

1 SUSAN K. GAREA, SBN 260407  
ADRIAN BARNES, SBN 253131  
2 **BEESON, TAYER & BODINE, APC**  
3 483 Ninth Street, 2nd Floor  
Oakland, CA 94607-4051  
4 Telephone: (510) 625-9700  
Facsimile: (510) 625-8275  
5 Email: ABarnes@beesontayer.com

6 Attorneys for Petitioner  
7 Teamsters Local 350

8 **UNITED STATES OF AMERICA**  
9 **BEFORE THE NATIONAL LABOR RELATIONS BOARD**  
10 **REGION 32**

12 TEAMSTERS LOCAL 350,

13 Petitioner,

14 and

15 BROWNING-FERRIS INDUSTRIES OF  
16 CALIFORNIA, INC., d/b/a BFI NEWBY  
ISLAND RECYCLERY,

17 Employer,

18 and

19 FPR-II, LLC, d/b/a LEADPOINT BUSINESS  
20 SERVICES,

21 Employer.

Case No. 32-RC-109684

**PETITIONER'S MOTION FOR THE  
BOARD TO TAKE ADMINISTRATIVE  
NOTICE**

23 Pursuant to Rule 201 of the Federal Rules of Evidence, Petitioner hereby moves the Board, in  
24 connection with Petitioner's Request for Review of the Regional Director's Decision and Direction of  
25 Election, to take administrative notice of the following Notice of Violation and Order to Pay  
26 Restitution issued by the City of San Jose to Republic Services of Santa Clara County,<sup>1</sup> and

27 <sup>1</sup> Employer Browning-Ferris Industries of California, Inc., d/b/a BFI Newby Island Recyclery, is a subsidiary  
28 of Republic Services and is referred to by employees generally and in the record as Republic Services (*see*  
Transcript of the hearing before Hearing Officer Paloma Loya on August 5, 2013, Tr. 43:5-19).

1 correspondence regarding that Notice. The Notice of Violation orders Republic Services to pay  
2 wages to employees of its subcontractors operating at the Newby Island Recyclery, including FPR-II,  
3 LLC, d/b/a Leadpoint Business Services.

- 4 (a) Letter from Nina Grayson, Director, Office of Equality Assurance, Department of Public  
5 Works, City of San Jose, to Michael Caprio, Area President, Republic Services of Santa Clara  
6 County (Dec. 2., 2013) (A copy is annexed hereto as Attachment A);
- 7 (b) Letter from Thomas M. Bruen, Counsel for Allied Waste Services of Santa Clara County, to  
8 Rosa Tsongtaatarii, Senior Deputy City Attorney, City of San Jose, and Nina Grayson,  
9 Director, Office of Equality Assurance (Dec. 11, 2013) (A copy is annexed hereto as  
10 Attachment B);
- 11 (c) Notice of Violation and Order to Pay Restitution from Nina Grayson, Director, Office of  
12 Equality Assurance, Department of Public Works, City of San Jose, to Michael Caprio, Area  
13 President, Republic Services of Santa Clara County (Dec. 16, 2013) (A copy is annexed  
14 hereto as Attachment C)

15 Dated: January 7, 2014

BEESON, TAYER & BODINE, APC

16 By: 

SUSAN K. GAREA  
ADRIAN BARNES

Attorneys for Petitioner Teamsters Local 350

**ATTACHMENT A**

December 2, 2013

Via Email – [MCaprio@republicservices.com](mailto:MCaprio@republicservices.com) & USPS

Michael Caprio  
Area President  
Republic Services of Santa Clara County  
1601 Dixon Landing Road  
Milpitas CA 95035

**RE: Commercial Solid Waste & Recyclable Materials Collection Franchises Agreement**

Dear Mike:

The purpose of this letter is to provide Republic one last opportunity to disclose to the City documents to confirm whether Republic has complied with the living wage requirements as set forth in Exhibit E of the Commercial Solid Waste and Recyclable Materials Collection Franchises Agreement Between the City of San Jose and Allied Waste Services of North America LLC dba Allied Waste Services of Santa Clara County dated September 6, 2011 (Franchises Agreement). Republic has had numerous opportunities since July 2013 to cure and confirm compliance with the living wage requirement. At the November 7, 2013 meeting between the City and Republic, Republic assured the City that it would respond by November 12, 2013 with more specific information regarding the pay rate for each of the classifications providing services under the Franchises Agreement. On November 27, 2013, the City received a letter from Allied Waste Services of Santa Clara County, through its attorney, Thomas M. Bruen, stating the sorters at the Recyclery are paid an hourly rate that is less than the required living wage rate.

