively, “Obligations”) in order to finance or refinance capital improvements, other long-term programs and working capital needs. In offering Obligations to the public, and at other times when the City makes certain reports, the City must comply with the “anti-fraud rules” of federal securities laws. (“Anti-fraud rules” refers to Section 17 of the Securities Act of 1933 and Section 10(b) of the Securities and Exchange Act of 1934, and regulations adopted by the Securities and Exchange Commission under those Acts, particularly “Rule 10b-5” under the 1934 Act.)

The core requirement of these rules is that potential investors in Obligations must be provided with all “material” information relating to the offered Obligations. The information provided to investors must not contain any material misstatements, and the City must not omit material information which would be necessary to provide to investors a complete and transparent description of the Obligations and the City’s financial condition. In the context of the sale of securities, a fact is considered to be “material” if there is a substantial likelihood that a reasonable investor would consider it to be important in determining whether or not to purchase the securities being offered.

When the City offers Obligations for sale to the public, the two central disclosure documents which are prepared are a preliminary official statement (“POS”) and a final official statement (“OS”, and collectively with the POS, the “Official Statement”). The Official Statement generally consists of (i) a section describing the specifics of the Obligations (including maturity dates, interest rates, redemption provisions, the specific type of financing, the security and source of repayment for the Obligations and other matters particular to the financing), (ii) a section which provides information on the City, including its financial condition (both historical and budgetary) as well as certain operating information (which may be ad valorem tax collections, the State funding process, enrollment, employee counts, material litigation and other post-employment benefit and pension plan descriptions, depending on the type of Obligations being issued) (“City Section”), and (iii) various other appendices, including the City’s audited financial report, form of the proposed legal opinion, and form of continuing disclosure undertaking. Investors use the Official Statement as one of their primary resources for making informed investment decisions regarding a purchase of the Obligations.

DISCLOSURE PROCESS

When the City determines to issue Obligations, the City Manager and/or Finance Director has a discussion with Bond Counsel, Disclosure Counsel and the lead underwriter and any City financial advisor to determine the type of Obligations to be sold and the information required to be gathered by the City for inclusion in the Official Statement. The Finance Director will involve other members of the City staff who are knowledgeable with City operations to assist in the review and updating of the City Section. The Finance Director then requests the relevant City employees to gather the information necessary for the

preparation of the portions of the Official Statement (including particularly the City Section) for which they are responsible. Any major financial or operational changes since the date of the last issue of Obligations should be analyzed and included in the City Section if material. The Finance Director is responsible for reviewing and preparing or updating the portions of the City Section which are within his or her particular area of knowledge. Once the Official Statement has been substantially updated, the entire Official Statement is shared with the City Manager for review and input. Additionally, all participants in the disclosure process are separately responsible for reviewing the entire Official Statement.

Members of the financing team, including the Bond Counsel and Disclosure Counsel, assist staff in determining the materiality of any particular item, and in the development of specific language to be included in the City Section. Members of the financing team also assist the City in the development of a “big picture” overview of the City’s financial condition, to be included in the City Section. This overview highlights the City’s current financial condition and any developing trends in City budgets or operations, including potential areas of financial stress or concern. Bond Counsel and Disclosure counsel have a confidential, attorney-client relationship with officials and staff of the City, so all matters may initially be shared confidentially before decisions are reached as to required disclosures.

The City Manager, Finance Director, or a member of the financing team at the direction of either of such officials, schedules one or more meetings or conference calls of the financing team (which includes City officials, Bond Counsel, Disclosure Counsel, the underwriter of the Obligations and any underwriter’s counsel, and any City financial advisor), and new drafts of the forepart of the Official Statement and the City Section are circulated and discussed. Such communications may occur via electronic means rather than by meetings or conference calls. During this part of the process, there is substantial contact among City staff and other members of the financing team to discuss issues which may arise, determine the materiality of particular items and ascertain the prominence in which the items should be disclosed.

Prior to distributing a POS to potential investors, there is typically a formal conference call which includes City officials involved in the preparation of the POS, members of the financing team, including Bond Counsel, Disclosure Counsel, the underwriter or underwriters and any underwriter’s counsel, during which due diligence questions are asked regarding the Official Statement to allow the underwriter or underwriters to obtain information from the City’s senior officials and to discharge their obligation under federal securities laws to determine that they may reasonably rely on the statements in the POS. This is referred to as a “due diligence” meeting.

A substantially final form of the POS is provided to the City Council in advance of approval to afford the City Council an opportunity to review the POS, ask questions and make comments. The substantially final form of the POS is approved by the City Council which generally authorizes certain senior staff to make additional corrections, changes and updates to the POS in consultation with the City’s Bond Counsel and Disclosure Counsel.

At the time the POS is posted for review by potential investors, a senior City official executes a certificate deeming the POS complete (except for certain pricing terms) as required by Securities and Exchange Commission Rule 15c2-12.

Between the posting of the POS for review by potential investors and delivery of the final OS to the underwriter for redelivery to actual investors in the Obligations, any material changes and developments will be incorporated into the POS, including particularly the City Section, if required. If necessary to reflect developments following publication of the POS or OS, as applicable, supplements will be prepared and published if needed to ensure that the POS or OS, as applicable, does not contain any material misstatement of facts or omit to state a material fact.

