

## Council Agenda Report

Date: April 25, 2016

Submitted by: Sandra Tripp-Jones, City Manager *STJ*

Prepared by: Ginger Heatwole, Finance Director

SUBJECT: Resolution regarding post-closing bond compliance disclosures

Recommendation that Council adopt A Resolution of the Commissioners of Cambridge approving the substantially final form of, and authorizing and directing certain officials to finalize and execute, on behalf of the City, written post-issuance continuing disclosure undertaking compliance procedures designed to ensure compliance with applicable post-closing provisions of SEC Rule 15c2-12; and determining various matters in connection therewith (Resolution 16-004).

Discussion: The City has substantially closed on the refunding of the Public Safety Bond and Marina Bond. When the City pays of these two bonds, the new bond will require the City to insure post-issuance compliance with continuing disclosure.

The continuing disclosures requirements are outlined in Exhibit A of the resolution are for the 2016 Refunding Bonds.

The City Manager is assigning to the Finance Director primary responsibility for complying with these disclosure requirements. Steps include:

- Maintaining a current list of the Obligations requiring disclosure compliance (updated yearly)
- Becoming knowledgeable of the annual filing with EMMA
- Filing of Annual Financial Statement
- Maintenance of a tickler system to provide reminders of annual filing obligations and monthly reminders of listed events
- Updating the job description of the Finance Director entrusted with these responsibilities
- Oversight of the filings by the City Manager and Finance Director

Fiscal impact: There is no anticipated fiscal impact. These steps will be handled internally by the Finance Department.

## RESOLUTION NO. 16-004

A RESOLUTION OF THE COMMISSIONERS OF CAMBRIDGE APPROVING THE SUBSTANTIALLY FINAL FORM OF, AND AUTHORIZING AND DIRECTING CERTAIN OFFICIALS TO FINALIZE AND EXECUTE, ON BEHALF OF THE CITY, WRITTEN POST-ISSUANCE CONTINUING DISCLOSURE UNDERTAKING COMPLIANCE PROCEDURES DESIGNED TO ENSURE COMPLIANCE WITH APPLICABLE POST-CLOSING PROVISIONS OF SEC RULE 15C2-12; AND DETERMINING VARIOUS MATTERS IN CONNECTION THEREWITH.

### RECITALS

WHEREAS, Rule 15c2-12, as promulgated under the Securities Exchange Act of 1934, as amended (as such Rule may be amended, modified or supplemented from time to time, the "Rule") requires issuers of municipal securities that are "obligated persons" (as contemplated by the Rule) to enter into "continuing disclosure undertakings" (as contemplated by the Rule) that require such issuers to file or post certain annual financial and operating information, annual audited financial statements, notices of certain failures to make timely filings, and notices of the occurrences of certain listed events specified in the Rule with respect to obligations covered by the Rule; and

WHEREAS, in connection with the contemplated issuance of its Public Facilities Refunding Bonds of 2016 (the "2016 Bonds"), The Commissioners of Cambridge, a Maryland municipal corporation (the "City"), as authorized by Resolution No. 16-003, adopted by The Commissioners of Cambridge, the governing body of the City, on March 28, 2016, will enter into a continuing disclosure undertaking with respect to the 2016 Bonds pursuant to the Rule; and

WHEREAS, the Securities and Exchange Commission has strongly recommended that issuers of obligations subject to the Rule put in place written procedures designed to ensure post-issuance compliance with the continuing disclosure undertaking provisions of the Rule; and

WHEREAS, because the City does not have any municipal securities outstanding, due to the relatively recent restructuring of City administrative positions, and in order to facilitate compliance with the Rule, bond counsel to the City has recommended that the City approve procedures designed to promote compliance with the continuing disclosure undertaking pertaining to the 2016 Bonds and any future issues of City municipal securities that become subject to the Rule.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS OF CAMBRIDGE that:

SECTION 1. The Recitals to this Resolution set forth above are incorporated by reference in and made a substantive part hereof. Capitalized terms used in the Sections of this

Resolution and not otherwise defined herein shall have the meanings given to such terms in the Recitals to this Resolution.

