CITY OF MIAMI
OFFICE OF INDEPENDENT AUDITOR GENERAL

THE CITY OF MIAMI
DADE CO., FLORIDA

INCORPORATED
1896

AUDIT OF CHOICE ENVIRONMENTAL SERVICES OF MIAMI, INC.

AUDIT NO. 07-003

Prepared By
Office of Independent Auditor General

Victor I. Igwe, CPA, CIA
Auditor General

ROSA LICEA, ADMINISTRATIVE AIDE I
MUNIRAH DANIEL, CPA, SENIOR STAFF AUDITOR
August 15, 2007

Honorable Members of the
City Commission
City of Miami
3500 Pan American Drive
Coconut Grove, FL 33133-5504

Re: Audit of Choice Environmental Services of Miami, Inc.
Audit No. 07-003

Pursuant to Section 48 of the City of Miami’s (City) Charter and the Fiscal Year 2007 Audit Plan, we have examined the billing records of Choice Environmental Services of Miami, Inc. (Choice). The audit was performed to determine whether Choice complied with Chapter 22 of the City Code and the Commercial Solid Waste Franchise Agreement (Agreement) between the City and commercial solid waste hauling companies. Chapter 22 of the City Code and said Agreement regulate the operation of commercial solid waste services in the City.

Additionally, we examined the internal control policies and procedures in the City’s Solid Waste Department to determine whether they were adequate and effective in administering and overseeing the operation of commercial solid waste services in the City.

The audit covered the period January 1, 2004, through September 30, 2006, as well as, selected financial transactions that were processed prior and subsequent to this period.

Sincerely,

Victor I. Igwe, CPA, CIA
Independent Auditor General
Office of Independent Auditor General
C: The Honorable Mayor Manuel A. Diaz
   Pedro G. Hernandez, Chief Administrator/City Manager
   Members of the Audit Advisory Committee
   Neal Rodrigue, President, Choice Environmental Services of Miami, Inc.
   Larry M. Spring, Chief Financial Officer
   Michael J. Boudreaux, Director Budget Department
   Peter W. Korinis, Chief Information Officer, Information Technology Department
   Jorge L. Fernandez, City Attorney, City Attorney’s Office
   Mario E. Soldevilla, Director, Solid Waste Department
   Priscilla A. Thompson, City Clerk, City Clerk’s Office
   Diana M. Gomez, CPA, Director, Finance Department
   Demetrio Constantiny, Accounts Receivable Supervisor, Finance Department
   Audit Documentation File
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INTRODUCTION

On July 25, 2002, and October 14, 2004, the City Commission passed and adopted Ordinance Numbers 12258 and 12599, respectively, amending Chapter 22, Articles I, II, and III of the City Code. A total of 25 firms signed the Commercial Solid Waste Franchise Agreement (Agreement), which authorized them to operate commercial solid waste hauling services in the City of Miami for the period starting November 1, 2004 through September 30, 2009, with a three year renewal option through September 30, 2012. The option to renew the Agreement for an additional three year period will be at the sole discretion of the City.

Article V of the Agreement titled “Franchise Fees” stipulates that the following fees be assessed and collected:

- **Gross Receipts Franchise Fee.** In accordance with Article II, Section 2.2 of the Agreement, the term “Gross Receipts” shall mean, “all monies whether paid by cash, check, debit or credit, collected from customers for garbage, solid waste, fuel surcharge, construction and demolition debris, roofing materials, trash, litters, refuse and/or rubbish collection removal and disposal services rendered, or from any other source related directly from waste collection services by the FRANCHISEE, exclusive of taxes as provided by law, whether wholly or partially collected within the CITY, less bad debts.” During the period October 1, 1999 through September 30, 2004, the franchisee was required to remit to the City 20% of the gross receipts generated. Effective October 1, 2004, the rate increased to 22%. A one and one half percent (1-1/2%) late payment penalty fee is assessed monthly on any balance due.

- **Annual Franchise Fee.** The sum of $5,000 (increased annually by $500) for the right to provide commercial solid waste services and specialized waste handling
services within the City. A one and one half percent (1-1/2%) late payment penalty fee is assessed monthly on any balance due.

- Annual Specialized Waste Handling Service Fee. The sum of $1,000 (increased annually by $500) for the right to provide “Specialized Waste Handler” services within the City. Ordinance 12258, Section 22-1 defines “Specialized Waste Handlers” as companies whose primary business is limited to collecting and disposing of solid waste that requires special handling and management; including, but not limited to, white goods (appliances), waste tires, used oil, lead-acid batteries, construction and demolition debris, ash residue, and biomedical and biological waste. A one and one half percent (1-1/2%) late payment penalty fee is assessed monthly on any balance due.

- Permit Per Account Fee. The franchisee is required to pay $50 for each account contracted within the City for commercial solid waste services and/or specialized waste handling services, including, each container and/or roll-off utilized by the franchisee in the course of providing solid waste services. The franchisee may only pass on an amount not to exceed $24 of said Permit Per Account Fee to each contracted customer. This fee is not transferable. A one and one half percent (1-1/2%) late payment penalty fee is assessed monthly on any balance due.

During the fiscal year, October 1, 2005 through September 30, 2006, the 25 franchisees remitted a total of $9,792,454 to the City. Choice Environmental Services of Miami, Inc. (Choice) was one of the franchisees selected for review to determine compliance with the provisions of the Franchise Agreement. A separate audit report will be issued for each of the franchisees audited.

The Solid Waste Department (SWD) is responsible for ensuring that commercial solid waste service accounts and applicable fees/transactions are properly assessed and paid to the City. The SWD is also responsible for monitoring the operations of the commercial
solid waste franchisees. This audit report describes whether Choice and the SWD complied with the terms of the Agreement and applicable Sections of the City Code.
SCOPE AND OBJECTIVES

This audit was performed pursuant to the authority set forth in Section 48 of the City’s Charter titled, “Office of the Independent Auditor General”, and was conducted in accordance with the Fiscal Year 2007 Audit Plan. As part of our oversight responsibilities, the Office of the Independent Auditor General performs financial and operational audits to determine the extent of compliance with terms of contracts, programs, and/or lease agreements between the City and private companies. This audit focused primarily on whether Choice Environmental Services of Miami, Inc. (Choice) and the City’s Solid Waste Department (SWD) complied with the terms of the Commercial Solid Waste Franchise Agreement (Agreement) and with Chapter 22 of the City’s Code, which govern the operation of commercial solid waste collection services in the City. The audit also included examinations of various transactions to determine whether they were processed in accordance with the generally accepted accounting principles. The audit covered the period January 1, 2004 through September 30, 2006, and focused on the following broad objectives:

- To ascertain whether all customer accounts located in the City were properly identified, coded, and assessed the appropriate fees.

- To determine whether all applicable franchise fees as stipulated in Article V of the Agreement were properly computed and remitted to the City.

- To review the annual statement of gross receipts that was prepared by an independent Certified Public Accountant retained by Choice. Additionally, to determine whether said statement was submitted to the SWD on or before 60 days following the close of the fiscal year.

- To ascertain whether the fees remitted to the City were properly recorded in the City’s accounting system and deposited into the City’s treasury.
• To verify whether the appropriate public liability insurance and bonds were obtained as required by Article VII of the Agreement.

