



OFFICE OF THE CITY CLERK
OAKLAND

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AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Vitaly B. Troyan, P.E

SUBJECT: Zero Waste Request for Proposals

DATE: March 23, 2012

City Administrator
Approval

Date

4-17-12

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council approve a Resolution Adopting The Zero Waste System Request For Proposals Economic Benefit Provisions: Competitive Wages and Benefits, Local Business Participation, Local Hire Preference Points, Job Retention, and In-County Landfill Points; And Allowing Full Consideration Of Proposal(s) From Companies Headquartered In Arizona.

EXECUTIVE SUMMARY

The City Council has approved a Zero Waste System Design, and a process and schedule for releasing a Request For Proposals (RFP) to procure new Franchise Contracts (Contracts) to provide recycling, solid waste collection and disposal services that the System Design comprises. Policy decisions on economic benefit measures that will be included in the RFP are presented in this report for City Council consideration. These contracting policies will affect the cost proposals received in response to the RFP process, and will be incorporated into the resulting Contracts. The policies include competitive wages and benefits, local business participation, local hire, job retention, and in-county landfill preference, which are discussed in Section II "Policy Recommendations", following an overview of the services described in the RFP.

OUTCOME

Approval of the resolution will establish the inclusion in the RFP of the following economic benefit contracting provisions:

- Competitive Wages and Benefits
- Maximization of Local Business Participation
- Local Hire Preference Points

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- Job Retention
- In-County Landfill Points

In addition, the resolution will allow full consideration of proposals received from companies headquartered in Arizona. The City Council's policy direction on these matters will allow staff to complete the RFP, which will be issued on or about May 23, 2012.

BACKGROUND/LEGISLATIVE HISTORY

The City of Oakland's Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Services with Waste Management of Alameda County (WMAC), and the Agreement for Residential Recycling Service with California Waste Solutions (CWS) expire on June 30, 2015.

In 2006 the City Council adopted a Zero Waste Strategic Plan that included developing a new System Design to be used in a Request for Proposals (RFP) process to procure new Contracts. On January 17, 2012 the City Council adopted a System Design that provides the framework for developing new Contracts, including a single franchise for citywide garbage and organics collection services, a single franchise for citywide residential recycling, and landfill capacity procured separately from collection and processing services. On February 21, 2012 the City Council adopted a process and schedule for releasing a RFP for zero waste service contracts, including a Protocol for Process Integrity. On April 3, 2012, Council adopted several policies related to the RFP, including proposal evaluation criteria and weighting, method for adjusting customer rates, diversion performance measurement, and continued participation in Alameda County Measure D.

In this report, economic benefit contracting policy decisions are presented for City Council consideration. These policies will affect the cost proposals received in response to the RFP process, and will be incorporated into the resulting Contracts.

ANALYSIS

January 17, 2012, the City Council adopted Resolution No. 83689 C.M.S., establishing a framework for the Zero Waste System Design. On February 21, 2012, the City Council adopted Resolution No. 83729 C.M.S., establishing a process and schedule for releasing a RFP to procure new contracts to provide the services that the System Design comprises. On April 3, 2012, the City Council adopted Resolution No. 83783 C.M.S., establishing proposal evaluation criteria weighting, approving use of an industry-related index for adjusting customer rates, providing Contract diversion performance incentives, and continuing participation in Alameda County Measure D fees.

This report presents:

- an overview of the RFP and the three Contract service groups it covers, including information about services that will be provided to the City, and the outreach and education program required in the Contracts;
- information about Oakland Municipal Code and Contract requirements that garbage service be provided to every property where garbage is generated;
- contract provisions to compel performance by the service providers (Franchisees);
- policy recommendations related to economic benefit measures, including competitive wages and benefits, maximization of local business participation, local hire, job retention, and in-county landfill; and
- a recommendation to allow full consideration of proposals received from companies headquartered in Arizona.

I. Informational Items

A. RFP Overview

The RFP will provide detailed information, data, and instructions sufficient to enable eligible proposers to submit proposals that are responsive to the City's requirements. The RFP will include background information on Oakland demographics, City government, current programs, the City's procurement goals, service requirements, forms and schedules to be completed by proposers, descriptions of the process integrity requirements and the proposal evaluation process.