The consequence of noncompliance with the wage provisions are significant including restitution to employees, liquidated damages in an amount triple the restitution amount, and possible suspension or termination of the Franchises Agreement. In order to avoid a possible breach of the Franchises Agreement, I recommend Republic take all necessary steps to cure and confirm compliance with Exhibit E, including immediate restitution to all current and former Republic employees and any current and former employees of subcontractors and affiliates providing services under the Franchises Agreement. Republic can mitigate its damages by immediately paying its employees and the employees of its subcontractors and affiliates the current living wage rate of \$17.03.

Please submit the following documents by Friday, December 6, 2013 close of business to demonstrate current compliance with the Franchises Agreement:

1. List of all subcontractors and affiliates

Michael Caprio

RE: Commercial Solid Waste & Recyclable Materials Collection Franchises Agreement

December 2, 2013

Page Two

2. Labor Compliance Workforce Statement(s) for all employees performing work within the scope of the Franchises Agreement including employees of all subcontractors and affiliates
3. Labor Compliance Fringe Benefit Statement(s) along with verification of fringe benefits if provided for all positions performing work permitted by the Franchise Agreement except for the following positions: Commercial Recycle Driver, Industrial Driver, Residential Driver, Container Shop Laborer, Container Shop Welder, Maintenance Shop PM Mechanic and Maintenance Shop – Mechanic Trucks
4. Employee signed time cards from July 1, 2012 to current (same classifications identified in 3. above)
5. Payroll Registers for July 1, 2012 to current (same classifications identified in 3. above)

Should these documents not be provided by close of business on December 6, 2013, the City reserves the right to issue an official Notice of Violation. Please find attached a courtesy Draft copy of the Notice of Violation.

Thank you for your prompt attention and cooperation.

Sincerely,



Nina Grayson  
Director

c Tom Bruen Esq.  
Gil Cheso, Republic Services, Inc.  
Joan Gallo Esq.  
Kerrie Romanov, Environmental Services Department  
Rosa Tsongtaatarii, City Attorney's Office  
Jo Zientek, Environmental Services Department

Issue Date: December 9, 2013

Via Email – [MCaprio@republicservices.com](mailto:MCaprio@republicservices.com) & USPS

Michael Caprio  
Area President  
Republic Services of Santa Clara County  
1601 Dixon Landing Road  
Milpitas CA 95035

**RE: DRAFT NOTICE OF VIOLATION - Commercial Solid Waste & Recyclable  
Materials Collection Franchises Agreement**

Dear Mike:

The Office of Equality Assurance (OEA) has determined that Republic Services of Santa Clara County (Republic) has not complied with the City of San Jose's living wage requirements of the Commercial Solid Waste and Recyclable Materials Collection Franchises Agreement Between the City of San Jose and Allied Waste Services of North America LLC dba Allied Waste Services of Santa Clara County dated September 6, 2011 (Franchises Agreement).

**Order to Pay Restitution**

The OEA has determined that Republic and its affiliates and subcontractors failed to pay its workers performing work under the Franchises Agreement a City of San Jose living wage as required under the Franchises Agreement.

The attached restitution calculation is based on the following best available information:

- Republic's October 2013 staffing levels provided to the Environmental Services Department. Based on titles and count, 193 workers were paid less than the City's established living wage rates.
- There are 173.33 workable hours in a month. Since July 1, 2012, the estimated number of workable hours is 2,946.61. These hours do not include overtime or any holiday hours.
- The City's living wage rate for July 1, 2012 through June 20, 2013 was \$15.98 per hour.
- The City's living wage rate for July 1, 2013 through June 30, 2014 is \$17.03 per hour.
- The State of California minimum wage rate is \$8.00 per hour.