**SECTION 2.** The substantially final form of the Post-Issuance Continuing Disclosure Undertaking Compliance Procedures attached hereto as Exhibit A (the “Procedures”) are hereby approved, and the City Manager and the Finance Director, on behalf of the City, working with bond counsel to the City, are hereby authorized and directed to make and approve changes thereto in order to conform the same to actual or recommended City practices, to correct typographical or grammatical errors, to cure ambiguities and inconsistencies, or to conform to applicable law as advised by bond counsel to the City or the City Attorney, and to execute the final form of the Procedures on behalf of the City. The City Manager’s and the Finance Director’s approval of the final form of the Procedures shall be evidenced conclusively by their signatures thereon. The final Procedures shall be maintained in the records of the City but need not be filed in any court records. All appropriate officials and employees of the City are hereby authorized, directed and empowered to comply with the Procedures with respect to the 2016 Bonds and any other obligations of the City that are, or become, subject to the Rule.

**SECTION 3.** Appropriate officials or employees of the City are hereby authorized from time to time to add appropriate detail to the job descriptions of City officials or employees who are charged with responsibility for complying with the final form of the Procedures.

**SECTION 4.** This Resolution shall become effective immediately upon its adoption.

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ATTEST:

THE COMMISSIONERS OF CAMBRIDGE

\_\_\_\_\_  
Sandra Tripp-Jones, City Manager

By: \_\_\_\_\_  
Donald Sydnor, Acting Mayor

Introduced: April 25, 2016

Adopted by the Commissioners: April 25, 2016

APPROVED AS TO FORM AND LEGAL SUFFICIENCY THIS 25th DAY OF April, 2016.

By: \_\_\_\_\_  
City Attorney

#186199;58042.001

## EXHIBIT A

### SUBSTANTIALLY FINAL FORM OF POST-ISSUANCE CONTINUING DISCLOSURE UNDERTAKING COMPLIANCE PROCEDURES

#### THE COMMISSIONERS OF CAMBRIDGE

### POST-ISSUANCE CONTINUING DISCLOSURE UNDERTAKING COMPLIANCE PROCEDURES

#### Background

These Post-Issuance Continuing Disclosure Undertaking Compliance Procedures (these “Procedures”) are approved on behalf of The Commissioners of Cambridge, a Maryland municipal corporation (the “City”), in accordance with Resolution No. 16-004 of The Commissioners of Cambridge, the legal name of the governing body of the City (the “Commissioners”), adopted on April 25, 2016, in an effort to ensure that the City meets its post-issuance continuing disclosure obligations under Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended (as such Rule may be amended, modified, supplemented or replaced from time to time, the “Rule”).

As of the date of approval of these Procedures, the Rule requires the City, when it is an “obligated person” for purposes of the Rule, to make with regard to its outstanding municipal securities that are subject to the Rule certain timely annual and event filings with the Electronic Municipal Market Access system maintained by the Municipal Securities Rulemaking Board. Each issue of obligations issued by the City must be examined (in conjunction with bond counsel to the City) to determine whether it is subject to the Rule. If subject to the Rule, the City is required to enter into a continuing disclosure agreement or certificate (as referred to in the Rule, a “continuing disclosure undertaking”) applicable to such issue of obligations.

As of the date of approval of these Procedures, the City is not currently subject to certain continuing disclosure undertakings. The City anticipates entering into a Continuing Disclosure Agreement pursuant to the Rule in connection with the issuance of The Commissioners of Cambridge Public Facilities Refunding Bonds of 2016, anticipated to be issued on April 27, 2016.

#### Definitions

In addition to the definitions provided for under “Background” above, the following capitalized terms shall have the following meanings:

“Bond Counsel” means Funk & Bolton, P.A., or any other attorney or firm of attorneys whose opinions are generally accepted in the field of public finance who or that at the time in

question is generally serving as bond counsel to the City or is selected by the City to provide bond counsel advice with respect to the matters contemplated by these Procedures.

“City Charter” means the Charter of the City of Cambridge, as the same may be amended, modified, supplemented or replaced from time to time.