The RFP includes a model Contract or for each of the three Contract service groups adopted in the Zero Waste System: garbage and organics collection, residential recycling collection, and landfill disposal.

1. Garbage and Organic Materials Contract

The company selected for this Contract will be the exclusive provider of garbage and organic materials (G/O) collection services to all residential and commercial buildings in Oakland, including bulky item collection services for both single family and multi-family residential buildings.

The G/O Franchisee will transport the collected organic and bulky item materials to material processing facilities, and transport garbage to the landfill. The G/O Franchisee will be required to maximize the recovery of organic materials. The proposals will allow for the respondents to identify the methods for processing the organic materials into commodities, including compost and soil amendments, with possible energy recovery during processing. The G/O Franchisee will be required to bill its customers for all services provided, and for the services provided by the Residential Recycling Franchisee.

2. Residential Recycling Contract

The company selected for this Contract will be the exclusive provider of residential recycling collection (RR) services to all residential buildings in Oakland. In addition to cans, bottles and paper products, the RR Franchisee will be required to collect and recycle used motor oil and filters, and household batteries.

3. Landfill Disposal Contract

The company selected for this Contract will provide landfill disposal services only. The City will contract with this Franchisee to provide, at a contracted price per ton, capacity at its landfill sufficient for the disposal of Oakland garbage collected and delivered by the Garbage and Organic Materials Franchisee. In addition, this contract includes disposal of residue generated from the processing of recyclable and organic materials delivered by the RR Franchisee and the G/O Franchisee, respectively.

B. City Services Overview

The City will receive services through the Contracts similar to those provided in the existing agreements with WMAC and CWS: collection of recyclables, organic materials, and garbage from City facilities; and acceptance of City-hauled recyclables, organic materials, garbage, and other regulated waste materials at a nearby disposal or recycling facility, or the provision of additional collection services to accommodate the absence of local disposal options. Services will include collection, maintenance, and provision of street litter containers; assistance to the City with abatement of illegal dumping; and delivery of finished compost or other soil amendments for City and community use.

C. Education & Outreach Program

A Zero Waste Education and Outreach Program (Program) will be fully funded and implemented through the two collection Contracts. The Franchisees will be required to submit Annual Outreach Plans (Plans) subject to City approval. They will be responsible for providing a high level of technical assistance to businesses and multifamily buildings in the first three years of the Contract term, and an ongoing Outreach Coordinator (Franchisee employee). The Program will include annual mailing of program information to residents and businesses. All outreach products will be subject to the City's review and approval, and meet the City's equal access policy.

The Plans will be designed to increase participation in and effectiveness of waste diversion programs as well as the suite of services available for proper disposal of garbage. The Plans will incorporate public information and community involvement elements. The Plans will address the needs of Oakland residents and businesses, including property owners, tenants, and employees, in addition to the account holders who pay the "garbage" bill.

Outreach efforts will target specific materials, service sectors, or geographic areas, where improvements can be maximized. Targets of outreach efforts will be based on local trends in customer participation and disposal of recyclable materials, determined through audits, surveys and studies performed by the Contractors, the City or other qualified agencies such as StopWaste.Org.

Preceding the new Contracts start up on July 1, 2015, a citywide outreach and education campaign on the Zero Waste system will be executed. Special attention will be given to the customers who would experience the most significant changes to the services they receive. The new Franchisees will assist building owners and businesses to comply with the countywide mandatory recycling ordinance that becomes effective July 1, 2012, which will affect multifamily buildings and businesses. In addition to any changes in services, customers will be notified of any adjustments to the billing system and change in service providers that may be part of new Contracts implementation.

D. Mandatory Garbage & Liens

The Oakland Municipal Code (O.M.C.) requires owners of property where solid waste is generated to subscribe to not less than weekly garbage collection from the City's exclusive Franchisee. To ensure that garbage collection, an essential service to protect the public health and safety, is continued whether or not the residential customer pays the bill, the City established a lien process that is defined in the O.M.C. The lien process allows the Franchisee to forward to the City after the close of a billing period, any uncollected payments due from residential customers. The City pays the Franchisee the delinquent amount and then liens the property to collect the unpaid bill. The City attempts to recover the delinquent amount and its administrative costs through allowable fees when the lien is cleared, which may occur up to five years after the City has paid the Franchisee.