In connection with the closing of the transaction, a senior City official executes a certificate stating that the OS (excluding certain limited portions), as of its date did not, and as of the date of closing does not, contain any untrue statement of material fact or omit to state any material fact necessary to make the statements contained in the OS in light of the circumstances under which they were made, not misleading.

CITY SECTION

The information contained in the City Section is developed by personnel under the direction of the Finance Director with the assistance of the financing team. In certain circumstances, additional officials will be involved, as necessary. The following principles govern the work of the respective staff members that contribute information to the City Section:

- City staff involved in the disclosure process is responsible for being familiar with the City's responsibilities under federal securities laws as described above.
- City staff involved in the disclosure process should err on the side of raising issues when preparing or reviewing information for disclosure. Officials and staff are encouraged to consult the City's Bond Counsel, Disclosure Counsel, other legal counsel retained by the City and other members of the financing team if there are questions regarding whether an issue is material or not.
- Care should be taken not to shortcut or eliminate any steps outlined in the Procedures on an ad hoc basis. However, the Procedures are not necessarily intended to be a rigid list of procedural requirements, but instead to provide guidelines for disclosure review. If warranted, based on experience during financings or because of additional SEC pronouncements or other reasons, the City should consider revisions to the Procedures.
- The process of updating the City Section from transaction to transaction should not be viewed as being limited to updating tables and numerical information. While it is not anticipated that there will be major changes in the form and content of the City Section at the time of each update, everyone involved in the process should consider the need for revisions in the form, content and tone of the sections for which they are responsible at the time of each update.
- The City must make sure to involve staff with sufficient seniority and knowledge to ensure that, collectively, they are in possession of all material information relating to the City, its operations and its finances.

TRAINING

Periodic training for the staff involved in the preparation of the Official Statement (including the City Section) is coordinated by the finance team and the City Manager. These training sessions are provided to assist staff members involved in identifying relevant disclosure information to be included in the City Section. The training sessions also provide an overview of federal laws relating to disclosure, situations in which disclosure rules apply, the purpose of the Official Statement and the City Section, a description of relevant SEC enforcement actions and a discussion of recent developments in the area of municipal disclosure. Attendees at the training sessions are provided the opportunity to ask questions of finance team members, including Bond Counsel and Disclosure Counsel, concerning disclosure obligations and are encouraged to contact members of the finance team at any time if they have questions.

CONTINUING DISCLOSURE REQUIREMENTS

In connection with the issuance of Obligations, the City has entered into a number of contractual agreements (“Continuing Disclosure Agreements”) to provide annual reports related to its financial condition (including its audited financial statements) as well as notice of certain events relating to the Obligations specified in the Continuing Disclosure Agreements. These Continuing Disclosure Agreements are entered into in order to allow the underwriters of the Obligations sold to the public to comply with SEC Rule 15c2-12. Each new offering of Obligations to the public will require an additional Continuing Disclosure Agreement. The City must comply with the specific requirements of each Continuing Disclosure Agreement.

Additionally, each Official Statement must contain disclosure as to whether, during the previous five years, the City has complied in all material respects with its Continuing Disclosure Agreements. If the City has not complied with its previous undertakings in all material respects within the last five years, then the Official Statement must describe the instances in which the City has not complied. Prior to finalizing a POS, the City staff should take steps to review the status of compliance and discuss with Disclosure Counsel, the underwriter and any underwriter’s counsel what steps it has taken to review the City’s compliance and whether any noncompliance has been noted. This review may be done by reviewing a report from a third party consultant engaged by the City to assist it in complying with its continuing disclosure obligations or a report from the underwriter or a third party engaged by the underwriter. If noncompliance is found, steps should be taken to disclose in the POS the instances of material noncompliance within the last five years and cure the noncompliance before the issuance of the Obligations.

The City’s Continuing Disclosure Agreements generally require that the annual report for a fiscal year be filed by the February 1 following the end of such fiscal year. Event notices are generally required to be filed within 10 business days of their occurrence. Specific events which require event notices are set forth in each Continuing Disclosure Agreement. Particular care shall be paid to the timely filing of any changes in credit ratings on Obligations (including changes resulting from changes in the credit ratings of insurers of particular Obligations) and to timely filing of defeasance notices. Additionally, all Continuing Disclosure Agreements entered into after February 27, 2019 will include two new event notices related to financial obligations of the City in order to comply with amendments to Rule 15c2-12 which took effect on such date. These amendments define “financial obligation” as a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii); however, the term “financial obligation” does not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with Rule 15c2-12. To ensure compliance with these amendments the Finance Director will identify the City’s financial obligations and provide any required event notice related to the City’s financial obligations.

The Finance Director is the official responsible for ensuring compliance by the City with its Continuing Disclosure Agreements, and will assign trained City personnel to oversee the preparation of the annual reports and will determine whether to retain the services of one or more consultants to assist in the preparation of the annual reports and event notices. The Finance Director will either assign trained City personnel to file the annual reports and event notices with the Electronic Municipal Market Access (“EMMA”) system of the Municipal Securities Rulemaking Board (emma.msrb.org) or will engage the services of one or more dissemination agents to file the annual reports and material event notices required pursuant to the Continuing Disclosure Agreements. Third party dissemination agents shall be contractually obligated to provide written confirmation to the City of the date of filing of the annual reports with EMMA.