



# CONSENT CALENDAR



**DRAFT MINUTES**

**SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY  
MEETING OF THE BOARD OF DIRECTORS  
January 26, 2017 – 2:00 p.m.  
San Carlos Library Conference Room A/B**

**Call To Order: 2:00PM**

**1. Roll Call**

Agency	Present	Absent	Agency	Present	Absent
Atherton		X	Menlo Park		X
Belmont	X		Redwood City	X	
Burlingame	X		San Carlos	X	
East Palo Alto	X		San Mateo		X
Foster City	X		County of San Mateo		X
Hillsborough	X		West Bay Sanitary District	X	

**2. Public Comment**

Persons wishing to address the Board on matters NOT on the posted agenda may do so.

Each speaker is limited to two minutes. If there are more than five individuals wishing to speak during public comment, the Chairman will draw five speaker cards from those submitted to speak during this time. The balance of the Public Comment speakers will be called upon at the end of the Board Meeting.

If the item you are speaking on is not listed on the agenda, please be advised that the Board may briefly respond to statements made or questions posed as allowed under The Brown Act (Government Code Section 54954.2). The Board's general policy is to refer items to staff for attention, or have a matter placed on a future Board agenda for a more comprehensive action or report and formal public discussion and input at that time.

None

**3. Adjourn to Closed Session – Pursuant to Government Code Section Govt. Code Sec. 54956.9  
Conference with Labor Negotiator: Unrepresented employees- (All employees).**

Call To Order: 2:27pm

**4. Roll Call**

Agency	Present	Absent	Agency	Present	Absent
Atherton		X	Menlo Park		X
Belmont	X		Redwood City	X	
Burlingame	X		San Carlos	X	
East Palo Alto	X		San Mateo		X
Foster City	X		County of San Mateo		X
Hillsborough	X		West Bay Sanitary District	X	

## 5. Additional Public Comment

None

## 6. Executive Director's Report

Executive Director La Mariana wished everyone a Happy New Year. He noted that the mid-year budget is about \$1M favorable to plan primarily because the commodity market has been more favorable than forecast, and also due to a series of staff vacancies throughout the last fiscal year. He also noted that the annual financial services audit was completed and reviewed by the finance committee on January 10<sup>th</sup>, and the results of that are before the Board today under consent item 8B. He added that there are some minor changes in the investment policy in 2017 driven by mandated code changes, and those too have been discussed with the finance committee. He noted that at this point all 12 Member Agencies have approved their 2017 contractor compensation adjustments. He touched on Household Hazardous Waste options being discussed later today, but that staff is recommending working closely with the County and their existing programs. He thanked and recognized Recology for their work on the Franchise Agreement negotiations. He noted that they have met every deadline, and that we can't move forward without their meeting those key deliverables. He also noted regarding the Franchise Agreement Extension that there has been an emphasis on Member Agency input, there have been 2 surveys sent out via Survey Monkey. He noted that the second survey only has about 5 responses so far, and he asked for the Board's help in getting those responses back. The second survey will assess the planned growth rate in our service area through 2013.

Member Brownrigg asked Executive Director La Mariana to send an email to the Board to let them know if their planning department has not responded.

Executive Director La Mariana also noted that through the Member Agency input process there are 246 different recommendations, and staff is working to ascertain the recommendations that apply to all of 12 Member Agencies and will be part of the model Franchise Agreement that will be presented to this Board in April, or those that are agency or a couple of agencies specific. Those that are agency specific will be introduced to the negotiations process once a model agreement is approved the agency wide level by the SBWMA Board, and will be negotiated at the individual Member Agency level. He also noted that since the last Board meeting there have been 4 FAX Committee meetings, and 3 Negotiation meetings, and a well-attended afternoon Member Agency input session that about 35 people attended. He noted that key points that are being negotiated are compensation methodology, growth, bulky item collection, abandoned waste, and which indices to use: local versus national. He noted that the goal is to also make the rate review process simpler, but still maintain the contractual integrity. He re-emphasized that in April the Finance Committee will have a high level review of the numbers, the TAC will review on April 13, and Staff expects to have a Model Franchise Agreement with a cost proposal for the base core services at the April Board Meeting.

Executive Director La Mariana also noted that there will be a report on the fire recovery later, but the plant reopened on January 10. He recognized Hilary Gans and Dwight Herring for their efforts. He added that 35 people are back to work almost 3 months earlier than expected. There is still facility repair work to complete, but it won't affect operations. From a financial reimbursement process standpoint, we have spent about \$7M so far, and are ahead about \$400,000 on reimbursements from Hanover, but have not received any business interruption reimbursements yet which is a correction to the December Executive Director's Report. He recognized Farouk Fakira for all of his tracking work and thoroughness and attention detail.

Executive Director La Mariana also recognized Mike Kelly and Tammy Del Bene on their recent promotions. Mike is the new General Manager, and Tammy is the new Senior Administrative Services Manager. Lastly, he

announced that the Shoreway Earth Day celebration will be April 8<sup>th</sup>, and asked everyone in attendance to save the date.

**7. Approval of Consent Calendar**

Consent Calendar item(s) are considered to be routine and will be enacted by one motion. There will be no separate discussion on these items unless members of the Board, staff or public request specific items be removed for separate action. *Items removed from the Consent Calendar will be moved to the end of the agenda for separate discussion.*

- A. Approval of Minutes from the November 17, 2016 Board of Directors Meeting
- B. Resolution Approving the 2016 Annual Financial Statements
- C. Resolution Approving Revised SBWMA Investment Policy for 2017

Member Aguirre made a motion to approve the consent calendar items

Member Brownrigg seconded the motion

Voice Vote: All in favor

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

**8. Administration and Finance**

- A. Election of SBWMA Board Chair and Vice Chair for 2017

Member Bronitsky nominated Bob Grassilli to remain chair for 2017.

Member Brownrigg seconded the nomination, noting that he didn't know if Chair Grassilli wanted to stay on as Chair, but thought that Chair Grassilli has done a fantastic job of running the meetings and keeping the group focused.

Roll Call Vote: 8-0-0-4

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

Member Brownrigg nominated Charlie Bronitsky noting the same reasons that he seconded re-nomination of Chair Grassilli.

Member Hurt seconded the nomination.

Roll Call Vote: 8-0-0-4

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

## B. Resolution Approving the FY16/17 Mid-Year Budget

Staff Fakira gave an overview of the staff report, and highlighted that overall staff is forecasting \$1M favorable to the budget. He noted that this is primarily due to favorable volumes in green waste, commodity pricing and also to extended staff vacancies at the SBWMA. He noted that Attachment A of the staff report has an expenditure summary breakdown for all of the detail, and the tables in the staff report explain the variances in the budget in detail.

Member Benton made a motion to approve the mid-year budget  
Member Aguirre seconded the motion

Member Brownrigg commented that a positive variance to budget is great, but makes it hard to go to rate payers and ask for a rate increase. He reminded staff that it would be helpful to have the justification for any rate requests given this positive variance.

Roll Call Vote: 8-0-0-4

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

## 9. Collection and Recycling Program Support and Compliance

### A. Quality Control on Recology Call Center: Update on Random Monitoring Calls

Agenda Item 10 was taken ahead of Agenda Item 9

Executive Director La Mariana gave a brief report on the Recology Call Center quality control monitoring. He noted that the reason for this audit is a contractual obligation to check in and maintain the quality standards. He reported that between October 24 and December 31 there were 76 phone calls made. He added that this is one of the audits he feels can be scaled back in frequency.

Member Aguirre asked if the audit also included emails, and if emails are monitored differently.

Mike Kelly of Recology noted that Recology does have people dedicated to reviewing emails as well as calls, but they are not part of the customer service audit.

Member Benton added that in future audits maybe monitoring the emails as well as the calls should be added to it.

### B. Resolution approving of final recommendations on Household Hazardous Waste Collection Options

Executive Director La Mariana introduced the item and gave background, he noted that at the office there were 6 phone calls and one email regarding the end of the Door to Door program, but that the County and Recology received a lot of phone calls. He noted that the County saw a very significant uptake in the drop off program when the post card went out and the Door to Door program appointments were full, but that has dropped off to a normal amount now. He introduced Larry Sweetser, who gave a presentation on the final household hazardous waste recommendations.

Larry Sweetser of Sweetser and Associates gave a presentation, on the closing of the HHW door to door program, and the County program going forward. He noted a possible permanent facility was looked at the transfer station and that would cost a ballpark figure of \$250,000. He also noted that the recycling facility already takes about 70% of hazardous waste, so it's just the most toxic items that need to be collected by the County. He noted that the County has an under-utilized program, so he recommended advertising that, and the drop off program.

Executive Director La Mariana thanked Larry for his presentation and noted that it cost about \$40,000 to send post cards to each household, and would like to send post cards again in the spring and fall to highlight all of the County events that are coming up in our service area.

Member Benton asked what does the Tower Road facility take that can only be taken at Tower Road.

Larry Sweetser answered that it's primarily the more difficult materials like pesticides, cleaners, solvents, thinners, and etcetera.

Member Benton then asked if Tower Road fills their three day appointments are they prepared to add a 4<sup>th</sup> day.

Waymond Wong of San Mateo County answered because there are other opportunities for items like paint and batteries it has freed up a lot of room at Tower Road for collection of the more difficult items, and at the Tower Road facility they can take up to 100 appointments a day and at the collection events up to 200 residents, and they can look at adding more days if those appointments fill up.