• To examine the internal control policies and procedures of Choice’s and the City’s SWD and determine whether they were adequate and effective in administering and overseeing the operation of commercial solid waste hauling services in the City.
METHODOLOGY

We conducted the audit in accordance with generally accepted Government Auditing Standards, issued by the Comptroller General of the United States. The audit methodology included the following:

- Interviewed and inquired of appropriate personnel; reviewed and observed applicable written policies and procedures in order to gain an understanding of the internal controls; assessed control risk; and planned substantive testing.
- Performed substantive testing consistent with the audit objectives.
- Examined, on a test basis, applicable transactions and records.
- Determined compliance with all the objectives noted on pages 4 and 5.
- Performed other audit procedures as deemed necessary.
- Drew conclusions based on the results of the testing, made corresponding recommendations, and obtained the auditee’s responses and corrective action plans.
SUMMARY OF AUDIT FINDINGS

CHOICE ENVIRONMENTAL SERVICES OF MIAMI, INC., THE CITY’S SOLID WASTE AND FINANCE DEPARTMENTS

COMPLIANCE WITH CERTAIN SECTIONS OF THE CITY CODE AND THE FRANCHISE AGREEMENT

We conducted various audit tests, on a sample basis, to determine compliance with certain Sections of the City Code, the Commercial Solid Waste Franchise Agreement, and other guidelines. Our tests disclosed that Choice Environmental Services of Miami, Inc. (Choice), the Solid Waster Department (SWD), and the Finance Department (FD) materially complied with the following:

- The FD properly recorded the sampled payments from Choice to the City. The sampled payments received by the FD were also traced to the City’s treasury without exception.

- Choice complied with the vehicle insurance requirement as stipulated by Section 22-47(4)a of the City Code.

- The SWD obtained vehicle insurance records from Choice as stipulated by Section 22-47(4)a of the City Code.
CHOICE ENVIRONMENTAL SERVICES OF MIAMI, INC.

ADDITIONAL FEES DUE TO THE CITY

Article V of the Agreement titled “Franchise Fees” stipulates certain fees the franchisee is required to remit to the City. Our review of Choice’s accounting and billing records disclosed that $164,980 is due to the City.

LACK OF COMPLIANCE WITH THE CITY CODE AND THE FRANCHISE AGREEMENT

- According to Article V, Section 5.6 of the Franchise Agreement Choice may only pass on an amount not to exceed $24.00 of the $50 Permit Per Account Fee due to the City for each contracted customer. However, according to a sample of customer invoices, we noted that on January 1, 2006 Choice charged its customers $50.00 for “City of Miami Permit Fee.”

- Section 4.15 of the Franchise Agreement stipulates that Choice is required to annually (October 1) submit to SWD a customer list, however, Choice did not provide OIAG with its Customer list at 9/30/05 (or 10/1/05) as requested.

- Article V, Section 5.2 of the Franchise Agreement stipulates that accompanying the remittance of the monthly 22% gross receipts franchise fees, franchisee also "must provide the City a list of customers' names, addresses, and total amount collected.” However, our audit disclosed that Choice has instead been submitting a “Payments by Municipalities” schedule as support for the returns which only shows a list of customers’ names along with the franchise fee amount being remitted to the City broken down by customer.
o Article V, Section 5.3 of the Agreement stipulates that following the close of each fiscal year (FY) Choice is to deliver to the SWD a CPA statement of its annual gross receipts generated from accounts within the City. However, our audit disclosed that said CPA statements, instead reported the gross receipts that were paid to the City of Miami. In addition, the CPA Statement for the FY ended September 9/30/05 contained errors.

o For FY 2006-2007 Choice failed to maintain the required amount of surety bond as stipulated in Section 22-47(4)b of the City Code and Article VII, Section 7.2 of the Franchise Agreement.
SOLID WASTE DEPARTMENT

INADEQUATE MONITORING AND ENFORCEMENT OF THE PROVISIONS OF THE FRANCHISE AGREEMENT

The Solid Waste Department (SWD) is responsible for administering, monitoring, and enforcing provisions of Chapter 22 of the City Code and the Commercial Waste Franchise Agreement (Agreement) between the City and the franchisees. However, we noted that adequate internal control procedures were not implemented to:

- Ensure that Choice maintained the required amount of surety bond as stipulated by Section 22-47(4)b of the City Code and Article VII, Section 7.2 of the Agreement.
- Ensure that Choice submitted the proper statements of gross receipts prepared by a Certified Public Accountant (CPA) as required by Article V, Section 5.3 of the Agreement.
- Ensure that Choice submitted the correct list of customers’ names, addresses, and total amount collected as support for the remittance of the monthly 22% gross receipts franchise fees as required by Article V, Section 5.2 of the Franchise Agreement.
- In addition, as part of its administrative and monitoring responsibilities, SWD is responsible for collecting and maintaining the required records from all commercial solid waste franchisees. However, OIAG requested the annual customer list that was required, by Article IV Section 4.15 of the Agreement and Section 22-53 of the City Code, to be provided by Choice on October 1, 2005; however, SWD did not provide a copy of said list to OIAG. Instead SWD provided OIAG with a list of customers for the period September 1 through September 30, 2005, which only indicated the customer names.
AUDIT FINDINGS AND RECOMMENDATIONS

CHOICE ENVIRONMENTAL SERVICES OF MIAMI, INC.

ADDITIONAL FEES DUE TO THE CITY

Article V of the Commercial Solid Waste Franchise Agreement titled “Franchise Fees” stipulates the various franchise fees (FF) to be remitted to the City. Total gross receipts include revenues generated from commercial hauling services and roll-off container accounts. Choice Environmental Services of Miami, Inc. (Choice) reported total gross receipts of $1,558,033 for services provided within the City during the audit period (January 1, 2004 through September 30, 2006). However, during our audit field work we noted that in some cases Choice excluded environmental, fuel surcharge, and container rental/maintenance fees charged to customers from its calculation of gross receipts. We calculated the total unreported gross receipts to be $479,635. Therefore, Choice’s actual total gross receipts for the audit period were $2,037,668 ($1,558,033 + $479,635). The total FF remitted to the City during the audit period was $355,626. Our review of Choice’s accounting and billing records disclosed that an additional $164,980 is due to the City as itemized below:

I. Gross Receipts Franchise Fee.

Article V, Section 5.2 of the Non-Exclusive Franchise Agreement (Old Agreement) as it relates to the period January 1, 2004 to September 30, 2004, requires the franchisee “to remit to the City, 20 percent (20%) of its Gross Receipts...The remittance of the previous month's collection should be received by the City no later than the 20th day of the following month. Failure to remit by the 20th day of the following month will cause the FRANCHISEE a one percent (1%) penalty per month on the balance due.”

Furthermore, Article V, Section 5.2 of the October 1, 2004 Franchise Agreement (Current Agreement) requires the franchisee “to remit monthly to the City, 22
percent (22%) of its Gross Receipts, generated from accounts within the City limits...The remittance of the previous month's collection should be received by the City on or before the last day of each month. Failure to remit by the last day of the following month will cause the FRANCHISEE a one and one half percent (1-1/2%) penalty per month on the balance due.”

a. Our audit disclosed that Choice did not correctly calculate its Gross Receipts franchise fees and therefore did not remit the correct amount to the City. Section 5.2 of the Agreement states that “the 22% remitted monthly to the City, should be calculated on all monthly gross receipts collected from customers, exclusive of taxes and franchise fees.” However, in many cases Choice improperly excluded environmental, fuel surcharge, and container rental/maintenance fees, from its calculation of the franchise fee percentage due to the City. As a result, un-remitted gross receipts franchise fees totaling $107,795.53 are due to the City.

b. As it relates to the un-remitted gross receipts franchise fees described above, the late payment penalty fee of one percent (1%) per month for January 1, 2004 through September 30, 2004 and one and one half percent (1-1/2%) per month for October 1, 2004 through September 30, 2004 will be assessed on the balance due to the City. Therefore, late payment penalty fees of $27,753.11 are due to the City.

c. In addition, the gross receipts of franchise fee amounts previously remitted to the City were not all remitted in a timely manner thus resulting in additional late payment penalty fees due. Our audit disclosed that Choice failed to remit a total of eleven payments by the 20th of the month as specified in the Old Agreement or by the last day of the each month as specified in the current Agreement. Therefore, late payment penalty fees of $1,255.75 are due to the City.
II. Annual Franchise Fee.

