



A Public Agency

ADMINISTRATION AND FINANCE



STAFF REPORT

To: SBWMA Board Members
From: Joe LaMariana, Executive Director
Date: August 20, 2020 Board of Directors Special Meeting
Subject: Potential Withdrawal of Town of Atherton from Membership in the SBWMA: Consideration of a Resolution to Determine Atherton's Liquidation Costs and Recommend Member Agencies Approve the Withdrawal Based on Certain Conditions

Executive Summary

On June 29, 2020, the Town of Atherton formally notified SBWMA of its intent to withdraw from membership in the SBWMA, effective December 31, 2020. Pursuant to the Second Amended and Restated Joint Powers Agreement ("JPA Agreement"), Article 15, "Withdrawal from SBWMA", a Member may not withdraw from the SBWMA unless and until that Member achieves the following:

- a. **The liquidation in full of its proportion of any and all existing debts, obligations, and liabilities incurred, earned, or expected to be earned by the date of withdrawal, including but not limited to the Revenue Bonds, as determined by the Board.**
- b. The provision to the SBWMA of a written notice of intent to withdraw from the SBWMA at least six (6) months prior to the end of the current Rate Year, specifying the date on which the Member intends to withdraw.
- c. The approval of such withdrawal by a 4/5 affirmative vote of Equity Members.

Atherton's June 29, 2020 letter satisfies its Article 15.1.b. obligation. Next, it must satisfy its Article 15.1.a. obligation, highlighted above. In order for it to do so, the Board is required to determine the amount Atherton must pay to liquidate "its proportion of any and all existing debts, obligations, and liabilities incurred, earned, or expected to be earned by the date of withdrawal," which is the purpose of this meeting. Finally, pursuant to Article 15.1.c., Atherton's withdrawal must be approved by four-fifths (10) of the JPA's Equity Members (i.e., Member Agencies) to become effective.

Staff recommends that the Board adopt the attached resolution determining the amount necessary for Atherton to liquidate its portion of existing debt obligations based on calculating the amount required to defease Atherton's portion of SBWMA's outstanding 2019 bonds plus costs, which is approximately \$2.2 million dollars,¹ and further recommending to the Member Agencies that they approve Atherton's withdrawal from the JPA, as required by

¹ The actual amount will vary slightly based on the date of defeasance and interest rates on Treasury obligations at the time. For example, as calculated on July 14, 2020, the defeasance cost would be \$2,203,016; if interest rates dropped to zero by the date of defeasance (worst case scenario), the defeasance cost would be \$2,271,183. If rates were to go up, on the other hand, the defeasance cost would be less.

Article 15.1.c. Atherton's withdrawal will become effective December 31, 2020, provided 10 Equity Members have approved the withdrawal and the liquidation amount has been paid by Atherton to the SBWMA.

Background

The original JPA for SBWMA was adopted effective December 9, 1999. It was established by a number of San Mateo County entities to provide a regional approach to the collection and disposition of solid waste, recyclable materials, and organic materials. Initially, SBWMA issued bonds in 2000 to acquire and reconstruct the Shoreway Environmental Center Facility, to be operated by SBWMA to meet the regulatory requirements for solid waste and recyclables for its Member Agencies. The original bonds were defeased and new bonds issued in 2009. In 2019, SBWMA took action to refund the 2009 bonds, thereby saving SBWMA money and, at the same time, raising new funds for certain capital improvements. The JPA has been amended and restated several times over the years; the current governing JPA document dated June 19, 2013, is entitled the "Second Amended and Restated Joint Exercise of Powers Agreement South Bayside Waste Management Authority".²

Atherton is one of the original founding members of SBWMA, and as such, is an "Equity Member."³ Expressing concern that SBWMA's work no longer aligns with the needs and demands of its residents, Atherton has been considering withdrawing from SBWMA for some time, and has been exploring alternative options for waste management. It has now reached a tentative agreement with GreenWaste to provide those services, contingent upon its withdrawal from SBWMA. Atherton and SBWMA exchanged letters related to the withdrawal process on March 18th and April 27th (Attachment 1), and Atherton sent a formal Notice of Intent to Withdraw on June 29, 2020, specifying December 31, 2020 as the exit date. (Attachment 2.) Assuming it goes forward, Atherton will be the first entity to withdraw from SBWMA since it was formed. The City of Burlingame considered withdrawal in 2009, but ultimately decided to remain a member. Thus, there is no institutional precedent on how the conditions specified in Article 15 are to be met.

Calculation of Liquidation Amount

A. Bond Costs

KNN Public Finance Analysis: In preparation for responding to Atherton's anticipated notice to withdraw, KNN Public Finance ("KNN"), SBWMA's financial advisor, was asked late last fall to calculate the portion of SBWMA's outstanding bond obligations attributable to Atherton, and to describe a method for retiring Atherton's proportional share of the bond obligations through a legal defeasance. In a letter dated December 6, 2019, KNN provided its Bond Allocation and Defeasance Analysis, which was shared with Atherton. (Attachment 3.) KNN concluded that because the outstanding bond obligations are for capital and equipment improvements at the Shoreway facility, a reasonable means for allocating a Member Agency's proportionate share is to measure their historic use of the facility, based on franchise tonnage. KNN looked at Atherton's share of overall franchise tonnage for years 2016, 2017, and 2018, and proposed three scenarios for determining Atherton's proportional share of bond obligations:

² A proposed Third Amended and Restated JPA is currently being circulated for consideration among member agencies, making a number of clerical and administrative updates to the JPA document; none of the proposed changes impact Article 15, Withdrawal, of the Agreement.

³ Under the SBWMA, JPA membership is divided into "equity members" and "non-equity members"; there are no non-equity members at this time, nor have there ever been. The primary difference between an Equity Member and Non Equity Member is described in Section 6.3 of the JPA: basically, non-equity members are not entitled to vote on any matter before the board, and do not have the rights and liabilities of equity members, particularly under Section 15, Withdrawal, or Section 16, Termination of the JPA.

- 1) 2018 calendar year tonnage – 3.25%;
- 2) three-year average tonnage – 3.27%; and
- 3) three-year average tonnage rounded – 3.30%.

The cost ranged from a high of \$2,019,383 to a low of \$1,987,908. KNN also recommended that SBWMA include an additional amount of \$100,000 for costs related to work that would be required by bond counsel, verification agent, escrow agent, and municipal advisor related to the defeasance transaction. KNN's analysis was based on market conditions as of December 4, 2019. After receiving Atherton's June Notice of Intent to Withdraw, KNN was asked to update its earlier analysis. In a July 22, 2020 letter, KNN provided an updated analysis based on July 14, 2020 market conditions. (Attachment 4.) As shown in that updated opinion, Atherton's 2019 franchise tonnage percentage was 3.24, slightly smaller than the 3.25% from 2018. Additionally, interest rates have fallen since December 2019, so the cost of the defeasance escrow has increased. Based on these changes, KNN determined that the updated amount of Atherton's proportionate share of the bond obligations, using the 3.24% figure from 2019, equals \$2,103,016. Adding the \$100,000 for defeasance costs, the liquidation number equals \$2,203,016.

Atherton/NHA Advisors Analysis: Atherton engaged a different financial advisor, NHA Advisors ("NHA"), to review the December KNN analysis and to "take another look" at its financial obligations in the event of withdrawal. The NHA analysis was included in the June 29th Notice of Intent to Withdraw. (Attachment 2.) In its analysis, NHA acknowledged that KNN's approach, using franchise tonnage as the measure of proportionality, is "the simplest and most straightforward," but proposed that other factors should be used in the calculation in order to reduce Atherton's exit costs. Most of the other factors proposed by NHA are revisionist in nature, essentially stemming from an assumption that, based on its waste generation profile, Atherton paid more than its fair share during the entirety of its membership in SBWMA, and that this unfairness should be addressed retroactively by way of a reduced exit cost. Within this context, NHA suggested five different scenarios that could be utilized to determine what proportionality to assign to Atherton in calculating its exit costs, which are discussed below. Each of the five scenarios include a deduction labeled as "overpayment" in the amount of \$581,386. NHA contends this deduction is justified because Atherton, which has mostly single-family homes, did not itself need the build-out part of the Shoreway facility that accommodates multifamily and commercial recycling and processing, and that therefore its portion of the payments for the 2009 bonds was higher than it should have been. NHA notes that the \$581,386 "represents a calculated total amount overpaid in the last ten years." The actual analysis NHA utilized to reach this number is not included in its letter.

The five scenarios proposed by NHA, which result in exit costs from Atherton ranging from \$1,677,498 to negative \$79,573 (where SBWMA would owe money to Atherton), are summarized below for the Board's convenience.⁴ They are contained in their entirety in Attachment 2.

- **Scenario 1:** this scenario uses the same methodology as the KNN analysis, but includes the \$581,386 deduction for "overpayment" discussed above. Based primarily on this adjustment, NHA concludes the amount owed is \$1,677,498.
- **Scenario 2:** this scenario assumes that in the future Atherton's share of the franchise tonnage will decline from 3.25% to 1.5% because it will remain stable while other member agencies will see population growth. Using this hypothetical reduced percentage would reduce the cash required to defease Atherton's portion of the bonds from \$2.26 million to \$1.5 million. After deducting the overpayment, the amount owed is \$933,748.

⁴ All of NHA's scenarios include the \$100,000 defeasance costs.

- **Scenario 3:** the 2019 bonds consist of two series: 2019A, which refunded the 2009 bonds, and 2019B, which raised capital (new money) for future improvements. In this scenario NHA proposes the exclusion of defeasance costs related to the 2019B (new money) bonds, on the basis that the bond proceeds will be used for future improvements that will not benefit Atherton. If the defeasance costs for the 2019B (new money) bonds are excluded (\$1,566,259) and the overpayment deducted (\$581,386), the amount owed is \$984,874.
- **Scenario 4:** this scenario combines Scenario 2 (taking into account a presumed future reduction in Atherton's proportion of the waste stream), and Scenario 3 (exclusion of the cost to defease the 2019B (new money) bonds, reducing the proportionate share to \$903,623 (\$322,238 with the overpayment deduction). This is the Scenario that Atherton proposes SBWMA accept in its Notice of Intent to Withdraw, without the deduction for overpayment.
- **Scenario 5:** this scenario includes Scenarios 2 and 3 and proposes additional reductions in the allocation of the 2019A bonds relating to the 2009 projects, similar to the argument made for the "overpayment" deduction, but in addition thereto. Under this scenario, SBWMA would end up owing \$79,573 to Atherton.

B. Other Costs

HF&H Consultants, LLC: In addition to KNN, staff retained HF&H Consultants to determine whether there are other (unrelated to the bonds) financial obligations attributable to Atherton that should be included in the liquidation amount pursuant to Article 15.1.b. which requires the withdrawing Member to liquidate in full "its proportion of any and all existing debts obligations, and liabilities incurred, earned, or expected to be earned by the date of withdrawal." After examining SBWMA's financial records, HF&H concluded that there are no other existing debt obligations or liabilities that Atherton would be responsible for after its withdrawal on December 31, 2020, the only exception would be an insurance claim, were one to be filed prior to that time. (Attachment 5.) As discussed in the Fiscal Impact section below, after Atherton's withdrawal, ongoing operational expenses would be apportioned between the remaining Members, because under the JPA, once a Member withdraws, it is no longer responsible for SBWMA's continued operational expenses.

Discussion

Under the terms of the JPA, a Member Agency may not withdraw *unless and until* it has liquidated in full its proportion of any and all existing debts, obligations, and liabilities of, as determined by the Board. The JPA does not specify the formula to be used when calculating this liquidation cost, so it falls upon the Board to make a determination based on the information presented. Based on the analyses prepared by the financial consultants for SBWMA and Atherton, there are basically three options for the Board to consider:

- 1) the KNN analysis which fully defeases the 2019A and B bonds based on franchise tonnage,
- 2) the NHA analysis which calculates the amount based on franchise tonnage but excludes the 2019 (new money) bonds proposed by Atherton, or
- 3) the NHA Scenario 4 analysis (without the overpayment deduction), proposed by Atherton.

Option 1 – Full Defeasance of all 2019 bonds based on franchise tonnage (estimated cost \$2,203,016).

SBWMA's consultant, KNN, utilizes franchise tonnage to determine Atherton's share of liabilities, noting that "In our opinion, franchise tonnage is the most reasonable measure to use in determining a member's proportionate share of liability because it mirrors the long-standing practice of allocating costs." (Attachment 3, page 1.) Atherton's consultant, NHA, in its analysis, acknowledges that using franchise tonnage to calculate proportionate liability is the "simplest and most straightforward approach." (Attachment 2, page 2.) Staff recommends this option because it

provides a reasonable approach, based on established business practice, to determine Atherton's proportionate share of outstanding debt as of December 31, 2020, in conformance with the requirements of the JPA. Because the JPA requires a withdrawing Member Agency to liquidate *in full* its proportionate share of debt. This option assures that Atherton will be responsible for its full share of existing debt, which it agreed to when it became a member of the JPA; it is thus fair to both Atherton and the JPA's remaining Member Agencies. Under this option, the liquidation amount Atherton is required to pay is approximately \$2,203,016.

