

CITY OF MIAMI
OFFICE OF INDEPENDENT AUDITOR GENERAL



CHOICE ENVIRONMENTAL SERVICES, INC.

AUDIT REPORT NO. 09-009

Prepared By

Office of Independent Auditor General

Victor I. Igwe, CPA, CIA
Independent Auditor General

ZEWBITU WOLDEGIORGIS, STAFF AUDITOR

City of Miami

VICTOR I. IGWE, CPA, CIA
INDEPENDENT AUDITOR GENERAL



Telephone (305) 416-2040
Telecopier: (305) 416-2046
E-Mail: lag@ci.miami.fl.usa

April 28, 2009

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

Re: Choice Environmental Services, Inc.
Audit No.09-009

Pursuant to Section 48 of the City of Miami's (City) Charter and the Fiscal year 2008/2009 audit plan, we have examined the billing records of Choice Environmental Services, Inc. (Choice). The audit was performed to determine whether Choice complied with applicable Sections 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 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, 2006 through September 30, 2008 and 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, Inc.
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 CHOICE ENVIRONMENTAL SERVICES, INC.
OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2008**

TABLE OF CONTENTS

INTRODUCTION.....	1
SCOPE AND OBJECTIVES.....	4
METHODOLOGY.....	6
AUDIT CONCLUSION.....	7
SUMMARY OF AUDIT FINDINGS	8
CHOICE ENVIRONMENTAL SERVICES, INC., THE CITY’S SOLID WASTE, AND FINANCE DEPARTMENTS.....	8
COMPLIANCE WITH CERTAIN SECTIONS OF THE CITY CODE AND THE FRANCHISE AGREEMENT	8
CHOICE ENVIRONMENTAL SERVICES, INC.	9
ADDITIONAL FEES DUE TO THE CITY.....	9
LACK OF COMPLIANCE WITH THE COMMERCIAL SOLID WASTE FRANCHISE AGREEMENT AND THE CITY CODE	9
SOLID WASTE DEPARTMENT.....	10
INADEQUATE MONITORING AND ENFORCEMENT OF THE PROVISIONS OF THE COMMERCIAL SOLID WASTE FRANCHISE AGREEMENT	10
AUDIT FINDINGS AND RECOMMENDATIONS	11
CHOICE ENVIRONMENTAL SERVICES	11
ADDITIONAL FEES DUE TO THE CITY.....	11
LACK OF COMPLIANCE WITH THE COMMERCIAL SOLID WASTE FRANCHISE AGREEMENT AND THE CITY CODE	14
FAILURE TO OBTAIN THE REQUIRED AMOUNT OF SURTY BOND	14
FAILURE TO PROVIDE THE CITY WITH THE REQUIRED CERTIFIED STATEMENT OF ANNUAL GROSS RECEIPTS IN A TIMELY MANNER.....	15
CHOICE ACQUIRED THE CUSTOMER LISTINGS AND OTHER ASSETS OF TWO FRANCHISEES WITHOUT CITY’S CONSENT.....	17
Auditee’s Response and Action Plan:.....	18
SOLID WASTE DEPARTMENT (SWD)	27
INADEQUATE MONITORING AND ENFORCEMENT OF THE PROVISIONS OF THE COMMERCIAL SOLID WASTE FRANCHISE AGREEMENT	27
CPA STATEMENT OF ANNUAL GROSS RECEIPTS.....	27
PERFORMANCE BOND	28
Auditee’s Response and Action Plan:.....	29
EXHIBIT I.....	32

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 \$6,000 and \$6,500 were due for the fiscal years 2006-2007 and 2007-2008, respectively) 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 fiscal year 2007/2008) 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 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 franchisees remitted a total of \$13,334,898 to the City. Choice Environmental Services, Inc. (Choice) 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 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 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 Choice Environmental Services (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 October 1, 2006 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 Choice. 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 Choice 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.
- To follow-up on prior audit findings and determine the status of all unresolved and outstanding issues.

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 customer accounts located in the City were properly identified, coded, and assessed the appropriate fees.
- Annual Franchise Fee and Permit Per Account Fee were remitted to the City in a timely manner.
- Surety Bond was obtained in the required amount as per Agreement.
- The statement of the annual gross receipts certified by a CPA was submitted to the City in a timely manner as required by the City Code and the Franchise Agreement.

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

- 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 of the Agreement.
- The SWD obtained vehicle insurance certificate.

Overall, we conclude that the internal control policies and procedures in place at Choice and at the City's Solid Waste Department can be enhanced to better safe guard the City's financial interests and ensure a more effective oversight over the operation of commercial solid waste hauling services in the City.

SUMMARY OF AUDIT FINDINGS

CHOICE ENVIRONMENTAL SERVICES, 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 requirements of the City Code, the Commercial Solid Waste Franchise Agreement, and other guidelines. Our tests disclosed that Choice Environmental Services, Inc. (Choice), the City's Solid Waste 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.
- Choice 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) of the City Code.