Member Dehn commented that there wasn't a significant difference in appointments at Tower Road until the post card went out, and she wondered if it was the conversion of Door to Door customers to Tower Road, or is it significantly more than would have gone through. She wondered if there was more captured through the post card.

Larry Sweetser answered that it was unknown, staff didn't receive data from the Door to Door program on how much it was used during the last few months, but that some people are transitioning he guessed probably about half.

Member Brownrigg asked that the calendar for the 2017 drop off events be circulated so that it can get out to residents. He also asked how Burlingame could be the host of one of the drop off events.

Waymond Wong answered that all of the events are posted on the County's website, and SBWMA staff will send the link. He also noted that there are some restrictions on event locations because there has to be space for 25 cars to queue.

Member Brownrigg commented that he would have Burlingame's public works department get in touch with Waymond to host something in Burlingame. He then asked regarding batteries if they should still be allowed to put batteries on top of the cart given the fire.

Executive Director La Mariana answered that staff is looking at that issue, and Staff Gans is putting together a fire mitigation plan, so look for more discussion on this topic soon.

Larry Sweetser added that the public wants something easy and accessible.

Member Brownrigg motioned to approve resolution 2017-05

Member Dehn seconded the motion

Roll Call Vote; 8-0-0-4

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

## 10. Shoreway Operations and Contract Management

### A. Resolution Approving Shoreway Environmental Center Site Restoration Services' Contracts Let Under Purchasing Policy and Update on MRF Fire Restoration and Facility Reopening Schedule

Staff Gans gave an overview of the staff report, and noted that the materials recovery facility (MRF) is back up and running and starting running cleanly with the start of the New Year, so there is a clean break for financial and accounting tracking. There is still repair work being done on the facility building, but the equipment is repaired and the MRF is in full operation. The contract for the remaining facility repair is \$170,000 which is the contract the Board is approving with this resolution. He also noted that the floods and the rain have affected recycling tremendously. Recycling is primarily paper and when paper gets wet it's a mess to handle, it significantly slows down the equipment and is very difficult to process. He noted that the facility is operating at about 50% speed due to the heaviness of the material, and SBR is having trouble keeping up due to the wet material. He also noted that there is a potential financial risk in marketing these materials because moisture is just like contamination and can cause the material to get downgraded or, even worse, rejected. Currently the materials are at 30-40% moisture and at that level there is a risk for rejection. To mitigate significant costs associated with material rejection the plan is to take this single batch of unrecoverable material to disposal. About 3 days' worth of material that is too wet to market needs to be disposed of and the difference in cost is about \$100,000. He noted that it is important to understand how the material gets wet. It's the commercial material with the bin lids open, which catch all the rain, and are meant to be water tight so material doesn't leak out of them, and by the time the cardboard has reached the MRF it's been absorbing water from the bin for week.

Member Bronitsky asked if commercial loads were multi-family or business.

Staff Gans answered that the same trucks are picking up business and multi-family together, so there is no ability to isolate bins that are known to be a problems.

Dwight Herring of SBR added that an SBR inspector is currently working to identify vehicles that are picking up just multi-family, and if it is then we are having those loads dump into the residential pile, because typically that material is drier.

Member Bronitsky asked if the wet material could be given back to the customer, so that rate payers don't have to subsidize for material that isn't recyclable.

Staff Gans stated that, in the case of simple contamination, it's much easier to have the customer address this issue because this material is consciously placed in the bin. . With water it's very difficult to regulate, and the bins are designed to be outside, and some don't have lids. The cost to dispose of this unrecoverable material is \$10,000.

Member Bronitsky suggested an ordinance so that wet recycling can be rejected.

Chair Grassilli commented that rejecting recycling would mean that the driver would have to get out and test every bin to make that work.

Staff Gans answered yes there would be more inspection and more dispute at the local level.

Member Hurt asked about communication and education of the commercial customers.

Gino Gasparini of Recology commented that the Recology drivers are well aware to keep the lids closed, they have received that direction, and if the drivers see if the lid is continually open the company will try to contact those customers and explain the situation. He also noted that the trucks have drain spouts and on particularly stormy nights they will drain the trucks before they go out on the routes to mitigate water in the trucks.

Tammy Del Bene added that the social media team has done posts to remind people to close their lids, but maybe the public committee can look into a future campaign as well.

Member Hurt commented that individual Member Agencies can speak to their constituents as well regarding the necessity of keeping the lids closed.

Dan Domonoske of SBR noted that the rain this year is unprecedented because of the lack of lapse between storms. He noted that Los Angeles and Long Beach have both taken down grades and taken recyclables to landfill as a risk mitigation measure. He noted that the rain is mostly with commercial loads, but not exclusively.

Member Aguirre made a motion to approve Resolution 2017-07

Member Brownrigg seconded the motion

Roll Call Vote: 8-0-0-4

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



B. Resolution Approving a New Contract with Zanker Road Resource Recovery for Construction and Demolition Materials Processing Services

Staff Gans gave an overview of the staff report and asked the Board to approved Resolution 2017-08 to authorize the Executive Director to Execute a Contract with Zanker Road Resource Recovery for Construction and Demolition (C&D) Materials Processing Services. He described the proposed 5 year term with an option to exit after the second year, and each year thereafter. The rates are being changed from \$51.61 per ton to \$60 per ton in rate year one, \$65 per ton in rate year two, and \$70 per ton in the out years, He added that it is a big increase, which is why the opportunity to exit the agreement after the second year if a better arrangement is found, and SBR is working to take materials out of the C&D tons that can be taken to different markets, like wood, dirt and sod. He also noted that the C&D rate is a self-haul rate that doesn't affect the Member Agencies or Franchise tons, and the tip fee increase that went into effect on January 1 will cover the rate that is proposed by Zanker.

Member Brownrigg asked for clarification if this was a pass through, so the fact that there was a \$10 increase by Zanker and the tip fees went up \$10 is coincidental.

Staff Gans answered that the goal is to match the gate fees to the cost of disposal, there is no Franchised C&D.

Member Brownrigg asked if there was a revenue opportunity for Shoreway to become a C&D processing facility.

Staff Gans answered that it's 34,000 to 35,000 tons a year, and it fluctuates with the economy. He noted that pass through costs have not been treated as profit opportunities, but noted that if processing of the material at the transfer station were done, the system could be built to accommodate C&D material as well.

Member Benton asked if there were any issues with prices being non-competitive, and what is the price per ton being charged

Staff Gans answered not yet, but the second 2017 tip fee increase was just put into place on January 1, and will be tracked to see if volumes decrease. He added that currently the C&D rate is \$100/ton and its \$12/ton to pay SBR for handling materials at the transfer station and there is a transportation fee as well.

Member Dehn asked if the sorting of the material was a good use if the labor cost is considered.

Staff Gans answered that C&D is low value material so it's a tough call.

Member Bronitsky commented that there is a net positive from this business, and as the rate at Zanker increases if the rate we charge doesn't increase what is the net effect. He didn't want to see pricing out of the market and losing the business since there is a net positive. He recommended looking at this when the budget is discussed.

Member Rutherford made a motion to approve Resolution 2017-08

Member Benton seconded the motion

Roll Call Vote: 8-0-0-4

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Atherton				X	Menlo Park				X
Belmont	X				Redwood City	X			
Burlingame	X				San Carlos	X			
East Palo Alto	X				San Mateo				X

Foster City	X				County of San Mateo				X
Hillsborough	X				West Bay Sanitary Dist.	X			

C. Update on Recology's Termination of 3rd Party Tons Supply Agreement with SBR

Staff Gans gave an overview of the staff report and noted that when the fire occurred, and closed the facility, the contract that SBR had with Recology to process their recyclables had a force de majeure provision that after 90 days Recology could chose to terminate the contract, and that is what they did. He noted that now that the facility is back open the third party host fee is no longer coming to the SBWMA, which translates to \$200,000 in lost revenue that was budgeted for the second half of FY16-17. He also added that Recology has recognized that their termination negatively affectsn the SBWMA budget, so to try offset that lost revenue, they've offered to bring other materials from other jurisdictions into the facility. He did note that some of it is recycling, but most of it is garbage and green waste. He also added that he was not yet able to make a forecast on how much of the gap we will be able to close with the additional tons.

Member Dehn asked for confirmation that the ceasing of this agreement meant that there was also no longer a need for a second shift, and if the new materials would require a second shift.

Staff Gans answered that there is no impact on the MRF with the new materials brought in from Recology, because it's mostly other categories of materials. He noted that there is no second shift at the MRF since it reopened. He also added that the MRF canopy project was supposed to be paid for from the revenue from 3rd party tons, and there has been over \$1M collected in host fees with the previous contract, so its \$400,000 cost has been paid for.

Member Benton wondered if Recology's decision to exit the contract was because they got a cheaper place elsewhere or if it was based on transportation and other things out of SBWMA control. He questioned if the host fee priced the SBWMA out of the market.

Staff Gans answered that Recology's choice to exit is mostly locational, there aren't that many MRF's around the Bay Area, and a new facility opened in San Jose and doubled its capacity and is likely pricing aggressively, but the tons we were getting from Recology were coming from cities geographically close to the new MRF in San Jose, so it's both logistics and price.

Member Brownrigg thanked Recology for their effort in trying to fill that budget hole when it's not something they are required to do.

Member Benton also thanked staff Gans for his efforts in restoring the facility so quickly and three months ahead of time.