Article V, Section 5.4 of the Franchise Agreement stipulates that franchisee "agrees to remit to the City annually (due October 1) the sum of $5,000 (increased annually by $500) for the right to be a FRANCHISEE for Commercial Solid Waste Services and Specialized Waste Handling Services within the City. Failure to remit the required annual franchise fee by the due date will cause the FRANCHISEE a one and one half percent (1-1/2%) penalty per month on the balance due." Our audit disclosed that Choice remitted the annual franchise fee for the fiscal year 2005-2006 on November 23, 2005 (2 months late). Therefore, a late payment penalty fee of $165.00 is due to the City.

III. Roll-Off/Container Permit Fee (ROFP).

Article V, Section 5.7 of the Old Agreement required the franchisee to “remit to CITY a Roll-Off/Container Permit Fee in the amount of $50, per account, for each temporary (not to exceed 90 days) roll-off/container(s) utilized by FRANCHISEE in the course of its provision of construction, renovation, and demolition material collection and disposal." Our audit disclosed that for the period January 1, 2004 through September 30, 2004 Choice did not remit the ROPFs on all of its new roll-off accounts. Office of Independent Auditor General (OIAG) requested a listing of new commercial and roll-off accounts for the period January 1, 2004 (the beginning of the audit period) through September 2004 however, Choice only provided the list of new customers as of March 1, 2004. We also obtained a listing of those roll-off permits on file with the City’s Solid Waste Department (SWD) for the same period. By comparing the list from Choice to the list from the SWD we noted that Choice did not report all roll-off containers that were serviced during the period to the City. We calculated the total ROPF due by adding the two lists together and taking the sum of $50 per account minus the amount of ROPFs previously remitted to the City. Due to the fact that Choice only provided the listing of new roll-off accounts as of March 1, 2004, we were unable to determine the number of new roll-off accounts for January and
February 2004. Therefore, we calculated the amount of ROPFs due to the City for January and February 2004 based on an average of the ROPFs due for March 2004 through September 2004. For the period January 1, 2004 through September 30, 2004 un-remitted ROPFs of $1,285.71 are due to the City.

IV. Permit Per Account Fee (PPAF)

Article V, Section 5.6 of the Old Agreement required the franchisee to “remit to City a Permit Per Account Fee in the amount of $100 for each account contracted with for Commercial Solid Waste Service” prorated on the month when service was contracted.

Furthermore, Article V, Section 5.6 of the Current Agreement requires the franchisee to “remit to the City annually (October 15) a Permit Per Account Fee in the amount of $50.00 for each account contracted within the City for commercial solid waste service and/or specialized waste handling services, including, each container and/or roll-off utilized by the FRANCHISEE in the course of the provision of solid waste services. The FRANCHISEE may only pass on an amount not to exceed $24.00 of said Permit Per Account Fee to each contracted customer... All late payments of this fee will cause the FRANCHISEE a one and one half percent (1-1/2%) penalty per month on the balance due."

a. Our audit disclosed that for the period January 1, 2004 through September 30, 2004 Choice did not remit the PPAFs on all of its new commercial accounts. OIAG requested a listing of new commercial and roll-off accounts for the period January 1, 2004 (the beginning of the audit period) through September 2004; however, Choice only provided the list of new customers as of March 1, 2004. We calculated the total PPAFs due by taking the sum of the prorated PPAFs for each new commercial account on the list minus the amount of PPAFs previously remitted to the City. Due to the fact that Choice only provided the listing of new commercial accounts as of March 1, 2004.
we were unable to determine the number of new commercial accounts for January and February 2004. Therefore, we calculated the amount of PPAFs due to the City for January and February 2004 based on an average of the PPAFs due for March 2004 through September 2004. For the period January 1, 2004 through September 30, 2004 unremitted PPAFs of $1,868.30 are due to the City.

b. Our audit disclosed that for the fiscal year beginning October 1, 2004 Choice did not correctly calculate the PPAFs due. In order to calculate the PPAF OIAG obtained Choice’s customer list as of 9/29/04, submitted to the SWD, indicating 409 customer accounts. Therefore, the total PPAFs due for that fiscal year were $20,450 (409 customers x $50 per account). However, Choice only remitted $3,406.97 to the City. Therefore a total of $24,712.39 ($17,043.03 PPAFs and $7,669.36 applicable late payment penalty fee) is due to the City.

c. Our audit also disclosed that for the fiscal year beginning October 1, 2005 Choice remitted $14,050 on November 23, 2005 (2 months late). Therefore, a late payment penalty fee of $421.50 is due to the City.

V. Miscoded Accounts.
Our review of the listing of Choice’s customers in Miami-Dade County and other municipalities disclosed that the gross receipts franchise fees and permit per account fees due from two customer accounts were not remitted to the City as required. Therefore, a total of $4,839.72 ($3,760.57 gross receipts franchise fees, $781.65 applicable gross receipts late payment penalty fees, $250.00 permit per account fees, and $47.50 of applicable late payment penalty fees) is due to the City.

VI. Audit Cost.
Article VI, Section 6.2 of the Franchise Agreement stipulates that “if a City Audit reveals that FRANCHISEE under reported gross receipts, and results in additional
revenue due the City in the amount of $20,000.00 (per Fiscal Year) or more, FRANCHISEE agrees to pay for the cost of said Audit.” Our audit for the period January 1, 2004 through September 30, 2006 disclosed that the amount due to the City before including the audit fee totaled $159,419.10. Therefore, the $5,560.92 cost of conducting this audit is due to the City.

VII. Credit for Miscoded Accounts
Choice requested a credit in the amount of $22,974.33 for 29 customer accounts located in other municipalities that were miscoded and paid to the City of Miami. Choice provided the list of 29 customers along with a breakdown of the amount of credit requested for each customer. However, the support provided for the credit breakdown only accounted for $10,773.10 of the amount requested. Furthermore, we were unable to locate one of the customers (Gables Food Market) in the detail listing of payments by customer, “Payments by Municipalities” schedule, provided as additional support for the credit. Therefore, based on our review of said support we are only able to grant Choice a credit of $10,677.91.

Discussion of Matters Unresolved at Exit Conference
In a written response dated July 16, 2007, Choice concurred with all of the findings and recommendations except for the assessment of gross receipts franchise fees and related late fees that pertain to the collection of container rental/maintenance fees charged to customers (I.a. & I.b.) and the assessment of fees related to January 1, 2004 through February 19, 2004. See auditee’s response on pages 27 through 39. However, in the final exit conference held on August 6, 2007 attended by the Auditor General, Senior Staff Auditor, Choice’s Vice President of Sales and Marketing and its legal Counsel, Choice expressed a willingness to resolve all issues related to this audit, if the Office of the Auditor General (OIAG) excludes the assessments of fees related to January 1, 2004 through February 19, 2004. Choice stated that it officially acquired the assets of United Environmental Services of South Florida in March 2004, and therefore, is not responsible for the franchise fees for those months. However, a memorandum from Solid Waste Department to Choice dated July 6, 2004, relating to this acquisition stated, “It should be
noted that Choice Environmental Services is responsible for all debts due the City of Miami, commencing January 1, 2004.” The Auditor General indicated that in order for any amounts to be excluded from the final amount due to the City, relevant and supporting documents would have to be provided for OIAG’s review. Choice agreed to provide additional supporting documents by the close of business on 8/6/07 and OIAG agreed to consider said support prior to issuing the audit report. However, at the time of issuance of this report (8/15/07) no additional documents were provided to support Choice’s assertion.