“City Code” means the code of ordinances of the City, however known, as the same may be amended, modified, supplemented or replaced from time to time.

“City Manager” means the official of the City known as the City Manager as provided for in the City Charter and in accordance with applicable City law, or any official of the City, by whatever title known, who succeeds generally to the financial duties of the City Manager as in effect as of the date of approval of these Procedures.

“Compliance Officer” means the Finance Director, or any other official or officials of the City to which compliance with the provisions of these Procedures with respect to one or more Continuing Disclosure Undertakings is delegated as provided herein.

“Continuing Disclosure Undertaking” means each written undertaking of the City (typically entitled a continuing disclosure agreement or a continuing disclosure certificate) to file certain annual operating and financial information and notice of the occurrence of certain events in accordance with the Rule, executed by the City in connection with the primary offering of an issue of Obligations.

“EMMA” means the Electronic Municipal Market Access system of the MSRB, or any repository or repositories that take the place of EMMA in accordance with amendments to the Rule. As of the date of approval of these Procedures, EMMA may be accessed at [www.emma.msrb.org](http://www.emma.msrb.org) and filings made on EMMA in accordance with the Rule are made through [www.msrb.org](http://www.msrb.org).

“Finance Director” means the official of the City known as the Finance Director, or any other official of the City, by whatever title known, who succeeds generally to the duties of the Finance Director as in effect as of the date of approval of these Procedures.

“Financial Advisor” means Public Advisory Consultants, Inc., or any other individual or company recognized as a provider of financial advice with regard to public finance matters who or that at the time in question is generally serving as financial advisor to the City or is selected by the City to provide financial advisory advice with respect to the matters contemplated by these Procedures.

“MSRB” means the Municipal Securities Rulemaking Board or any other board or entity that succeeds to the functions delegated to the Municipal Securities Rulemaking Board as of the date of approval of these Procedures by the Rule.

“Obligations” means any municipal securities issued by, or whose payment is guaranteed by, the City, which are subject to the Rule and for which the City constitutes an “obligated person” within the meaning of the Rule.

### **Rules of Construction**

References in these Procedures to any official by title shall be deemed to refer (i) to any official authorized under the City Charter, the City Code or other applicable law to act in such titled official’s stead during the absence or disability of such titled official, (ii) to any person who has been elected, appointed or designated to fill such position in an acting capacity under the City Charter or the City Code or other applicable law, (iii) to any person who serves in a “Deputy” or “Assistant” capacity as such an official, provided that the applicable responsibilities, rights or duties referred to herein have been delegated to such deputy or assistant in accordance with applicable law or authority, and/or (iv) to the extent an identified official commonly uses another title not provided for in the City Charter or the City Code, the official, however known, who is charged under the City Charter or the City Code or other applicable law or authority with the applicable responsibilities, rights or duties referred to herein.

### **Determination of Compliance Officer**

[As of the date of approval of these Procedures, the Finance Director is the Compliance Officer with respect to existing Continuing Disclosure Undertakings.] The Finance Director shall be the Compliance Officer with regard to any Continuing Disclosure Undertakings entered into by the City subsequent to the date of approval of these Procedures. Notwithstanding the foregoing, the City Manager and the Finance Director may collectively determine from time to time that the duties of the Compliance Officer provided for in these Procedures should be delegated to one or more other officials of the City (whether in addition to or in place of the Finance Director). Any such delegation may provide that responsibility for compliance with these Procedures is appropriately divided with regard to specific responsibilities provided for herein and/or specific Continuing Disclosure Undertakings, but only if such division of responsibilities makes sense and is justifiable. Any such delegation shall be made in writing and shall be maintained in the records of the City Manager and the Finance Director. Upon any such delegation, references in these Procedures to the Compliance Officer shall be deemed to refer individually or collectively, as applicable, to the City official or officials to which such duties are delegated.

Upon any such delegation, each Compliance Officer shall promptly review these Procedures to ensure that appropriate ticklers/reminders provided for herein are modified accordingly and all such ticklers/reminders (other than any of those provided through EMMA if the same will not accommodate multiple recipients) and notification of any filings made on EMMA shall be provided to each Compliance Officer simultaneously in addition to the other City officials identified in these Procedures.

