



Item No. 16 Town of Atherton

CITY COUNCIL STAFF REPORT – REGULAR AGENDA

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: GEORGE RODERICKS, CITY MANAGER

DATE: JULY 15, 2020

SUBJECT: AUTHORIZATION FOR THE REFUSE SERVICES SUBCOMMITTEE TO NEGOTIATE ON BEHALF OF THE TOWN FOR EXIT FROM THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY

RECOMMENDATION

Authorize the Refuse Services Subcommittee to negotiate on behalf of the Town for exit from the South Bayside Waste Management Authority (SBWMA).

BACKGROUND/ANALYSIS

As the Council is aware, the Town released a request for bid for refuse and recycling services for the Town in 2019. After a review of responses, the Council directed that the Subcommittee proceed with active negotiations with Greenwaste Recovery for a potential refuse service franchise to begin January 1, 2021. The current franchise agreement with Recology terminates on December 31, 2020. The Town hired R3 Consulting Group to assist the Subcommittee with negotiations. The Subcommittee consists of Council Members Wiest and Widmer, as well as City Manager Rodericks. The Council has been regularly apprised of the status of those negotiations.

As those negotiations finalized, the Council directed that correspondence be sent to the SBWMA, as required, to advise the SBWMA of the Town's withdrawal to be effective December 31, 2020. Pursuant to the SBWMA Joint Powers Agreement, an initial letter was sent on March 18 providing preliminary notice of withdrawal (attached).

Pursuant to the terms of the JPA, withdrawal requires liquidation in full 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; the provision of a notice of intent to withdraw at least six (6) months prior to the end of the current Rate Year, and approval of such withdrawal by at 4/5 affirmative vote of Equity Members.

The SBWMA responded to the Town's Notice of Intent and advised that they had conducted independent analysis of the required bond liquidation payment and that that amount would be approximately \$2,087,908 and that there could be additional obligations and liabilities related to the JPA itself (attached).

Refuse Service Subcommittee Exit Authorization

July 15, 2020

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The Town disagrees with the analysis provided by the SBWMA and conducted its own independent analysis. The results of this analysis were provided to the SBWMA in a second letter on June 29 (attached). The analysis provides a range of considerations and options that could reduce the Town's liquidation requirements to a low of \$501,812, before including the potential analysis of an overpayment due to land use demographic and waste stream processing differentials. The June 29 letter suggested that the Town is willing to consider a withdrawal cost of \$903,623, without a deduction for overpayment advising that we are not interested in a protracted exit plan and expect prompt agreement from the SBWMA.

Negotiations with Greenwaste Recovery have progressed to the point that a refuse franchise agreement with Greenwaste Recovery will provide residents with a long-term financial benefit and regulatory compliance assurance. The final details of the negotiated franchise agreement remain in progress and staff anticipates returning to the Council toward the end of July with a final recommendation and term sheet for award.

However, final exit negotiations with the SBWMA must proceed forward in order to meet the timeline expectations for a new franchise agreement. If the Town *is not able* to successfully negotiate an exit from the SBWMA, the Town will be required to rescind its notice of exit and execute the Draft Amended and Restated 15-Year Franchise Agreement with Recology to begin January 1, 2021. If the Town *is able* to negotiate a successful exit from the SBWMA, the Town will need to execute the new franchise agreement with Greenwaste Recovery in a timely manner to allow for Greenwaste Recovery to ramp up its service infrastructure to begin a new franchise serving the Town on January 1, 2021. Alternatively, if the City Council opted at the meeting at the end of July *not to move forward* with Greenwaste Recovery, the work of the Subcommittee in negotiating an exit would cease.

As the Council is aware, the Town has a Rate Stabilization Fund that can provide financial offset to any exit settlement from the SBWMA. The preliminary financial analysis of the new proposed franchise agreement with Greenwaste Recovery provides for a recoupment of funds to that Rate Stabilization Fund over the course of the initial years of the new franchise agreement and still provides for a long-term financial benefit overall.

Staff recommends that the City Council authorize the Refuse Services Subcommittee (Wiest, Widmer, Rodericks) to negotiate on behalf of the Town for a final exit from the SBWMA. As stated in the June 29 letter, the Town believes that a reasonable exit cost is approximately \$903,623; but, it is anticipated that the SBWMA disagrees with that analysis.

FISCAL IMPACT

There would be no long-term General Fund impact to exiting the SBWMA. Any final exit costs would be borne by the Rate Stabilization Funds and/or built into a rate structure for recovery as part of a new franchise.

There is approximately \$2 million in the Town's Rate Stabilization Fund.

POLICY FOCUS

Staff is seeking direction and authority from the Council for the Refuse Services Subcommittee to negotiate on the Town’s behalf. If provided, the Subcommittee would serve as the decision-making authority to negotiate and accept any final exit cost from the SBWMA.

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town’s electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town’s electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service provides (water, power, and sewer), and regional elected officials.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

This item ___ has or X has not been before a Town Committee or Commission.

- ___ Audit/Finance Committee (meets every other month)
- ___ Bicycle/Pedestrian Committee (meets as needed)
- ___ Civic Center Advisory Committee (meets as needed)
- ___ Environmental Programs Committee (meets every other month)
- ___ Park and Recreation Committee (meets each month)
- ___ Planning Commission (meets each month)
- ___ Rail Committee (meets every other month)
- ___ Transportation Committee (meets every other month)

ATTACHMENTS

1. March 2020 Letter to the SBWMA
2. April 2020 Response Letter from the SBWMA
3. June 2020 Letter to the SBWMA and Town Analysis



**Town of Atherton
Office of the City Manager
150 Watkins Avenue
Atherton, California 94027
Phone: (650) 752-0500
Fax: (650) 614-1212**

March 18, 2020

VIA E-MAIL AND U.S. MAIL

Joe La Mariana
Executive Director
South Bayside Waste Management Authority
610 Elm Street, Suite 202
San Carlos, CA 94070
E-Mail: jlamariana@rethinkwaste.org

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.

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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.

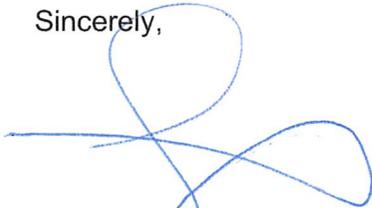
The Town is entitled to certain assets of the JPA proportionate to its financial contributions to JPA initiatives until the time of the Town's withdrawal. However, the requisite liquidation prior to withdrawal is a measure of both the Town's assets and liabilities in the JPA. The total assets of the 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

Joe La Mariana, SBWMA Executive Director
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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 blue ink, consisting of several overlapping loops and a long horizontal stroke 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.

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San Carlos, CA 94070 | F: 650-802-3501

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 blue 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



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).

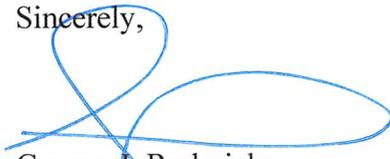
In a further effort to aid SBWMA in separating its assets from the Town's, the Town has engaged a consultant, NHA Advisors, to determine an estimated cost of withdrawal from SBWMA. NHA Advisors has experience in public financing, especially related to a range of bond obligations held and managed by public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

Joe La Mariana, Executive Director
Re: Notice of Intent to Withdraw from SBWMA
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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



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San Rafael, CA 94903

Office: 415.785.2025
www.NHAadvisors.com

June 26, 2020

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

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