Michael Caprio

RE: **DRAFT NOTICE OF VIOLATION - Commercial Solid Waste & Recyclable Materials Collection Franchises Agreement**

December 9, 2013

Page Two

- The City's minimum wage rate, effective March 11, 2013 is \$10.00 per hour.
- The average percentage of San Jose tons delivered and processed at the NIRRP MRF for the period July 2012 through July 2013 is 65% of all tons delivered and processed through NIRRP MRF.

Based on the above, Republic is ordered to pay **\$13,396.94** in restitution to each worker. Total gross restitution for 193 workers is **\$2,585,608.59**.

#### **Liquidated Damage for Violation of Living Wage Requirement**

In accordance with the City of San Jose's Franchises Agreement, Franchisee shall pay to the City as liquidated damages the amount of **\$7,756,825.77**, the sum of three (3) times the difference between the actual amount of wages paid and the living wage. Republic is directed to remit a check payable to the City of San Jose no later than twenty (20) days from the date of the issuance of this Notice of Violation. The check is to be delivered or mailed to the following address: City of San Jose, Nina Grayson, Office of Equality Assurance, 200 East Santa Clara Street, Fifth Floor, San Jose CA 95113.

#### **Payment Process Information**

Republic must deliver the restitution checks for all underpaid workers by mail or in person to Nina Grayson, 200 East Santa Clara Street, Fifth Floor, San Jose CA 95113 no later than twenty (20) days from the date of the issuance of this Notice of Violation. OEA will disperse the restitution checks to the affected workers.

#### **Notice of Violation Review Process**

Republic has the right to contest this Notice of Violation. Republic is afforded the opportunity to provide additional information and relevant documentation to the OEA no later than ten (10) days from the date of the issuance of this Notice of Violation.

The additional information and relevant documentation will be reviewed and responded to by the OEA. If Republic is still not satisfied with the result, Republic is afforded the opportunity to speak with the Director of Public Works no later than ten (10) days following a response from the OEA. The Director of Public Works' decision will be final.

#### **Failure to Comply**

Should Republic fail to comply within the time required by this Notice of Violation or within the time required by the decision of the Director of Public Works, the City reserves all rights to take

Michael Caprio

RE: **DRAFT NOTICE OF VIOLATION - Commercial Solid Waste & Recyclable Materials Collection Franchises Agreement**

December 9, 2013

Page Three

appropriate enforcement action.

Sincerely,

Nina Grayson  
Director

Attachments

c Tom Bruen Esq.  
Gil Cheso, Republic Services, Inc.  
Joan Gallo Esq.  
Kerrie Romanov, Environmental Services Department  
Rosa Tsongtaatarii, City Attorney's Office  
Jo Zientek, Environmental Services Department



## Operations

NIRRP's permit allows it to operate 24 hours per day, 7 days per week. Current operating hours are 4 a.m. to 11 p.m. Monday through Friday and Saturday 4 a.m. to midnight. The facility is closed on the following holidays: New Year's Day, Independence Day, Thanksgiving Day, and Christmas Day. No further changes to the operating hours or holiday schedule are currently being contemplated.

Staffing by Title		
Title	Count	Responsibility
General Manager	1	Oversee all activity and personnel
Supervisors	7	Oversee Facility, Maintenance, Safety, Shifts
Administrative	3	Accounting and clerical
Maintenance	✓ 11	Maintain Equipment
Scale House Operators	✓ 3	Conduct scale house operations
Truck Drivers	11	Material movement on site and to ZWED
Equipment Operators	✓ 10	Loaders, Material Handlers, Sort Line
Lift Truck Operators	✓ 6	Conduct shipping dock operations
Load Check/Spotters	✓ 5	Inspect loads, direct traffic
Sorter - Dry CDR Pre-Sort - Day	✓ 4	Hand sort materials
Sorter - Dry CSS Pre-Sort - Day	✓ 6	Hand sort materials
Sorter - WET Pre-Sort - Day	✓ 7	Hand sort materials
Sorter - Residential Pre-Sort - Day	✓ 6	Hand sort materials
Sorter - Dry Post Sort - Day	✓ 9	Hand sort materials
Sorter - Shared Fiber QC - Day	✓ 20	Hand sort materials
Sorter - Shared Container Line - Day	✓ 10	Hand sort materials
Sorter - Shared Bale Cleaning - Day	✓ 3	Hand sort materials
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Sorter - Dry CDR Pre-Sort - Swing	✓ 4	Hand sort materials
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Sorter - WET Pre-Sort - Swing	✓ 7	Hand sort materials
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Sorter - Line Leads - Swing	✓ 4	Supervise the Sort Staff
Sorter - Manager	1	Manage all sorter operations
Quality Control Sorter	✓ 1	Test incoming and outgoing material quality
Housekeepers	✓ 19	Clean property and equipment
	(193)	