If the position of Finance Director is vacant, no other official has the authority to act in the Finance Director's stead as determined in accordance with "Rules of Construction" above, and the duties of the Compliance Officer have not been delegated to one or more other officials of the City in accordance with these Procedures, the City Manager shall serve as the default Compliance Officer. In the event the positions of both the City Manager and the Finance Director are vacant and no other officials have the authority to act in such titled officials' stead as determined in accordance with "Rules of Construction" above, the Commissioners shall be responsible for determining which City official(s)/employee(s) shall serve as the Compliance Officer.

### **Maintenance of Lists and Files**

The Compliance Officer shall maintain (i) a current list for each fiscal year identifying each issue of Obligations that is subject to a Continuing Disclosure Undertaking, including the CUSIP numbers for such Obligations, the rating agency or agencies maintaining a rating on such Obligations (including any rating agency that assigned a rating to such Obligations due to credit enhancement such as a letter of credit or a municipal bond insurance policy), and the identification of any provider of credit enhancement applicable to all or a part of such Obligations, and (ii) copies of the related Continuing Disclosure Undertakings.

### **Annual Financial and Operating Information Filing Requirements**

The Compliance Officer shall be knowledgeable and familiar with the provisions of each Continuing Disclosure Undertaking as to the type, format and content of the financial and operating information required to be filed annually with EMMA and the timing requirements for each such filing. Generally, the Continuing Disclosure Undertakings provide or are expected to provide submission dates of no later than 275 days after the close of each fiscal year of the City (as such fiscal year may be changed—currently each fiscal year ends on June 30). The annual financial and operating information filing requirements are generally found in Section 3 of the Continuing Disclosure Undertakings.

Provided that time permits, before making any annual financial and operating information filing required under a Continuing Disclosure Undertaking, the Compliance Officer shall first have the City Manager, Bond Counsel or the Financial Advisor review such proposed filing.

For some issuers, particularly those that prepare comprehensive audited financial reports (CAFRs"), the annual financial and operating information required by a Continuing Disclosure Undertaking is frequently included in the issuers' CAFRs. For an issuer that does not file a CAFR, the issuer may need to prepare one or more separate documents to be filed on EMMA in order to meet all of its annual financial and operating information filing obligations.

### **Annual Financial Statements**

Annual audited financial statements of the City are required to be filed no later than the submission date established under each Continuing Disclosure Undertaking—generally no later than 275 days after the close of each fiscal year. The Compliance Officer shall be knowledgeable and familiar with the specific timing requirements for filing annual audited financial statements and, if not available by the date(s) required, the provisions of each Continuing Disclosure Undertaking regarding the filing of unaudited annual financial statements (and the prompt filing when available of audited annual financial statements). The annual financial statement filing requirements are generally found in Section 3 of the Continuing Disclosure Undertakings.

### **Notice of Failures to File**

The Compliance Officer shall be knowledgeable and familiar with the specific requirements under each Continuing Disclosure Undertaking of the requirement to timely file notice of a failure to file any annual financial and operating information or annual financial statements. Such notice obligations are generally found in Section 3 of the Continuing Disclosure Undertakings.

### **Use of Tickler System for Annual Filing Reminders**

The Compliance Officer shall maintain an electronic tickler system to provide reminders of the City's annual filing obligations under each Continuing Disclosure Undertaking. Such tickler system shall provide prompts in sufficient time to ensure timely preparation and filing of the required annual financial information and operating data and annual financial statements, or notice of failure to timely file the same. As a means to ensure compliance and provide redundancy in the event of the absence of the Compliance Officer, such tickler system shall also provide for electronic prompts to be given to the City Manager, the Finance Director (if the Finance Director is no longer the Compliance Officer), and any other officials or employees directed by the City Manager or the Finance Director. As of the date of approval of these Procedures, issuers may sign up for prompts through EMMA and the Compliance Officer may also arrange for prompts to be given through EMMA (whether to just the Compliance Officer or to the Compliance Officer and others depending on the capabilities of the EMMA tickler system).