**11. Informational Items Only (no action required)**

- A. Franchise Agreement Extension Discussions Calendar
- B. November and December 2016 Check Register Detail
- C. Technical Consulting and Professional Services Agreements for 4th Quarter 2016
- D. 2018 Finance and Rate Setting Calendar

**12. Board Member Comments**

Chair Grassilli noted that the Board would need to vote on whether they wanted to add a discussion item to the agenda as an urgency item. He gave the background that Heather Abrams who was appointed to the Franchise Agreement Extension (FAX) Committee has left the City of Menlo Park, and can no longer serve as a FAX Member, she appointed someone from her staff to take her place on the committee, but the City Manager of Atherton would also like to be on the committee.

Counsel Savaree added that the issue came up after the agenda was posted, but the Board could vote to add it to the agenda as an urgency item.

Member Bronitsky moved to add it to the agenda as an urgency item

Member Brownrigg seconded the motion

Roll Call Vote: 8-0-0-4

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

Chair Grassilli commented that the Board appointed 6 members to the committee, and it is now 5. He asked if the Board wanted to appoint a sixth member, and if yes, should that person be a Menlo Park representative or a different member.

Counsel Savaree noted that in April the Board passed a resolution that appointed the FAX Committee members. There are representatives from 6 Member Agencies who meet and are part of the negotiation process with Recology for the Franchise Agreement Extension. She noted that that Board appointed the individuals based in part on the history with the organization and secondly for their qualifications. She posed the question with this vacancy do you want to change the composition of the committee, leave it vacant, appoint someone from Menlo Park or appoint someone from another agency.

Member Benton asked why Heather Abrams was appointed.

Executive Director La Mariana answered that she volunteered last April during a TAC meeting, and the TAC's recommendation was brought for approval to this Board at its April 2016 meeting.

Member Hurt asked how often is this committee appointed.

Executive Director La Mariana answered that it's a one-time Ad Hoc committee, and once negotiations are complete the committee will cease.

Member Dehn asked if there was an alternate system set up at the time of the formation of the committee.

Member Bronitsky asked if Heather Abrams brought a skill set that is otherwise absent now, noting that they've gotten to a certain point in the negotiations, and a new person may drag negotiations backward.

Executive Director La Mariana answered that Heather had great industry knowledge and program knowledge and it will be a loss not having her perspective on the committee.

Member Bronitsky commented that he would like to see a replacement who has the same skill set as Heather, and isn't going to have to go back to square one if she is to be replaced.

Member Dehn asked if other members of the TAC are attending the FAX committee meetings.

Executive Director La Mariana answered no, but there was one joint meeting.

Member Dehn asked if the FAX Committee had a recommendation of replacement.

Executive Director La Mariana answered that it has not been before the FAX, as we just got the request from Atherton yesterday.

Member Benton asked about what percentage of the FAX's work is done.

Executive Director La Mariana answered probably a third of the way done, and added that it is a complex and highly nuanced assignment.

Member Benton suggested leaving the position vacant, and put out a notice to replicate the skill set.

Member Brownrigg commented that he thought it would be helpful to hear from the FAX members. He noted that if the FAX members want to have 6 people to share the work, we should take Heather's alternative because that person would be the closest to tracking her work, but they may say they only need five.

The Board gave direction to the FAX Members to put forth a recommendation on the vacant position.

Member Dehn added that if they decide they need a sixth person it should be someone with the skill set qualified to fill the role.

Member Brownrigg commented that it remains a staff position.

### **13. Adjourn 4:01pm**



## STAFF REPORT

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**To:** SBWMA Board Members  
**From:** Jean Savaree, Deputy General Counsel  
**Date:** February 23, 2017 Board of Directors Meeting  
**Subject:** Resolution Authorizing Executive Director to Notify the City of San Carlos to Accept the Lease Agreement at San Carlos Library

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### Recommendation

It is recommended that the SBWMA Board of Directors approve Resolution No. 2017-10, attached hereto, authorizing the Executive Director to Execute a 5-Year Lease Agreement from July 1, 2017 to June 30, 2022 with the City of San Carlos (City) for space in the San Carlos Library (Library).

### Background

In 2003, the SBWMA first entered into a Lease Agreement (Lease) with the City for approximately 300 square feet of space in the upstairs office area of the Library. The Lease was subsequently amended and extended seven times. Pursuant to the current Lease, the SBWMA rents approximately 2,429 square feet of office space at an annual lease rate of \$54,300 (\$4,525.00 per month). Utilities and janitorial services are billed by City on a quarterly basis to the SBWMA based on the square footage leased.

The current Lease expires June 30, 2017.

The Executive Director has met with the City's staff over the last several weeks to discuss terms for a new lease which would allow the SBWMA continued occupancy of its currently leased space in the Library. Attachment 1 to this report is both the proposed Lease and a Resolution for the Board's consideration.

The proposed Lease contains the following provisions:

### Paragraph 2, Lease Term

The lease term would be from July 1, 2017 to June 30, 2022, with an option to be extended for three additional years.

Rent during the lease term would be as follows:

- \$4,570.56 per month from July 1, 2017 to December 31, 2018 (i.e., \$1.88 per sq. ft.)
- For each successive year, the rent would be increased 3.5% on January 1<sup>st</sup>

### Paragraph 7, City Reimbursement/Personal Property Taxes and Assessments

Utilities, janitorial services, personal property taxes and assessments related to SBWMA's occupation of the premises would be paid separately by the City with the SBWMA billed for its prorata share of these costs based on the square footage leased. The SBWMA would be responsible for payment of all personal property taxes,

special assessments, bonds or other charges assessed during the term of the Lease and payable to the San Mateo County Tax Collector.

**Paragraph 8, Telephone and Internet Services**

The SBWMA would be responsible for providing its own telephone services and equipment, as well as Internet services and equipment.

**Paragraph 9.1, City's Obligations**

The City is responsible for keeping in good order, condition and repair the foundations, exterior walls, heating, ventilation and air conditioning systems, electrical panel, water main and the exterior roofing; except if the SBWMA causes damage by any negligent or intentional act or omission. The City would not be obligated to paint the exterior or maintain the interior surface of exterior walls, interior windows, doors or plate glass. Requests for repairs would be made by the City Parks Superintendent or designee in a timely manner with a reasonable lead time, except in emergency situations.

**Paragraph 9.2, Lessee's Obligations**

The SBWMA, in entering into the Lease, would be accepting the premises "As Is." The SBWMA would be responsible for repairs and maintenance of the space including, but not limited, to lamp replacement, painting and modifications. No structural changes or repairs or maintenance services, including but not limited to lighting fixture replacement, and electrical, mechanical or structural modifications, could be made without prior approval of the City Parks Superintendent or designee. Any outside vendor selected by the SBWMA to make improvements would need to be approved by the City Parks Superintendent or designee.

**Paragraph 9.3, Alterations and Additions**

The SBWMA would be obligated to obtain City's prior written consent to make any alterations, improvements, additions and/or utility installations which exceed \$1,000.00 in cost.

**Paragraph 10, Assignment and Subletting**

Subletting or assignment of the Lease would require the City's approval.

**Paragraph 12, Use of Conference Rooms**

The SBWMA would have access to the public conference rooms on the second floor of the library building, along with the City's Parks and Recreation Administrative staff. The Library would have first priority for conference room usage during the day. City sponsored events and public usage of the conference rooms would be given second priority during the day and SBWMA would have third priority for use of the rooms during the day. The SBWMA would be required to pay for the use of Library Conference Room A and/or B at the prevailing rate and to follow the same guidelines as prescribed for San Carlos community organizations.

**Paragraph 13, Entry on Premises**

Entry into the SBWMA leased space by the City would be allowed with 24 hours' written notice. For emergency repairs, the City could enter without consent or notice.

**Paragraph 14, Lessee Parking**

The SBWMA and its guests could use the available public parking spaces in the Library's underground parking lot.

**Paragraph 16.1, Liability Insurance**

The SBWMA would be required to maintain a liability insurance policy of \$1,000,000.00 throughout the term of the Lease.

**Paragraph 9, City Repair of Lessee Damage**

If the City would be required to perform any repairs for damage caused by a casualty not covered by an insurance policy, as soon as reasonably possible or to give 30 days' written notice to the SBWMA that it wishes to terminate the Lease. If the City provides notice to terminate the Lease, the SBWMA could advise City within 10 days after receipt of the notice that it wishes to repair the damage at SBWMA's expense, without reimbursement from the City, and the Lease would continue in full force and effect.

**Paragraph 9.2, Total Destruction**

If at any time during the term of the Lease the premises are totally destroyed from any cause whether or not covered by insurance, the Lease would automatically terminate as of the date of total destruction.

**Fiscal Impact**

The initial monthly rent would be \$4,570.56 from July 1, 2017 to December 31, 2018. This lease rate equates to \$1.88 per sq. ft. As shown in the attached Marketbeat Report from Cushman & Wakefield, the third quarter 2016 overall average asking rent for all classes of commercial buildings in San Carlos is \$4.32 per square foot. The rate for Class A buildings in San Carlos is \$4.50. (Attachment 2)

**Attachments:**

1. Resolution 2017-10  
Exhibit A – Lease Agreement
2. Marketbeat Report from Cushman & Wakefield



## RESOLUTION NO. 2017-10

### RESOLUTION OF THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO THE LEASE AGREEMENT WITH THE CITY OF SAN CARLOS

**WHEREAS**, the South Bayside Waste Management Authority (SBWMA) has rented space for its offices in the San Carlos Library since 2003; and

**WHEREAS**, said current Lease Agreement expires June 30, 2017, and the SBWMA wishes to enter into a new Lease Agreement with the City of San Carlos as shown in Exhibit A; and

**WHEREAS**, the Board of Directors has reviewed the terms for the new Lease Agreement and finds those terms acceptable.

**NOW, THEREFORE BE IT RESOLVED** that the South Bayside Waste Management Authority hereby authorizes the Executive Director to enter into the Lease Agreement with the City of San Carlos, attached hereto as Exhibit A.