Month	Total SJ Tons Inbound to NIRPP	% of SJ tons at NIRRP MRF
Jul-12	6,200	not available
Aug-12	16,285	68%
Sep-12	14,490	65%
Oct-12	17,968	67%
Nov-12	17,037	65%
Dec-12	16,734	65%
Jan-13	16,268	63%
Feb-13	14,433	66%
Mar-13	15,918	66%
Apr-13	16,122	65%
May-13	16,634	66%
Jun-13	15,227	63%
Jul-13	16,506	65%
Aug-13	15,070	not available
Sep-13	14,292	not available

average 65%

**Republic Restitution Calculations**

Commercial Solid Waste and Recyclable Materials Collection Franchises Agreement

Month	Workable Hours By Month	Living Wage Rate	Rate Paid by Republic/Affiliate/Subcontractor	Difference/Living Wage Rate & Rate Paid	Restitution Owed Each Worker
Jul-12	173.33	\$15.98	\$8.50	\$7.48	\$1,296.51
Aug-12	173.33	\$15.98	\$8.50	\$7.48	\$1,296.51
Sep-12	173.33	\$15.98	\$8.50	\$7.48	\$1,296.51
Oct-12	173.33	\$15.98	\$8.50	\$7.48	\$1,296.51
Nov-12	173.33	\$15.98	\$8.50	\$7.48	\$1,296.51
Dec-12	173.33	\$15.98	\$8.50	\$7.48	\$1,296.51
Jan-13	173.33	\$15.98	\$8.50	\$7.48	\$1,296.51
Feb-13	173.33	\$15.98	\$8.50	\$7.48	\$1,296.51
Mar-13	173.33	\$15.98	\$10.00	\$5.98	\$1,036.51
Apr-13	173.33	\$15.98	\$10.00	\$5.98	\$1,036.51
May-13	173.33	\$15.98	\$10.00	\$5.98	\$1,036.51
Jun-13	173.33	\$15.98	\$10.00	\$5.98	\$1,036.51
Jul-13	173.33	\$17.03	\$10.00	\$7.03	\$1,218.51
Aug-13	173.33	\$17.03	\$10.00	\$7.03	\$1,218.51
Sep-13	173.33	\$17.03	\$10.00	\$7.03	\$1,218.51
Oct-13	173.33	\$17.03	\$10.00	\$7.03	\$1,218.51
Nov-13	173.33	\$17.03	\$10.00	\$7.03	\$1,218.51
<b>Subtotal Per Worker</b>					<b>\$20,610.67</b>
<b>Total Per Worker @ 65%</b>					<b>\$13,396.94</b>
<b>Total - 193 Workers</b>					<b>\$2,585,608.59</b>
<b>LD Assessment</b>					<b>\$7,756,825.77</b>

**ATTACHMENT B**

THOMAS M. BRUEN  
ERIK A. REINERTSON

LAW OFFICES OF  
**THOMAS M. BRUEN**  
A PROFESSIONAL CORPORATION  
1990 NORTH CALIFORNIA BOULEVARD  
SUITE 620  
WALNUT CREEK, CALIFORNIA 94596

TELEPHONE: (925) 295-3137  
FACSIMILE: (925) 295-3132  
TBRUEN@TBSGLAW.COM

December 11, 2013

VIA EMAIL

Rosa Tsongtaatarii  
Senior Deputy City Attorney  
16<sup>th</sup> Floor  
200 East Santa Clara Street  
San Jose, California 95113  
[Rosa.tsongtaatarii@sanjoseca.gov](mailto:Rosa.tsongtaatarii@sanjoseca.gov)

Nina Grayson  
Office of Equality Assurance  
5<sup>th</sup> Floor  
200 East Santa Clara Street  
San Jose, California 95113  
[Nina.grayson@sanjoseca.gov](mailto:Nina.grayson@sanjoseca.gov)

RE: Commercial Solid Waste & Recyclable Materials Collection Franchises Agreement

Dear Rosa and Nina:

I am writing on behalf of Allied Waste Services of Santa Clara County in response to Nina Grayson's letter to Michael Caprio, dated December 2, 2013.