### **Notification of Annual Filings/Notices Made**

Upon making each required annual financial information and operating data and annual financial statement filing through EMMA, the Compliance Officer shall notify (through e-mail or other appropriate written means) the City Manager and the Finance Director (if the Finance Director is no longer the Compliance Officer) that such filing has been made. Note: the annual

information required by Section 3 of each Continuing Disclosure Undertaking does not all need to be filed on the same day on EMMA.

### **Listed Events**

The Rule requires filing of a notice with EMMA upon the occurrence of certain listed events described in each Continuing Disclosure Undertaking. The listed events are generally found in Section 4 of the Continuing Disclosure Undertakings.

The Rule was amended in 2010 to expand the types of listed events the occurrence of which must or may be required to be reported, and the Rule may be further amended in the future to expand, contract or modify the types of, and standards for reporting, various listed events (generally, Rule amendments are effective only prospectively). Accordingly, over time the City may be subject to multiple Continuing Disclosure Undertakings that have different reporting standards. The Compliance Officer shall be knowledgeable and familiar with the types of, and standards for reporting, the events listed in the various Continuing Disclosure Undertakings.

The listed events most likely to occur with respect to the City's Obligations that are general obligation bonds relate to ratings changes, bond redemptions and defeasances. Under the Rule, ratings changes apply not only to an issuer's "underlying" rating but also to any rating change based on credit enhancement (including a municipal bond insurance policy or letter of credit) issued with respect to an issue of Obligations. To the extent the City issues revenue Obligations that are subject to the Rule in the future (and for which the City is an "obligated person" within the meaning of the Rule), other of the listed events may be applicable to such issues.

Provided that time permits, before filing notice of a listed event on EMMA, the Compliance Officer will make a good faith attempt to have the City Manager, Bond Counsel or the Financial Advisor review the proposed filing.

### **Ticklers/Reminders as to Listed Events**

1. To the extent an issuer may sign up with any of the rating agencies maintaining ratings of any Obligations or of providers of credit enhancement for any of the Obligations to receive electronic notice of rating changes with respect to the issuer's municipal securities or providers of credit enhancement on a no-cost basis, the Compliance Officer will take advantage of such electronic notification service.

2. The Compliance Officer shall maintain an electronic tickler system that will prompt the Compliance Officer to consider on an at least monthly basis whether any listed event under the Continuing Disclosure Undertakings has occurred that may need to be reported. As a means to ensure compliance and provide redundancy in the event of the absence of the Compliance Officer, such tickler system shall also provide for electronic prompts to be given to

the City Manager and any other officials or employees directed by the City Manager or the Finance Director.

### **Notification of Listed Event Filings Made**

Upon filing notice of the occurrence of a listed event through EMMA, the Compliance Officer shall notify (through e-mail or other appropriate means) the City Manager and the Finance Director that such filing has been made.

### **Actions Upon an Issuance of Obligations**

Promptly following closing on an issue of Obligations, the Compliance Officer shall review these Procedures and make additions to the lists and files provided for herein and set up or adjust any tickler reminders that relate specifically to an issue of Obligations or generally to compliance with these Procedures. (Promptly following approval of these Procedures, the Compliance Officer shall also undertake such activities, to the extent not already complied with, with regard to any existing Continuing Disclosure Undertaking.)

To the extent a particular issue of Obligations provides for a redemption, defeasance or other event that could mature into a listed event, and the applicable documents entered into by the City in connection with such issue delegate to a trustee, bond registrar and paying agent or escrow deposit agent responsibility to make any filing on EMMA on the City's behalf in connection therewith (e.g., pursuant to the provisions of an escrow deposit agreement), the Compliance Officer shall add such listed event to the tickler system to make sure notice of the event is timely filed by such third party.

### **Use of Other City Personnel**

In performing the obligations set forth in these Procedures, the Compliance Officer shall be entitled to utilize the services of appropriate City personnel, but the Compliance Officer shall remain primarily responsible for performing the obligations set forth in these Procedures in such event.

### **Consulting with Others**

In performing the obligations provided for in these Procedures, the Compliance Officer shall be entitled to consult with other appropriate City officials and employees and, to the extent applicable, counsel to the City (including Bond Counsel) and the Financial Advisor.