**PASSED AND ADOPTED** by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California on the 23<sup>rd</sup> day of February, 2017, 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. 2017-10 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on February 23, 2017.

ATTEST:

\_\_\_\_\_  
Bob Grassilli, Chairperson of SBWMA

\_\_\_\_\_  
Cyndi Urman, Board Secretary



**DRAFT FOR INTERNAL REVIEW AND CONSIDERATION**

**LEASE AGREEMENT**

THIS LEASE AGREEMENT (“Lease” or “Lease Agreement”), made and entered into this Nth day of February, 2017 by and between the CITY OF SAN CARLOS ("City"), a California municipal corporation, and the SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY (SBWMA) (“Lessee”), a California Joint Powers Authority, executed in the City of San Carlos, County of San Mateo.

WITNESSETH:

The parties hereto mutually agree as follows:

1. **Premises.** City hereby leases unto Lessee and Lessee hereby hires from City those certain Premises situated in the City of San Carlos, County of San Mateo, State of California, and more particularly described as follows: San Carlos Library, 610 Elm Street, San Carlos, California, 2<sup>nd</sup> Floor, Suite 202, totaling 2,429 square feet (“Premises” or “Leased Premises”).

2. **Lease Term.** To have and hold said Leased Premises, together with the appurtenances, rights, privileges, and easements thereunto belonging or appertaining unto Lessee for a term commencing on the 1<sup>st</sup> day of July, 2017, and ending on the 30<sup>th</sup> day of June, 2022 with such rights of termination as are hereinafter set forth with rent payable by Lessees as follows:

- Four Thousand Five Hundred Seventy Dollars and Fifty Six Cents (\$4,570.56) per month due monthly for the lease period of July 1, 2017 to December 31, 2018, payable on the first day of each month.
- Said rental shall increase by Three and One-Half Percent (3.5%) on January 1, 2019 and each year thereafter commencing January 1.

The Lease may be extended three additional years under the same terms with the authorization of the City Manager. The City and Lessee must mutually agree on lease extensions.

3. **Rental Payment Address.** Lessee agrees to pay the said rental to City at the address specified in Paragraph 4, or to such other address as City may designate by a notice in writing.

4. **Notices.** All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when hand delivered or sent via overnight courier to:

City at: City Manager  
City of San Carlos  
600 Elm Street  
San Carlos, CA 94070

Lessee at: Chief Executive Officer  
SBWMA  
610 Elm Street, Suite 202  
San Carlos, CA 94070

## **DRAFT FOR INTERNAL REVIEW AND CONSIDERATION**

5. **Hold Harmless.** Lessee does further expressly agree to defend, indemnify and save City, its officers, agents, and employees harmless from any and all claims for loss, damage, injury, or liability of whatsoever nature and howsoever the same may be caused or may arise resulting directly or indirectly from the exercise of this Lease or the occupation of the Premises herein permitted to be used or the Premises of City to which Lessee, its agents, employees, or Lessee may have access by reason of this Lease, other than claims arising from the gross negligence or willful misconduct of City.

6. **Prorated Rent.** Rent payable hereunder for any period of time less than that for which periodic rent is paid shall be determined by prorating the rent herein specified for the applicable period.

7. **City Reimbursement/Personal Property Taxes and Assessments.** Lessee shall be responsible for payment of all personal property taxes, special assessments, bonds or other charges that may be assessed during the term of the Lease and payable to the San Mateo County Tax Collector arising out of the Lease or occupation of the Premises. Lessee shall further be responsible for reimbursing the City during the Lease term, at Lessee's sole cost, the actual cost of the following services and utilities for the premises:

- A. Janitorial services, including but not limited to, regular cleaning of office areas and restrooms, toilet supplies and waste disposal.
- B. All Personal property taxes and assessments related to Lessee's occupation of the Premises, to the extent Lessor is required to advance said funds to the appropriate taxing authorities.
- C. All utilities, including trash, recycling, water, electrical and gas.
- D. Provision of other services may be negotiated at a future date.
- E. Charges shall be billed to the Lessee and be due fifteen (15) days after receipt of said billing.
- F. Said charges shall commence on the effective date of this Lease.

8. **Telephone and Internet Services.** Lessee shall be responsible for providing its own telephone services and equipment as well as Internet services and equipment during the term of this Lease.

9. **Maintenance Repairs and Alterations.**

9.1 **City's Obligations.** Except for damage caused by any negligent or intentional act or omission of Lessee, Lessee's agents, employees, or invitees, in which event Lessee shall repair the damage, City, at City's expense, shall keep in good order, condition and repair the foundations, exterior walls, heating, ventilation and air conditioning systems, electrical panel, water main and the exterior roofing surfaces of the Premises.

City shall not, however, be obligated to paint such exterior, nor shall City be required to maintain the interior surface of exterior walls, interior windows, doors or plate glass of the premises. City shall have no obligation to make repairs until a reasonable time after receipt of written notice of the need for such repairs. Request for these repairs and maintenance services shall be submitted to the City of San Carlos Parks Superintendent or designee in a timely manner with a reasonable lead time, except in emergency situations.

The City of San Carlos Parks Superintendent or designee will be the contact for Lessee for any repairs and maintenance services.

## **DRAFT FOR INTERNAL REVIEW AND CONSIDERATION**

**9.2 Lessee's Obligations.** Lessee accepts the Premises in their "AS IS" condition. Except as otherwise provided by this Lease, Lessee, at Lessee's expense, shall keep in good order, condition and repair the Premises and every part thereof (whether or not the damaged portion of the Premises or the means of repairing the same are reasonably or readily accessible to Lessee) except for the foundations, exterior walls, heating, and ventilation systems, water main, electrical panel, exterior roofing surfaces of the Premises and any termite damage that may exist at the commencement of this Lease. Lessee expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Lessee the right to make repairs at City's expense or to terminate this Lease because of City's failure to keep the Premises in good order, condition and repair.

Lessee shall be entitled to make repairs at its own cost and expense. Lessee is responsible for, and at its sole cost and expense, repairs and maintenance services required by usage of the space including, but not limited, to lamp replacement, painting and modifications. No structural changes or repairs or maintenance services, including but not limited to lighting fixture replacement, and electrical, mechanical or structural modifications, shall be made without approval of the City of San Carlos Parks Superintendent or designee. Any outside vendor selected by Lessee to perform any repairs or maintenance services including but not limited to lighting fixture replacement and structural, mechanical or electrical modifications shall be approved by the City of San Carlos Parks Superintendent or designee.

### **9.3 Alterations and Additions.**

(a) Lessee shall not without City's prior written consent make any alterations, improvements, additions, and/or Utility Installations within the Premises, exceeding One Thousand Dollars (\$1,000.00) in cost.

(b) As used in this section the term "Utility Installation" shall mean bus ducting, power panels, wiring, fluorescent fixtures, space heaters, conduits, air-conditioning and plumbing. City may require that Lessee remove any or all of said alterations, improvements, additions or Utility Installations at the expiration of the term, and restore the Premises to their prior condition. City may require Lessee to provide City, at Lessee's sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated costs of such improvements, to insure City against any liability for mechanic's and materialmen's liens or stop notices and to insure completion of the work. Should Lessee make any alterations, improvements, additions or Utility installations without the prior approval of City, City may require that Lessee remove any or all of such.

(c) Any alterations, improvements, additions or Utility Installations in or about the Premises that Lessee wish to make and which require the written consent of City shall be presented to City in written form with proposed detailed plans. If City shall give its consent the consent shall be deemed conditional upon Lessee's acquiring of a permit or permits to do so from appropriate agencies, the furnishing of a copy thereof to City prior to the commencement of the work, and the compliance by Lessee of all conditions of said permit or permits in a prompt and expeditious manner.

(d) Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use in the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein, or claimed under a stop notice. Lessee shall give City no less than ten (10) days notice prior to the commencement of any work in or on the Premises, and City shall have the right to post notices of non-responsibility in or on the Premises as provided by law. If Lessee shall, in good faith,

## **DRAFT FOR INTERNAL REVIEW AND CONSIDERATION**

contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend itself and City against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against City or the Premises, upon the condition that if City shall require, Lessee shall furnish to City a surety bond satisfactory to City in an amount equal to such contested lien claim or demand indemnifying City against liability for the same and holding the Premises free from the effect of such lien or claim. In addition, City may require Lessee to pay City's attorneys' fees and costs in participating in such action if City shall decide it is in its best interest to do so.

10. **Assignment and Subletting.** Lessee shall not assign or transfer this Lease or any interest therein, nor sublet the whole or any part of the Premises without the prior mutual agreement with the City. The Lessee understands that it is leasing space in a government building and that City reserves the right to determine who shall occupy its Premises.

Lessee further covenants and agrees that neither this Lease nor any interest therein shall be assignable or transferable in any proceedings in execution against Lessee, or in any voluntary or involuntary proceedings in bankruptcy, or insolvency taken by or against Lessee, or by process of law applying to such proceedings.

10.1 **Assignment and Subleasing.** Tenant shall not assign or hypothecate this Lease or any interest therein, sublet the Premises or any part thereof, or permit the use of the Premises by any Party other than Tenant without the prior written consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned. Any of the foregoing acts without such consent shall be void and shall, at the option of Landlord, be deemed an Event of Default and shall terminate this Lease. This lease shall not, nor shall any interest of Tenant herein, be assignable by operation of law without the written consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned, and except as set forth below.