Recommendation

We recommend that the Finance Department bill Choice for the total amount of $164,980 due and payable to the City. We also recommend that Choice enhance its internal control procedures to ensure that service accounts located within the City are properly identified and coded and that the appropriate fees are remitted to the City in a timely manner as required.

Auditee’s Response and Action Plan

Please see the last paragraph “Discussion of Matters Unresolved at Exit Conference” on pages 16 and 17 and auditee’s written response on pages 27 through 39.

LACK OF COMPLIANCE WITH THE CITY CODE AND THE FRANCHISE AGREEMENT

Allowable Fees

Article V, Section 5.6 of the Current Agreement requires the franchisee to “remit to the City annually (October 15) a Permit Per Account Fee in the amount of $50.00 for each account contracted within the City for commercial solid waste service and/or specialized waste handling services, including, each container and/or roll-off utilized
by the FRANCHISEE in the course of the provision of solid waste services. The FRANCHISEE may only pass on an amount not to exceed $24.00 of said Permit Per Account Fee to each contracted customer.

Our audit disclosed that for the fiscal year 2005-2006 Choice passed on more than the $24.00 allowable amount of PPAF to its customers. According to a sample of customer invoices, we noted that on January 1, 2006 Choice charged its customers $50.00 for “City of Miami Permit Fee.”

**Annual Customer List**

According to Section 4.15 of the Franchise Agreement between the City and Choice, Choice is required to annually (October 1) submit to Solid Waste, (1) a listing of the names and addresses of customers and the addresses of each location served (2) the number and capacity of each dumpster and compactor per accounts, and (3) the list of accounts within the City for which hand collection of bags/cans is provided.

When conducting our testing of Permit Per Account Fees (PPAF) for the fiscal year beginning October 1, 2005, OIAG requested Choice's Customer list at 9/30/05 (or 10/1/05) in order to calculate the total amount of PPAFs that should have been remitted to the City on 10/15/05. However, Choice did not provide OIAG with said list as requested.

**Support for Monthly Remittances**

Article V, Section 5.2 of the Franchise Agreement stipulates that accompanying the remittance of the monthly 22% gross receipts franchise fees, franchisee also "must provide the City a list of customers' names, addresses, and total amount collected. FRANCHISEE agrees to maintain a second list which reflects individual account charges which must be retained for a period of 60 months from the end of the Agreement and made available at all times to CITY auditors."
Our audit disclosed that Choice has not been submitting the proper “list of customers’ names, addresses, and total amount collected” along with its monthly returns to the City. Instead, Choice has been submitting a “Payments by Municipalities” schedule as support for the returns which only shows a list of customers’ names along with the franchise fee amount being remitted to the City broken down by customer. It is important that the amount collected from each customer be reported in order for the City to determine whether the proper franchise fee amount is being remitted.

**CPA Statement of Annual Gross Receipts**

Article V, Section 5.3 of the Agreement stipulates that the franchisee shall, on or before 60 days (November 30th) following the close of each fiscal year (FY), deliver to the Director of the Department of Solid Waste, a statement of its annual gross receipts generated from accounts within the City for the preceding fiscal year. Such statement must be prepared by an independent Certified Public Accountant.

a. The CPA Statement for the FY ended September 30, 2005 incorrectly labeled/identified the months in the fiscal year thus improperly including gross receipts from September 2004 and excluding gross receipts from September 2005. As such OIAG was unable to verify the September 2005 gross receipts reported on the monthly return submitted to the City.

b. The CPA statements provided for the fiscal years ended 9/30/04, 9/30/05 and 9/30/06 reported the gross receipts that were paid to the City of Miami as opposed to the gross receipts ‘generated from accounts within the City’ that should have been reported to the City. For instance, the amounts reported on the CPA statements did not always include gross receipts related to environmental, fuel surcharge, and container rental/maintenance fees charged to customers.
We recommend that Choice provide its independent CPA with a copy of the Franchise Agreement highlighting the franchise fee requirements, fiscal year period required to be included in the CPA’s statement, and the requirement to report all gross receipts generated from accounts within the City and not just those gross receipts paid to the City. In addition, we recommend that said statements be retained by Choice for a period of at least five years so they may be provided when requested by a City audit.

Surety Bond

Article VII, Section 7.2 of the Agreement provides that “FRANCHISEE agrees to maintain, for the term of this AGREEMENT, a Performance Bond, executed by a surety company duly authorized to do business in the State of Florida, which shall be counter-signed by an agent for the company, resident in the State of Florida. The amount of the bond shall be equal to the FRANCHISEE’S previous 12 month franchise fees paid to the CITY (including the annual franchise fees, monthly 22% franchise fee, annual per account fee, and other franchise fees paid to the City) or a minimum or $25,000, whichever is greater, as security for the faithful performance of the Franchise AGREEMENT.”

Our audit disclosed that the amount of surety bond obtained by Choice needs to be increased. The franchise fees for FY 2005-2006 totaled $212,773.95. Accordingly, the required amount of surety bond for the current period FY 2006-2007 should be $212,773.95. However, our audit disclosed that Choice currently maintains a surety bond of $165,750. We recommend that Choice obtain an additional amount of surety bond $47,024 to comply with the requirement as stipulated in the agreement.

The purpose of the surety bond is to ensure that the City is properly compensated in the event of noncompliance or lack of performance. By not having the required amount of surety bond stipulated in Section 7.2 of the Agreement, the City could be adversely
affected if the commercial waste hauling company fails to comply with its financial obligations as stipulated in Article V of the Agreement.

Recommendation

We recommend that Choice comply with all sections of the franchise agreement including passing on no more than the $24.00 allowable amount of PPAF to its customers; preparing the proper annual and monthly customer lists, submitting said lists to the City in a timely manner, and retaining said lists for the required time period; retaining an independent CPA to report Choice’s annual gross receipts, submitting said report to the City in a timely manner, and retaining said report for the required time period; and obtaining the required amount of surety bond in a timely manner.

We also recommend that for the fiscal year 2005-2006 PPAF overpayments, Choice either refund or credit each customer account for the $26.00 charged above the allowable amount.
Auditee’s Response and Action Plan

The auditee concurred with the audit findings and recommendations. Specifically, Choice agreed that in response to overcharging customers for the fiscal year 2005-2006 PPAF it will waive charging the September 2007 PPAF to customers in order to correct its accounting error. In addition, Choice stated that it will maintain both paper and electronic copies of the required annual customer list for a period of at least five (5) years and increase its surety bond upon bond renewal. Lastly, Choice indicated that it has hired a Florida CPA and has provided him with copies of the franchise agreement and revised reports. Please see the written response on pages 27 through 39.
SOLID WASTE DEPARTMENT

INADEQUATE MONITORING AND ENFORCEMENT OF THE PROVISIONS OF THE FRANCHISE AGREEMENT

The Solid Waste Department (SWD) is responsible for administering, monitoring, and enforcing provisions of Chapter 22 of the City Code and the Commercial Waste Franchise Agreement (Agreement) between the City and the franchisees.