Option 2 – Partial Defeasance of 2019 bonds (exclusion of 2019B (new money) bonds) based on franchise tonnage (estimated cost \$1,543,090). Atherton's consultant, NHA, suggests that Atherton should not be responsible for defeasing its portion of the 2019B (new money) bonds because, by leaving in December, it will not reap the future benefits of the capital raised by these bonds. In its review of NHA's analysis, KNN calculated what Atherton's liquidation amount would be if the 2019B (new money) bonds were excluded from the debt calculation. (Attachment 3, page 3.) The result of excluding the 2019B (new money) bonds is shown in the chart below.

	All bonds defeasance	Atherton Share (3.24%)
2019A (Refunding)	\$44,511,685	\$ 1,443,090
2019B (New Money)	20,355,228	659,926
Total	\$64,866,913	\$2,103,016

As the chart shows, Atherton's cost to defease its proportionate share of the 2019B (new money) bonds is \$659,926; subtracting that amount from its full liability would mean that Atherton's liquidation amount would be \$1,443,090 (plus the \$100,000 for defeasance costs), for a total estimated cost of \$1,543,090.⁵

If the Board agreed to exclude the 2019B (new money) bonds from the calculation, Atherton's portion of the debt would be assumed by the remaining Member Agencies. KNN provided a chart, shown below, in its updated analysis that breaks down the additional amount of debt each member agency would incur if Atherton's portion of the 2019B (new money) bonds were allocated amongst them (the total difference in the remaining members' debt service, \$677,912, is somewhat higher than cost of defeasance, \$661,545, because the cost of defeasance is calculated to the first call date on the bonds, whereas the debt service on the bonds goes through final maturity of the bonds). The far right column entitled "Total Difference" shows the additional amount each individual entity would pay:

⁵ NHA's analysis calculates the amount necessary for defeasing Atherton's share of only the 2019A refunding bonds as \$1,466,259, rather than \$1,443,090. This difference likely reflects different assumptions as to timing and interest rates. KNN's number is the more current, and therefore the better number to rely on for purposes of the Board's determination.

Reallocation of 2019B New Money Debt Service (DS) to Member Agencies

	Avg. Annual DS with Atherton Prepayment	Avg. Annual DS without Atherton Prepayment	Annual Difference	Total DS with Atherton Prepayment	Total DS without Atherton Prepayment	Total Difference
Belmont	\$89,419	\$92,415	\$2,996	\$983,609	\$1,016,566	\$32,958
Burlingame	\$216,415	\$223,666	\$7,251	\$2,380,560	\$2,460,325	\$79,765
County	\$57,028	\$58,939	\$1,911	\$627,313	\$648,332	\$21,019
No. Fair Oaks	\$55,600	\$57,463	\$1,863	\$611,601	\$632,094	\$20,493
East Palo Alto	\$98,752	\$102,061	\$3,309	\$1,086,269	\$1,122,666	\$36,397
Foster City	\$108,280	\$111,908	\$3,628	\$1,191,077	\$1,230,987	\$39,909
Hillsborough	\$53,707	\$55,506	\$1,800	\$590,776	\$610,571	\$19,795
Menlo Park	\$227,894	\$235,530	\$7,636	\$2,506,830	\$2,590,826	\$83,996
Redwood City	\$360,318	\$372,391	\$12,073	\$3,963,495	\$4,096,299	\$132,804
San Carlos	\$142,452	\$147,225	\$4,773	\$1,566,970	\$1,619,474	\$52,504
San Mateo	\$401,268	\$414,713	\$13,445	\$4,413,948	\$4,561,846	\$147,897
West Bay Sanitary	\$28,149	\$29,092	\$943	\$309,640	\$320,015	\$10,375
Total	\$1,839,281	\$1,900,909	\$61,628	\$20,232,088	\$20,910,000	\$677,912

Staff recommends the Board reject this option because there is no contractual support for this approach in the language of the JPA. Under Article 15, if debt is issued prior to withdrawal (“any and all existing debts, ... by the date of withdrawal”), that debt is to be included in the calculation of proportionate share of debt obligations. Atherton was a Member Agency in 2019 when the bonds were issued by SBWMA; thus, it is responsible for its share of the debt. The fact that it will not reap the benefit of future improvements if it withdraws from the JPA is not a reason to excuse Atherton from responsibility for its share. In withdrawing from SBWMA, Atherton is choosing to forego future benefits - the JPA language does not provide for remaining Member Agencies to subsidize this choice.

Option 3 – Partial Defeasance of 2019 bonds based on exclusion of 2019B (new money) bonds plus a hypothetically-reduced franchise tonnage percentage (estimated cost \$903,623). Option 3 is Atherton’s proposed approach. It consists of determining Atherton’s proportionate share by first excluding the 2019B (new money) bonds (discussed above), and then factoring in a hypothetical reduction in Atherton’s future portion of the franchise tonnage if it were to remain a member. Under this approach, in Scenario 4, NHA estimates that Atherton’s liquidation amount would be \$903,623. In its Notice of Intent to Withdraw, Atherton asks that SBWMA consider this amount as the appropriate liquidation cost.

Staff believes this number does not comply with the requirements of Article 15 for several reasons. First, as discussed above, Atherton’s obligation to defease its portion of the 2019B (new money) bonds should not be excused because this is an indebtedness incurred while Atherton was a Member of SBWMA, and Atherton is contractually obligated to liquidate its portion of the debt in full as a condition of withdrawal. Secondly, the assumption that Atherton’s share of the franchise tonnage would decline in the future if it were to remain a Member of SBWMA is speculative and unsupported by any evidence; it does not constitute a reasonable basis to reduce its current, definable debt obligation. If the Board were to select this option, the \$1,204,552 balance of Atherton’s debt obligation would be apportioned amongst the remaining Member Agencies. Similar to the chart above, the far right column of the chart below shows what each Member Agency’s additional cost would be:

	Avg. Annual DS with Total Atherton Prepayment (3.242%)	Avg. Annual DS with Partial Atherton Prepayment (1.393%)	Annual Difference	Total DS with Total Atherton Prepayment (3.242%)	Total DS with Partial Atherton Prepayment (1.393%)	Total Difference
Belmont	\$171,264	\$174,537	\$3,273	\$3,767,818	\$3,839,820	\$72,002
Burlingame	\$414,500	\$422,420	\$7,921	\$9,118,990	\$9,293,251	\$174,260
County	\$109,227	\$111,314	\$2,087	\$2,402,988	\$2,448,909	\$45,920
No. Fair Oaks	\$106,491	\$108,526	\$2,035	\$2,342,805	\$2,387,575	\$44,770
East Palo Alto	\$189,140	\$192,754	\$3,614	\$4,161,069	\$4,240,586	\$79,516
Foster City	\$207,389	\$211,352	\$3,963	\$4,562,550	\$4,649,738	\$87,189
Hillsborough	\$102,865	\$104,831	\$1,966	\$2,263,031	\$2,306,277	\$43,246
Menlo Park	\$436,486	\$444,827	\$8,341	\$9,602,682	\$9,786,185	\$183,503
Redwood City	\$690,118	\$703,306	\$13,188	\$15,182,594	\$15,472,727	\$290,133
San Carlos	\$272,838	\$278,052	\$5,214	\$6,002,445	\$6,117,149	\$114,704
San Mateo	\$768,550	\$783,237	\$14,687	\$16,908,103	\$17,231,210	\$323,107
West Bay Sanitary	\$53,914	\$54,944	\$1,030	\$1,186,108	\$1,208,774	\$22,666
Total	\$3,522,781	\$3,590,100	\$67,319	\$77,501,185	\$78,982,202	\$1,481,017

Legal or Credit Implications Created by Atherton's Withdrawal: Bond counsel (Stradling Yocca Carlson & Rauth) has raised no additional legal issues relating to the bonds that the Board needs to be aware of. KNN Public Finance has indicated that Atherton's withdrawal should have no rating impact, as it was known as a risk at the time of the last bond issuance, but allowing a Member Agency to exit without a full defeasance of its obligation could result in a rating impact in the future if additional Member Agencies were to withdraw from SBWMA.

Fiscal Impact

Assuming that Atherton's withdrawal is approved, the fiscal impact to SBWMA will depend on the liquidation amount determined by the Board, as discussed above. If the Board chooses Option 1, Atherton's share of the existing debt obligation will be paid. If the Board chooses Option 2 or 3, the remaining Member Agencies will each be responsible for a higher amount of debt service on the bonds.

Otherwise, under all options, commencing January 1, 2021, the remaining eleven Member Agencies will be responsible for the ongoing operational costs of SBWMA because, pursuant to the terms of the JPA, once a Member Agency withdraws, it is no longer a part of SBWMA and thus no longer responsible for ongoing expenses. Tip fee revenue from each Member Agency covers SBWMA fixed and variable costs. After adjusting for Atherton's variable costs, Staff calculates that Atherton's withdrawal will result in a net shortfall in operating funds of approximately \$146,760 from fixed costs that would need to be reallocated. Staff anticipates recommending the Board address this shortfall through a tip fee adjustment of \$0.52 per ton for all franchise material. To put this in perspective, the 52 cents would be added to current franchise tip fees, which range from \$127/ton to \$141/ton. The projected impact of this increase to the individual Member Agencies is shown in the chart below:

	Total Tip Fee Tons	Percentage of Allocation	Dollar Amount of Allocation
Belmont	13,240	5%	\$6,898
Burlingame	33,910	12%	\$17,668
County	8,457	3%	\$4,407
No. Fair Oaks	8,603	3%	\$4,482
East Palo Alto	16,370	6%	\$8,529
Foster City	16,345	6%	\$8,516
Hillsborough	8,208	3%	\$4,277
Menlo Park	34,995	12%	\$18,234
Redwood City	55,248	20%	\$28,786
San Carlos	21,061	7%	\$10,973
San Mateo	60,957	22%	\$31,761
West Bay Sanitary	4,276	2%	\$2,228
SBWMA	281,671	100%	\$146,760

Next Steps

The Board's determination of the liquidation costs is a final administrative decision which is not subject to appeal. Once the Board makes this determination, Atherton is then required to secure approval of withdrawal by "a 4/5 affirmative vote of Equity Members." (Article 15.1.c.) Approval by the governing board of each Member Agency is required because Article 15 makes a distinction between the process for determination of the liquidation amount, which is made by the SBWMA Board, and the approval to withdraw, which is made by the Equity Members. Given that SBWMA consists of twelve Equity Members, ten of them will need to approve the withdrawal before it can become effective. This means that each Member Agency's governing board will need to place the matter on its agenda for consideration, mirroring the process used when the JPA itself was amended.

Atherton has suggested that Article 15.1.c be interpreted differently, and that the approval to withdraw does not need to go to each Member Agency, rather, it can be made by a 4/5 vote of the Board, because the Board consists of representatives from each Member Agency. Staff does not agree with this interpretation. As noted above, the JPA makes a distinction in Article 15 between the Board and Equity Members. The Board is required to determine the liquidation amount, the Equity Members are required to approve the withdrawal. Under the JPA, "Board" is defined as the governing Board of Directors of the SBWMA, comprising one Director from each of the Members. "Member" is defined as the public entity itself. If the parties had intended that the Board to make the decision, they would have written the JPA to say that; instead, the JPA language requires the final approval for withdrawal go to the individual entities. In staff's opinion, if the Board were to take action to approve the withdrawal, that action would be void because the Board has no authority to approve a Member's withdrawal under the terms of the JPA.

The Board is asked to adopt the resolution attached to the staff report, Attachment 6, determining the method to be used to calculate Atherton's proportionate share of outstanding debt. The resolution further recommends to the Equity Members (Member Agencies) that they approve Atherton's withdrawal upon payment of the exit obligations as determined by the Board. Pursuant to Section 15.1a., each Member Agency's approval will be contingent upon and not effective until Atherton has liquidated its obligations calculated in accordance with the

Board's determination. To assist the Member Agencies as they consider this request, staff will prepare a staff report and resolution which can be utilized by each Member Agency as it considers Atherton's request.

Timing Considerations

As noted above, once the Board determines the amount necessary for Atherton to liquidate its proportional debt, Atherton will need to secure the approval of at least ten of the Member Agencies in order to effectuate the withdrawal. This needs to occur before the end of the year, and with enough time for Atherton to complete its negotiations with GreenWaste and to make its liquidation payment to SBWMA no later than December 31, 2020. Staff understands this is a daunting task, which is why this item has been scheduled for this special meeting rather than waiting to have it placed on the Board's next regular meeting in September. Once ten Member Agencies approve the withdrawal, staff will work with its consultants and Atherton's staff to effect the defeasance.

Recommendation

It is recommended the Board take action to determine the amount necessary for Atherton to liquidate its proportionate share of debt so that it can move forward in the withdrawal process. Staff recommends the Board select Option 1 - full defeasance of Atherton's share of both 2019A and B bonds (approximately \$2,203,016), as the liquidation amount. It is further recommended the Board adopt the attached Resolution, setting forth the liquidation process and recommending that Member Agencies approve Atherton's withdrawal contingent and effective upon its payment of the determined amount.

Attachments:

- 1) March 18, 2020 Letter from Atherton re Intent to Withdraw; April 27, 2020 response letter from Authority to Atherton
- 2) KNN Public Finance Analysis dated December 6, 2019
- 3) June 26, 2020 Notice of Intent to Withdraw including NHA Advisors Analysis
- 4) KNN Public Finance Additional Analysis dated July 22, 2020
- 5) HF&F Consultants Analysis dated August 11, 2020
- 6) **Resolution 2020-34** - Determining the Amount Required for the Town of Atherton to Liquidate its Proportionate Share of SBWMA Existing Debt in Connection with the Town's Notice of Intent to Withdraw from Membership in SBWMA; and Recommending Member Agencies Approve the Withdrawal, Subject to Certain Conditions.



