COMMISSION POLICY NO. 2019-01 **Approved by:** DocuSigned by: Alicia Aguirre 591D199BBC29495...

Rev: A **Rev Date: 10/19/2020** **Issue Date: 02/25/2019**

Approved by the SVCW Commission at Meeting of October 19, 2020 by Resolution No. SVCW 20-37

SUBJECT: **Debt Disclosure Procedures**

APPLICABLE CODES AND REGULATIONS:

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

PURPOSE:

These Debt Disclosure Procedures (the "Procedures") memorialize and communicate procedures in connection with obligations, including notes, bonds, loans and other debt obligations, issued by or on behalf of the Silicon Valley Clean Water (the "Authority") so as to ensure that the Authority continues to comply with all applicable disclosure obligations and requirements under the federal securities laws.

BACKGROUND:

The Authority may from time to time issue revenue bonds, notes, loans or other debt obligations (collectively, "Obligations") payable directly or indirectly by all or certain of its members (the "Members") in order to fund or refund capital investments, other long-term programs and working capital needs. In offering Obligations to the public, and at other times when the Authority makes certain reports, the Authority 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 Authority must not omit material information which would be necessary to provide to investors a complete and transparent description of the Obligations and the Authority's financial condition. In the context of the sale of securities, a fact is generally 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 Obligations are issued 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, "Official Statement"). The Official Statement generally consists of (i) the forepart (which describes the specific transaction including maturity dates, interest rates,

redemption provisions, the specific type of financing, the project and other matters particular to the financing, (ii) a section which provides information on the Authority (the "Authority Section"), (iii) appendices prepared by Members participating in the financing which provide information about the participating Members and their wastewater collection and treatment systems or wastewater treatment system, including their financial condition, other operating information and audited financial statements (each a "Member Section") and (iv) various other appendices, including the Authority's audited financial report, form of the proposed legal opinion, and forms of continuing disclosure undertakings of the Authority and the Members that participate in the financing. Investors use the Official Statement as one of their primary resources for making informed investment decisions regarding the Obligations.

DISCLOSURE PROCEDURE:

When the Authority determines to issue Obligations, the Chief Financial Officer requests the involved departments to commence preparation of the portions of the Official Statement (including particularly the Authority Section) for which they are responsible and the participating Members to prepare their Member Sections. While the general format and content of the Official Statement, including the Member Sections, may not normally change substantially from offering to offering, except as necessary to reflect major events, the Chief Financial Officer, other relevant Authority staff and relevant Member staff are responsible for reviewing and preparing or updating the portion of the Official Statement which are within their particular areas of knowledge. Once the draft POS has been substantially updated, the entire draft POS is shared with the SVCW Manager for review and input. The Chief Financial Officer will also confirm that each Member Section has been shared with the City Manager or District Manager of such Member.

Members of the financing team, including Bond and Disclosure Counsel and a municipal advisor (the "Municipal Advisor"), assist staff, including Member staff, in determining the materiality of any particular item, and in the development of specific language in the Authority Section or the Member Section. Members of the financing team also assist the Authority in the development of a "big picture" overview of the Authority's financial condition, included in the Authority section and each Member's staff with respect to the Member Section. This overview highlights particular areas of interest. Bond and Disclosure Counsel has a confidential, attorney-client relationship with officials and staff of the Authority.

The Chief Financial Officer or a member of the financing team at the direction thereof schedules one or more meetings or conference calls of the financing team (which includes Authority officials, General Counsel, Bond and Disclosure Counsel, the Authority's Municipal Advisor (and the underwriters of the Obligations, and the underwriters' counsel, if the proposed financing is being undertaken as a negotiated transaction)) and Member representatives. New drafts of the forepart of the draft POS, the Authority Section and the Member Sections are then 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 Authority staff, participating Member representatives 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 Authority officials involved in the preparation of the POS and members of the financing team (and the underwriters and the underwriters' counsel, if the financing is a negotiated transaction) during which the POS is reviewed in its entirety to obtain final comments and to allow the underwriters (if the proposed financing is being undertaken as a negotiated transaction), to ask questions of the Authority's senior officials. This is referred to as a "due diligence" meeting. Formal due diligence meetings may also occur with each participating Member.

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

A substantially final form of each Member Section is provided to the respective Member in advance of approval to afford the city council or governing board of each Member an opportunity to review its Member Section, ask questions and make comments. The substantially final form such Member Section is approved by the city council or governing board of the Member which generally authorizes certain senior staff to make additional corrections, changes and updates to its Member Section in consultation with counsel, and Bond and Disclosure Counsel.

At the time the POS is posted for review by potential investors, senior Authority officials and senior staff from each participating Member execute certificates deeming certain portions of the POS, or the participating Members Section, as applicable, complete (except for certain pricing terms) as required by SEC 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 changes and developments will have been incorporated into the POS, including particularly the Authority Section and Member Sections, if required. If necessary, to reflect developments following publication of the POS or OS, as applicable, supplements will be prepared and published.