Surety Bond
The SWD did not implement adequate internal control procedures to ensure that Choice obtain the correct amount of surety bond as required by Section 22-47(4)b of the City Code and Article VII, Section 7.2 of the Agreement.

As discussed on pages 20 and 21, the surety bond currently maintained by Choice is less than the required amount by $47,024. Proper monitoring of compliance with the Agreement would safeguard the City’s best interest and ensure that the City is properly compensated in the event of Choice’s noncompliance or lack of performance.

CPA Statement of Annual Gross Receipts
The SWD did not implement adequate internal control procedures to monitor that Choice deliver the proper statements of gross receipts prepared by a Certified Public Accountant (CPA) as required by Article V, Section 5.3 of the Agreement.

As discussed on pages 19 and 20, the CPA statements submitted by Choice to the City reported the gross receipts that were paid to the City of Miami as opposed to the gross receipts ‘generated from accounts within the City’ that should have been reported to the City. For instance, the amounts reported on the CPA statements did not always include gross receipts related to environmental, fuel surcharge, and container rental/maintenance fees charged to customers.
In addition, the CPA statement for the fiscal year ended September 30, 2005 incorrectly labeled/identified the months in the fiscal year thus improperly including gross receipts from September 2004 and excluding gross receipts from September 2005. As such OIAG was unable to verify the September 2005 gross receipts on the monthly return submitted to the City with the independent CPA statement.

Annual Customer List
Article IV, Section 4.15 of the Commercial Solid Waste Franchise Agreement between the City and Choice and Section 22-53 of the City Code stipulate that at least annually (October 1) but not more frequently than quarterly, each FRANCHISEE shall supply a listing, as of the reporting date, of the names and addresses of customers, and the addresses of each location served.

As part of its administrative and monitoring responsibilities, SWD is responsible for collecting and maintaining the required records from all commercial solid waste franchisees. OIAG requested the annual customer list that was required to be provided by Choice on October 1, 2005; however, SWD did not provide a copy of said list to OIAG. Instead SWD provided OIAG with a list of customers for the period September 1 through September 30, 2005, which only indicated the customer names.

Support for Monthly Remittances
The SWD did not implement adequate internal control procedures to ensure that Choice submit the correct list of customers’ names, addresses, and total amount collected as support for the remittance of the monthly 22% gross receipts franchise fees as required by Article V, Section 5.2 of the Franchise Agreement.

Our audit disclosed that Choice has not been submitting the proper “list of customers’ names, addresses, and total amount collected” along with its monthly returns to the City. Instead, Choice has been submitting a “Payments by Municipalities” schedule as support
for the returns which only shows a list of customers’ names along with the franchise fee amount being **remitted** to the City broken down by customer. It is SWD’s responsibility to monitor Choice’s compliance with the Franchise Agreement. The list of customers’ names, addresses, and amounts collected is important for determining whether the franchisee is in fact remitting the proper gross receipts franchise fee percentage to the City.

**Recommendation**

We recommend that the SWD enhance its internal control procedures to ensure that franchisees comply with the Franchise Agreement including submitting the proper annual customer lists and support for the monthly remittances; retaining an independent CPA to report Choice’s annual gross receipts; and obtaining the required amount of surety bond in a timely manner.

**Auditee’s Response and Action Plan**

The SWD indicated that it has implemented stronger internal control procedures to monitor each commercial hauler including sending more aggressive follow-up letters to franchisees reminding them that they must adhere to all covenants in the Agreement, as well as, Chapter 22 of the City Code. The SWD’s response also indicated that any franchisee not in compliance within 14 days of notification by SWD of deficiencies that exist will be notified that their license can and will be suspended or revoked, dependent upon the severity of the deficiency.

In addition, the SWD stated that it has requested that Choice submit amended CPA statements for the FY’s ended 9/30/04, 9/30/05, and 9/30/06 and that it notified Choice to remit the correct support for the monthly gross receipts franchise fee remittances.

Please see the written response on pages 40 through 45.
July 16, 2007

Ms. Munirah Daniel, Senior Staff Auditor
City of Miami
444 S. W. 2nd Avenue, 7th Floor
Miami, FL 33130

RE: Audit of Choice Environmental Services of Miami, Inc. – Audit #07-003

Dear Ms. Daniel:

This shall serve as Choice’s response to your letter of July 2, 2007 regarding the City of Miami’s position with regard to Choice’s application of the City’s Franchise Fee. While Choice chooses not to contest a majority of your findings, Choice disagrees with your assessment that Choice did not properly calculate the Gross receipts upon which the franchise fee payments were predicated. Choice is requesting a meeting with you to further clarify Choice’s reasons for deducting costs, including maintenance cost, all of which were done on advice of the City. In addition, as requested, Choice has now hired a Florida CPA and will be forwarding his revised statements shortly.

CALCULATION OF GROSS RECEIPTS

Although the City uses the term “Gross Receipts”, this is actually a misnomer, because Addendum No. 1 to RFQ #03-04-107 (June 29, 2004), provides that “leases, rentals and repairs of equipment” shall “not” be included in the definition of “Gross Receipts.” Choice properly relied on the City’s advice on this issue and pursuant to the City’s instructions properly deducted appropriate costs from the calculation of Gross Receipts. Based on the City’s gross Receipts numbers the total collections from Feb 05 – Sept 06 were $1,403,471.38. A conservative 15% container maintenance cost adjustment, reduced the gross receipts for that period by $210,520.71. This would lower both the un-remitted gross receipts franchise fees and the late payment penalty associated with those fees. Choice asks the City to adopt these calculations.

Further, Choice is clearly not responsible for any amounts owed by the predecessor company for the period January 1, 2004 through February 19, 2004. Choice did not receive these funds, nor did we benefit from them. The franchise
To: Ms. Munirah Daniel  
Date: July 16, 2007  
Page: Two

states that fees are due on payments collected and Choice never collected these payments.

Choice would further commit to keep both a paper and electronic copy of the annual listing of accounts for the city for a period of at least 5 years. On item IV. e. Choice agrees that our billing department charged the whole permit fee versus the $24 as noted, Choice suggests that as a solution to this we do not charge the fee for September 07.

Choice understands that the City would like the Surety Bond amount increased to $212,773.95 and will increase it upon the current bonds renewal.

As noted above, Choice has retained the services of McHenry Hamilton, P.A., a Florida CPA and will forward his revised annual statements very shortly.

Choice’s position with respect to the remainder of your findings is reflected in the attached.

Thank you for your efforts in resolving these items and the relationship that we have with you and the City of Miami.

Very truly yours,

Michael A. Pizzi, Jr., Esq.

MAP, Jr:alc
Enclosure
Mr. Neil Rodrigue, President  
Choice Environmental Services of Miami, Inc.  
13300 NW 38 CT.  
Miami, Florida 33054  

RE: Audit of Choice Environmental Services of Miami, Inc. – Audit #07-003

Dear Mr. Rodrigue:

Our additional audit fieldwork of Choice Environmental Services of Miami, Inc. (Choice) for the period January 1, 2004 through September 30, 2006, performed subsequent to the Exit Conference held on May 30, 2007, determined that additional franchise fees totaling $164,980.02 are due to the City of Miami (City) as summarized below:

I. Gross Receipts Franchise Fee.

Article V, Section 5.2 of the Non-Exclusive Franchise Agreement (Old Agreement) as it relates to the period January 1, 2004 to September 30, 2004, requires the franchisee “to remit to the City, 20 percent (20%) of its Gross Receipts...The remittance of the previous month’s collection should be received by the City no later than the 20th day of the following month. Failure to remit by the 20th day of the following month will cause the FRANCHISEE a one percent (1%) penalty per month on the balance due.”