10.1.1 **Conditions of Consent.** If at any time, or from time to time, during the Term Tenant desires to assign this Lease or sublet part of the Premises, Tenant shall give notice to Landlord setting forth the terms and provisions of the proposed assignment or sublease and the identity of the proposed assignee or subtenant. Tenant shall promptly supply Landlord with such information concerning the business background and financial condition of such proposed assignee or subtenant as Landlord may reasonably request. Landlord shall have the option, exercisable by notice given to Tenant within twenty (20) days after Tenant's notice is given, either to sublet such space from Tenant at the rental rate and on the other terms set forth in this Lease for the term set forth in Tenant's notice, or, in the case of a proposed assignment or sublease, to terminate this Lease. Landlord shall allow Tenant five (5) days from notice of Landlord's exercise of the option to terminate this Lease, to withdraw its proposed assignment or sublease. If Landlord does not exercise such option, Tenant may assign the Lease or sublet such space to the proposed assignee or subtenant on the following further conditions:

(a) Landlord shall have the right to approve such proposed assignee or subtenant, which approval shall not be unreasonably withheld;

(b) The assignment or sublease shall be on the same terms set forth in the notice given to Landlord;

(c) No assignment or sublease shall be valid, and no assignee or sublessee shall take possession of the Premises, until (1) an executed counterpart of such assignment or sublease shall have been delivered to Landlord and (2) Landlord shall have executed and delivered its consent to such sublease or assignment;

## **DRAFT FOR INTERNAL REVIEW AND CONSIDERATION**

(d) No assignee or sublease shall have the right further to assign or sublet without compliance with this Section 4.2.; and

(e) Fifty (50%) percent of any sums or other economic consideration received by Tenant as a result of such assignment or subletting, however denominated under the assignment or sublease, which exceed, in the aggregate, the total sums which Tenant is obligated to pay Landlord under this Lease for the relevant period of the sublease or assignment (prorated to reflect obligations allocable to any portion of the Premises subleased) excluding any real estate brokerage commissions, reasonable attorneys' fees, Tenant improvements payable in connection with such assignment or subletting, and the unamortized value of any tenant improvements made and paid for by Tenant shall be paid to Landlord as Additional Rent under this Lease without affecting or reducing any other obligations or Tenant hereunder. "Additional rent" shall not be included in calculating the net amount due Landlord hereunder.

**10.2.2 No Waiver or Release.** No subletting or assignment shall release Tenant of its obligations under this Lease or alter the primary liability of Tenant to pay the Rent and to perform all other obligations to be performed by Tenant hereunder. The acceptance of Rent by Landlord from any other person shall not be deemed to be a waiver of Landlord of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default of an assignee or subtenant of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee, subtenant, or successor. Landlord may consent to subsequent assignments of the Lease or sublettings or amendments or modifications to the Lease with assignees of Tenant without notifying Tenant, or any successor Tenant, and without obtaining its or their consent thereto, and any such actions shall not relieve Tenant of liability under this Lease.

**10.2.3 Administrative Fee.** If Tenant assigns the Lease or sublets the Premises or requests the consent of Landlord to any assignment or subletting, Tenant shall, upon demand, pay Landlord attorney's fees reasonably incurred by Landlord in connection with such act or request, not to exceed \$2,000.

**11. Use of Premises.** The Premises are hereby leased to Lessee upon the express condition that Lessee shall use said Premises for use as the administrative offices and meeting space for the SBWMA. Lessee shall not use any portion of the Premises for purposes other than those specified hereinabove, and no use shall be made or permitted to be made upon the Premises, nor acts done, which will increase the existing rate of insurance upon the property, or cause cancellation of insurance policies covering said property.

**12. Use of Conference Rooms.** Lessee shall coordinate their use of the public conference rooms on the second floor of the library building with the City's Parks and Recreation Administrative Staff. The library will get first priority for conference room usage during the day. City sponsored and public usage of the conference rooms will be second priority during the day. Lessee will get third priority usage of these rooms during the day. The conference rooms will be given first priority for public usage and City sponsored meetings during evening hours. Where Lessee has obtained prior approval to use a conference room, said usage shall not be preempted without Lessee's prior consent. Lessee shall pay for the use of Library Conference Room A and/or B at the prevailing rate and following the same guidelines as prescribed for San Carlos community organizations.

## **DRAFT FOR INTERNAL REVIEW AND CONSIDERATION**

13. **Entry on Premises.** City may enter the Premises with consent of Lessee or upon prior reasonable written notice to Lessee (24 hours shall be deemed reasonable advance notice) for the purposes of conducting reasonable inspection, making repairs, alterations or additions, showing the Premises to prospective tenants, purchasers, or mortgagees, or for any other valid and reasonable business purpose. Entry shall be made during regular business hours. In the event of an emergency (such as fire or plumbing leak, etc.), City may enter the Premises without consent or prior notice.

14. **Lessee Parking.** Lessee and its guests are allowed to park in the available public parking spaces in the library's underground parking lot.

15. **Binding on Successors.** This Lease is and shall be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

16. **Insurance.**

16.1 **Liability Insurance.** Lessee shall, at Lessee's expense, obtain and keep in force during the term of this Lease a policy of combined single limit bodily injury and property damage insurance insuring City and Lessee against any liability arising out of the ownership interest, use, occupancy or maintenance of the Premises and all areas appurtenant thereto

Such insurance shall be a combined single limit policy in an amount no less than One Million Dollars (\$1,000,000.00). The policy shall contain cross liability endorsements and insure performance by Lessee of the indemnity provisions of this Lease. The limits of said insurance shall not, however, limit the liability of Lessee hereunder. In the event that the Premises constitute a part of a larger property said insurance shall have a Lessor's Protective Liability endorsement attached thereto. If Lessee shall fail to procure and maintain said insurance, City may, but shall not be required to, procure and maintain the same and at the expense of Lessee.

City and its agents, employees and officials shall be named as additional insureds on said policy and Lessee shall provide City with a certificate of said insurance coverage.

16.2 **Insurance Company Rating.** Insurance required hereunder shall be in companies holding a "General Policyholders Rating" of B plus or better as set forth in the most current issue of the "Best Insurance Guide." Lessee shall deliver to City copies of policies of liability insurance required or certificates evidencing the existence and amounts of such insurance with loss payable clauses satisfactory to City. No such policy shall be cancelable or subject to reduction of coverage or other modification except after ten (10) days prior written notice to City. Lessee shall, within ten (10) days prior to the expiration of such policies, furnish City with renewals or "binders" thereof, or City may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee upon demand. Lessee shall not do or permit to be done anything which shall invalidate the insurance policies referred to herein.

16.3 **Waiver of Subrogation.** Lessee and City each hereby waives any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, for loss of or damage to such waiving party or its property or the property of others under its control, where such loss or damage is insured against under any insurance policy in force at the time of such loss or damage. Lessee and City shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.



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16.4 **Exemption of City from Liability.** Lessee hereby agrees that City shall not be liable for injury to Lessee's "business" or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Lessee, Lessee's employees, invitees, customers, or any other person in, on, or about the Premises, nor shall City be liable for injury to the person of Lessee, Lessee's employees, agents or contractors whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether the said damage or injury results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Lessee.

17. **Severability.** If any provision of this Lease Agreement, or its application, is held invalid, it will not affect other provisions or application herein which can be given effect without the invalid provision or application. To this end, all provisions of the Lease Agreement are severable.

18. **Attorney's Fees.** In the event of litigation or arbitration between the parties over the terms or performance of this Lease, the prevailing party shall be entitled to reasonable attorney's fees and costs.

19. **City Repair of Lessee Damage.** If at any time during the term hereof the Premises are damaged, except by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at its expense), and such damage was caused by a casualty not covered under an insurance policy required to be maintained by City, City may at City's option either (i) repair such damage as soon as reasonably possible at City's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Lessee within thirty (30) days after the date of the occurrence of such damage of City's intention to cancel and terminate this Lease as of the date of the occurrence of such damage. In the event City elects to give such notice of City's intention to cancel and terminate this Lease, Lessee shall have the right within ten (10) days after the receipt of such notice to give written notice to City of Lessee's intention to repair such damage at Lessee's expense, without reimbursement from City, in which event this Lease shall continue in full force and effect, and Lessee shall proceed to make such repairs as soon as reasonably possible.

If Lessee does not give such notice within the ten (10) day period, this Lease shall be terminated as of the date of the occurrence of such damage.

19.1 **Total Destruction.** If at any time during the term hereof the Premises are totally destroyed from any cause whether or not covered by the insurance required to be maintained by City (including any total destruction required by any authorized public authority) this Lease shall automatically terminate as of the date of such total destruction.

19.2 **Termination – Advance Payments.** Upon termination of this Lease an equitable adjustment shall be made concerning advance rent and any advance payments made by Lessee to City. City shall, in addition, return to Lessee so much of Lessee's security deposit that has not already been applied by City.

20. **Defaults.** The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Lessee:

- (a) The vacating or abandonment of the Premises by Lessee;

## **DRAFT FOR INTERNAL REVIEW AND CONSIDERATION**

(b) The failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as and when due, where such failure shall continue for a period of three (3) days after written notice thereof from City to Lessee;

(c) The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than described in paragraph (b) above, where such failure shall continue for a period of thirty (30) days after written notice from City to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion;

(d) (i) The making by Lessee of any general arrangement for the benefit of creditors; (ii) the filing by or against Lessee of a petition to have Lessee judged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days; and

(e) The discovery by City that any financial statement given to City by Lessee, any assignee of Lessee, any subtenant of Lessee, any successor in interest of Lessee or any guarantor of Lessee's obligation hereunder, and any of them, was materially false.