Many cities that require garbage service regardless of bill payment use a lien process that is different from Oakland's. These cities pay the franchisee only after receiving the proceeds from the lien being cleared. Cities that use this lien process have a typical bill payment delinquency rate of 1%, while Oakland's delinquency rate has been 10% for many years.

Three methods the City can use to address protecting the public health and safety by requiring garbage collection service are: (1) the status quo lien process, (2) alternate lien process, and (3) no lien process. Each of these options has certain risks for the City.

Using the status quo lien process the City might not recover all portions of the payments it has made to the franchisee. It may also be encouraging delinquent payments because the property owners receive service irrespective of payment.

In the alternate lien process, the franchisee would forward the uncollected bills at the end of a billing cycle to the City and continue to provide garbage collection service. The City would

lien the property, however the franchisee would not receive payment until the City receives lien proceeds from the County Assessor's Office. This process would forestall any loss to the City from uncollected liens, and provide incentive to the franchisee to collect delinquent bills. As with the status quo lien process, the alternate lien process may encourage delinquent payments because property owners receive service irrespective of payment.

The third process, the no lien process, would require the franchisee to collect payment from the customer through a prescribed schedule of notices before turning over the unpaid bill to a collection agency. After the bill is forwarded to a collection agency the franchisee would be allowed to stop service. This process eliminates possible City losses on collection of unpaid bills or liens. However, to continue to protect the public health and safety, the City would need to put financial and staff resources into blight and garbage service enforcement.

To understand the impact of the delinquent bill payment rate on the cost of service, the RFP will require proposers to submit proposals that provide rates for both the alternate lien process and the no lien process.

E. Performance Compliance Measures

The Contracts will require Franchisees to adhere to performance standards and measures. The primary goal is to engender customer (residential, commercial, and City) satisfaction with the Contract services, which includes protecting public health and safety in the discharge of those services. The Franchisees are expected to deliver reliable, high quality service resulting in maximum diversion of recyclable and organic materials. In addition to measures described in the March 27, 2012 agenda report to address diversion performance, the Franchisees will be required to adhere to basic standards of conduct that apply to the Franchisees' employees in the delivery of services to Oakland residents and businesses, and to the management of these services. Where possible, liquidated damages have been identified for specific service failures, such as telephone customer service, spills, litter, missed setouts, timeliness in cart delivery, accurate billing, inaccurate reporting, and commingling of materials. More egregious violations of the contract may be addressed as events of default or breach.

F. Bonds & Insurance

The Franchisees will be required to carry appropriate insurance for Commercial General Liability, Automobile Liability, Workers Compensation and Employers Liability, Hazardous Waste and Environmental Impairment Liability, and Crime for Employee Theft. The details of the scopes, limits, endorsements, waivers, and claims relating to the insurance requirements have been reviewed in detail by the Risk Management staff. In addition, the Franchisees will be required to indemnify the City. Finally, each Franchisee will furnish the City a performance bond, or an irrevocable letter of credit, in an amount appropriate for the contract. Provisions for indemnification and bonding have been reviewed by the Office of the City Attorney.

II. Policy Recommendations

This section describes the recommendations for the application of the City's contracting and purchasing policies and ordinances for this specific RFP. Because these Franchise Contracts are neither Professional Services Agreements nor Construction Contracts, the City's contracting and purchasing policies and ordinances do not apply. However, they have been included in the RFP.

The size and term of these Contracts provide an economic opportunity for Oakland residents and businesses. However, established industry standards for these types of Contracts necessitate thoughtful application of provisions to secure the desired economic and social benefits.

While the RFP process must strike a balance between securing economic benefits for Oakland and achieving the best customer rates for the services, it must also guard against unintentional bias or infeasible requirements that would suppress competition.