Furthermore, Article V, Section 5.2 of the 10/1/04 Franchise Agreement (Current Agreement) requires the franchisee “to remit monthly to the City, 22 percent (22%) of its Gross Receipts,
generated from accounts within the City limits...The remittance of the previous month’s collection should be received by the City on or before the last day of each month. Failure to remit by the last day of the following month will cause the FRANCHISEE a one and one half percent (1-1/2%) penalty per month on the balance due.”

a. Our audit disclosed that Choice did not correctly calculate its Gross Receipts franchise fees and therefore did not remit the correct amount to the City. Section 5.2 of the Agreement states that “the 22% remitted monthly to the City, should be calculated on all monthly gross receipts collected from customers, exclusive of taxes and franchise fees.” However, in many cases Choice improperly excluded environmental, fuel surcharge, and container rental/maintenance fees, from its calculation of the franchise fee percentage due to the City. As a result, un-remitted gross receipts franchise fees totaling $107,795.53 are due to the City.

☐ I agree; ☑ I disagree. Please initial: NVR

Explanations:
2) 9/11 deductions were according to City of Miami directory.

b. As it relates to the un-remitted gross receipts franchise fees described above, the late payment penalty fee of one percent (1%) per month for January 1, 2004 through September 30, 2004 and one and one half percent (1-1/2%) per month for October 1, 2004 through September 30, 2004 will be assessed on the balance due to the City. Therefore, late payment penalty fees of $27,753.11 are due to the City.

☐ I agree; ☑ I disagree. Please initial: NVR

Explanations:
The late penalty must be adjusted according to objections to it in Section (a) above.
c. In addition, the gross receipts of franchise fee amounts previously remitted to the City were not all remitted in a timely manner thus resulting in additional late payment penalty fees due. Our audit disclosed that Choice failed to remit a total of eleven payments by the 20th of the month as specified in the Old Agreement or by the last day of the each month as specified in the current Agreement. Therefore, late payment penalty fees of $1,255.75 are due to the City.

X I agree: □ I disagree. Please initial: 

Explanation Choice previously agreed to this finding at the Exit Conference held on May 30, 2007.

II. Annual Franchise Fee.

Article V, Section 5.4 of the Franchise Agreement stipulates that franchisee “agrees to remit to the City annually (due October 1) the sum of $5,000 (increased annually by $500) for the right to be a FRANCHISEE for Commercial Solid Waste Services and Specialized Waste Handling Services within the City. Failure to remit the required annual franchise fee by the due date will cause the FRANCHISEE a one and one half percent (1.5%) penalty per month on the balance due.” Our audit disclosed that Choice remitted the annual franchise fee for the fiscal year 2005-2006 on November 23, 2005 (2 months late). Therefore, a late payment penalty fee of $165.00 is due to the City.

X I agree: □ I disagree. Please initial: 

Explanation Choice previously agreed to this finding at the Exit Conference held on May 30, 2007.

III. Roll-Off/Container Permit Fee (ROFP).

Article V, Section 5.7 of the Old Agreement required the franchisee to “remit to CITY a Roll-Off/Container Permit Fee in the amount of $50, per account, for each temporary (not to exceed 90 days) roll-off/container(s) utilized by FRANCHISEE in the course of its provision of construction, renovation, and demolition material collection and disposal.” Our audit
disclosed that for the period January 1, 2004 through September 30, 2004 Choice did not remit the ROPFs on all of its new roll-off accounts. Office of Independent Auditor General (OIAG) requested a listing of new commercial and roll-off accounts for the period January 1, 2004 (the beginning of the audit period) through September 2004 however, Choice only provided the list of new customers as of March 1, 2004. We also obtained a listing of those roll-off permits on file with the City’s Solid Waste Department (SWD) for the same period. By comparing the list from Choice to the list from the SWD we noted that Choice did not report all roll-off containers that were serviced during the period to the City. We calculated the total ROPF due by adding the two lists together and taking the sum of $50 per account minus the amount of ROPFs previously remitted to the City. Due to the fact that Choice only provided the listing of new roll-off accounts as of March 1, 2004, we were unable to determine the number of new roll-off accounts for January and February 2004. Therefore, we calculated the amount of ROPFs due to the City for January and February 2004 based on an average of the ROPFs due for March 2004 through September 2004. For the period January 1, 2004 through September 30, 2004 un-remitted! ROPFs of $1,285.71 are due to the City.

X I agree: □ I disagree. Please initial: __________

Explanation: Choice previously agreed to this finding at the Exit Conference held on May 30, 2007.

IV. Permit Per Account Fee (PPAF)

Article V, Section 5.6 of the Old Agreement required the franchisee to “remit to City a Permit Per Account Fee in the amount of $100 for each account contracted with for Commercial Solid Waste Service” prorated on the month when service was contracted.

Furthermore, Article V, Section 5.6 of the Current Agreement requires the franchisee to “remit to the City annually (October 15) a Permit Per Account Fee in the amount of $50.00 for each account contracted within the City for commercial solid waste service and/or specialized waste handling services, including, each container and/or roll-off utilized by the FRANCHISEE in the course of the provision of solid waste services. The FRANCHISEE may
only pass on an amount not to exceed $24.00 of said Permit Per Account Fee to each contracted customer… All late payments of this fee will cause the FRANCHISEE a one and one half percent (1 1/2%) penalty per month on the balance due."

a. Our audit disclosed that for the period January 1, 2004 through September 30, 2004 Choice did not remit the PPAFs on all of its new commercial accounts. OIAG requested a listing of new commercial and roll-off accounts for the period January 1, 2004 (the beginning of the audit period) through September 2004, however, Choice only provided the list of new customers as of March 1, 2004. We calculated the total PPAFs due by taking the sum of the prorated PPAFs for each new commercial account on the list minus the amount of PPAFs previously remitted to the City. Due to the fact that Choice only provided the listing of new commercial accounts as of March 1, 2004, we were unable to determine the number of new commercial accounts for January and February 2004. Therefore, we calculated the amount of PPAFs due to the City for January and February 2004 based on an average of the PPAFs due for March 2004 through September 2004. For the period January 1, 2004 through September 30, 2004 un-remitted PPAFs of $1,868.30 are due to the City.

X I agree. □ I disagree. Please initial: __________________

Explanation: Choice previously agreed to this finding at the Exit Conference held on May 30, 2007.

b. Our audit disclosed that for the fiscal year beginning October 1, 2004 Choice did not correctly calculate the PPAFs due. In order to calculate the PPAF OIAG obtained Choice’s customer list as of 9/29/04, submitted to the SWD, indicating 409 customer accounts. Therefore, the total PPAFs due for that fiscal year were $20,450 (409 customers x $50 per account). However, Choice only remitted $3,406.97 to the City. Therefore a total of $24,712.39 ($17,043.03 PPAFs and $7,669.36 applicable late payment penalty fee) is due to the City.

X I agree; □ I disagree. Please initial: 

Explanation Choice previously agreed to this finding at the Exit Conference held on May 30, 2007.

c. Our audit also disclosed that for the fiscal year beginning October 1, 2005 Choice remitted $14,050 on November 23, 2005 (2 months late). Therefore, a late payment penalty fee of $421.50 is due to the City.