**Town of Atherton
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March 18, 2020

VIA E-MAIL AND U.S. MAIL

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Re: Town of Atherton's Notice of Withdrawal from SBWMA JPA

Dear Director La Mariana:

This letter is to notify you that the Town of Atherton ("Atherton" or "Town") is considering withdrawal from the South Bayside Waste Management Authority ("SBWMA" or "JPA"). The Town is principally concerned that the JPA's work no longer aligns with the needs and demands of the Town's residents, so it is exploring alternative options for waste management.

The general rules of governance for SBWMA are laid out in the Second Amended and Restated Joint Exercise of Powers Agreement dated June 19, 2013 ("JPA Agreement"). Therein, and as discussed below, Article 15 – *Withdrawal from SBWMA* provides certain procedures to withdraw from the JPA:

15.1 Withdrawal Conditions. A Member may not withdraw from the SBWMA unless and until that Member achieves the following:

- a. The liquidation in full of its proportion of any and all existing debts, obligations, and liabilities incurred, earned, or expected to be earned by the date of withdrawal, including but not limited to the Revenue Bonds, as determined by the Board.
- b. The provision to the SBWMA of a written notice of intent to withdraw from the SBWMA at least six (6) months prior to the end of the current Rate Year, specifying the date on which the member intends to withdraw.
- c. Approval of such withdrawal by a 4/5 affirmative vote of Equity Members.

Notice of intent to withdraw is due to the Board at least six (6) months before the end of a rate year. (JPA Agreement, Section 15.1(b).) A rate year, as defined in the JPA Agreement, ends on December 31 so notice must be provided by the end of June in the member's final rate year. This

Joe La Mariana, SBWMA Executive Director
March 18, 2020
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letter shall serve as Atherton's notice of intent to withdraw pursuant to Section 15.1; however, the Town reserves the right to remain as a Member as long as withdrawal does not actually occur.

As part of the process for withdrawal from the JPA, the Town would like to clarify its obligations for the payment of the Town's proportionate share of SBWMA's liabilities required for withdrawal under Section 15.1(a).

The Town understands that its obligations to the JPA are a function of the assets which it has invested in the JPA and any bond indebtedness that it has signed and remain outstanding at the time of withdrawal.

As a founding member of the JPA, Atherton has been an Equity Member since 1999. During that time, the Town has financially supported each of the JPA's initiatives, predominately including the development, construction, and management of the Shoreway Environmental Center. If the Town was to withdraw from the JPA, the value of the Center—proportionate to the Town's contribution to the Center's development—would properly be valued as an asset owed to the Town, less the value of the Town's use of the Center until the time of withdrawal.

The JPA Agreement provides, in the event the JPA is terminated without naming a successor agency, "all assets and liabilities shall be apportioned to each Member in proportion to the contribution of each current Member's ratepayers' total contribution [until termination]." (JPA Agreement, section 16.1(b).) This means that, at the termination of the JPA, each remaining member will receive a portion of the assets of the JPA, less the amount of outstanding JPA obligations.

It follows that the same principle applies if the Town was to withdraw from the JPA. The JPA's portfolio of assets includes, in part, those only made possible by the Town's contributions. Assuming the Town withdraws from the JPA, assets due to the Town would be reallocated to the remaining members until such time that those members withdraw, via termination of the JPA or otherwise. Thus, the Town is owed the same consideration and entitled to the value of its assets at the time that it withdraws from the JPA, if it so chooses to withdraw.

Outside the express language of the JPA Agreement, principles of equity call for the Town to be paid its share of the JPA assets – the Town will no longer benefit from use of the Center and other JPA initiatives. These assets, part of which were fostered by the Town's contributions, will only be utilized by the remaining members; to ignore the Town's contributions would unjustly benefit and enrich the remaining members.

It is true at the creation of the JPA, the assets, rights, and liabilities of the JPA "shall not constitute assets, rights, debts, liabilities, or obligations of any of the Agencies [of] the SBWMA." (JPA Agreement, Section 3.3.) However, this is contradicted in the plain language of the JPA Agreement that repeatedly and expressly provides each member is allocated responsibility to the JPA proportionate to its contributions and needs. We believe that the intent of this section was more appropriately to highlight the fact that the JPA is a separate legal entity and therefore, members are not individually liable for the contractual obligations of the JPA. And, in any event, if the Town is not entitled to the benefits of the JPA (proportionate share of assets), it should be followed that it is also not burdened by its debts and liabilities.

Joe La Mariana, SBWMA Executive Director
 March 18, 2020
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As a founding principle, indeed prior to the section quoted above, the recitals of the JPA Agreement provide "the costs for planning and implementing Solid Waste and Recycling Programs will be based on a fair and equitable allocation system that considers the relative benefits to each Agency and the additional costs of services provided to each Agency." (JPA Agreement, Recital (D).) This means that a driving factor in the allocation of financial responsibilities within the JPA was the proportionate use and benefit gleaned by each member. Thus, each member was assessed for costs at a rate with consideration of their proportionate use and benefit from the JPA.

SBWMA's predominant direction, especially in recent years, has been to fund projects that target and benefit commercial growth and diversion. Atherton is a built-out residential community with no commercial development or uses. Therefore, the Town does not benefit from this targeted approach in any way, and it never has. To avoid this divergence from the JPA's founding principle articulated above, Atherton expressly requested that processing costs for commercial and residential uses be apportioned equitably. Unfortunately, the request, and even discussion of the request, was unilaterally declined. Consequently, it comes as no surprise that while Atherton has benefited the JPA, the JPA has predominantly served at the pleasure of, and for the advantage of, the other members.

In addition, Section 12.1 – *Debts and Liabilities* provides that a member agency's obligation is "expressly limited only to the appropriation and contribution of such funds as may be levied pursuant to this agreement or as the Members hereto may agree." Furthermore, Section 13.2 – *Attributing Solid Waste* provides "the SBWMA shall establish a fair and equitable method of attributing Solid Waste, Recyclable Materials, and Plant Materials to the Members that are delivered to the Facilities." These further support that the Town is entitled to its share of the JPA's assets. Indeed, despite these established principles of fair allocation, the Town has never utilized the JPA's full suite of services, nor received a discount for not doing so – as explained, the Town does not produce multi-family unit or commercial waste like other members and was denied its request to equitably apportion costs related to each.

If the SBWMA were to abide by the exact language of the JPA Agreement, "Revenue Bonds" is expressly defined as only "those certain revenue bonds titled 'South Bayside Waste Management Authority (San Mateo County, California) Solid Waste System Revenue Bonds, Series 2000,' and issued in the amount of \$20,090,000 on March 1, 2000." (JPA Agreement, Ex. C, "Definitions.") There is no mention or consideration for future revenue bonds. Thus, a plain reading provides room for an argument to be made that the JPA Agreement does not apply to bonds issued beyond the Series 2000 bonds and the Town, or really any JPA member, has no obligation to revenue bonds except for the Series 2000 bonds pursuant to the JPA Agreement.

The Town is entitled to certain assets of the JPA proportionate to its financial contributions to JPA initiatives until the time of the Town's withdrawal. However, the requisite liquidation prior to withdrawal is a measure of both the Town's assets and liabilities in the JPA. The total assets of the JPA as of the 2017/18 Audited Financial Statements is \$74,506,626. The JPA's stated total liabilities in that same Report is \$54,235,476. Allocating the Town's responsibility at 3.25% for both assets and liabilities result in a net to the Town of \$658,812. The Town does not expect the JPA to refund the Town in that amount nor liquidate its assets; however, the Town asks for the

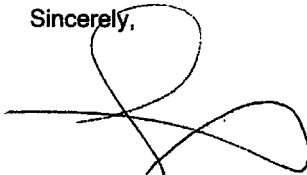
ATTACHMENT 1

Joe La Mariana, SBWMA Executive Director
March 18, 2020
Page 4

Board's response on the Town's outstanding assets and obligations to liquefy in the event the Town decides to withdraw from the JPA.

The Town appreciates the Board's assistance in this matter as the Town considers its options for waste management.

Sincerely,

A handwritten signature in black ink, appearing to read "George J. Rodericks". The signature is stylized with a large loop and a horizontal line extending to the left.

George J. Rodericks
City Manager
Town of Atherton

cc: City Council



A Public Agency

April 27, 2020

Mr. George J. Rodericks, City Manager
Town of Atherton
150 Watkins Avenue
Atherton, CA 94027
grodericks@ci.atherton.ca.us

VIA email and U.S. Postal Service

RE: TOWN OF ATHERTON'S NOTICE OF INTENT TO WITHDRAW FROM SBWMA JPA

Dear Mr. Rodericks:

The South Bayside Waste Management Authority (SBWMA or Authority) is in receipt of your letter dated March 18, 2020 advising SBWMA that the Town of Atherton is considering withdrawing from the Authority. The letter states that it serves as Atherton's six month Notice of Intent to Withdraw, which is required under the terms of the Joint Powers Agreement (JPA) governing the SBWMA. The letter notes that the end of the rate year is December 31, 2020; it does not, however, state a specific date on which Atherton intends to withdraw, which is also required under the JPA. We assume if Atherton moves forward with withdrawing from the Authority, it will provide the specific notice in a timely manner. Additionally, the letter requests clarification of Atherton's obligations for the liquidation of its proportionate share of SBWMA's liabilities as required by the withdrawal process set forth in the JPA.

The original JPA for SBWMA was adopted effective December 9, 1999. The Authority was established by a number of San Mateo County entities to provide a regional approach to the collection and disposition of solid waste, recyclable materials and organic materials. Initially, the Authority issued bonds in 2000 (the "Revenue Bonds" defined in the original JPA) to acquire and reconstruct the Shoreway Environmental Center Facility, to be operated by the Authority to meet the regulatory requirements for solid waste and recyclables for its member agencies. In 2019, the Authority took action to refund previously issued bonds, thereby saving the Authority money and, at the same time, raising funds for certain capital improvements. The JPA has been amended and restated several times over the years; the current governing JPA document dated June 19, 2013, is entitled the "Second Amended and Restated Joint Exercise of Powers Agreement South Bayside Waste Management Authority" (the JPA).¹

The Town of Atherton is one of the original founding members of the JPA, and as such is an "Equity Member."² Article 15 of the JPA sets forth the process for withdrawing as a Member of the JPA. It provides:

- 15.1 Withdrawal Conditions.** A Member may not withdraw from the SBWMA unless and until that Member achieves the following:
 - a. The liquidation in full of its proportion of any and all existing debts obligations, and

¹ A proposed Third Amended and Restated JPA is currently being circulated for consideration among member agencies, making a number of clerical and administrative updates to the JPA document; none of the proposed changes impact Article 15, Withdrawal, of the Agreement.

² Under the SBWMA, JPA membership is divided into "equity members" and "non-equity members"; there are no non-equity members at this time, nor have there ever been. The primary difference between an Equity Member and Non Equity Member is described in Section 6.3 of the JPA; basically, non-equity members are not entitled to vote on any matter before the board, and do not have the rights and liabilities of equity members, particularly under Section 15, Withdrawal, or Section 16, Termination of the JPA.

610 Elm Street, Suite 202 P: 650-802-3500
San Carlos, CA 94070 F: 650-802-3501 RethinkWaste.org

MEMBER AGENCIES: Town of Atherton • City of Belmont • City of Burlingame • City of East Palo Alto • City of Foster City • Town of Hillsborough
City of Menlo Park • City of Redwood City • City of San Carlos • City of San Mateo • County of San Mateo • West Bay Sanitary District

- liabilities incurred, earned, or expected to be earned by the date of withdrawal, including but not limited to the Revenue Bonds, as determined by the Board.
- b. The provision to the SBWMA of a written notice of intent to withdraw from the SBWMA at least six (6) months prior to the end of the current Rate Year, specifying the date on which the Member intends to withdraw.
 - c. The approval of such withdrawal by a 4/5 affirmative vote of Equity Members.

Liquidation Amount: The substantive question raised by Atherton's potential withdrawal from the JPA is how to calculate the "liquidation in full of its proportion of any and all existing debts, obligations, and liabilities incurred, earned or expected to be earned by the date of withdrawal, including, but not limited to the Revenue Bonds, as determined by the Board." While Burlingame considered withdrawing in 2009, it did not do so and no other Member has proposed withdrawing from the Authority since it was established in 1999, so there is no specific precedent to consider when addressing this question.

Based on communications from Atherton that it might consider withdrawing, the Authority, in late 2019, asked its bond consultants, KNN Public Finance, LLC., to calculate the portion of SBWMA's outstanding bond obligations attributable to the Town, and to describe a method for retiring that proportional share through a legal defeasance of the bonds. A copy of KNN's letter was provided to Atherton in December 2019. KNN calculated Atherton's proportionate bond share based on its proportion of overall franchise tonnage, which over the past three years has been approximately 3.25%. Applying this factor to the outstanding bond obligations, and calculating the costs for legal defeasance, KNN calculated that Atherton's proportionate share for liquidating its bond obligations upon withdrawal would be approximately \$2,087,908.00. This number only takes into account Atherton's share of bonded indebtedness; it does not include other obligations and liabilities.³ Staff is in the process of calculating that number.

