

CITY OF MIAMI
OFFICE OF INDEPENDENT AUDITOR GENERAL



LOPEFRA CORPORATION

AUDIT REPORT NO. 09-008

Prepared By

Office of Independent Auditor General

Victor I. Igwe, CPA, CIA
Independent Auditor General

PAULINO GARCIA, STAFF AUDITOR

City of Miami

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December 1, 2008

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

Re: Lopefra Corporation
Audit No.09-008

Pursuant to Section 48 of the City of Miami's (City) Charter and the Fiscal year 2008 audit plan, we have examined the billing records of Lopefra Corporation. The audit was performed to determine whether Lopefra complied with applicable Sections of the City Code and the Commercial Waste Franchise Agreement (Agreement) between the City and commercial solid waste hauling companies. Chapter 22 of the City Code and the said Agreement regulates 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 October 1, 2007 through September 30, 2008 and selected financial transactions that were processed prior and subsequent to this period.

Sincerely,

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

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
Rosemary L. Hartigan, Vice President, Lopefra Corporation
Roger Hernstadt, Assistant City Manager, Office of the City Manager
Bill Anido, Assistant City Manager, Office of the City Manager
Larry M. Spring, Assistant City Manager/Chief Financial Officer
Peter W. Korinis, Chief Information Officer, Information Technology Department
Michael J. Boudreaux, Director, Budget Department
Julie O. Bru, City Attorney, City Attorney's Office
Mario A. 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

**AUDIT OF LOPEFRA CORPORATION
OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008**

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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 period 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 Fees.** 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 half percent (1-1/2%) late payment penalty fee would be assessed per month on any balance due.
- **Annual Franchise Fee.** The sum of \$5,000 (increased annually by \$500, thus \$6,500.00 was due for the audit period) for the right to provide commercial solid waste services and special waste handling services within the City. A one and

half percent (1-1/2%) late payment penalty fee would be assessed per month on any balance due.

- Annual Specialized Waste Handling Service Fee. The sum of \$1,000 (increased annually by \$500, thus \$2,500 was due for the audit period) 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, biomedical and biological waste. A one and 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 franchisee in the course of providing solid waste services. The franchisee may only pass on an amount not to exceed \$24 of the paid Permit Per Account Fee to each contracted customer. This fee is not transferable. A one and half percent (1-1/2%) late payment penalty fee is assessed monthly on any balance due.

During the fiscal year, October 1, 2007 through September 30, 2008 the twenty five franchisees remitted a total of \$13,334,898 to the City. Lopefra Corporation is 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 Lopetra 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 2008 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 Lopefra Corporation 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 October 1, 2007 through September 30, 2008 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 the 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 Lopefra. Additionally, to determine whether said statement was submitted to the SWD within 60 days after the end 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 Lopefra Corporation and the City's Solid Waste Department 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 this performance audit in accordance with *Generally Accepted Government Auditing Standards*. Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence in order to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. 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 and made corresponding recommendations and obtained the auditee's responses and corrective action plans.

AUDIT CONCLUSION

Based upon various tests performed and the audit findings noted, we conclude that adequate internal controls were not in place to ensure that all applicable franchise fees were remitted to the City in a timely manner.

Based upon various tests performed and the audit findings noted, we conclude that adequate internal controls were in place to ensure that:

- Customer accounts located in the City were properly identified, coded, and assessed the appropriate fees.
- Franchise Fees remitted to the City were properly recorded in the City's accounting system and deposited in the City's Treasury.
- Appropriate public liability insurance was obtained as required by Article VII or the Agreement.
- The SWD obtained vehicle insurance certificates and the CPA statement as required by the City Code and the Agreement.

Overall we conclude that the internal control policies and procedures in place at Lopefra Corporation and at the City's Solid Waste Department were adequate and effective in administering and overseeing the operation of commercial waste hauling services in the City.