The City's five adopted Ordinances that apply to Professional Services Agreements or Construction Contracts include: Equal Benefits, Living Wage, Campaign Contributions, Prompt Payment, and Prevailing Wage. Additionally, the City has several policies that apply or may apply to professional services and construction contracts: 15% Apprenticeship, Disadvantaged Business, Arizona Resolution, Local and Small Local Business, and Certification and Local Employment Program.

Each of the three Contracts will include the City's provisions for Equal Benefits, Living Wage, and Campaign Contributions. These provisions are included in the existing Solid Waste Franchise and Residential Recycling Contract. The other provisions recommended for inclusion in the Contracts follow.

Competitive Wages and Benefits

It is recommended that the RFP require proposers to provide competitive wages and benefits relative to similar operations in the Bay Area region. Garbage, organics, and recycling collection and processing in the region are typically performed through labor agreements. These negotiated agreements provide for competitive and equitable worker wages and benefits.

Local Business Participation

As noted, the Local and Small Local Business Enterprise Program ordinance does not presently apply to franchise agreements. However, staff recommends that every effort be made to maximize the participation of Local Businesses in the three proposed franchise agreements. This recommendation is not intended to give preference to the incumbent companies but to allow for competition among the qualified firms to propose the most cost-effective services while ensuring a substantial presence in Oakland.

Local Hire Preference Points

Similarly, it is recommended that the Garbage and Organics and Residential Recycling procurement include additional points for Local Hire, which would be awarded based on the proposer's commitment to give preference to Oakland residents for new hires which would achieve greater levels of Oakland resident participation in benefits from these long term franchises. Up to five additional points, beyond the 100 points established for proposal evaluation, as established in December 2011 through Ordinance No. 13101 C.M.S., will be awarded for proposals committing to Oakland new hires by specific dates in the proposal.

Oakland Workforce	Additional Points
Up to 24%	1.00 pt
25% - 49%	2.00 pts
50% - 74%	3.00 pts
75% - 99%	4.00 pts
100%	5.00 pts

Job Retention

It is recommended that the Garbage and Organics and Residential Recycling Franchisee(s) provide employment preference to the current contractors' employees, and the proposals must describe how the proposer would provide the current employees employment preference.

In-County Landfill Points

It is recommended that the RFP award bonus points for in-county landfill for the economic benefit accrued to Oakland. The Contract for landfill disposal, which will not be in Oakland's geographical boundary, has limited opportunities for a "return" of economic benefit to Oakland beyond what is expected as a very competitive price for landfill disposal.

There are two landfills located in Alameda County, Altamont and Vasco Road landfills. Awarding preference points for in-county landfill disposal would acknowledge the direct and indirect economic benefits that are received for these businesses' location in the county, including a portion of sales taxes paid by an in-county landfill that would be allocated to Oakland. In addition, property, payroll, business license, and gas taxes paid by an in-county landfill fund services that Oakland receives from Alameda County.

Applying the Alameda County Measure D Fee to the City's disposal tons regardless of the location of the landfill equalized the competition between in-county and out-of- county landfills. This recommendation for economic benefits, awarding bonus points for in-county landfills, would favor landfills located in Alameda County, while not excluding the competition from landfills in other counties that would help to drive down the cost proposals.

Non-Applicability of Boycott Arizona Based-Businesses Policy

It is recommended that the City Council give full consideration to proposal(s) received through the RFP process for businesses headquartered in Arizona. In April 2010, the City Council

adopted Resolution No. 82727 C.M.S., which urges City departments to refrain from entering into new contracts with companies that are headquartered in Arizona. This policy does not apply to franchise agreements, only to contracts for the purchase of goods and services. Moreover, even under the Arizona policy, the City Council can consider awarding contracts to businesses headquartered in Arizona if there is cost implication and furthers competition. In order to receive the most competitive rates that will be paid by Oakland residents and businesses, the City needs to solicit highly competitive proposals from qualified firms.