### **Job Description**

To the extent the City maintains written job descriptions for any officials or employees who have responsibilities under or are impacted by these Procedures, the appropriate officials of

the City shall endeavor to add compliance or familiarity with these Procedures, as applicable, to such written job descriptions, and to modify the same accordingly to reflect any delegations provided for in these Procedures.

### **Use of EMMA**

The Compliance Officer shall be knowledgeable and familiar with the process for making postings and filings on EMMA. The Compliance Officer or other appropriate City official may take any necessary actions to allow others such as other appropriate City officials or employees, Bond Counsel, the Financial Advisor, or any trustee, bond registrar and paying agent or escrow agent to make postings and filings on EMMA on the City's behalf in appropriate circumstances. Note that as of the date of adoption of these Procedures, all postings on EMMA must be in word searchable PDF format. As long as such requirement remains in effect, the City may need to convert received PDFs to word searchable format, and, with regard to audited financial statements that electronically signed by the auditor, may need to ask the City's auditor to provide the same in word searchable PDF format in which any electronic signatures will be not be deleted when the financial statements are posted to EMMA.

### **Training**

When attending seminars or conferences that provide training or updates on continuing disclosure compliance under the Rule, the Compliance Officer and other appropriate City officials and employees shall endeavor to take advantage of such training.

At least annually the Compliance Officer shall review the EMMA website to determine if training materials are available and take advantage of the same to the extent they would supplement the Compliance Officer's knowledge and efforts under these Procedures.

### **Postings**

After making any postings or filings on EMMA, the Compliance Officer shall review the same for accuracy and to determine whether a particular posting or filing covers all the affected CUSIP numbers of outstanding Obligations.

To the extent an agreement with a trustee, bond registrar and paying agent or escrow deposit agent provides for such third party to make any filings on EMMA on behalf of the City (e.g., redemption notices, notices of defeasance or notice of a change in trustee), the Compliance Officer shall timely review EMMA to make sure such notice is timely filed by such third party.

### **Records Retention**

The Compliance Officer shall maintain electronic and, to the extent not in violation of applicable City record retention policy, hard copy, records of all filings made on EMMA,

including, but not limited to, EMMA posting receipts showing the dates and nature or contents of filings made.

### **Periodic Review**

At least annually, the City Manager, the Finance Director (if the Finance Director is no longer the Compliance Officer) and the Compliance Officer shall review these Procedures to determine whether any modifications or delegations hereunder are warranted. The Compliance Officer shall maintain an electronic tickler system to provide reminders of such periodic review.

### **Scope of Procedures**

As provided by the definition of Obligations, these Procedures apply only to “obligations” covered by the Rule for which the City is an “obligated person” within the meaning of the Rule. These Procedures are not intended to apply to “obligations” covered by the Rule for which the City is an issuer but not an “obligated person” (e.g. conduit revenue bonds issued by the City).

Notwithstanding the foregoing provisions of these Procedures, if as an “obligated person” the City is required to make only certain annual or listed event notice filings in accordance with the Rule and the applicable Continuing Disclosure Undertaking, these Procedures shall be construed to apply only to those reporting obligations for which the City has assumed responsibility in the applicable Continuing Disclosure Undertaking.

In the event any City official or employee complies with these Procedures in a particular instance due to the absence or disability of the Compliance Officer, such City official or employee shall use his or her best efforts to undertake the same duties delegated to the Compliance Officer under these Procedures that are applicable in such instance (e.g., to provide notification of any filings made in accordance with these Procedures and to facilitate record retention with respect to the same).

### **Liberal Construction**

These Procedures shall be liberally construed in order to effectuate and facilitate compliance by the City with its Continuing Disclosure Undertakings and applicable provisions of the Rule.

[CONTINUED ON FOLLOWING PAGE]

The foregoing Procedures are approved on behalf of The Commissioners of Cambridge as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

APPROVED:

\_\_\_\_\_  
Sandra Tripp-Jones, City Manager

\_\_\_\_\_  
Ginger Heatwole, Finance Director