We note that Atherton has made a number of arguments in its letter of intent suggesting that it is entitled to a proportionate share of the Authority's assets upon its withdrawal, and that its liability obligations should be offset from this share. These arguments are based on Article 16, Termination, of the JPA, which provides that upon mutual termination of the Authority by the members, if there is no successor agency to the Authority, "all assets and liabilities shall be apportioned to each Member in proportion to the contribution of each current Members' ratepayers' total contribution during the Term of this Agreement. A reference to ratepayers' contribution means payment of Collection fees under each jurisdiction's respective Uniform Franchise Agreement."

The Authority does not agree that the provisions of Article 16, dealing with termination of the agency, impliedly apply to Article 15 when a Member decides to withdraw. It is a fundamental principle of contract interpretation that when something is not included in a term, it is meant to be excluded. In this case, Article 15 does not include any language related to the Authority's assets, it very specifically refers to its liabilities. If the Members had desired to include assets in Article 15, they would have done so, as evidenced by the fact that they are included in Article 16. Nor does the Authority view Article 15's requirement that a Member pay its proportionate share of debt and liabilities upon its withdrawal as violative of the equitable principle of unjust enrichment. The Members entered the JPA in furtherance of their mutual interests, and incurred debt in reliance upon each Member's participation. The JPA document, which the Members approved, provides that the burden created by the withdrawal of a Member should fall on the Member, not the Authority.

Process: According to Article 15, the withdrawal process requires that the Board determine the amount required to liquidate the withdrawing member's share. Once that number is determined by the Board, 4/5 (four-fifths) of the Member Agencies are required to approve the withdrawal. This process is similar to that required when the JPA is amended: upon approval by the Board of the liquidation amount, and Atherton's commitment to pay that amount, each Member Agency's governing board will be required to place the matter on its agenda for consideration. We believe the individual Member Agency's must approve the withdrawal based upon their own local rules, typically by a majority of members present. We do not believe the

³ This number was calculated based on interest assumptions that were current in December 2019. The number would have to be recalculated based on the current market to determine a final number for withdrawal.

4/5 requirement applies to the individual Member Agency actions. Once 4/5 of the Member Agencies' governing boards have approved the withdrawal, it may go forward upon the agreed-upon terms.

While we are sorry to learn that Atherton intends to withdraw from the Authority, please be assured we will make every effort to cooperate with you in this process. Please do not hesitate to contact me if you have any questions.

A handwritten signature in black ink, appearing to read "Joe La Mariana". The signature is fluid and cursive, with a large loop at the beginning of the first name.

Joe La Mariana
Executive Director
jlamariana@rethinkwaste.org

Date: December 6, 2019

To: **South Bayside Waste Management Authority**
Joe La Mariana, Executive Director
John Mangini, Finance Director

From: **KNN Public Finance**
David Brodsky and Melissa Shick

Re: **Bond Allocation and Defeasance Analysis**

You have advised us that the Town of Atherton is considering withdrawing from the South Bayside Waste Management Authority (SBWMA). No Member Agency has ever requested to withdraw from the Joint Powers Authority.

Section 15.1 of the Joint Powers Authority Agreement sets forth the terms and conditions pursuant to which a Member Agency may withdraw from the SBWMA: i) notice at least six months prior to the end of the rate year; ii) approval of four-fifths (4/5) of the members; and iii) the payment of a proportionate share of the Authority's liabilities. Specifically, Section 15.1(a) states that, prior to its exit, a Member Agency must "achieve...the liquidation in full of its proportion of any and all existing debts, obligations, and liabilities incurred, earned, or expected to be earned by the date of withdrawal, but not limited to the Revenue Bonds, as determined by the Board." The particular method of calculating (and liquidating) a Member Agency's proportional share of any such outstanding obligation is not specified under the Joint Powers Authority Agreement.

While there would likely be other obligations and liabilities for which a Member Agency would be responsible, the largest such liability, and the focus of this memo, is likely to be the outstanding revenue bonds of the SBWMA. While Atherton has not yet requested information on its obligations and liabilities, you have requested that we calculate the portion of SBWMA's outstanding bond obligations attributable to the Town of Atherton and describes a method for retiring Atherton's proportional share of the bond obligations through a legal defeasance so that this information can be shared with Atherton as it considers whether or not to withdraw from SBWMA. We again emphasize that this memo addresses only that obligation.

Bond Allocation Methodology

SBWMA's outstanding bond obligations consist of two series – \$31,860,000 Solid Waste Enterprise Refunding Revenue Bonds, Series 2019A (Non-AMT) and \$16,915,000 Solid Waste Enterprise Revenue Bonds, Series 2019B (AMT) – together, totaling \$48,775,000 in outstanding par amount (the Series 2019 Bonds).

- The Series 2019A Bonds were issued to refund in full the SBWMA's Solid Waste Enterprise Revenue Bonds (Shoreway Environmental Center), Series 2009A, which originally financed the construction of a new scale house, a new materials recovery facility (MRF) to be used for the

processing of recyclables, the expansion and renovation of the transfer station, and the acquisition of equipment to be utilized in the MRF.

- The Series 2019B Bonds were issued to finance certain costs in connection with the construction of various improvements and acquisition and installation of certain associated equipment, including MRF equipment improvements, organics-to-energy pilot projects, and other capital improvements at Shoreway Environmental Center.

Because proceeds from the SBWMA's outstanding bond obligations have been or are expected to be directly invested in capital and equipment improvements at the Shoreway Environmental Center, a reasonable means to allocate such obligations is a Member Agency's historical use of the facility – measured by tonnage. Below is a summary of SBWMA total franchise tonnage by Member Agency over the last three calendar years. The Town of Atherton's tonnage as a percentage of SBWMA's total franchise tonnage has remained fairly consistent over the last three calendar years – ranging from 3.25% to 3.29%.

SBWMA Total Franchise Tonnage by Member Agency (Last Three Calendar Years)						
Member Agency	2016		2017		2018	
	Total Tons	% of Total	Total Tons	% of Total	Total Tons	% of Total
Town of Atherton	11,892	3.29%	12,089	3.28%	11,964	3.25%
City of Belmont	17,236	4.76%	17,624	4.78%	17,189	4.67%
City of Burlingame	41,111	11.36%	42,194	11.43%	41,870	11.36%
County Unincorporated	11,103	3.07%	11,356	3.08%	11,200	3.04%
North Fair Oaks	10,651	2.94%	10,605	2.87%	10,638	2.89%
City of East Palo Alto	19,208	5.31%	19,207	5.21%	19,030	5.17%
City of Foster City	20,287	5.61%	20,837	5.65%	20,843	5.66%
Town of Hillsborough	9,837	2.72%	10,165	2.75%	10,025	2.72%
City of Menlo Park	39,515	10.92%	42,360	11.48%	44,251	12.01%
Redwood City	70,562	19.50%	71,057	19.26%	70,558	19.15%
City of San Carlos	27,189	7.51%	27,731	7.52%	27,092	7.35%
City of San Mateo	77,841	21.51%	78,265	21.21%	78,320	21.26%
West Bay Sanitary	5,421	1.50%	5,510	1.49%	5,432	1.47%
SBWMA Total	361,854	100.0%	369,000	100.0%	368,413	100.0%

Source: South Bayside Waste Management Authority.

Each Member Agency's percentage of total franchise tonnage can be used as a proxy for their proportional share of SBWMA obligations under the Joint Powers Agreement. Because existing debts, obligations, and liabilities of the SBWMA are shared only among the Member Agencies, we have focused on franchise tonnage to calculate a Member Agency's proportional share and do not include non-franchise and general public tonnage as part of the percentage calculus.

Town of Atherton Bond Allocation and Defeasance Analysis

While the Authority's revenue bonds cannot be redeemed for ten years, the SBWMA can legally retire the Town of Atherton's allocable percentage of the Series 2019 Bonds by executing a partial bond defeasance of this outstanding obligation. We discuss this approach below.

Defeasance Description

The term "defeasance" refers to a method in which an outstanding bond issue can be discharged, both legally and financially and in whole or in part, prior to the time at which the bonds can be prepaid or "called." Bonds are defeased by the creation of an irrevocable escrow that pays the bonds. Although a defeasance is generally utilized as part of a refunding transaction (when the refunded bonds cannot be redeemed on the date of issuance of refunding bonds), a defeasance can also be accomplished with available cash rather than the proceeds of the issuance of refunding bonds.

Mechanics of Defeasance

In a defeasance, the issuer purchases federal government securities for deposit in an escrow account. The escrow account is held by a bank or trust company that serves as escrow agent (this would be your existing Series 2019 Bond trustee). Under the terms of an escrow agreement, the government securities are irrevocably pledged to the payment of the outstanding bonds. The specific government securities are selected so that the principal maturities and interest earned are sufficient to pay the principal of and interest on the outstanding bonds as they come due, and to pay the remaining principal on the call date. It is common to purchase a specific type of Treasury security that was designed specifically for this purpose, called State and Local Government Series (or "SLGS"), as they allow for tailoring the maturity of the investments to the specific needs of the defeasance escrow.

Under the Authority's bond documents, a defeasance of the bonds in the amount allocated to Atherton would result in those bonds being deemed "paid" (even though they would not be actually redeemed until the first available redemption date on September 1, 2029). Once the government securities are deposited in escrow on the date of the defeasance, the defeased bonds would no longer be payable from the revenues of the Solid Waste System. In order for a bond issue to be legally defeased, the types of investment securities selected and the terms of how and where the securities are held must meet the requirements set forth in the documents that authorized the outstanding bonds. If the defeasance is consistent with generally accepted accounting principles and complies with the outstanding bond document requirements, the bonds will no longer be treated as debt for accounting purposes and will not be considered debt for purposes of setting your rates.

Defeasance Analysis for the Town of Atherton Obligation

The cost of defeasance for the Town of Atherton's proportional share of the outstanding Series 2019 Bonds will be driven by the calculation of their share of the debt and the specific cost of the escrow required to defease that debt. In addition, the execution of the defeasance will also involve third-party costs (similar to cost of issuance on a bond offering) that should also be considered in the overall cost of the defeasance transaction.

Allocable Debt Service. The total par amount (principal) of the outstanding Series 2019 Bonds is \$48,775,000. Of this total, bonds maturing from 2020 – 2029, representing \$14.575 million in outstanding par amount, are non-callable, and bonds maturing from 2030 – 2042, representing \$34.200 million in par amount, are callable and subject to optional redemption on September 1, 2029. Inclusive of principal and interest, total debt service through the first call date of September 1, 2029 equates to \$36,410,513.89 and total debt service through the September 1, 2042 maturity equates to \$83,739,013.89.

In **Attachment A** we provide a schedule of the outstanding maturities of the Series 2019 Bonds. The schedule to the right details the Town of Atherton's allocable debt service based on the assumption that 3.25% of the outstanding Series 2019 Bonds are attributable to the Member Agency.

Because Series 2019 Bonds maturing after 2029 are callable and can be optionally redeemed by SBWMA, a defeasance escrow would therefore be structured to the first call date of September 1, 2029. The escrow sufficiency would be the amount necessary to pay principal and interest on the non-callable maturities through their respective maturity dates plus the total amount of callable principal to be redeemed on the September 1, 2029 call date.

Escrow Cost. Assuming an escrow invested in SLGS bearing interest rates as of December 4, 2019 and an escrow period from March 2, 2020 (a Monday) to the September 1, 2029 call date, a defeasance of all outstanding Series 2019 Bonds would require an escrow that costs \$61,193,433.24. The table below calculates the Town of Atherton's proportional defeasance cost based on varying approaches to the application of their allocable percentage of total outstanding bond obligations.

City of Atherton's Portion of the 2019 Solid Waste Revenue Bonds Based Allocable Share of 3.25%					
Period Ending	Principal	Coupon	Interest	Annual Debt Service	Call Date
9/1/2020	30,000	5.000%	39,625	69,625	
9/1/2021	40,000	5.000%	77,750	117,750	
9/1/2022	40,000	5.000%	75,750	115,750	
9/1/2023	45,000	5.000%	73,750	118,750	
9/1/2024	50,000	5.000%	71,500	121,500	
9/1/2025	50,000	5.000%	69,000	119,000	
9/1/2026	50,000	5.000%	66,500	116,500	
9/1/2027	55,000	5.000%	64,000	119,000	
9/1/2028	60,000	5.000%	61,250	121,250	
9/1/2029	60,000	5.000%	58,250	118,250	
9/1/2030	60,000	5.000%	55,250	115,250	9/1/2029
9/1/2031	65,000	5.000%	52,250	117,250	9/1/2029
9/1/2032	70,000	5.000%	49,000	119,000	9/1/2029
9/1/2033	70,000	5.000%	45,500	115,500	9/1/2029
9/1/2034	75,000	5.000%	42,000	117,000	9/1/2029
9/1/2035	80,000	5.000%	38,250	118,250	9/1/2029
9/1/2036	85,000	5.000%	34,250	119,250	9/1/2029
9/1/2037	90,000	5.000%	30,000	120,000	9/1/2029
9/1/2038	90,000	5.000%	25,500	115,500	9/1/2029
9/1/2039	100,000	5.000%	21,000	121,000	9/1/2029
9/1/2040	100,000	5.000%	16,000	116,000	9/1/2029
9/1/2041	110,000	5.000%	11,000	121,000	9/1/2029
9/1/2042	110,000	5.000%	5,500	115,500	9/1/2029
	1,585,000		1,082,875	2,667,875	

Town of Atherton Defeasance Analysis (Preliminary - Market Conditions as of December 4)	
Total Cost of Defeasance - Series 2019 Bonds	\$ 61,193,433.24
Scenario 1: Most Recent Calendar Year 2018 Tonnage Allocable Percentage = 3.25%	\$ 1,987,908.71
Scenario 2: Average Tonnage Percentage - Last Three Years Allocable Percentage = 3.27%	\$ 2,001,025.27
Scenario 3: Three-Year Historical Tonnage Rounded Allocable Percentage = 3.30%	\$ 2,019,383.30

We note that the above calculations of the cost of a defeasance escrow are driven by a number of assumptions. For example, the interest rates earned on the investments are based on today's market conditions. Depending on market conditions at the time a defeasance may be executed, the results will vary. For example, the portfolio of securities that comprises the defeasance escrow may yield more or less in the future than from what is assumed today – SLGS investments yielding an average of 1.686% – based on market conditions and/or the package of securities utilized. If the escrow yield is higher, the cost to the Town of Atherton would be lower and, conversely, if the escrow yield is lower, the cost to the Town of Atherton would be higher.