Republic Services, a company headquartered in Arizona, is a nationwide provider of recycling and solid waste collection services, and a landfill operator. Locally, Republic Services provides recycling and solid waste collection to the cities of Fremont, Union City, Piedmont, Richmond, Hercules, Pinole, and San Pablo, and to the cities served by the Central Contra Costa Solid Waste Authority; they operate a solid waste transfer station in west Contra Costa County and three Bay area landfills. Republic Services has requested the City waive the Arizona restriction (*Attachment A*), and doing so will allow them to respond to the RFP and have their proposal(s) fully considered. For each of the three Contracts that will be procured through the RFP, there are only a handful of qualified firms that may apply, particularly for landfill disposal. Allowing all qualified firms to propose as part of the Zero Waste RFP will stimulate competition among the qualified firms and result in the most cost-effective services for the rate payers.

PUBLIC OUTREACH/INTEREST

This item did not require any additional public outreach other than the required posting on the City's website.

COORDINATION

Public Works staff has coordinated closely with the Office of the City Attorney, the Division of Contract Compliance, the Risk Management Division, and the Revenue Division for this report and the development of the RFP and model Contracts.

COST SUMMARY/IMPLICATIONS

There are no direct fiscal impacts associated with the adoption of the resolution.

SUSTAINABLE OPPORTUNITIES

Economic: Expanding and actively supporting use of discarded materials drives local economic and workforce development with 'green collar' jobs and value added production.

Environmental: Waste reduction and recycling conserves natural resources, reduces air and water pollution, protects habitat, and reduces greenhouse gas (GHG) emissions.

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Social Equity: The Zero Waste System will help provide new living-wage jobs for the community.

CEQA

Appropriate CEQA review will be conducted prior to the award of the Franchise Contracts.

For questions regarding this report, please contact Susan Kattchee, Environmental Services Manager, 510-238-6382.

Respectfully submitted,



VITALY B. TROYAN, P.E.
Director, Public Works Agency

Reviewed by:
Brooke A. Levin, Assistant Director

Reviewed by:
Susan Kattchee, Environmental Services Manager

Prepared by:
Becky Dowdakin, Solid Waste & Recycling Prog. Sup.
Environmental Services Division

Attachments –
A – Republic Services Letter

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April 24, 2012



February 29, 2012

Ms. Becky Dowdakin
Solid Waste and Recycling Program Supervisor
City of Oakland Public Works Agency
Environmental Services Division
250 Frank Ogawa Plaza, Suite 5301
Oakland, CA 94612

Dear Ms. Dowdakin:

Republic Services would like the opportunity to participate in the City of Oakland's upcoming RFP for Zero Waste Services, and we request a waiver from the City's policy regarding businesses based in Arizona.

In today's cash-strapped environment, it is important for the City of Oakland to establish a competitive procurement process that encourages the maximum level of response from service providers to ensure that the City has the opportunity to select the best possible proposal to benefit Oakland residents and businesses. As this RFP represents one of the City's largest competitive procurements, valued at over \$60 million per year for a term of 20-30 years, differences in vendor bids can result in significant cost savings to the City. Oakland taxpayers deserve to have bids from every major service provider, who wishes to participate, represented.

The City Council's resolution on this issue is specific in its direction that a company's Arizona affiliation be considered only "in instances where there is no significant additional cost to the City." It is only possible to determine the cost savings to the City once the competitive procurement process has been completed and every vendor wishing to participate has been considered.

Republic Services is the second largest company in the country providing residential and commercial solid waste, recycling and organics collection, as well as processing and disposal services. In the Bay Area, we operate 18 divisions, employ over 1100 people, and have made providing a safe, respectful and rewarding workplace our priority. All of our divisions are managed locally, with virtually all operational decisions made at the local level. Our employees live and work in the Bay Area and embody the region's diversity. Republic Services is proud to contribute to the Bay Area economy and keep middle-class jobs here. We are a local company with deep-seated roots in the communities we serve.

Republic Services prides itself on its award-winning, community-responsive, environmentally responsible and cost-effective services. We look forward to having the opportunity to participate in the City of Oakland's RFP for Zero Waste Services, and demonstrate our commitment to providing environmentally conscious, high quality, low cost services to Oakland residents and businesses.

Sincerely,

A handwritten signature in black ink that reads "Mike Caprio". The signature is written in a cursive, flowing style.