We strongly reject any suggestion that Allied Waste Services of Santa Clara County is in breach of its Franchises Agreement with the City. The premise of your letter is at odds with the clear and express language of the Franchises Agreement.

Allied has provided San Jose City staff with all of the required information regarding its compliance with the Franchises Agreement living wage rules for the employees of Allied Waste Services of Santa Clara County and its approved subcontractor, Cascadia, who are performing franchise services under the agreement. With respect to the Recyclery workers, Allied is not required by the Franchises Agreement to pay them wages consistent with the City's Living Wage Policy, nor does the Living Wage Policy independently apply to these workers because they are exempt from the policy.

Rosa Tsongtaatarii  
Nina Grayson  
December 11, 2013  
Page 2

Section 13.2 of the Franchises Agreement states that Allied Waste Services of North America, LLC dba Allied Waste Services of Santa Clara County, as the "FRANCHISEE," "and its approved subcontractors as set forth in Exhibit D" shall pay their employees performing work permitted by the Franchises Agreement those minimum wage rates set forth in Exhibit E. The sole Approved Subcontractor listed in Exhibit D is Cascadia Consulting Group of Seattle, Washington, with the identified area of responsibility of "Business Outreach and Technical Assistance." Neither the Recyclery, which the Franchises Agreement states is operated by Browning-Ferris Industries of California, Inc. ("BFI"), nor the Newby Island Sanitary Landfill, which the Franchises Agreement states is owned and operated by International Disposal Corp. of California ("IDC"), are listed or treated as "Subcontractors" in Section 13.2 or Exhibits D and E of the Franchises Agreement.

For more than thirty five years before the Franchises Agreement was signed in June of 2011, dating back to the original Disposal Agreement between the City and International Disposal Corporation signed in 1985, the City has been fully aware that the Newby Island Recyclery and the Landfill were operated, respectively, by BFI and IDC—and not by Allied Waste Services of North America, LLC.

Therefore, when the Franchises Agreement was approved by the City Counsel and signed by Allied, City staff was well aware that the Recyclery and Landfill were operated by independent companies other than Allied Waste Services of Santa Clara County and that these companies were not listed in Exhibit D as companies required to pay Living Wage rates. If the parties had intended that the employees of BFI or IDC be paid in accordance with the otherwise inapplicable Living Wage Policy (because they are exempt from coverage under that policy), why didn't the City list them in Exhibit D to the Franchises Agreement or call them out specifically in Section 13.2 as noted above.?

Finally, there is no other contractual requirement for the payment of living wages other than what is stated in Section 13.2 and Exhibit D of the Franchises Agreement. So, in short, the language of the contract is clear and controlling.

The final Franchises Agreement was thoroughly negotiated over many months between Allied Waste Services and City staff. The final agreement package was carefully reviewed by City staff and presented to the City Council for approval. It is inappropriate for the City to now

Rosa Tsongtaatarii  
Nina Grayson  
December 11, 2013  
Page 3

attempt to renegotiate the agreement through an administrative process, so that the Living Wage Policy would apply to the Recyclery without having expressly provided for this in the agreement.

Sincerely,

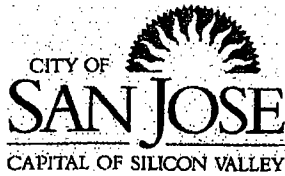
A handwritten signature in black ink that reads "Tom Bruen". The signature is written in a cursive, slightly slanted style.

Thomas M. Bruen

cc. Michael Caprio  
Gil Chesó  
Joan Gallo, Esq.