In connection with the closing of the transaction, one or more senior Authority officials and senior staff of participating Member execute certificates stating that certain portions of the OS, as of the date of each OS 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 Official Statement in light of the circumstances under which they were made, not misleading. General Counsel and counsel for each Member also provide opinion letters (generally addressed to the underwriters) advising that information contained in the Authority Section or Member Section, as applicable (or specified portions thereof) as of its date did not, and as of the date of the closing, does not contain any untrue statement of a material fact or omitted 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. General Counsel or counsel to the Member, as applicable does not opine to the underwriters or to other third parties as to any financial, statistical, economic or demographic data or forecasts, charts, tables, graphs, estimates, projections, assumptions or expressions of opinion, and certain other matters which are customarily excluded. Bond and Disclosure Counsel also provides a negative assurance letter (addressed to the underwriters) with respect to the

Authority Section. Bond and Disclosure Counsel does not give negative assurances to the underwriters or to other third parties as to any financial, statistical, economic or demographic data or forecasts, charts, tables, graphs, estimates, projections, assumptions or expressions of opinion, or information contained in appendices to the OS, and certain other matters which are customarily excluded.

AUTHORITY SECTION

The information contained in the Authority Section is developed by personnel under the direction of the Chief Financial Officer, 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 that contribute information to the Authority Section:

- Authority staff members involved in the disclosure process are responsible for being familiar with their responsibilities under federal securities laws as described above.
- Authority 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 General Counsel, Bond and Disclosure Counsel or 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 Authority should consider revisions to the Procedures.
- The process of updating the Authority 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 Authority 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 Authority must make sure that the staff involved in the disclosure process is of sufficient seniority such that it is reasonable to believe that, collectively, they are in possession of material information relating to the Authority, its operations and its finances.

Authority staff and members of the finance team are also made available to the participating Members to assist in the development of the Member Sections. The Authority has suggested that each Member adopt disclosure policies to assist with the Member's compliance with federal securities law which detail how the participating Members Section will be prepared.

TRAINING:

Periodic training for Authority staff involved in the preparation of the Official Statement (including the Authority Section) is coordinated by the finance team and the Chief Financial Officer. These training sessions are provided to assist staff members involved in identifying relevant disclosure information to be included in the Authority 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 Authority Section, a description of previous 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 and Disclosure Counsel, concerning disclosure obligations and are encouraged to contact members of the finance team at any time if they have questions. The Authority may provide Members the opportunity to attend such training.

ANNUAL CONTINUING DISCLOSURE REQUIREMENTS:

In connection with the issuance or execution and delivery of Obligations, the Authority has entered into contractual agreements ("Continuing Disclosure Certificates") to provide its audited financial statements and notice of certain events relating to the Obligations specified in the Continuing Disclosure Certificates. The Authority must comply with the specific requirements of each Continuing Disclosure Certificate. The Authority's Continuing Disclosure Certificates generally require that the annual reports be filed no later than nine months after the end of the Authority's fiscal year (currently March 31 of each year, based on a fiscal year ending on June 30), and material event notices are generally required to be filed within 10 business days of their occurrence.

Specific events which require "material event" notices are set forth in each particular Continuing Disclosure Certificate.

The Chief Financial Officer shall be responsible for preparing and filing the annual reports and material event notices required pursuant to the Continuing Disclosure Certificates, including outreach to participating Members to obtain any operating information which may be required in order for the Authority to complete its annual reports. 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).

Effective February 27, 2019, Authority General Counsel, Authority Manager, other senior staff or other executive positions within SVCW will provide written notice to the Chief Financial Officer of receipt by Silicon Valley Clean Water ("SVCW") of any default, event of acceleration, termination event, modification of terms (only if material or may reflect financial difficulties), or other similar events (collectively, a "Potentially Reportable Event") under any agreement or obligation to which SVCW is a party and which may be a "financial obligation" as discussed below. Such written notice should be provided by General Counsel to the Chief Financial Officer as soon as General Counsel is placed on written notice by SVCW staff, consultants, or external parties of such event or receives written notice of such event so that the Chief Financial Officer can determine, with the assistance of disclosure counsel, whether notice of such Potentially Reportable Event is required to be filed on EMMA pursuant to the disclosure requirements of SEC Rule 15c2-12. If filing on EMMA is required, the filing is due within 10 business days of such Potentially Reportable Event to comply with the continuing disclosure undertaking for the various debt obligations of SVCW.