Another factor contributing to the escrow cost is its duration. The current analysis assumes an escrow purchase date of March 2, 2020 and an escrow maturity of September 1, 2029 – a modified duration of 7.04 years. Given the actions that must be taken by the Town of Atherton and SBWMA prior to a defeasance, next March is likely an optimistic assumption for execution. A later defeasance would shorten the length of the defeasance escrow, lowering the total cost (assuming no changes in the interest rates earned by the defeasance securities).

Execution Cost. Similar to a bond issuance and related cost of issuance, there are several parties that would be required to formally execute a defeasance transaction – summarized as follows:

- *Bond Counsel:* Bond Counsel drafts the escrow agreement and renders an opinion that the outstanding bonds have been legally defeased.
- *Verification Agent:* The Indenture of Trust for the outstanding bonds requires an independent certified public accountant to provide an opinion that the escrow account is sufficient to retire the outstanding bonds.
- *Escrow Agent:* The bank or trust company that holds the government securities and makes payments to the paying agent for the outstanding bonds is referred to as the escrow agent. The bond trustee on the SBWMA Series 2019 Bonds would serve this function.
- *Municipal Advisor:* An advisor typically assists with the financing plan. The advisor assists in identifying the government securities to be placed in the escrow account, assists in the arrangements for the acquisition of the government securities, reviews the terms of the escrow agreement, and assists the issuer in the transfer of funds to the escrow agent.

In addition to payments to outside consultants there may be other ancillary costs of the defeasance transaction (i.e. subscriptions for new CUSIP numbers, which identify bonds for the market). We recommend that SBWMA estimate approximately \$75,000 - \$100,000 for the additional cost of execution when communicating the total cost to the Town of Atherton to liquidate is proportional share of the Series 2019 Bonds. We have assumed \$100,000 in such costs in our analysis.

In **Attachment B** we provide illustrative cash flows of a partial defeasance of the Series 2019 Bonds for the Town of Atherton utilizing a 3.25% allocable percentage of total SBWMA obligations to the Town of Atherton.

We understand that SBWMA management, its Board committees, and their legal counsel are beginning the process and dialogue around this topic. As the Town of Atherton's plans become more definitive, we are available for further discussion and analysis around the defeasance analysis and execution. In the interim, however, should you have any questions or desire further information, please do not hesitate to contact David (510-208-8205) or Melissa (510-208-8226).

Attachment A: Series 2019 Bonds

Bond Pricing
South Bayside Waste Management Authority
Solid Waste Enterprise Revenue Bonds
(Shoreway Environmental Center)
Series 2019A and Series 2019B

Maturity Date	Amount	Rate	Yield	Call Date	
Non Callable Maturities					
9/1/2020	850,000	5.000%	1.500%	NC	Escrow pays non-callable bond principal and interest through September 1, 2029
9/1/2021	1,245,000	5.000%	1.520%	NC	
9/1/2022	1,305,000	5.000%	1.530%	NC	
9/1/2023	1,370,000	5.000%	1.540%	NC	
9/1/2024	1,440,000	5.000%	1.570%	NC	
9/1/2025	1,515,000	5.000%	1.620%	NC	
9/1/2026	1,590,000	5.000%	1.680%	NC	
9/1/2027	1,670,000	5.000%	1.810%	NC	
9/1/2028	1,750,000	5.000%	1.900%	NC	
9/1/2029	1,840,000	5.000%	2.020%	NC	
14,575,000					
Callable Maturities					
9/1/2030	1,930,000	5.000%	2.140%	9/1/2029	Escrow redeems callable principal on September 1, 2029
9/1/2031	410,000	5.000%	2.270%	9/1/2029	
9/1/2031	1,620,000	5.000%	1.820%	9/1/2029	
9/1/2032	2,130,000	5.000%	1.940%	9/1/2029	
9/1/2033	2,235,000	5.000%	2.010%	9/1/2029	
9/1/2034	2,345,000	5.000%	2.080%	9/1/2029	
9/1/2035	2,465,000	5.000%	2.160%	9/1/2029	
9/1/2036	2,590,000	5.000%	2.210%	9/1/2029	
9/1/2037	2,715,000	5.000%	2.280%	9/1/2029	
9/1/2038	2,855,000	5.000%	2.320%	9/1/2029	
9/1/2039	2,995,000	5.000%	2.360%	9/1/2029	
9/1/2040	3,145,000	5.000%	2.390%	9/1/2029	
9/1/2041	3,300,000	5.000%	2.460%	9/1/2029	
9/1/2042	3,465,000	5.000%	2.460%	9/1/2029	
34,200,000					

Attachment B: Cash Flows of Partial Defeasance of the Series 2019 Bonds

SOURCES AND USES OF FUNDS

South Bayside Waste Management
Proposed Cash Defeasance
City of Atherton's Portion of the 2019 Solid Waste Revenue Bonds
Reflects Market Conditions as of December 4, 2019
*****Preliminary, Subject to Change with Market Conditions*****

Dated Date 03/02/2020
 Delivery Date 03/02/2020

Sources:

Other Sources of Funds:	
Cash Defeasance	1,987,908.71
Cost of Issuance	100,000.00
	2,087,908.71

Uses:

Refunding Escrow Deposits:	
Cash Deposit	0.71
SLGS Purchases	1,987,908.00
	1,987,908.71
 Delivery Date Expenses:	
Cost of Issuance	100,000.00
	2,087,908.71

SUMMARY OF BONDS REFUNDED

South Bayside Waste Management
 Proposed Cash Defesance
 City of Atherton's Portion of the 2019 Solid Waste Revenue Bonds
 Reflects Market Conditions as of December 4, 2019
 Preliminary, Subject to Change with Market Conditions

Bond	Maturity Date	Interest Rate	Par Amount	Call Date	Call Price
2019 Solid Waste Enterprise Revenue Bonds, 19ATH:					
ATH	09/01/2020	5.000%	30,000.00		
	09/01/2021	5.000%	40,000.00		
	09/01/2022	5.000%	40,000.00		
	09/01/2023	5.000%	45,000.00		
	09/01/2024	5.000%	50,000.00		
	09/01/2025	5.000%	50,000.00		
	09/01/2026	5.000%	50,000.00		
	09/01/2027	5.000%	55,000.00		
	09/01/2028	5.000%	60,000.00		
	09/01/2029	5.000%	60,000.00		
	09/01/2030	5.000%	60,000.00	09/01/2029	100.000
	09/01/2031	5.000%	65,000.00	09/01/2029	100.000
	09/01/2032	5.000%	70,000.00	09/01/2029	100.000
	09/01/2033	5.000%	70,000.00	09/01/2029	100.000
	09/01/2034	5.000%	75,000.00	09/01/2029	100.000
	09/01/2035	5.000%	80,000.00	09/01/2029	100.000
	09/01/2036	5.000%	85,000.00	09/01/2029	100.000
	09/01/2037	5.000%	90,000.00	09/01/2029	100.000
	09/01/2038	5.000%	90,000.00	09/01/2029	100.000
	09/01/2039	5.000%	100,000.00	09/01/2029	100.000
	09/01/2040	5.000%	100,000.00	09/01/2029	100.000
	09/01/2041	5.000%	110,000.00	09/01/2029	100.000
	09/01/2042	5.000%	110,000.00	09/01/2029	100.000
			1,585,000.00		

PRIOR BOND DEBT SERVICE

South Bayside Waste Management
 Proposed Cash Defesance
 City of Atherton's Portion of the 2019 Solid Waste Revenue Bonds
 Reflects Market Conditions as of December 4, 2019
 Preliminary, Subject to Change with Market Conditions

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
09/01/2020	30,000	5.000%	39,625	69,625	69,625
03/01/2021			38,875	38,875	
09/01/2021	40,000	5.000%	38,875	78,875	117,750
03/01/2022			37,875	37,875	
09/01/2022	40,000	5.000%	37,875	77,875	115,750
03/01/2023			36,875	36,875	
09/01/2023	45,000	5.000%	36,875	81,875	118,750
03/01/2024			35,750	35,750	
09/01/2024	50,000	5.000%	35,750	85,750	121,500
03/01/2025			34,500	34,500	
09/01/2025	50,000	5.000%	34,500	84,500	119,000
03/01/2026			33,250	33,250	
09/01/2026	50,000	5.000%	33,250	83,250	116,500
03/01/2027			32,000	32,000	
09/01/2027	55,000	5.000%	32,000	87,000	119,000
03/01/2028			30,625	30,625	
09/01/2028	60,000	5.000%	30,625	90,625	121,250
03/01/2029			29,125	29,125	
09/01/2029	60,000	5.000%	29,125	89,125	118,250
03/01/2030			27,625	27,625	
09/01/2030	60,000	5.000%	27,625	87,625	115,250
03/01/2031			26,125	26,125	
09/01/2031	65,000	5.000%	26,125	91,125	117,250
03/01/2032			24,500	24,500	
09/01/2032	70,000	5.000%	24,500	94,500	119,000
03/01/2033			22,750	22,750	
09/01/2033	70,000	5.000%	22,750	92,750	115,500
03/01/2034			21,000	21,000	
09/01/2034	75,000	5.000%	21,000	96,000	117,000
03/01/2035			19,125	19,125	
09/01/2035	80,000	5.000%	19,125	99,125	118,250
03/01/2036			17,125	17,125	
09/01/2036	85,000	5.000%	17,125	102,125	119,250
03/01/2037			15,000	15,000	
09/01/2037	90,000	5.000%	15,000	105,000	120,000
03/01/2038			12,750	12,750	
09/01/2038	90,000	5.000%	12,750	102,750	115,500
03/01/2039			10,500	10,500	
09/01/2039	100,000	5.000%	10,500	110,500	121,000
03/01/2040			8,000	8,000	
09/01/2040	100,000	5.000%	8,000	108,000	116,000
03/01/2041			5,500	5,500	
09/01/2041	110,000	5.000%	5,500	115,500	121,000
03/01/2042			2,750	2,750	
09/01/2042	110,000	5.000%	2,750	112,750	115,500
	1,585,000		1,082,875	2,667,875	2,667,875

ESCROW COST

South Bayside Waste Management
 Proposed Cash Defesance
 City of Atherton's Portion of the 2019 Solid Waste Revenue Bonds
 Reflects Market Conditions as of December 4, 2019
 Preliminary, Subject to Change with Market Conditions

Type of Security	Maturity Date	Par Amount	Rate	Total Cost
SLGS	09/01/2020	53,368	1.560%	53,368.00
SLGS	03/01/2021	22,599	1.550%	22,599.00
SLGS	09/01/2021	62,949	1.550%	62,949.00
SLGS	03/01/2022	22,437	1.540%	22,437.00
SLGS	09/01/2022	62,609	1.540%	62,609.00
SLGS	03/01/2023	22,092	1.540%	22,092.00
SLGS	09/01/2023	67,262	1.540%	67,262.00
SLGS	03/01/2024	21,654	1.540%	21,654.00
SLGS	09/01/2024	71,822	1.540%	71,822.00
SLGS	03/01/2025	21,124	1.550%	21,124.00
SLGS	09/01/2025	71,288	1.560%	71,288.00
SLGS	03/01/2026	20,594	1.590%	20,594.00
SLGS	09/01/2026	70,758	1.630%	70,758.00
SLGS	03/01/2027	20,085	1.660%	20,085.00
SLGS	09/01/2027	75,251	1.670%	75,251.00
SLGS	03/01/2028	19,505	1.680%	19,505.00
SLGS	09/01/2028	79,668	1.690%	79,668.00
SLGS	03/01/2029	18,842	1.700%	18,842.00
SLGS	09/01/2029	1,184,001	1.710%	1,184,001.00
		1,987,908		1,987,908.00

Purchase Date	Cost of Securities	Cash Deposit	Total Escrow Cost	Yield
03/02/2020	1,987,908	0.71	1,987,908.71	1.685784%
	1,987,908	0.71	1,987,908.71	

ESCROW CASH FLOW

South Bayside Waste Management
 Proposed Cash Defesance
 City of Atherton's Portion of the 2019 Solid Waste Revenue Bonds
 Reflects Market Conditions as of December 4, 2019
 Preliminary, Subject to Change with Market Conditions