**20.1 Remedies.** In the event of any such material default or breach by Lessee, City may at any time thereafter, with or without notice or demand, and without limiting City in the exercise of any right or remedy which City may have by reason of such default or breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises to City. In such event City shall be entitled to recover from Lessee all damages incurred by City by reason of Lessee's default including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorney's fees, and any real estate commission actually paid, the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided.

(b) Maintain Lessee's right to possession in which case this Lease shall continue in effect whether Lessee have abandoned the Premises. In such event, City shall be entitled to enforce all of City's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder.

(c) Pursue any other remedy now or hereafter available to City under the laws or judicial decisions of the State of California.

**20.2 Late Charges.** Lessee hereby acknowledges that late payment by Lessee to City of rent and other sums due hereunder will cause City to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain.



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Such costs include, but are not limited to, processing and accounting charges and late charges which may be imposed on City by the terms of any mortgage or trust deed covering the Property. Accordingly, if any installment of rent or any other sum due from Lessee is not received by City or City's designee within fifteen (15) days after such amount is due, Lessee shall pay to City a late charge equal to Six Percent (6%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs City will incur by reason of late payment by Lessee. Acceptance of such late charge by City shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent City from exercising any of the other rights and remedies granted hereunder.

21. **Time of Essence.** Time is of the essence.

22. **Notice.** Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery or by certified mail, and if given by personal delivery or by certified mail, and if given personally or by mail, shall be deemed sufficiently given if addressed to Lessee or to City at the address noted in section 4 for the respective parties, as the case may be. Either party may be notice to the other specify a different address for notice purposes except that upon Lessee taking possession of the Premises, the Premises shall constitute Lessee's address for notice purposes. A copy of all notices required or permitted to be given to City hereunder shall be concurrently transmitted to such party or parties at such addresses as City may from time to time hereafter designate by notice to Lessee.

22 **Holding Over.** If Lessee remains in possession of the Premises or any part thereof after the expiration of the term hereof without the express written consent of City, such occupancy shall be a tenancy from month to month at a rental in the amount of the last monthly rental plus all other charges payable hereunder, and upon all terms hereof applicable to a month to month tenancy.

IN WITNESS WHEREOF, this Lease has been executed by the parties hereto as of the date first above written.

DATED: \_\_\_\_\_, 2014

CITY OF SAN CARLOS

By \_\_\_\_\_  
Jeff Maltbie, City Manager

DATED: \_\_\_\_\_, 2014

SOUTH BAYSIDE WASTE  
MANAGEMENT AUTHORITY

By \_\_\_\_\_  
Chief Executive Officer

DATED: \_\_\_\_\_, 2014

Approved as to Form

By \_\_\_\_\_  
Greg Rubens, City Attorney

# MARKETBEAT

## San Mateo County

### Office & R&D Q3 2016



#### SAN MATEO COUNTY OFFICE & R&D

##### Economic Indicators

	Q3 15	Q3 16*	12-Month Forecast
San Mateo County Employment	419K	439K	▲
San Mateo County Unemployment	3.8%	3.3%	▲
U.S. Unemployment	5.2%	4.9%	▼

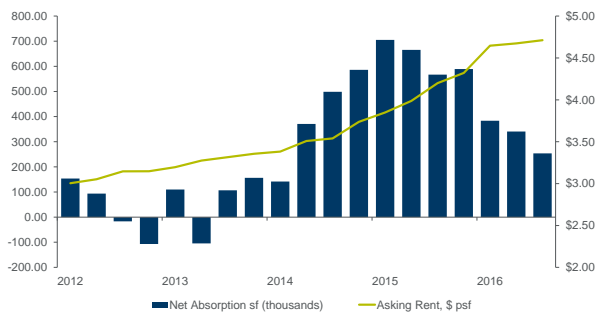
\*Q3 16 data based on the average of July and August values.

##### Market Indicators

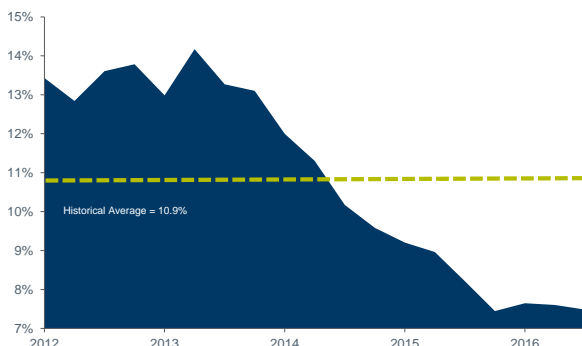
	Q3 15	Q3 16	12-Month Forecast
Overall Vacancy	8.2%	7.5%	▲
Net Absorption (sf)	576K	229K	▼
Under Construction (sf)	553K	1.2M	▼
Average Asking Rent*	\$4.20	\$4.71	▲

\*Rental rates reflect full service asking \$psf/month

##### Overall Net Absorption/Overall Asking Rent (Full Service) 4-QTR TRAILING AVERAGE



##### Overall Vacancy



### Market Remains Strong with Uptick in Activity

The Bay Area's commercial real estate market began to ease off the throttle after several years of record growth. Despite the adjustment, the Bay Area's employment levels remain at an all-time high with almost four million workers. Unemployment in the Bay Area resides at a low 4.3%, well below the national average of 4.9%. The overarching trend points to prices remaining high and vacancy still very low, however, the rates of growth for occupancy and rental rates are decreasing. This is in part due to blocks of cheaper sublease space coming back on the market. While this may seem like negative news, smaller corrections can help ease an overheated market and avoid sharper declines later.

At the close of the third quarter of 2016, San Mateo County's Office and R&D combined vacancy rate eased by 10 basis points to 7.5%, from last quarter's reading of 7.6%. Vacancy has been on the decline since reaching 17.2% in 2009. The last time San Mateo County experienced occupancy this high was during the economic boom at the turn of the 21<sup>st</sup> century. That said, since the beginning of the year, sublease space being returned to the market has increased significantly. At the end of 2015, combined Office and R&D product recorded a total of 766,000 square feet (SF) of sublease space, which then climbed back up to over 1.0 million square feet (MSF) halfway through 2016. For the third quarter, sublease vacancy did ease slightly to 955,000 SF, a significant portion of this reduction is due to EMC taking their sublease listing off the market consisting of the entire building at 162 Jefferson Drive in Menlo Park. Facebook signed a deal here on a direct basis with Sobrato instead. The current sublease to direct ratio stands at 23.9% which is slightly above the average over the last five years. Regardless, the sheer number of sublease listings has been increasing in recent quarters. This could be considered positive news for tenants, who are more likely to benefit from these additional options which are generally built-out (move-in ready) and are, for the most part, at a lower price point.

Prices continue to increase quarter over quarter, however, the velocity of growth has started to wane. For the third quarter, the average asking price for the combined Office and R&D product was \$4.71 per square foot, on a monthly basis, full service (PSF), just 0.9% higher than the \$4.67 PSF in Q2 2016. Arguably, the increase in more affordable sublease space is the root cause of the slow down as many landlords continue to raise prices on direct availability. Taking a look back historically, prices have jumped 73.8% since the aftermath of the 2008 housing crisis when San Mateo County recorded an average price of \$2.71 PSF. Over the past year alone, the average asking rent has risen 12.1% from \$4.20

# MARKETBEAT

## San Mateo County

Office & R&D Q3 2016



PSF.

Net absorption increased significantly from under +24,000 SF in the second quarter to over +229,000 SF in the third quarter. Most of this growth can be attributed to Facebook completing and occupying 180,000 SF at 300 Constitution in Menlo Park (build to suit). Year-to-date, the combined occupancy growth has increased to just over +469,000 SF. While 2016 is well in the black, these figures pale in comparison to both 2014 and 2015 which recorded over +2.3 MSF of occupancy growth each. That said, even with the recent decline, the full year will be quite healthy.

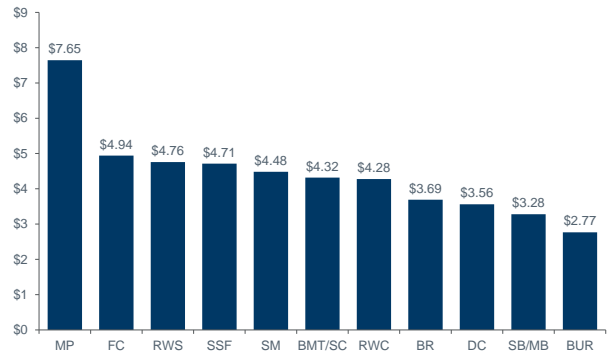
### MARKET BOUNDS BACK AFTER LAST QUARTER'S STALL. MORE PENDING DEALS COULD BOOST EXPANSION EVEN FURTHER.

North County has a tremendous amount of activity from the life science industry that has yet to hit the books. New development projects are being fought over and leased up before they can be completed. In cases such as Genesis (formerly known as Centennial Towers), office product is being transformed into R&D / life science. We believe that these additional projects will only add to occupancy growth for San Mateo County in the fourth quarter of 2016 and into 2017.