**ATTACHMENT C**





*Department of Public Works*  
OFFICE OF EQUALITY ASSURANCE

Issue Date: December 16, 2013

Via Email – [MCaprio@republicservices.com](mailto:MCaprio@republicservices.com) & USPS

Michael Caprio  
Area President  
Republic Services of Santa Clara County  
1601 Dixon Landing Road  
Milpitas CA 95035

**RE: NOTICE OF VIOLATION - Commercial Solid Waste & Recyclable  
Materials Collection Franchises Agreement**

Dear Mike:

I received Mr. Thomas Bruen's letter dated December 11, 2013 sent on behalf of Republic Services of Santa Clara County (Republic). Based on the information the Office of Equality Assurance (OEA) has received to date, we have determined that Republic has not complied with the City of San Jose's living wage requirements of the Commercial Solid Waste and Recyclable Materials Collection Franchises Agreement Between the City of San Jose and Allied Waste Services of North America LLC dba Allied Waste Services of Santa Clara County dated September 6, 2011 (Franchises Agreement). All affiliates and subcontractors that have provided services and wished to continue to provide services under the Franchises Agreement are required to pay its employees the minimum wage rates established by the City of San Jose. In addition, Exhibit E contains worker retention, job fair and labor peace provisions, and documentation and reporting requirements.

**Order to Pay Restitution**

The OEA has determined that Republic and its affiliates and subcontractors failed to pay its workers performing work under the Franchises Agreement a City of San Jose living wage as required under the Franchises Agreement.

The attached restitution calculation is based on the following best available information:

- Republic's October 2013 staffing levels provided to the Environmental Services Department. Based on titles and count, 193 workers were paid less than the City's established living wage rates.
- There are 173.33 workable hours in a month. Since July 1, 2012, the estimated number of workable hours is 2,946.61. These hours do not include overtime or any holiday hours.

Michael Caprio

RE: NOTICE OF VIOLATION - Commercial Solid Waste & Recyclable Materials Collection Franchises Agreement

December 16, 2013

Page Two

- The City's living wage rate for July 1, 2012 through June 20, 2013 was \$15.98 per hour.
- The City's living wage rate for July 1, 2013 through June 30, 2014 is \$17.03 per hour.
- The State of California minimum wage rate is \$8.00 per hour.
- The City's minimum wage rate, effective March 11, 2013 is \$10.00 per hour.
- The average percentage of San Jose tons delivered and processed at the NIRRP MRF for the period July 2012 through July 2013 is 65% of all tons delivered and processed through NIRRP MRF.

Based on the above, Republic is ordered to pay **\$13,396.94** in restitution to each worker. Total gross restitution for 193 workers is **\$2,585,608.59**.

### **Liquidated Damage for Violation of Living Wage Requirement**

In accordance with the City of San Jose's Franchises Agreement, Franchisee shall pay to the City as liquidated damages the amount of **\$7,756,825.77**, the sum of three (3) times the difference between the actual amount of wages paid and the living wage. Republic is directed to remit a check payable to the City of San Jose no later than twenty (20) days from the date of the issuance of this Notice of Violation. The check is to be delivered or mailed to the following address: City of San Jose, Nina Grayson, Office of Equality Assurance, 200 East Santa Clara Street, Fifth Floor, San Jose CA 95113.

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Republic must deliver the restitution checks for all underpaid workers by mail or in person to Nina Grayson, 200 East Santa Clara Street, Fifth Floor, San Jose CA 95113 no later than twenty (20) days from the date of the issuance of this Notice of Violation. OEA will disperse the restitution checks to the affected workers.

### **Notice of Violation Review Process**

Republic has the right to contest this Notice of Violation. Republic is afforded the opportunity to provide additional information and relevant documentation to the OEA no later than ten (10) days from the date of the issuance of this Notice of Violation.

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Michael Caprio

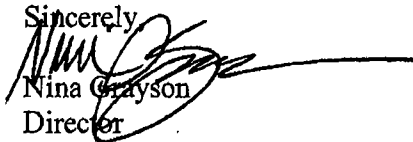
**RE: NOTICE OF VIOLATION - Commercial Solid Waste & Recyclable Materials Collection Franchises Agreement**

December 16, 2013

Page Three

appropriate enforcement action.