Date	Principal	Interest	Net Escrow Receipts	Present Value to 03/02/2020 @ 1.6857844%
09/01/2020	53,368.00	16,256.95	69,624.95	69,046.21
03/01/2021	22,599.00	16,275.44	38,874.44	38,229.08
09/01/2021	62,949.00	15,926.12	78,875.12	76,917.37
03/01/2022	22,437.00	15,438.27	37,875.27	36,626.45
09/01/2022	62,609.00	15,265.51	77,874.51	74,677.39
03/01/2023	22,092.00	14,783.42	36,875.42	35,065.94
09/01/2023	67,262.00	14,613.31	81,875.31	77,206.91
03/01/2024	21,654.00	14,095.39	35,749.39	33,429.24
09/01/2024	71,822.00	13,928.65	85,750.65	79,515.18
03/01/2025	21,124.00	13,375.62	34,499.62	31,723.54
09/01/2025	71,288.00	13,211.91	84,499.91	77,051.00
03/01/2026	20,594.00	12,655.86	33,249.86	30,065.37
09/01/2026	70,758.00	12,492.14	83,250.14	74,647.70
03/01/2027	20,085.00	11,915.46	32,000.46	28,453.94
09/01/2027	75,251.00	11,748.75	86,999.75	76,711.22
03/01/2028	19,505.00	11,120.40	30,625.40	26,777.95
09/01/2028	79,668.00	10,956.56	90,624.56	78,577.13
03/01/2029	18,842.00	10,283.37	29,125.37	25,042.43
09/01/2029	1,184,001.00	10,123.21	1,194,124.21	1,018,143.97
	1,987,908.00	254,466.34	2,242,374.34	1,987,908.00

Escrow Cost Summary

Purchase date	03/02/2020
Purchase cost of securities	1,987,908.00
Target for yield calculation	1,987,908.00

ESCROW STATISTICS

South Bayside Waste Management
 Proposed Cash Defesance
 City of Atherton's Portion of the 2019 Solid Waste Revenue Bonds
 Reflects Market Conditions as of December 4, 2019
 Preliminary, Subject to Change with Market Conditions

Total Escrow Cost	Modified Duration (years)	Yield to Receipt Date	Yield to Disbursement Date	Perfect Escrow Cost	Value of Negative Arbitrage	Cost of Dead Time
Global Proceeds Escrow: 1,987,908.71	7.040	1.685784%	1.685784%	2,242,375.05	-254,466.34	
1,987,908.71				2,242,375.05	-254,466.34	0.00

Delivery date 03/02/2020

BOND DEBT SERVICE AFTER DEFEASANCE

South Bayside Waste Management
 Proposed Cash Defeasance
 City of Atherton's Portion of the 2019 Solid Waste Revenue Bonds
 Reflects Market Conditions as of December 4, 2019
 Preliminary, Subject to Change with Market Conditions

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
09/01/2020	820,000	5.000%	1,179,750	1,999,750	1,999,750
03/01/2021			1,159,250	1,159,250	
09/01/2021	1,205,000	5.000%	1,159,250	2,364,250	3,523,500
03/01/2022			1,129,125	1,129,125	
09/01/2022	1,265,000	5.000%	1,129,125	2,394,125	3,523,250
03/01/2023			1,097,500	1,097,500	
09/01/2023	1,325,000	5.000%	1,097,500	2,422,500	3,520,000
03/01/2024			1,064,375	1,064,375	
09/01/2024	1,390,000	5.000%	1,064,375	2,454,375	3,518,750
03/01/2025			1,029,625	1,029,625	
09/01/2025	1,465,000	5.000%	1,029,625	2,494,625	3,524,250
03/01/2026			993,000	993,000	
09/01/2026	1,540,000	5.000%	993,000	2,533,000	3,526,000
03/01/2027			954,500	954,500	
09/01/2027	1,615,000	5.000%	954,500	2,569,500	3,524,000
03/01/2028			914,125	914,125	
09/01/2028	1,690,000	5.000%	914,125	2,604,125	3,518,250
03/01/2029			871,875	871,875	
09/01/2029	1,780,000	5.000%	871,875	2,651,875	3,523,750
03/01/2030			827,375	827,375	
09/01/2030	1,870,000	5.000%	827,375	2,697,375	3,524,750
03/01/2031			780,625	780,625	
09/01/2031	1,965,000	5.000%	780,625	2,745,625	3,526,250
03/01/2032			731,500	731,500	
09/01/2032	2,060,000	5.000%	731,500	2,791,500	3,523,000
03/01/2033			680,000	680,000	
09/01/2033	2,165,000	5.000%	680,000	2,845,000	3,525,000
03/01/2034			625,875	625,875	
09/01/2034	2,270,000	5.000%	625,875	2,895,875	3,521,750
03/01/2035			569,125	569,125	
09/01/2035	2,385,000	5.000%	569,125	2,954,125	3,523,250
03/01/2036			509,500	509,500	
09/01/2036	2,505,000	5.000%	509,500	3,014,500	3,524,000
03/01/2037			446,875	446,875	
09/01/2037	2,625,000	5.000%	446,875	3,071,875	3,518,750
03/01/2038			381,250	381,250	
09/01/2038	2,765,000	5.000%	381,250	3,146,250	3,527,500
03/01/2039			312,125	312,125	
09/01/2039	2,895,000	5.000%	312,125	3,207,125	3,519,250
03/01/2040			239,750	239,750	
09/01/2040	3,045,000	5.000%	239,750	3,284,750	3,524,500
03/01/2041			163,625	163,625	
09/01/2041	3,190,000	5.000%	163,625	3,353,625	3,517,250
03/01/2042			83,875	83,875	
09/01/2042	3,355,000	5.000%	83,875	3,438,875	3,522,750
	47,190,000		32,309,500	79,499,500	79,499,500



Town of Atherton

Town Administrative Offices
150 Watkins Avenue
Atherton, California 94027
650-752-0500
Fax 650-688-6528

June 29, 2020

VIA E-MAIL – ORIGINAL BY U.S. MAIL

Joe La Mariana, Executive Director
South Bay Waste Management Authority
610 Elm Street, Ste. 102
San Carlos, California 94070
Email: jlamariana@rethinkwaste.org

**RE: Town of Atherton's Notice of Intent to Withdraw from SBWMA Effective
December 31, 2020**

Director La Mariana,

This letter is in response to your letter dated April 27, 2020, sent on behalf of the South Bay Waste Management Authority, a joint powers authority formed and organized pursuant to the Joint Powers Act, Government Code section 6500 et seq. ("SBWMA") and regarding the Town of Atherton's Notice of Intent to Withdraw from SBWMA.

This letter is to inform you that the Town of Atherton ("Town" or "Atherton") intends to withdraw from SBWMA effective December 31, 2020. Pursuant to the "Second Amended and Restated Joint Exercise of Powers Agreement [of SBWMA]" dated June 19, 2013, a member seeking to withdraw from SBWMA must provide "written notice to withdraw from SBWMA at least six (6) months prior to the end of the current Rate Year, specifying the date on which the Member intends to withdraw." (Art. 15.1(b).) The current Rate Year will end on December 31, 2020. By way of this correspondence, the Town is notifying you of the date of withdrawal prior to six months of the end of the current Rate Year and, therefore, meets the requirements of Article 15.1(b).

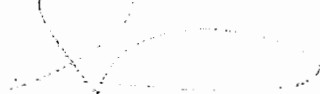
In a further effort to aid SBWMA in separating its assets from the Town's, the Town has engaged a consultant, NHA Advisors, to determine an estimated cost of withdrawal from SBWMA. NHA Advisors has experience in public financing, especially related to a range of bond obligations held and managed by public entities. With this background and particular

Joe La Mariana, Executive Director
Re: Notice of Intent to Withdraw from SBWMA
June 29, 2020
Page 2

knowledge of the project, NHA Advisors has determined that the approximate cost of withdrawal could range from a low of \$501,812 to a high of \$2,258,883, depending on how one treats the 2019 Bonds, community waste demographic, and declining debt service. The Town could also fold in a deduction for overpayment of prior bonds based on its waste generation profile reducing the Town's exit obligation considerably further. The Town is willing to consider a withdrawal cost of \$903,623, Scenario #4, without a deduction for overpayment. This amount is supported by the JPA's financial records, obligations, and the Town's fair share. The Town foresees engaging in further discussions with SBWMA leadership and staff to agree on a final plan to separate the JPA's assets from the Town's assets. However, the Town is not interested in a protracted exit plan and expects an agreement for exit in a timely fashion.

The Town of Atherton thanks you for your assistance and anticipates your response.

Sincerely,



George J. Rodericks
City Manager
Town of Atherton

Attached: NHA Associates Final Report

CC: Mona G. Ebrahimi, City Attorney, Town of Atherton

1964568.2 14537-018

June 26, 2020

Mr. George J. Rodericks, City Manager
 Town of Atherton
 150 Watkins Avenue
 Atherton, CA 94027

RE: Town of Atherton – SBWMA JPA Withdrawal Analysis

Dear Mr. Rodericks:

NHA Advisors and I are pleased to provide this letter report analyzing the Bond Allocation and Defeasance Analysis prepared by KNN Public Finance (“KNN”) for the JPA dated December 6, 2019, the April 27, 2020 response to the Town of Atherton’s (the “Town”) Notice of Withdrawal from the South Bayside Waste Management Authority (JPA) and the March 18, 2020 letter from the Town to the JPA. Although we understand the KNN methodology used, we still believe that the analysis provided by the SBWMA’s financial advisor does not consider all factors that should be considered when evaluating the financial impacts of the Town withdrawing from the JPA. As stated, the JPA agreement gives very little direction as to how any costs incurred by a withdrawing member shall be calculated. To that end, the Town has asked us to take another look at its reasonable financial obligations in the event of a withdrawal.

The Table below summarizes five different approaches that should be considered when determining the amount required to defease the Town’s liability related to the outstanding bonds, all of which we believe have merit under the broad withdrawal terms. A description of each is provided in the paragraphs following the table.

Town of Atherton Withdrawal Scenarios

Scenario	1	2	3	4	5
Effective Share of 2019 Bonds	3.25%	2.15%	2.13%	1.17%	0.58%
A Rate	0.570%	0.557%	0.597%	0.597%	0.597%
Escrow Requirement to Defeasance	2,158,883	1,415,133	1,466,259	803,623	401,812
Estimated Fees	100,000	100,000	100,000	100,000	100,000
Total Cash Required	2,258,883	1,515,133	1,566,259	903,623	501,812
Amount Overpaid (2009-2018)	581,386	581,386	581,386	581,386	581,386
Net Amount Owed	1,677,498	933,748	984,874	322,238	-79,573
Difference from Scenario 1	-	(743,750)	(692,624)	(1,355,260)	(1,757,071)
	3.25% annual share	3.25% in first year, 0.25% decline every 3 years until 1.5% share	No benefit from 2019 Bonds and nets out New Money	Scenario 2 and share related to 2019A Bonds	Scenario 2, no Multi-Family or Commercial, only 2019A Bonds



Scenario 1

In Scenario 1, the methodology used by SBWMA's financial advisor was simply updated to reflect current conditions in the market. Key assumptions to Scenario 1 are unchanged from the KNN analysis which took the simplest and most straight forward approach. The scenario continues to assume that the Town is responsible for 3.25% of the total debt service on the 2019A and B bonds through final maturity based on its current share of the solid waste stream. This resulted in an increased cost to withdraw under this approach.

However, we believe that in addition to the future liabilities, the Town merits consideration for amounts overpaid in the past related to the current and prior bonds. Given the Town's waste generation profile, we believe that there was little to no need to build out the facility to accommodate for multifamily and commercial recycling capabilities. As a result, the prior payments on the 2009 and 2019 Bonds represented annual over-payments on the Town's part. Accordingly, we have included a line item in each scenario that shows an amount of \$581,386 which represents a calculated total amount overpaid in the last ten years. The Town has consistently stated that the facility is larger than is needed and therefore we believe that this amount should be deducted from any scenario discussed because none of the recent bond issuances have had an impact on the Town's diversion rates although you have paid for them each year through the rates. The Town has paid a portion of these issuances through customer rates without a benefit to their rate payers, we do not believe the Town should have had to pay a portion of the debt service amounts associated to these newer programs that did not benefit the Town.

Scenario 2

In this scenario, it is assumed that the share of the 2019 Bonds Debt Service given projected growth in neighboring communities would decline over the life of the bonds (3.25% in first year, 0.25% decline every 3 years until it reaches a 1.5% share). It is our understanding that the Town is a built-out residential bedroom community with no plans for higher density residential multi-family or commercial development like most of its neighboring communities. As a result, the Town's proportional share of the solid waste stream will slowly decrease over time. Without readily available and reliable information, it is impossible to know the exact amount or timing of the growth so, we tried to use a conservative, straight line approach that does not go below a 1.5% share. According to this analysis the total cash required to defease the Town's obligation is reduced from \$2.26 million to \$1.5 million, before accounting for amounts overpaid in prior years.