General Counsel, Authority Manager, other senior staff or other executive positions within SVCW, as applicable, will report to the Chief Financial Officer the execution by SVCW of any agreement or other obligation which might constitute a "financial obligation" for purposes of Rule 15c2-12 and which is entered into after February 27, 2019. Amendments to existing SVCW agreements or

obligations with "financial obligation" which relate to covenants, events of default, remedies, priority rights, or other similar terms should be reported to the Chief Financial Officer as soon as General Counsel or such other senior staff is placed on written notice by SVCW staff, consultants, or external parties of such event or receives a written notice of such amendment requests. Notice to the Chief Financial Officer is necessary so that the Chief Financial Officer can determine, with the assistance of disclosure counsel, whether such agreement or other obligation constitutes a material "financial obligation" for purposes of Rule 15c2-12. If such agreement or other obligation is determined to be a material "financial obligation" or a material amendment to a "financial obligation" described above, notice thereof would be required to be filed on EMMA within 10 business days of execution or incurrence. The types of agreements or other obligations which could constitute "financial obligations" and which could need to be reported on EMMA are discussed in the memorandum from disclosure counsel attached hereto as **Exhibit A.**

SECONDARY MARKET DISCLOSURE

On February 7, 2020, the SEC released a staff legal bulletin (the "Bulletin") concerning secondary market disclosure in the municipal bond market. The Bulletin included SEC staff views on a variety of matters, including but not limited to, the applicability of the federal securities laws to public agency websites, reports delivered to governmental and institutional bodies and statements made by public officials including board members. Documents, reports, and other written statements of the Authority that contain current financial and operational conditions of the Authority may be included on the Authority's website as appropriate. The Authority and its Bond Counsel have reviewed the Bulletin and have incorporated certain SEC staff recommendations into this Policy and into disclosure training for staff and Board members. The Authority and its Bond Counsel will be cognizant of those reviews and will consider whether those reviews require the Authority to make secondary market disclosures.

Exhibit A
Administrative Policy No. 2019-01 Debt Disclosure Procedures
January 19, 2019 Memorandum from Stradling Yocca Carlson & Rauth

An amendment to Securities and Exchange Commission (the "SEC") Rule 15c2-12 (the "Rule") becomes effective as to underwriters of publicly offered municipal securities on February 27, 2019 (the "Effective Date"). As a result, we would expect that with respect to any debt offered publicly by Silicon Valley Clean Water ("SVCW") after the Effective Date to which the Rule applies, SVCW will be required to enter into a continuing disclosure undertaking pursuant to which it will agree to provide notice on the EMMA electronic reporting system ("EMMA") of the incurrence of any "financial obligation" if material and will be obligated to disclose default on and certain other information with respect to any "financial obligation" regardless of when the financial obligation was incurred.

The Rule provides a general definition of a "financial obligation." While the impetus for the proposed changes to the Rule was a perception by the SEC and others that municipal issuers were increasingly entering into bank or other private placement debt, the final amendment to the Rule defines "financial obligation" more broadly to include "a debt obligation, derivative instrument …. or a guarantee of either a debt obligation or a derivative instrument."

To date the SEC has provided limited guidance on the specific application of the definition of "financial obligation". The SEC release accompanying the final amendment does suggest a key concept is that a "financial obligation" involves the borrowing of money. In public comments representatives of the SEC have declined to provide a definition of a "guarantee" or a "debt" but did indicate that the SEC will not necessarily look to state law definitions of a "guarantee" or "debt".

SVCW will need to monitor agreements or other obligations entered into by SVCW after the Effective Date, and any modifications to such agreements or other obligations, carefully to determine whether they constitute "financial obligations" under the Rule and, if material, would need to be disclosed on EMMA within 10 business days of execution or incurrence.

In addition, if SVCW receives a notice of default or an event of default or of an acceleration, termination event, modifications of or other similar event on any agreement or other obligation after the Effective Date, SVCW will need to determine whether such agreement or obligation constitutes a financial obligation (regardless of when originally incurred) and whether such default or other event reflects financial difficulty (ie, reduction in overall liquidity, creditworthiness or debt owner's rights).

Types of agreement or other obligations which are likely to be "financial obligations" under the Rule include:

- Bank loans or other obligations which are privately placed;
- State or federal loans;
- Commercial paper or other short-term indebtedness for which no offering document has been filed on EMMA;
- Letters of credit, surety policies or other credit enhancement with respect to SVCW's publicly offered debt;

- Letters of credit, including letters of credit which are provided to third parties to secure SVCW's obligation to pay or perform (an example of this is a standby letter of credit delivered to secure SVCW's obligations for performance under a mitigation agreement);
- Capital leases for property, facilities, fleet or equipment; and
- Agreements which guarantee the payment or performance obligations of a third party (regardless of whether the agreements constitute guarantees under California law).

Types of agreements which could be a "financial obligation" under the Rule include:

- Payment agreements which obligate SVCW to pay a share of another public agency's debt service (for example, an agreement with a joint powers agency whereby SVCW agrees to pay a share of the joint powers agency's bonds, notes or other obligations); and
- Service contracts with a public agency or a private party pursuant to which SVCW is obligated to pay a share of such public agency or private party's debt service obligation (for example, certain types of P3 arrangements).

Types of agreements which may be a "financial obligation" subject to the Rule include:

- Any agreement the payments under which are not characterized as an operation and maintenance expenses for accounting purposes if such agreement could be characterized as the borrowing of money;

The above list is based on disclosure counsel advice as of January 19, 2019. The Chief Financial Officer will continue to work with General Counsel and disclosure counsel to refine the definition of financial obligation going forward based on future SEC guidance.