X I agree; □ I disagree. Please initial: 

Explanation Choice previously agreed to this finding at the Exit Conference held on May 30, 2007.

d. Furthermore, as it relates to the PPAFs for the fiscal year beginning October 1, 2005, OIAG requested Choice’s Customer list at 9/30/05 (or 10/1/05) in order to calculate the total amount of PPAFs that should have been remitted to the City on 10/15/05. According to Section 4.15 of the Franchise Agreement between the City and Choice Environmental Services, Choice is required to annually (October 1) submit to Solid Waste, (1) a listing of the names and addresses of customers and the addresses of each location served (2) the number and capacity of each dumpster and compactor per accounts, and (3) the list of accounts within the City for which hand collection of bags/cans is provided. However, Choice did not provide OIAG with said list as requested.

□ I agree; □ I disagree. Please initial: NNR

Explanation **Choice will maintain both paper & electronic copies for a period of at least 5 years.**

e. Our audit also disclosed that for the fiscal year 2005-2006 Choice passed on more than the $24.00 allowable amount of PPAF to its customers. According to a sample
of customer invoices, we noted that on January 1, 2006 Choice charged its customers $50.00 for "City of Miami Permit Fee." We recommend that Choice either refund or credit each customer account for the $26.00 charged above the allowable amount.

☑ I agree. ☐ I disagree. Please initial: N W R

Explanation: Choice agrees to waive charging the 9.07 permit fee's to correct our accounting error.

V. Miscoded Accounts.

Our review of the listing of Choice’s customers in Miami-Dade County and other municipalities disclosed that the gross receipts franchise fees and permit per account fees due from two customer accounts were not remitted to the City as required. Therefore, a total of $4,839.72 (permitted $3,760.57 gross receipts franchise fees, $781.65 applicable gross receipts late payment penalty fees, $250.00 permit per account fees, and $47.50 of applicable late payment penalty fees) is due to the City.

☑ I agree. ☐ I disagree. Please initial:

Explanation: 

VI. Audit Cost.

Article VI, Section 6.2 of the Franchise Agreement stipulates that “if a City Audit reveals that FRANCHISEE under reported gross receipts, and results in additional revenue due the City in the amount of $20,000.00 (per Fiscal Year) or more, FRANCHISEE agrees to pay for the cost of said Audit.” Our audit for the period January 1, 2004 through September 30, 2006 disclosed that a total of $164,980.02 of additional revenue is due to the City. Therefore, the cost of conducting this audit $5,560.92 is due to the City.

☑ I agree. ☐ I disagree. Please initial:
Explanation

VII. Credit for Miscoded Accounts
Choice requested a credit in the amount of $22,974.33 for 29 customer accounts located in other municipalities that were miscoded and paid to the City of Miami. Choice provided the list of 29 customers along with a breakdown of the amount of credit requested for each customer. However, the support provided for the credit breakdown only accounted for $10,773.10 of the amount requested. Furthermore, we were unable to locate one of the customers (Gables Food Market) in the detail listing of payments by customer, “Payments by Municipalities” schedule, provided as additional support for the credit. Therefore, based on our review of said support we are only able to grant Choice a credit of $10,677.91.

☐ I agree; ☐ I disagree. Please initial: ________________

Explanation Choice previously agreed to this finding at the Exit Conference held on May 30, 2007.

VIII. Surety Bond.
Article VII, Section 7.2 of the Agreement provides that “FRANCHISEE agrees to maintain, for the term of this AGREEMENT, a Performance Bond, executed by a surety company duly authorized to do business in the State of Florida, which shall be counter-signed by an agent for the company, resident in the State of Florida. The amount of the bond shall be equal to the FRANCHISEE’S previous 12 month franchise fees paid to the CITY (including the annual franchise fees, monthly 22% franchise fee, annual per account fee, and other franchise fees paid to the City) or a minimum or $25,000, whichever is greater, as security for the faithful performance of the Franchise AGREEMENT.”

Our audit disclosed that the amount of surety bond obtained by Choice needs to be increased. The franchise fees for FY 2005-2006 totaled $212,773.95. Accordingly, the required amount
of surety bond for the current period FY 2006-2007 should be $212,773.95. However, our audit disclosed that Choice currently maintains a surety bond of $165,750. We recommend that Choice obtain an additional amount of surety bond $47,024 to comply with the requirement as stipulated in the agreement.

☐ I agree; ☐ I disagree. Please initial: NWL

Explanation: Upon Bond Renewal Requested.

IX. CPA Statement of Annual Gross Receipts

Article V, Section 5.3 of the Agreement stipulates that the franchisee shall, on or before 60 days (November 30th) following the close of each fiscal year (FY), deliver to the Director of the Department of Solid Waste, a statement of its annual gross receipts generated from accounts within the City for the preceding fiscal year. Such statement must be prepared by an independent Certified Public Accountant.

a. The CPA Statement for the FY ended September 30, 2005 incorrectly labeled/identified the months in the fiscal year thus improperly including gross receipts from September 2004 and excluding gross receipts from September 2005. As such OIAG was unable to verify the September 2005 gross receipts reported on the monthly return submitted to the City.

b. The CPA statements provided for the fiscal years ended 9/30/04, 9/30/05 and 9/30/06 reported the gross receipts that were paid to the City of Miami as opposed to the gross receipts 'generated from accounts within the City' that should have been reported to the City. For instance, the amounts reported on the CPA statements did not always include environmental, fuel surcharge, and container rental/maintenance fees charged to customers.
We recommend that Choice provide its independent CPA with a copy of the Franchise Agreement highlighting the franchise fee requirements, fiscal year period required to be included in the CPA’s statement, and the requirement to report all gross receipts generated from accounts within the City and not just those gross receipts paid to the City. In addition, we recommend that said statements be retained by Choice for a period of at least five years so they may be provided when requested by a City audit.

X. Non-compliance with Franchise Agreement.

Article V, Section 5.2 of the Franchise Agreement stipulates that accompanying the remittance of the monthly 22% gross receipts franchise fees, franchisee also “must provide the City a list of customers’ names, addresses, and total amount collected.” FRANCHISEE agrees to maintain a second list which reflects individual account charges which must be retained for a period of 60 months from the end of the Agreement and made available at all times to CITY auditors.”

Our audit disclosed that Choice has not been submitting the proper “list of customers’ names, addresses, and total amount collected” along with its monthly returns to the City. Instead, Choice has been submitting a “Payments by Municipalities” schedule as support for the returns which only shows a list of customers’ names along with the franchise fee amount being remitted to the City broken down by customer.

Explanation  Choice previously agreed to this finding at the Exit Conference held on May 30, 2007.
Please confirm our understanding by signing on the space provided below and return this memo to us no later than July 16, 2007. In the event that you disagree with any of the items listed above, that were not previously agreed upon at the Exit Conference held on May 30, 2007, please provide your explanation and attach all supporting documents/records. Once we receive your response we can set up a meeting to discuss the findings, if necessary.

A summary schedule is attached for your reference. If you have any questions, please feel free to contact me at 305-416-2051 or by email at mdaniel@miamigov.com.

Thank you for your attention in this matter.

[Signature]
Mr. Neil Rodrigue, President

[Date]

Sincerely,

Munirah Daniel, CPA
Senior Staff Auditor
Office of Independent Auditor General

C: Mario E. Soldevilla, Director, Solid Waste Department
   Steven Margolis, Principal Auditor, Solid Waste Department
   Victor Igwe, CPA, CIA, Auditor General
In connection with our audit of Choice Environmental Services of Miami, Inc. (Choice), please review the following preliminary and tentative findings and respond accordingly.