Scenario 3

As stated in prior correspondence between the Town and the JPA, we agree that the Town should not be financially accountable for bond costs that provided them with no benefit, especially the two most recent issuances where your objections were raised repeatedly. In this scenario, we have assumed that the Town does not benefit from improvements financed with the 2019 Bonds and nets out a portion of the Series B (the new money component) from the Town's 3.25% share as the benefits from this portion of the proceeds will be realized in the future after the Town is no longer a member of the Authority. The Town has stated numerous times in the past that these bonds will have no impact on the Town's diversion rate which we concur. While most of the member agencies will need to increase programs for the multi-family and commercial growth that is occurring and projected in the future and need to increase its overall waste diversion in these sectors, we believe the Town should not have to pay back any portion of these 2019 Series B Bond proceeds as they provide limited to no benefit to The Town. Additionally, the Town has already reached the mandated diversion rates that will be required in the future. As a result of not including the unused and unnecessary components related to the 2019 Series B debt Service, the Town's net defeasance amount decreases from \$2.259 million to \$1.6 million, before accounting for amounts overpaid in prior years.

Scenario 4

Scenario 4 combines Scenario 2 and 3. We believe that the premises of scenarios 2 and 3 are reasonable and should be considered in any calculation of the Town's buy-out cost and are not inconsistent with the JPA Agreement language. By any projection, the Town's share of the solid waste generated in the service area will decrease over time. As part of our analysis, we were unable to find any local or regional projections that would create a material change to this approach, but we welcome any other projection information that you may be aware of.

As stated above, in regard to the most recent bond issuances, we believe the Town should not pay a share of debt service on the new money, Series B component of the 2019 Bonds as that would result in double counting given those funds will remain in possession of the JPA after the Town's departure. As you are aware, the Town voted no to the last issuance and has continually claimed that there is little to no benefit to these improvements for the Town. As the JPA Agreement is silent on this issue, we feel that it should not pay for any additional funds from which it will receive no benefit or will be controlled by the JPA. When these adjustments are done, the total cash required to meet the Town's obligation is reduced from \$2.259 million to \$904,000, before accounting for amounts overpaid in prior years.

Scenario 5

Finally, this scenario assumes that the Town would pay a declining percentage share of debt service in the future (3.25% to 1.5%) due to growth in other sectors throughout the JPA service area (See Scenario 2 above) Additionally, it includes the deduction described in Scenario 3 where the Town pays only the 2019A bond costs. Additionally, this scenario excludes those costs associated with multifamily and commercial bond proceeds back to 2010 in which the Town has consistently claimed should not be apportioned to it as there is no benefit gained and leaves your small town subsidizing the other members diversion efforts in these sectors. We do not object to the related costs included in the rates but do not believe the Town should have to pay again upon withdrawal. As the methodology in the JPA is not clear, we believe that this adjustment is not unreasonable. When these three adjustments are made, the total cash required to meet the Town's obligation is reduced from \$2.259 million to \$502,000, before accounting for amounts overpaid in prior years.

Summary

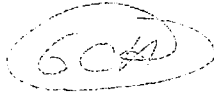
Should the Town proceed with withdrawal from the JPA, we concur that the JPA agreement is vague as to the methodology to be used to calculate any funds due the JPA by the Town. We believe that the Town has contributed a greater share of revenue than justified by its overall share of expenses since formation of the JPA and that those prior contributions should be considered. As shown in the summary table, just taking that fact into account back to 2010 along with our two methodological adjustments shows that the Town not only does not owe the JPA funds but is due a payment.

If desired, we would be happy to meet and walk JPA staff through our analysis and discuss the different scenarios. Because the JPA agreement does not specifically define a method for calculating any funds due the JPA upon withdrawal, and that our approaches yield outcomes that are approximately \$2.2 million apart, we understand that the final amount will largely be subject to negotiation based on a justifiable and supported approach. Further, should the Town proceed with withdrawal from the JPA, the Town will be switching to a new franchised collector and may incur unforeseen costs to the rate payers in order to ensure a successful transition and the recycling reserve funds, less any amount paid back to the JPA could be used to buffer any initial rate impacts or unforeseen costs of the transition. Therefore, it is very important that the buy-out costs be kept as low as possible.


Finally, we feel that the Town has paid more than its fair share of the capital costs associated with all of the bond issuances to date regardless of the impact they have had on its diversion rate which we believe to be minimal. It is our hope that through further discussions you can come to an amicable solution that allows you to move forward in a positive manner.

We thank you for the opportunity to be of assistance. Please let us know if there are any questions or if additional analysis is required.

Very truly yours,



Craig Hill
Managing Principal



Scott Hanin
Senior Consultant

Date: July 22, 2020

To: **South Bayside Waste Management Authority**
Joe La Mariana, Executive Director
John Mangini, Finance Director

From: **KNN Public Finance**
David Brodsky and Melissa Shick

Re: **Additional Cost Analysis for the Town of Atherton's Withdrawal**

Below are some additional thoughts regarding exit costs for the Town of Atherton to withdraw from the South Bayside Waste Management Authority (SBWMA). This memo updates our December 2019 bond allocation defeasance analysis to incorporate current rates and a January 2021 transaction date, analyzes the cost if only the 2019A refunding bonds were used as the basis of determining outstanding liabilities, and provides comments on the memo prepared by NHA Financial Advisors (NHA) for the Town of Atherton.

Background

The Town of Atherton has submitted its official notice of its intent to withdraw from the Authority at the end of the current rate year, which ends on December 31, 2020.

Section 15.1 of the Joint Powers Authority Agreement states that, prior to its exit, a Member Agency must “achieve...the liquidation in full of its proportion of any and all existing debts, obligations, and liabilities incurred, earned, or expected to be earned by the date of withdrawal, but not limited to the Revenue Bonds, as determined by [approval of four-fifths (4/5) of the members of] the Board.”

The agreement does not specifically define liabilities. We have focused our analysis strictly on the SBWMA's outstanding Revenue Bonds, consisting of \$31,860,000 in 2019A refunding bonds (refunding a 2009 bond issue that financed various capital improvements) and \$16,915,000 in 2019B bonds, issued to finance various new capital improvements (referred to as “new money” bonds).

The agreement is also silent on how any member's “proportion” should be determined. In our December 2019 memo, we utilized the same methodology used by the Authority in its annual rate setting - franchise tonnage - to determine Atherton's share of liabilities. In our opinion, franchise tonnage is the most reasonable measure to use in determining a member's proportionate share of liability because it mirrors the long-standing practice of allocating costs. The NHA memo explores other approaches to proportionality, which we discuss below.

Update of December 2019 Defeasance Analysis

We have updated our December 2019 analysis, using current interest rates for a defeasance escrow, and assuming that the transaction is executed not in March 2020 (as was the case in our prior analysis), but instead on January 15, 2021, two weeks after the end of the rate year. As before, we relied on

tonnage as the basis for allocating proportionate share. The following compares this updated analysis to the analysis used in our memo dated December 6, 2019.

Market Conditions as of	December 4, 2019	July 14, 2020
Basis of Atherton's proportional allocation	2018 tonnage	2019 tonnage
Atherton proportion	3.25%	3.24%
Closing date	March 2, 2020	January 15, 2021
Atherton's proportionate cost of defeasance ¹	\$1,987,908.71	\$2,103,016.34

Because a defeasance occurs when federal securities are deposited into an escrow, the dollar cost is in inverse relationship to interest rates. When rates are higher, the dollar cost to buy securities that generate the debt service and redemption costs will be lower. Because interest rates have fallen since our analysis in December 2019, the cost of the defeasance escrow has increased. The change in interest rates is a more significant factor than the minor decrease in Atherton's tonnage percentage.

NHA Memo

Attached to the Town of Atherton's letter notifying the Authority of its intent to withdraw was an analysis by NHA Advisors, a firm that performs advisory services similar to KNN. The analysis suggested five scenarios that could be utilized to determine the appropriate proportionality to assign to Atherton in calculating its exit costs. In all of the five scenarios, Atherton's consultant suggests that the Authority should consider other factors "when evaluating the financial impacts of the Town withdrawing from the JPA" in order to determine the Town's "reasonable financial obligations." The exit payment would be reduced under all five scenarios if the Board were to accept Atherton's assumptions and methodology.

While some of the arguments raised by the memo are based on information and forecasts we have not reviewed, we can make the following observations regarding the various alternative allocation approaches discussed in the NHA memo.

"Overpayment"

In all five scenarios described below, Atherton's consultants have included a deduction labeled as an "overpayment" in the amount of \$581,386. NHA argues that Atherton is entitled to this equitable adjustment because it has overpaid its share of Agency obligations during its membership in the JPA. They argue that Atherton did not need the build-out of the Agency's facility that accommodates multifamily and commercial recycling and processing because the Town's waste generation profile consists mainly of single family homes, and that therefore their portion of the payments for the 2009 bonds were higher than they should have been. NHA notes that the \$581,386 "represents a calculated total amount overpaid in the last ten years." The actual analysis NHA utilized to reach this conclusion is not included in the memo.

¹ Represents only the cost of defeasance and does not include execution costs, which we estimate to be approximately \$100,000. NHA has accepted this amount as a reasonable estimate and includes it in all of its scenarios.

Our analysis does not include such a deduction, and we note that the JPA Agreement does not contemplate what would be, in effect, a retroactive adjustment of rates.

Five Scenarios

- **Scenario 1:** this analysis simply updates our prior analysis based on changing market conditions and timing and makes the \$581,386 adjustment for “overpayment.” Based primarily on this adjustment, NHA concludes the amount owed is \$1,677,498 rather than \$2,103,016 as shown in our calculation done for this memo. NHA notes in this scenario that our analysis uses the “simplest and most straight forward approach.”
- **Scenario 2:** this analysis assumes that in the future Atherton’s share of the members’ waste stream will decline; if this proved to be true, and the Town remained in the Authority, indeed their share of debt service would decline. We have no insight into that possibility, but we will note that when the original 2009 bonds were issued, the official statement reported that Atherton’s share of the waste stream was 2.6%. In 2019, it was 3.2%. In our opinion, the use of speculative future assumptions is an unusual basis for calculating “in full [Atherton’s] proportion of any and all existing debts.”
- **Scenario 3:** in this scenario, NHA proposes the exclusion of defeasance costs related to the 2019B new money bonds, on the basis that the bond proceeds will be used for future improvements that will not benefit Atherton. For informational purposes, we have broken out the cost of defeasing both individual series of bonds, and calculated Atherton’s proportionate cost of defeasing only the 2019A bonds, which refunded the Authority’s 2009 bond issue. We have used the same timing and interest rate assumptions updated above and 2019 tonnage as the basis for the allocation of Atherton’s “proportionate” share. If Atherton were only liable for the cost of liquidating its share of the 2019A refunding bonds, then its share of cost would be \$1,443,090.²

	All bonds defeasance	Atherton Share (3.24%)
2019A (Refunding)	\$44,511,685	\$1,443,090
2019B (New Money)	20,355,228	659,926
Total	\$64,866,913	\$2,103,016

Limiting Atherton’s liquidation cost to the 2019A bonds would mean that what would have been their portion of debt service on the 2019B bonds would be allocated among the remaining members. We have prepared the following table to put into perspective the relative

² Note that the amount NHA calculates would be necessary for defeasing Atherton’s share of only the 2019A refunding bonds is \$1,566,259, while ours is \$1,443,090. We assume this reflects different assumptions as to timing and interest rates.

impact on each of the members if Atherton's pro-rata share of the 2019B bonds is deducted from the calculation of the Town's liability:

Reallocation of 2019B New Money Debt Service (DS) to Member Agencies

	Avg. Annual DS with Atherton Prepayment	Avg. Annual DS without Atherton Prepayment	Annual Difference	Total DS with Atherton Prepayment	Total DS without Atherton Prepayment	Total Difference
Belmont	\$89,419	\$92,415	\$2,996	\$983,609	\$1,016,566	\$32,958
Burlingame	\$216,415	\$223,666	\$7,251	\$2,380,560	\$2,460,325	\$79,765
County	\$57,028	\$58,939	\$1,911	\$627,313	\$648,332	\$21,019
No. Fair Oaks	\$55,600	\$57,463	\$1,863	\$611,601	\$632,094	\$20,493
East Palo Alto	\$98,752	\$102,061	\$3,309	\$1,086,269	\$1,122,666	\$36,397
Foster City	\$108,280	\$111,908	\$3,628	\$1,191,077	\$1,230,987	\$39,909
Hillsborough	\$53,707	\$55,506	\$1,800	\$590,776	\$610,571	\$19,795
Menlo Park	\$227,894	\$235,530	\$7,636	\$2,506,830	\$2,590,826	\$83,996
Redwood City	\$360,318	\$372,391	\$12,073	\$3,963,495	\$4,096,299	\$132,804
San Carlos	\$142,452	\$147,225	\$4,773	\$1,566,970	\$1,619,474	\$52,504
San Mateo	\$401,268	\$414,713	\$13,445	\$4,413,948	\$4,561,846	\$147,897
West Bay Sanitary	\$28,149	\$29,092	\$943	\$309,640	\$320,015	\$10,375
Total	\$1,839,281	\$1,900,909	\$61,628	\$20,232,088	\$20,910,000	\$677,912

We note that the total difference in the remaining members' debt service is higher than the cost of defeasing Atherton's share of the 2019B bonds. This is because the cost of defeasance is calculated to the first call date on the bonds and the above chart assumes the 2019B bonds remain outstanding through the final maturity of the bonds.

In our opinion, the argument that Atherton would not benefit from the new projects if they were to remain a member is less than compelling—the projects are expected to increase both the efficiency of the diversion of recyclables and organics from the waste stream (lowering operating costs) as well as increasing the amount of material diverted from landfills.

It is true that, with its withdrawal, Atherton will not receive benefit from the new improvements. Whether that is relevant to the calculation of the amount required to finance “the liquidation in full of its proportion of any and all existing debts” will be a matter for the Authority members to decide.