SUMMARY OF AUDIT FINDINGS

LOPEFRA CORPORATION, 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 requirements of the City Code, the Commercial Solid Waste Franchise Agreement, and other guidelines. Our tests disclosed that Lopefra Corporation, the Solid Waste Department (SWD), and the Finance Department (FD) materially complied with the following:

- The FD properly recorded the sampled payments made to the City by Lopefra. The sampled payments received by the FD were also traced to the City's treasury.
- Customer accounts located in the City were properly identified, coded, and assessed the appropriate fees.
- Lopefra Corporation complied with the vehicle insurance requirement as stipulated by Section 22-47 (4a) of the City Code.
- The SWD obtained vehicle insurance records as stipulated by Section 22-47(4)a of the City Code.
- The SWD obtained the CPA statement and the appropriate amount of surety bond was also obtained and retained on file as required by the City Code.

LOPEFRA CORPORATION

ADDITIONAL FEES DUE TO THE CITY

Article V, Section 5.2 of the Agreement titled “Franchise Fees” stipulates certain fees the franchisee is required to remit to the City. Our review of Lopefra Corporation’s accounting and billing records disclosed that \$156.00 is due to the City. See detailed discussions on pages 9 through 14.

AUDIT FINDINGS AND RECOMMENDATIONS

LOPEFRA CORPORATION

ADDITIONAL FEES DUE TO THE CITY

Article V, Section 5.2 of the Commercial Waste Franchise Agreement (Agreement) titled “Franchise Fees” stipulates the various franchise fees (FF) to be remitted to the City. Lopefra Corporation generated total gross receipts of \$497,765 for services provided within the City during the audit period (fiscal year 2007-2008). The total gross receipts include revenues generated exclusively from Specialized Waste Handling. The total FF remitted to the City during the audit period was \$109,439. Our review of Lopefra Corporation’s accounting and billing records disclosed that an additional \$156.00 is due to the City, as itemized below:

ANNUAL FEES

- Article V, Section 5.7 of the Commercial Solid Waste Franchise Agreement (Agreement) stipulates that franchisee agrees to remit to the City annually (due October 1) the sum of \$1,000.00 (increased annually by \$500.00, thus \$2,500.00 was due for the audit period) for the right to provide only Specialized Waste Handling Services within the City limits. Failure to remit the required annual fee by the due date will result in a one and half percent (1-12%) per month on the balance due to the City. Our audit disclosed that Lopefra Corporation remitted its annual franchise fee for the fiscal year 2007-2008 on November 14, 2007 (2 months late). As a result of the late remittance, a late fee of \$75.00 is due to the City.

PERMIT PER ACCOUNT FEES

- Article V, Section 5.6 of the Agreement requires the franchisee to remit to the City annually (Due October 15) a permit per account fee (PPAF) in the amount of \$50 for each account contracted for commercial solid waste handling services within the City, including each container and/or roll-off utilized by the franchisee. Failure to remit the required PPAF by the due date will result in a one and half percent (1-1/2%) per month on the balance due to the City. Our review of Lopefra Corporation and the City Finance Department's accounting records disclosed that Lopefra Corporation remitted its PPAF for the fiscal year 2007-2008 on November 14, 2007 (1 month late) and as a result a late payment penalty fee of \$57.00 is due to the City.

FRANCHISE FEES (22%)

- Article V, Section 5.2 of the Commercial Solid Waste Franchise Agreement (Agreement) requires the franchisee to remit monthly to the City 22 percent (22%) of its Gross Receipts generated from accounts within the City limits, or \$500 whichever is greater. 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 result in one and half percent (1-1/2%) penalty per month on the balance due. Our audit disclosed that Lopefra Corporation remitted the 22% of the gross receipts for \$1,600 relative to the month of November 2007 one (1) month late. As a result of the late remittance, a late payment fee of \$24.00 is due to the City.

Recommendation:

We recommend that the Finance Department bill Lopefra Corporation for the total amount of \$156.00 due and payable to the City.

Auditee's Response and Action Plan:

The auditee concurred with all audit findings and recommendations. See written responses and pages 13 through 15.