Sincerely

A handwritten signature in black ink, appearing to read "Nina Grayson", is written over the typed name and title. The signature is fluid and cursive, extending to the right with a long horizontal stroke.

Nina Grayson  
Director

**Attachments**

- c Tom Bruen Esq.  
Gil Cheso, Republic Services, Inc.
- Joan Gallo Esq.  
Kerrie Romanov, Environmental Services Department
- Rosa Tsongtaatarii, City Attorney's Office
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## Operations

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AVERAGE 65%

**Republic Restitution Calculations**

Commercial Solid Waste and Recyclable Materials Collection Franchises Agreement

Month	Workable Hours By Month	Living Wage Rate	Rate Paid by Republic/Affiliate/Subcontractor	Difference/Living Wage Rate & Rate Paid	Restitution Owed Each Worker
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Sep-12	173.33	\$15.98	\$8.50	\$7.48	\$1,296.51
Oct-12	173.33	\$15.98	\$8.50	\$7.48	\$1,296.51
Nov-12	173.33	\$15.98	\$8.50	\$7.48	\$1,296.51
Dec-12	173.33	\$15.98	\$8.50	\$7.48	\$1,296.51
Jan-13	173.33	\$15.98	\$8.50	\$7.48	\$1,296.51
Feb-13	173.33	\$15.98	\$8.50	\$7.48	\$1,296.51
Mar-13	173.33	\$15.98	\$10.00	\$5.98	\$1,036.51
Apr-13	173.33	\$15.98	\$10.00	\$5.98	\$1,036.51
May-13	173.33	\$15.98	\$10.00	\$5.98	\$1,036.51
Jun-13	173.33	\$15.98	\$10.00	\$5.98	\$1,036.51
Jul-13	173.33	\$17.03	\$10.00	\$7.03	\$1,218.51
Aug-13	173.33	\$17.03	\$10.00	\$7.03	\$1,218.51
Sep-13	173.33	\$17.03	\$10.00	\$7.03	\$1,218.51
Oct-13	173.33	\$17.03	\$10.00	\$7.03	\$1,218.51
Nov-13	173.33	\$17.03	\$10.00	\$7.03	\$1,218.51
<b>Subtotal Per Worker</b>					<b>\$20,610.67</b>
<b>Total Per Worker @ 65%</b>					<b>\$13,396.94</b>
<b>Total - 193 Workers</b>					<b>\$2,585,608.59</b>
<b>LD Assessment</b>					<b>\$7,756,825.77</b>

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is Beeson, Tayer & Bodine, 483 Ninth Street, 2nd Floor, Oakland, California 94607. On this day, I served the foregoing document:

**PETITIONER'S MOTION FOR THE BOARD TO TAKE ADMINISTRATIVE NOTICE**

By Mail to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Beeson, Tayer & Bodine, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business in a United States mailbox in the City of Oakland, California.

By Personal Delivering a true copy thereof, to the parties in said action, as addressed below in accordance with Code of Civil Procedure §1011.

By Overnight Delivery to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(c), by placing a true and correct copy thereof enclosed in a sealed envelope, with delivery fees prepaid or provided for, in a designated outgoing overnight mail. Mail placed in that designated area is picked up that same day, in the ordinary course of business for delivery the following day via United Parcel Service Overnight Delivery.

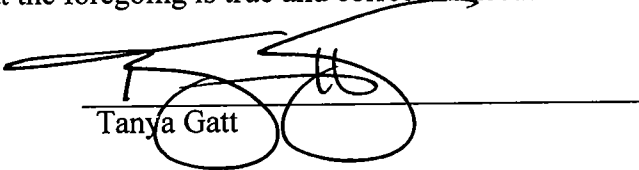
By Facsimile Transmission to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(e).

By Electronic Service. Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed in item 5. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Thomas Stanek  
Elizabeth M. Townsend  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
2415 E. Camelback Road, Suite 800  
Phoenix, AZ 85016

Michael G. Pedhirney  
Littler Mendelson  
650 California Street, 20th Floor  
San Francisco, CA 94108

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, January 7, 2014.

  
\_\_\_\_\_  
Tanya Gatt