- **Scenario 4:** this analysis combines Scenario 2 (taking into account a presumed future reduction in Atherton's proportion of the waste stream, and thus a reduction in their share of their appropriate cost to defease a portion of the 2019A refunding bonds) and Scenario 3 (exclusion of the cost to defease the 2019B new money bonds), reducing the proportionate share to \$903,623. This is the Scenario that Atherton proposes the Authority accept in its Notice of Intent to Withdraw. We believe this approach is flawed for the reasons discussed above regarding Scenario 2.

- **Scenario 5:** this Scenario includes Scenarios 2 and 3 and proposes additional reductions in the allocation of the 2019A bonds relating to the 2009 projects, similar to the argument made for the “overpayment” credit, but in addition thereto. Under this Scenario, the Authority would end up owing money to Atherton. This Scenario makes additional assumptions relative to past cost-allocation, which strikes us as inappropriate at this point in time. We assume that the additional adjustments for past expenditures relating to multifamily and commercial generations are not double counted, but there is insufficient information for us to tell.

Conclusion

The Joint Powers Authority Agreement for SBWMA provides that the Authority's Board is tasked with determining Atherton's exit cost. The Board's determination should be based on a reasoned approach that achieves a fair and equitable result. Our analysis calculates Atherton's proportionate share based on the formula used by the Authority over the years in setting its rates – percentage of franchise tonnage of the member agencies. This methodology is straightforward and consistent with the plain language of the joint powers agreement and past rate setting practices; in our opinion, it constitutes a reasonable basis for determining a member's proportionate share of liabilities.

The situation before the Authority - calculating the cost for a member to exit the JPA - is not usual in our practice. But what is common is that when agreements are terminated before the end of their term there is some penalty, premium, breakage fee, or make-whole payment made by the party exercising their option. Whether that analogy is relevant to the Authority's situation is better answered by the Authority.

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MEMORANDUM

Date: August 11, 2020
To: Joe LaMariana – Rethink Waste
From: Marva Sheehan and Colleen Costine – HF&H Consultants, LLC
Copy to: John Mangini- Rethink Waste
Subject: Review of the Town of Atherton's Exit Obligation as of December 31, 2020

At the request of the South Bayside Waste Management Authority (SBWMA) HF&H Consultants, LLC (HF&H) has reviewed financial information related to the potential withdrawal of the Town of Atherton (Town) from the Joint Powers Authority (JPA).

BACKGROUND

Request for Withdrawal from the JPA

The Town of Atherton has notified the SBWMA of its intent to withdraw from the JPA as of December 31, 2020, the end of the current agreement between Recology San Mateo County (Recology) and the Town. According to the Second Amended and Restated Joint Exercise of Powers Agreement dated June 19, 2013 (Agreement) between the Member Agencies, including the Town, there are specific conditions that must be met. Article 15 lists the following conditions:

15.1 Withdrawal Conditions. A Member may not withdraw from the SBWMA unless and until that Member achieves the following:

- a. The liquidation in full of its proportion of any and all existing debts obligations, and liabilities incurred, earned, or expected to be earned by the date of withdrawal, including but not limited to the Revenue Bonds, as determined by the Board.
- b. The provision to the SBWMA of a written notice of intent to withdraw from the SBWMA at least six (6) months prior to the end of the current Rate Year, specifying the date on which the Member intends to withdraw.
- c. The approval of such withdrawal by a 4/5 affirmative vote of Equity Members

SBWMA engaged KNN Public Finance, LLC (KNN) to determine the debt obligations related to the Revenue Bonds attributable to the Town. Additionally, HF&H was engaged to determine if there were other

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financial obligations attributable to the Town at the date of withdrawal. This memorandum summarizes our findings.

Findings

General

Debts and liabilities for members of the JPA fall into three categories of expenses:

- Collection Expenses which are governed by the individual franchise agreements between Recology and the individual member agencies of the JPA.
- South Bayshore Recycling Center (Shoreway) Expense - Shoreway is operated by South Bay Recycling, LLC (SBR) on behalf of the SBWMA and receives the materials collected by Recology as well as 3rd party materials delivered directly to the facility. Shoreway charges a per ton/yard rate for all materials collected to cover its costs of operation. The operating agreement for the facility is between the SBWMA and SBR.
- SBWMA Expense – Each fiscal year an operating budget is approved by the Board of the JPA which includes budgeted expenses (e.g., disposal expense, franchise fees paid to the City of San Carlos, debt service, SBWMA program budget, administrative, insurance etc.) and revenues (e.g., tip fees, grants, etc.) The approved compensation for SBR is bundled with all other SBWMA operating budget expenses to establish the Shoreway tip fee.

As previously stated, we understand the SBWMA has engaged KNN to determine the financial impact to the Town related to the SBWMA's Revenue Bonds. Therefore, we are not including any potential liability from the Town's withdrawal related to the Revenue Bonds.

Based on our review, of potential financial obligations of the Town, as a result of its request to withdraw, we have broken our comments into the three categories as shown above.

Limitations

Our review included the review of financial information provided by the SBWMA. It is based on our interpretation of various agreements (JPA agreement, SBR agreement and the member agency agreement with Recology). We are not providing legal advice and suggest the SBWMA's legal counsel review and comment on this document.

Recology Related Costs/Obligations

For the collection rights and responsibilities as outlined in the current agreement between the Town and Recology, Recology is entitled to bill and collect rates established through resolution by the Town. Each year, (with the exception of the final year of the agreement), there is a revenue reconciliation to reconcile net revenues billed for the year with Recology's approved compensation. Should there be any excess revenue or a shortfall of revenue in the final year no obligation or rebate will occur.

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Comment

Due to the request for withdrawal coinciding with the end of the term of the current collection agreement, HF&H did not identify any financial obligations as of December 31st, 2020 owed to the JPA from the Town. The current collection agreement is between Recology and the Town and based on our interpretation does not obligate the JPA financially to Recology for costs attributable to the Town as of the date of withdrawal. Additionally, the Town did NOT sign a new agreement with Recology for services to begin January 1, 2021, therefore, any future costs “intended” for the Town in Exhibit N of the model franchise agreement would not be recoverable from the Town. Since each member agency has its own agreement with Recology, our interpretation is that the JPA would not be responsible for any future costs “intended” for the Town.

SBR Related Costs/Obligations

Each of the member agencies pays a per ton rate for all materials brought to Shoreway to cover SBR’s cost attributed to processing, transfer and transport of the material. This amount is paid during the year on actual tonnage brought to Shoreway from the collection activities within the Town. There is no minimum tonnage requirement.

Comment

The gate rate (per ton tip fee for material received by SBR) is calculated each year in accordance with the compensation section of the agreement. Briefly, the first year’s proposed costs by various cost categories were totaled and then divided by the anticipated inbound tons (357,725 inbound tons net of recycling, and 74,022 recycling tons (Threshold Tons)). Each year thereafter the cost categories are adjusted by prescribed indices based on the category and per ton rates are adjusted appropriately.

The gate rate for the first year of the agreement included fixed and variable components. The fixed costs are therefore “paid” with the Threshold Tons received by SBR. Inbound tons have consistently been above the Threshold Tons). Therefore, the fixed component on the “excess tons” is considered extra profit to SBR.

Since the reduction of approximately 9,600 inbound tons related to Town’s withdrawal would come out of the “excess tons”, we believe there would be no liability related to SBR costs and/or obligations.

There should be no financial obligation owing SBR at the end of the calendar year unless an error in reported tons is discovered when the year-end reporting is reviewed or if the inbound tons fall below the Threshold Tons for the calendar year ending December 31, 2020.

SBWMA Related Costs/Obligations

The SBWMA provided the following list of potential SBWMA liability categories that may qualify as incurred at the time of the Town’s potential withdrawal from the JPA.

- Contracts for long term services at a fixed amount in the future.
 - Accounting Services contract with Redwood City
 - Three year information systems contract
 - Legislative lobbying contract
- Insurance premium liabilities for active policies with renewal dates after January 1, 2021
- Audit fees paid in 2021 that pertain to the 2020 calendar year

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- State reporting expensed for 2020 paid in 2021
- Property tax depending on when the invoice is due vs. the period levied.
- Insurance premium liabilities for active policies with renewal dates after January 1, 2021
- Compensated (accrued leave) of all employees as of the termination date.

Comment

With the exception of the insurance liability for active claims, all of these approved operating costs should have been covered by the per ton tip fee set for the current year at Shoreway. The SBWMA represented it has fully accrued for compensated absences and no unrecorded liability exists.

With regards to possible insurance claims related to the period prior to the Town's anticipated withdrawal from the JPA, HF&H recommends requesting an estimate from the SBWMA's insurance provider of potential increases or reserve funding due to claims initiating from incidents occurring prior to December 31st of 2020.



RESOLUTION NO. 2020-34

RESOLUTION OF THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS

Determining the Amount Required for the Town of Atherton to Liquidate its Proportionate Share of SBWMA Existing Debt in Connection with the Town's Notice of Intent to Withdraw from Membership in SBWMA; and Recommending Member Agencies Approve the Withdrawal, Subject to Certain Conditions.

WHEREAS, The SBWMA is a joint powers agency established through a Joint Exercise of Powers Agreement in 1999 by a number of San Mateo County entities to provide a regional approach to the collection and disposition of solid waste, recyclable materials, and organic materials; the Agreement has been amended and restated several times over the years, the current governing document, dated June 19, 2013, is entitled the "Second Amended and Restated Joint Exercise of Powers Agreement" ("JPA"); and

WHEREAS, , the SBWMA issued bonds in 2000 to acquire and reconstruct the Shoreway Environmental Center Facility, to be operated by the Authority to meet the regulatory requirements for solid waste and recyclables for its member agencies. The original bonds were defeased and new bonds issued in 2009. In 2019, the SBWMA refunded the 2009 bonds, saving the Authority money and, at the same time, raising new funds for certain capital improvements (the 2019A and 2019B bonds); and

WHEREAS, the SBWMA is comprised of 12 member agencies, including the Town of Atherton ("Atherton"), all of which are founding members of the SBWMA, and as such, "Equity Members" under the JPA. On June 29, 2020, Atherton sent the SBWMA a Notice of Intent to Withdraw from the SBWMA, specifying December 31, 2020 as the date of withdrawal; and

WHEREAS, Article 15.1 of the JPA provides that a Member may not withdraw from the SBWMA unless and until that Member achieves the following:

- a. The liquidation in full of its proportion of any and all existing debts, obligations, and liabilities incurred, earned, or expected to be earned by the date of withdrawal, including but not limited to the Revenue Bonds, as determined by the Board.
- b. The provision to the SBWMA of a written notice of intent to withdraw from the SBWMA at least six (6) months prior to the end of the current Rate Year, specifying the date on which the Member intends to withdraw.
- c. The approval of such withdrawal by a 4/5 affirmative vote of Equity Members; and

WHEREAS, pursuant to Article 15.1.a. of the JPA, the Board of Directors of the SBWMA ("Board") is required to determine the amount necessary for Atherton to achieve "the liquidation in full of its proportion of any and all existing debts, obligations, and liabilities incurred, earned, or expected to be earned by the date of withdrawal;" and

WHEREAS, pursuant to Article 15.1.c. of the JPA, four-fifths (10) of the Member Agencies are then required to approve the withdrawal in order for it to be effective; and

WHEREAS, On August 20, 2020, the Board held a properly noticed hearing to determine Atherton's liquidation obligation, and considered the staff report and all evidence, oral and documentary, presented to it at the hearing; and

WHEREAS, the Board, having reviewed and considered the evidence presented, and based thereon, hereby makes the following determination.

NOW, THEREFORE BE IT RESOLVED that the Board of the South Bayside Waste Management Authority hereby determines that in order to satisfy its requirement under Article 15.1.a., Atherton must fully defease its proportionate share of the 2019A and 2019B bonds, and pay for the costs associated with the defeasance. The Board determines that Atherton's proportionate share of the 2019A and 2019B bonds is 3.24 percent, based on Atherton's share of the SBWMA's overall franchise tonnage in 2019. The cost to defease Atherton's bond share is estimated to be \$2,203,016 (\$2,103,016 to defease + \$100,000 costs). The actual amount is subject to adjustment depending on market conditions at the time of defeasance. Staff is directed to work with SBWMA's financial consultants and Atherton staff to ensure the defeasance of the bonds occurs prior to December 31, 2020.

BE IT FURTHER RESOLVED that the Board recommends that its Member Agencies now review and approve Atherton's withdrawal from the SBWMA, effective December 31, 2020, provided that on or before December 31, 2020, Atherton satisfies its obligation to liquidate its proportionate share of debt, as determined by the Board. Pursuant to the JPA, a minimum of ten (10) Member Agencies must approve the withdrawal for it to take effect.

PASSED AND ADOPTED by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California, by the following vote:

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Atherton					Menlo Park				
Belmont					Redwood City				
Burlingame					San Carlos				
East Palo Alto					San Mateo				
Foster City					County of San Mateo				
Hillsborough					West Bay Sanitary Dist				

I HEREBY CERTIFY that the foregoing Resolution No. 2020-34 was duly and regularly adopted at a special meeting of the South Bayside Waste Management Authority on August 20, 2020.

ATTEST:

 Jess E (Jay) Benton, Chairperson of SBWMA

 Cyndi Urman, Board Secretary