### Outlook

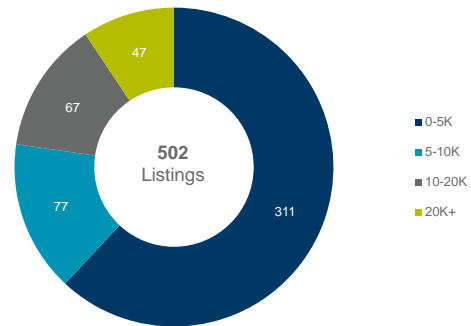
- Office and R&D vacancy slightly decreased to 7.5% down from 7.6% last quarter. While there was an increase in the number of listings coming on from last quarter, larger deals were made to bring vacancy down.
- The combined Office and R&D average asking rate is still climbing but losing velocity. San Mateo County now rests at a peak of \$4.71 FS
- The life science industry is pushing growth in North San Mateo County. Many pending deals should land soon.

### Average Asking Rate by Submarket (Full Service) MENLO PARK CONTINUES TO COMMAND HIGHEST RENTS



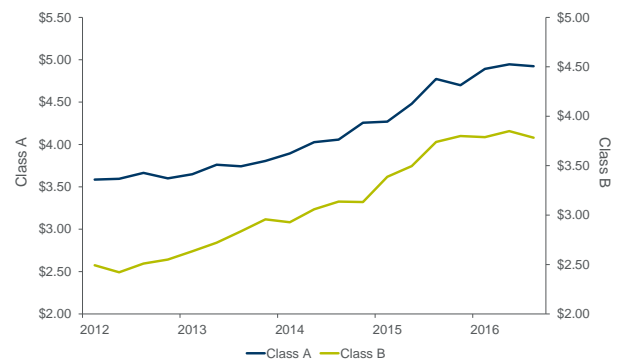
### Availabilities by Size Segment

THE NUMBER OF LISTINGS HAS DECREASED 1.6% FROM Q3 2015



### Average Asking Rate by Class (Full Service)

OFFICE ASKING RATE GROWTH IS DECLINING



# MARKETBEAT

## San Mateo County

### Office & R&D Q3 2016



SUBMARKET	INVENTORY (SF)	SUBLET VACANT (SF)	DIRECT VACANT (SF)	OVERALL VACANCY RATE	CURRENT QTR OVERALL NET ABSORPTION (SF)	YTD OVERALL NET ABSORPTION (SF)	UNDER CONSTRUCTION (SF)	OVERALL AVERAGE ASKING RENT* (ALL CLASSES)	OVERALL AVERAGE ASKING RENT* (CLASS A)
Daly City	933,281	810	146,241	15.8%	21,909	76,847	0	\$3.56	\$4.03
Brisbane	962,719	52,001	237,084	30.0%	-60,542	-11,637	0	\$3.69	\$3.77
S. San Francisco	11,564,186	109,486	539,900	5.6%	52,488	128,868	231,394	\$4.71	\$3.50
San Bruno/Millbrae	1,705,911	22,427	12,805	2.1%	27,850	89,224	0	\$3.28	\$3.71
Burlingame	2,381,729	40,471	171,557	8.9%	-18,622	-55,227	0	\$2.77	\$3.17
<b>NORTH COUNTY TOTALS</b>	<b>17,547,826</b>	<b>225,195</b>	<b>1,107,587</b>	<b>7.6%</b>	<b>23,083</b>	<b>228,075</b>	<b>231,394</b>	<b>\$4.02</b>	<b>\$3.62</b>
San Mateo	7,448,926	239,545	665,089	12.1%	-145,189	28,768	302,468	\$4.48	\$4.99
Foster City	4,893,312	87,725	286,375	7.6%	-22,688	57,709	300,000	\$4.94	\$4.99
Redwood Shores	6,024,550	149,466	333,106	8.0%	51,457	-1,319	0	\$4.76	\$4.79
<b>CENTRAL COUNTY TOTALS</b>	<b>18,366,788</b>	<b>476,736</b>	<b>1,284,570</b>	<b>9.6%</b>	<b>-116,420</b>	<b>85,158</b>	<b>602,468</b>	<b>\$4.65</b>	<b>\$4.92</b>
Belmont/San Carlos	2,649,117	0	55,120	2.1%	-14,366	79,539	0	\$4.32	\$4.50
Redwood City	6,350,672	181,106	242,675	6.7%	96,582	-132,019	209,647	\$4.28	\$4.26
Menlo Park	8,446,017	71,766	348,522	5.0%	240,546	208,515	205,222	\$7.65	\$9.84
<b>SOUTH COUNTY TOTALS</b>	<b>17,445,806</b>	<b>252,872</b>	<b>646,317</b>	<b>5.2%</b>	<b>322,762</b>	<b>156,035</b>	<b>414,869</b>	<b>\$5.85</b>	<b>\$6.59</b>
<b>CLASS BREAKDOWN</b>									
Office Class A	23,610,750	679,503	1,941,627	11.1%	287,867	265,212	717,337	\$4.92	
Office Class B	5,907,246	114,624	403,848	8.8%	31,169	56,226	0	\$3.78	
R&D	20,402,218	512,881	143,669	3.2%	(71,429)	152,360	531,394	\$3.75	
<b>TOTAL</b>	<b>53,360,420</b>	<b>954,803</b>	<b>3,038,474</b>	<b>7.5%</b>	<b>229,425</b>	<b>469,268</b>	<b>1,248,731</b>	<b>\$4.71</b>	<b>\$4.92</b>

\*Rental rates reflect full service asking \$psf/month

#### Key Lease Transactions Q3 2016

PROPERTY	SF	TENANT	LANDLORD	TRANSACTION TYPE	SUBMARKET
162 Jefferson Drive	135,307	Facebook, Inc.	Sobrato Development Co.	Relocation	Menlo Park
Bayshore Technology Park	100,676	Shutterfly, Inc.	Prudential Investment Mgmt.	Renewal	Redwood Shores
500-600 Clipper Drive	53,508	Volkswagon of America	Undisclosed	Sublease	Redwood Shores
2765 Sand Hill Road	28,162	O'Melveny & Meyers	Addison Wesley Publishing	Renewal	Menlo Park

#### Key Sale Transactions Q3 2016

PROPERTY	SF	BUYER	SELLER	SALE PRICE / \$PSF	MARKET
San Mateo Bay Center	302,432	Rubicon Point Partners	Rockpoint Group LLC	\$157,000,000 / \$519	San Mateo
Century Centre	274,619	Invesco	La Salle Investment	\$142,000,000 / \$517	San Mateo
Keynote Plaza	187,435	Wafra Investment	Cornerstone Real Estate	\$94,000,000 / \$502	San Mateo

# MARKETBEAT

## San Mateo County

Office & R&D Q3 2016



Office & R&D Submarkets  
San Mateo County



Cushman & Wakefield  
1350 Bayshore Highway  
Burlingame, CA, 94010

For more information, contact:  
Cole Speers  
Senior Research Analyst  
Tel: +1 650 401 2112  
cole.speers@cushwake.com

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## STAFF REPORT

**To:** SBWMA Board Members  
**From:** Farouk Fakira, Finance Manager  
**Date:** February 23, 2017 Board of Directors Meeting  
**Subject:** Approval of Quarterly Investment Report for the Quarter Ended December 31, 2016

### Recommendation

It is recommended that the SBWMA Board review and accept the Quarterly Investment Report.

### Analysis

The primary objective of the Investment Policy for the SBWMA is safety of principal, while meeting the cash flow needs of the Authority, through prudent investment of unexpended cash. As of December 31, 2016, the investment portfolio was in compliance with the Investment Policy. The portfolio contains sufficient liquidity to meet the next six months of expected expenditures by the Authority as well as by other third parties.

### Fiscal Impact

The attached Investment Portfolio Summary indicates that as of December 31, 2016, funds in the amount of \$17,681,659 were invested, producing a weighted average yield of 0.53%.

Below is a summary of the changes from the last quarter.

	<b>Qtr Ended 12/31/16</b>	<b>Qtr Ended 9/30/16</b>	<b>Increase (Decrease)</b>
Total Portfolio	\$ 17,681,659	\$ 17,424,918	\$ 256,741
Weighted Average Yield	0.53%	0.52%	0.01%
Interest Earnings	\$ 26,645	\$ 24,394	\$ 2,251

The total portfolio balance increased by \$256,741. The increase is primarily due to the required monthly debt service transfers into the bond account from operating funds (\$1.0m), which more than offsets a decrease in the combined LAIF/SMCP investment accounts (\$0.8m) due to transfers out to cover operating expenses. While the quarter-end weighted average yield remained level, greater interest earnings were achieved by maintaining a higher average balance in the San Mateo County Pool fund for a large part of the quarter, which bore a greater return.

A table comparison of the portfolio components is provided below:

	<b>12/31/2016 Balance</b>	<b>% of Total</b>	<b>9/30/2016 Balance</b>	<b>% of Total</b>	<b>Change over Prior Quarter</b>
SM County Pool	\$ 5,289,351	30%	\$ 6,274,875	36%	\$ (985,524)
LAIF	6,723,255	38%	6,513,338	37%	209,917
Bond Account	5,669,053	32%	4,636,705	27%	1,032,348
<b>Total Portfolio</b>	<b>\$ 17,681,659</b>	<b>100%</b>	<b>\$ 17,424,918</b>	<b>100%</b>	<b>\$ 256,741</b>

Note: There may be minor differences in totals as individual amounts are rounded to the nearest dollar



Due to arbitrage restrictions, bond investments are not included in our LAIF rate or investment pool comparison. As of December 31, 2016, the bond reserve and payment accounts of approximately \$5.7 million were invested with the trustee in short-term investments.