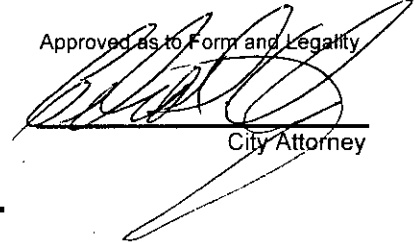
Mike Caprio
Area President, Northern California
3260 Blume Dr.
Richmond, CA 94806

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OAKLAND CITY COUNCIL

Approved as to Form and Legality



City Attorney

RESOLUTION No. _____ C.M.S.

RESOLUTION ADOPTING ZERO WASTE SYSTEM REQUEST FOR PROPOSALS ECONOMIC BENEFIT MEASURES: COMPETITIVE WAGES AND BENEFITS, JOB RETENTION, LOCAL BUSINESS PARTICIPATION, LOCAL HIRE PREFERENCE POINTS, IN-COUNTY LANDFILL PREFERENCE POINTS; AND SEEKS PROPOSALS FROM ALL QUALIFIED FIRMS TO ESTABLISH COMPETITION TO AVOID SIGNIFICANT ADDITIONAL COSTS TO CITY RATE PAYERS

WHEREAS, the City of Oakland's Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Services with Waste Management of Alameda County, and the Agreement for Residential Recycling Service with California Waste Solutions expire on June 30, 2015; and

WHEREAS, on December 5, 2006 through Resolution No. 80286 C.M.S. the City Council adopted a Zero Waste Strategic Plan; and

WHEREAS, on January 17, 2012 through Resolution No. 83689 C.M.S the City Council adopted a Zero Waste System Design that provides the framework for developing new Contracts under a single franchise for citywide garbage and organics collection services, a single franchise for citywide residential recycling, and landfill capacity procured separately from collection and processing services; and

WHEREAS, on February 21, 2012 through Resolution No. 83729 C.M.S. the City Council adopted a process and schedule for releasing a RFP for three new zero waste service franchise contracts for solid waste/organic, recycling, and land fill disposal ("Franchise Contracts"), including a Protocol for Process Integrity; and

WHEREAS, on April 3, 2012 the City Council adopted a resolution establishing proposal evaluation criteria and weighting, a method for annually adjusting customer rates, diversion performance measurement, and continued participation in Alameda County Measure D; and

WHEREAS, the City Council has adopted Ordinances and Resolutions to enhance the economic benefits to Oakland and its residents and businesses when awarding construction contracts and professional services agreements; and

WHEREAS, the City will use a competitive procurement through a Request for Proposals (RFP) to establish the Franchise Contracts for zero waste services and landfill disposal; and

WHEREAS, businesses interested in submitting proposals in response to the City's Zero Waste System Request for Proposals will invest significant money and time to prepare proposals; and

WHEREAS, allowing firms headquartered in Arizona the opportunity to participate in the RFP for Zero Waste Services and thus allowing more competition for the RFP for Zero Waste Services and subsequent Franchise Contracts will avoid significant additional cost to the City rate payers;

WHEREAS, the City purchasing and development policies and ordinances applicable to contracts for the purchase of goods, construction, services and development projects do not apply to franchise agreements under which franchised businesses provide city services in exchange for fees paid by resident users or ratepayers; now for therefore be it

RESOLVED: that the City Council hereby adopts the following economic benefit provisions for the Zero Waste System RFP and subsequent Franchise Contracts:

1. Competitive Wages and Benefits will be required of proposers relative to similar operations in the Bay Area region; and
2. Maximization of Local Business Participation for the Garbage and Organics and Residential Recycling Contracts; and
3. Local Hire Preference Points beyond the 100 points established for proposal evaluation, will be awarded for commitment to hire Oakland residents as new hires for the Garbage and Organics and Residential Recycling Contracts; and
4. Employment Preference for the employees of the current solid waste franchise and residential recycling contractor in the Garbage and Organics and Residential Recycling Franchises; and
5. In-County Landfill bonus points, up to three points, may be awarded for Landfill Disposal proposals including in-county landfills; and be it

FURTHER RESOLVED the City seeks proposals for the Zero Waste Services from all qualified firms to establish competition to avoid significant additional costs to City rate payers.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California