1) Article VII, Section 7.2 of the Commercial Solid Waste Franchise Agreement (Agreement) between the City of Miami (City) and Choice stipulates that "FRANCHISEE agree to maintain, for the term of the AGREEMENT, a Performance Bond, executed by a surety company duly authorized to do business in the State of Florida, which shall be counter-signed by an agent for the company, resident in the State of Florida. The amount of the bond shall be equal to the FRANCHISEE'S previous 12 month franchise fees paid to the CITY (including the annual franchise fee, monthly 22% franchise fees, annual per account fee, and any other franchise fees paid to the City) or a minimum of $25,000, whichever is greater, as security for the faithful performance of the Franchise AGREEMENT."

a) Our audit disclosed that amount of surety bond obtained by Choice needs to be significantly increased. The franchise fees for FY 2004-2005 totaled $194,239.43. Accordingly, the required amount of surety bond for the period FY 2005-2006 should have been $194,239.43. However, our audit disclosed that Choice maintained a surety bond of $150,000. Similarly, the total franchise fees for FY 2005-2006 totaled $302,131.43. Accordingly, the required amount of surety bond for the current period FY 2006-2007 should be $302,131.43. However, our audit disclosed that Choice currently maintains a surety bond of $150,000. We recommend that Choice obtain an additional amount of surety bond ($152,131.43) to comply with the requirement as stipulated in the agreement.

b) Our prior audits of the franchisees have disclosed lack of compliance with this requirement. What procedures (if any) have been established by the Solid Waste Department to monitor compliance with Section 7.2 of the Agreement?
2) Article V, Section 5.3 of the Agreement between the City and Choice and Section 22-56 of the City Code stipulate that "FRANCHISEE shall, on or before 60 days following the close of each fiscal year, deliver to the Director of the Department of Solid Waste, a statement of its annual gross receipts generated from accounts within the City prepared by an independent Certified Public Accountant reflecting gross receipts within the City for the preceding fiscal year."

a) We noted the following points regarding SWD's monitoring of this requirement of the Agreement:

i) Office of Independent Auditor General (OIAG) requested the CPA Statement for the fiscal year ended September 30, 2004 in order to confirm January-September 2004 gross receipts; however, SWD did not provide a copy of said statement to OIAG.

ii) We noted that the CPA Statement for the fiscal year ended September 30, 2005 incorrectly labeled/identified the months in the fiscal year thus improperly including gross receipts from September 2004 and excluding gross receipts from September 2005. As such OIAG was unable to verify the September 2005 gross receipts on the monthly return submitted to the City to the independent CPA statement.

iii) The CPA statements provided for the fiscal years ended 9/30/05 and 9/30/06 reported the gross receipts that were paid to the City of Miami as opposed to the gross receipts generated from accounts within the City that should have been reported to the City. For instance, the amounts reported on the CPA statement did not include the gross receipts related to 40% maintenance fees charged to customers.

b) Our prior audits of the franchisees have disclosed lack of compliance with this requirement. What procedures (if any) have been established by the Solid Waste Department to monitor the compliance with Section 5.3 of the Agreement?
3) Article IV, Section 4.15 of the Commercial Solid Waste Franchise Agreement between the City and Choice and Section 22-53 of the City Code stipulate that at least annually (October 1) but not more frequently than quarterly, each FRANCHISEE shall supply a listing, as of the reporting date, of the names and addresses of customers, and the addresses of each location served.

a) Chapter 119, Florida Statutes (General Records Schedule for Local Government Agencies) provides that records such as customer listings, which support franchise fees receivable, shall be retained for four calendar years provided applicable audits have been released. Also, said statutory provision mandates that duplicate copies shall be retained until obsolete, superseded, or when administrative value is lost. Additionally, the statutory provisions require Municipal entities to follow certain procedures before disposing public records.

As part of its administrative and monitoring responsibilities, SWD is responsible for maintaining all related records submitted by all commercial solid waste franchisees. OIAG requested the annual customer list that was required to be provided by Choice on October 1, 2005; however, SWD did not provide a copy of said list to OIAG. If the customer list can not be located and provided for our review, please provide written explanation.

Your understanding is: Correct ☐ Incorrect ☐ Please initial: __________

Explanation: __________________________________________________________

____________________________________________________________________

4) Article V, Section 5.2 of the Franchise Agreement stipulates that accompanying the remittance of the monthly 22% gross receipts franchise fees, franchisee "must provide the City a list of customers' names, addresses, and total amount collected. FRANCHISEE agrees to maintain a
second list which reflects individual account charges which must be retained for a period of 60 months from the end of the Agreement and made available at all times to CITY auditors."

a) Our audit disclosed that Choice has not been submitting the proper “list of customers’ names, addresses, and total amount collected” along with its monthly returns to the City. Instead, Choice has been submitting a “Payments by Municipalities” schedule as support for the returns which only shows a list of customers’ names along with the franchise fee amount being remitted to the City broken down by customer. It is SWD’s responsibility to monitor Choice’s compliance with the Franchise Agreement. The list of customers’ names, addresses, and amounts collected is important for determining whether the franchisee is in fact remitting the proper gross receipts franchise fee percentage to the City.

b) What procedures have been established by the Solid Waste Department to monitor compliance with Article V, Franchise Fees, of the Franchise Agreement?

Your understanding is: Correct □ Incorrect □ Please initial: _________

Explanation: ________________________________________________________________

______________________________________________________________

______________________________________________________________

Please confirm whether our understanding as described above is correct or incorrect. If our understanding is incorrect, please provide written explanation and supporting documentation. In order to meet our audit deadline, your response by May 18, 2007 would be greatly appreciated.

If you have any questions or comments please feel free to contact me at 305-416-2051 or by email at mdaniel@miamigov.com.
I. Performance Bond:

At the commencement of each fiscal year, our department sends every commercial solid waste hauler a letter reminding them of their financial and fiduciary responsibilities to the City. We have also instituted stronger internal control procedures to monitor each commercial hauler. Our department is pleased to see that your own staff auditor reviewed our more aggressive follow-up letter dated February 16, 2007, wherein we informed Choice Environmental to increase their Performance Bond to $165,750.00. Due to this letter being sent to Choice, we received a new Bond in the amount of $165,750.00 (see attached) on March 5, 2007 (approximately 2 weeks later). Therefore, our stronger follow-up letters are working. It should also be noted that any additional revenue found as a result of an audit, will adjust the Franchisee’s Performance Bond at the commencement of the new fiscal year.

In the future, even stronger follow-up letters will be sent, reminding Franchisees that they must adhere to all covenants of the Agreement, as well as, Chapter 22 of the City Code. Any Franchisee not in compliance within 14 days of notification by this Department of deficiencies that exist, will then be notified that their license can and will be suspended or revoked, dependent upon the severity of the deficiency.

II. Statement of Gross Receipts:

Please see the attached CPA Statement for the period February 2004 through September 30, 2004. It should be noted that Choice acquired United during February 2004.

We have requested Choice to submit amended CPA statements for the FY’s ended 9/30/04, 9/30/05 and 9/30/06. In addition, we requested Choice to explain any deductions they made from City Franchise fees, for maintenance of equipment.
III. Customer Listing:

Please see the attached customer list for Choice, as of October 1, 2005.

IV. Franchise Fees:

In accordance with Article V, Franchise Fees - Section 5.2, of our Franchise Agreement, we notified Choice to submit along with their monthly franchise remittance to our City’s Finance Department, a monthly list of customers’ names, addresses and total amount collected.

c: Mary H. Conway, Chief of Operations
   Steven Margolis, Auditor
   Joe Tang, Fiscal Administrator