As of December 31, 2016, investments in the County Investment Pool totaled 44% of SBWMA's funds available for investment pools (see Attachment 1). The percentage is within the range specified by the SBWMA Board.

The average yield of the portfolio in the quarter excluding the bond proceeds was 0.79%. LAIF is used as a benchmark and the average LAIF yield for the quarter ending December 31, 2016, was 0.68%. The San Mateo County Pool average yield for the quarter was 0.92%.

The Investment Advisory Committee, consisting of Jeff Maltbie, City Manager of San Carlos; Michael Galvin, City Treasurer for San Carlos; and Rebecca Mendenhall, Administrative Services Director of San Carlos, have reviewed this report before presentation to the Board.

### **Attachments**

- A – Summary of All Investments for Quarter Ending December 31, 2016
- B – Investment Portfolio 12/31/2016 - Chart
- C – Historical Summary of Investment Portfolio

**SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY**

**SUMMARY OF ALL INVESTMENTS**  
For Quarter Ending December 31, 2016

Category	Weighted Average Interest Rate	Historical Book Value	% of Portfolio	GASB 31 ADJ Market Value*	Interest Earned
<b>Liquid Investments:</b>					
San Mateo County Investment Pool (COPOOL)	0.92%	\$ 5,289,351	44%	\$ 5,289,351	\$ 17,018
Local Agency Investment Fund (LAIF)	0.68%	6,723,255	56%	6,719,381	9,611
<b>Total - Investments</b>	<b>0.79%</b>	<b>12,012,606</b>	<b>100.00%</b>	<b>12,008,732</b>	<b>26,629</b>
<b>Bond Accounts - Cash with Fiscal Agents</b>					
BNY Western Trust - Dreyfus Cash Mgmt 670 Inv^ 2009A Reserve Fund Account	0.00%			-	-
BNY Western Trust - Dreyfus Cash Mgmt 670 Inv^ 2009A Payment Fund Account	0.00%			-	-
BNY Western Trust - Blackrock Treasury Trust Instl 62 2009A Reserve Fund Account	0.00%	4,126,632		4,126,632	12
BNY Western Trust - Blackrock Treasury Trust Instl 62 2009A Payment Fund Account	0.00%	1,542,421		1,542,421	4
<b>Total - Bond Accounts</b>	<b>0.00%</b>	<b>5,669,053</b>		<b>5,669,053</b>	<b>16</b>
<b>GRAND TOTAL OF PORTFOLIO</b>	<b>0.53%</b>	<b>\$ 17,681,659</b>		<b>\$ 17,677,785</b>	<b>\$ 26,645</b>
<b>Total Interest Earned This Quarter</b>				<b>26,645</b>	
<b>Total Interest Earned Fiscal Year-to-Date</b>				<b>51,039</b>	

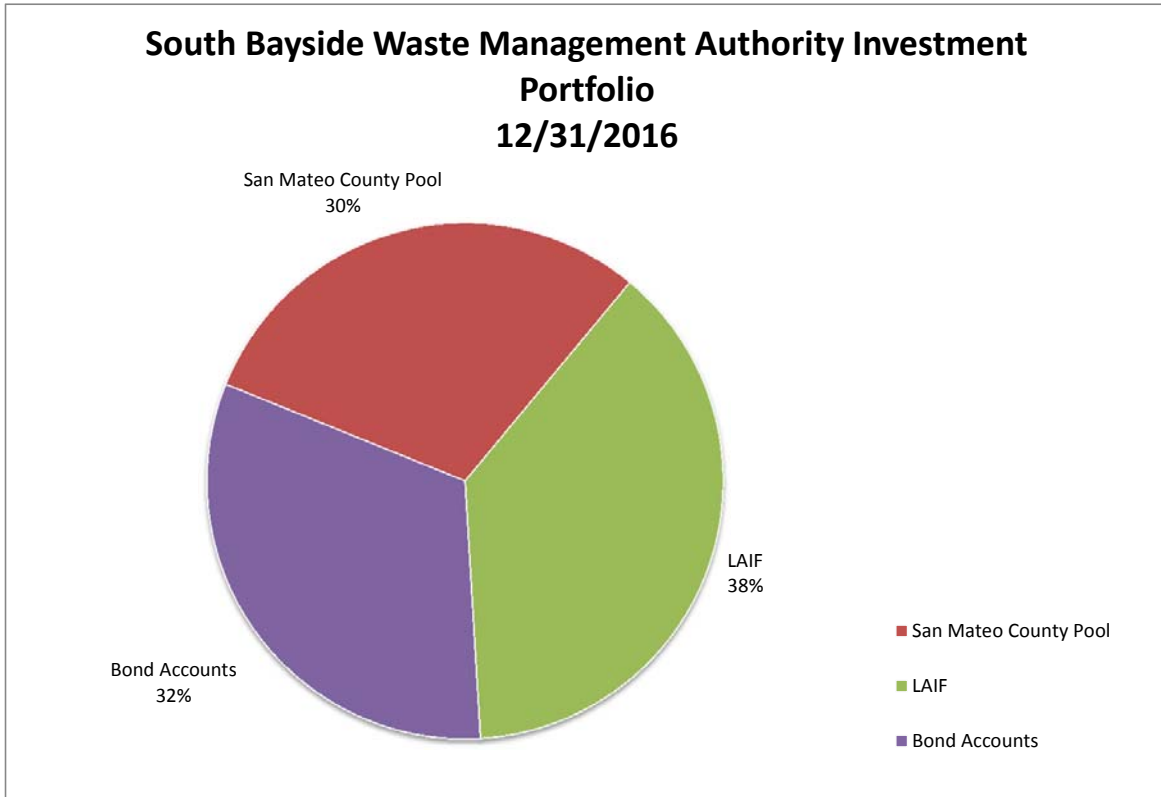
^ - Balances in Dreyfus Cash Mgmt fund transferred to Blackrock Treasury fund during month of October, 2016

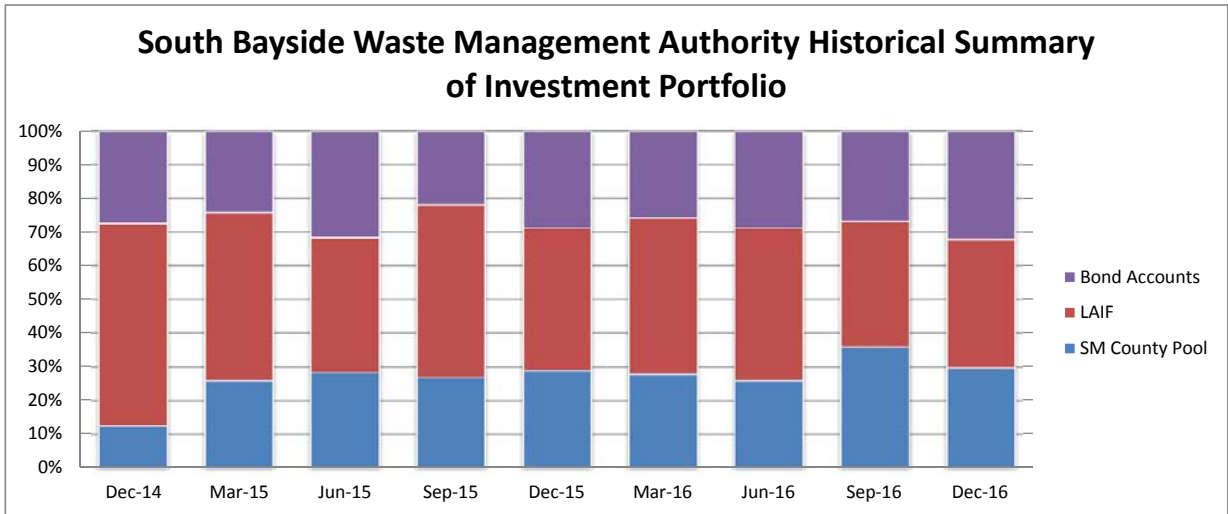
**Note: SBWMA Board approved the following investment mix at its January 22, 2015 meeting:**

LAIF - 50% to 70%  
COPOOL - 30% to 50%

\*Difference in value between Historical Value and Market Value may be due to timing of purchase. Investments in the investment pools may have been purchased when interest rates were lower or higher than the end date of this report. As interest rates increase or decrease, the value of the investment pools will decrease or increase accordingly. However, interest rate fluctuations does not have any impact to SBWMA's balance in the investment pools. The market values are presented as a reference only.







**South Bayside Waste Management Authority Portfolio**

	<b>Dec-14</b>	<b>Mar-15</b>	<b>Jun-15</b>	<b>Sep-15</b>	<b>Dec-15</b>	<b>Mar-16</b>	<b>Jun-16</b>	<b>Sep-16</b>	<b>Dec-16</b>
SM County Pool	2,596,754	5,700,859	5,719,002	5,728,746	5,739,190	5,750,398	5,762,103	6,274,875	5,289,351
LAIF	12,456,035	10,864,026	7,971,342	10,878,169	8,385,354	9,593,633	10,003,104	6,513,338	6,723,255
Bond Accounts	5,659,274	5,264,849	6,296,018	4,631,288	5,662,254	5,289,337	6,320,831	4,636,705	5,669,053
<b>Grand Total</b>	<b>\$20,712,063</b>	<b>\$21,829,734</b>	<b>\$19,986,362</b>	<b>\$21,238,203</b>	<b>\$19,786,798</b>	<b>\$20,633,368</b>	<b>\$22,086,038</b>	<b>\$17,424,918</b>	<b>\$17,681,659</b>