City of Miami

VICTOR I. IGWE, CPA, CIA
INDEPENDENT AUDITOR GENERAL



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November 20, 2008

Ms. Rosemary L. Hartigan, Vice-President
Lopetra Corporation
2601 SW 69th Court
Miami, Florida 33165

RE: Audit of Lopetra Corporation – Audit #09-008

Dear Ms. Hartigan:

In connection with our audit of Lopetra Corporation for the period October 1, 2007 through September 30, 2008, and selected transactions prior and subsequent to this period, our audit disclosed that additional franchise fees totaling \$156.00 (W/P T-6) is due to the City as summarized below:

- I. Article V, Section 5.7 of the Commercial Solid Waste Franchise Fee Agreement (Agreement) stipulates that franchisee agrees to remit to the City annually (due October 1) the sum of \$1,000.00 (increased annually by \$500, thus \$2,500.00 was due for the audit period) for the right to provide only Specialized Waste Handling Services within the City limits. Failure to remit the required annual fee by the due date will result in a one and half percent (1-1/2%) per month on the balance due to the City. Our audit disclosed that Lopetra Corporation remitted its annual franchise fee for the fiscal year 2007-2008 on November 14, 2007 (2 months late). As a result of the late remittance, a late fee of \$75.00 is due to the City. (W/P T-8)

2008/11/20

I agree I disagree _____ Please initial: _____
Explanation _____

II. Article V, Section 5.6 of the Agreement requires the franchisee to remit to the City annually (due October 15) a permit per account fee (PPAF) in the amount of \$50 for each account contracted within the City for commercial solid waste handling services, including each container and/or roll-off utilized by franchisee. Failure to remit the required PPAF by the due date will result in a one and half percent (1-1/2%) per month on the balance due to the City. Our review of Lopefra Corporation and the City Finance Department's accounting records disclosed that Lopefra Corporation remitted its PPAF for the fiscal year 2007-2008 on October 14, 2007 (1 month late) and as a result a late payment penalty fee of \$57.00 is due to the City. (W/P T-11)

I Agree I Disagree _____ Please initial: _____
Explanation _____

III. Article V, Section 5.2 of the Commercial Solid Waste Franchise Agreement (Agreement) requires the Franchisee to remit monthly to the City 22 percent (22%) of its Gross Receipts generated from accounts within the City limits, or \$500 whichever is greater. 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 result in one and half percent (1-1/2%) penalty per month on the balance due. Our audit disclosed that Lopefra Corporation remitted the 22% of the gross receipts for

2008/11/20

\$1,600 relative to the month of November 2007 one (1) month late. As a result of the late remittance, a late payment fee of \$24.00 is due to the City. (W/P T-23)


I agree I disagree Please Initial: _____

Explanation: _____

Please confirm our understanding by indicating whether you agree or disagree with each of the observations described above by checking the appropriate box and include your initials on the space provided for each observation. Also, sign on the space provided below and return this memorandum to us. In the event that you disagree with any of the items listed above, please provide your written explanations and attach all supporting documents/records. Please respond by November 29, 2008.

A summary schedule is attached for your reference. If you have any questions, please feel free to contact me at (305) 416-2042 or Victor Igwe (the Independent Auditor General) at (305) 416-2044.

Thank you for your attention in this matter.




Rosemary L. Hartigan



Date

Sincerely,



Paulino Garcia
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

2008/11/20

EXHIBIT I

**LOPEFRA CORPORATION
SCHEDULE OF FEES DUE TO THE CITY
OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008**

DESCRIPTION	ITEMIZED AMOUNT	TOTAL FEES DUE
	\$	\$
<u>Annual Franchise Fee</u>		
1.50% Penalty on Late Remittance		75.00
<u>Permit Per Account Fee</u>		
1.50% Penalty on Late Remittance		57.00
<u>Franchise Fees (22%)</u>		
Late Fees (1.50%) on Franchise Fees remitted late		24.00
Total Due to the City		\$ 156.00