CHOICE ENVIRONMENTAL SERVICES, INC.

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 Choice Environmental Service’s (Choice) accounting and billing records disclosed that \$86,996.67 is due to the City from the franchise fee transactions assessed during the audit period. See detailed discussions on pages 11 through 13.

LACK OF COMPLIANCE WITH THE COMMERCIAL SOLID WASTE FRANCHISE AGREEMENT AND THE CITY CODE

- Our audit disclosed that for fiscal year 2006-2007, Choice did not maintain the required amount of bond as stipulated in Section 22-47(b) of the City Code and Article VII, Section 7.2 of the Agreement. See detailed discussions on page 14.
- Our audit disclosed that Choice did not provide the City, in a timely manner, with the required certified statement of annual gross receipts prepared by an independent certified public accountant as stipulated in Section 22-56(b) of the City Code and Article V, Section 5.3 of the Agreement. See detailed discussions on page 15.

SOLID WASTE DEPARTMENT

INADEQUATE MONITORING AND ENFORCEMENT OF THE PROVISIONS OF THE COMMERCIAL SOLID WASTE 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 Solid Waste Franchise Agreement (Agreement) between the City and the franchisees. However, we noted that adequate internal control procedures were not implemented to:

- Ensure that the statement of annual gross receipts was obtained from Choice in a timely manner as required by Section 22-56(b) of the City Code and Article V, Section 5.3 of the Agreement.
- Ensure that Choice maintained the required amount of bond as stipulated in Section 22-47(b) of the City Code and Article VII, Section 7.2 of the Agreement.

AUDIT FINDINGS AND RECOMMENDATIONS

CHOICE ENVIRONMENTAL SERVICES

ADDITIONAL FEES DUE TO THE CITY

Article V, Section 5.2 of the Commercial Solid Waste Franchise Agreement (Agreement) titled "Franchise Fees" stipulates the various franchise fees (FF) to be remitted to the City. Choice Environmental Services, Inc. (Choice) generated total gross receipts of \$2,906,547.65 for services provided within the City during the audit period (fiscal years 2006-2007 and 2007-2008). The total gross receipts include revenues generated from commercial solid waste and specialized waste handling services. The total FF remitted to the City during the audit period was \$608,616.75. Our audit of Choice's accounting and billing records disclosed that an additional \$86,996.67 is due to the City, as itemized below:

FRANCHISE FEES (22%)

Article V, Section 5.2 of the Commercial Solid Waste Franchise Fee Agreement (Agreement) requires the franchisee to remit monthly to the City 22 percent (22%) of the 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 payment by the last day of the following month will result in a one and one-half percent (1-1/2%) penalty per month on the balance due. Our audit disclosed that:

- Choice improperly excluded maintenance and environmental fees, from its calculation of the 22% franchise fee percentage due to the City for the months October 2006 through March 2007. As a result, the un-remitted franchise fees and the related late payment penalty totaling \$37,662.71 (\$28,383.55 + \$9,279.16) are due to the City.

- Franchise fees were not remitted in a timely manner in 7 (or 29%) of the 24 monthly payments that were made to the City during the audit period. The number of days late ranged from 1 to 30 days. As a result of the untimely remittance, a late payment penalty totaling \$1,591.44 is due to the City.

MISCODED ACCOUNTS

Our review of Choice's customer listings for the unincorporated Miami-Dade County (County) and other municipalities for the audit period disclosed that 26 customer accounts located in the City were miscoded to the County and the 22% franchise fees and the permit per account fees relative to said miscoded accounts were not remitted to the City as required. As a result, the un-remitted franchise fees, the permit per account fees, and the applicable late/penalty fees totaling \$44,151.52 (\$30,130.74 + \$10,268.72 + \$2,908.31 + \$843.75) are due to the City.

ANNUAL FEE

Article V, Section 5.4 of the Agreement stipulates that "FRANCHISEE agrees to remit to the City annually (due October 1) the sum of \$5,000 (increased annually by \$500, thus \$6,000 and \$6,500 were due for the fiscal years 2006-2007 and 2007-2008, respectively) 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 result in a one and one-half percent (1-1/2%) penalty per month on the balance due to the City. However, our audit disclosed that Choice remitted its annual fees for the fiscal year 2006-2007 and 2007-2008 on 12/6/06 and 10/3/07 respectively (3 and 1 months late). As a result of the late remittance, a total late fee of \$367.50 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) 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 assessment of a late payment penalty of a one and one-half percent (1-1/2%) per month on the balance due to the City. However, our audit disclosed that Choice remitted its PPAF two (2) months late for each fiscal year (2006-2007 and 2007-2008) in the audit period. As a result of the late remittances, a late penalty fee of \$1,213.50 is due to the City.

AUDIT FEE

Article VI, Section 6.2 of the Agreement stipulates that: "If a City Audit reveals that FRANCHISEE under reported gross receipts, and results in additional revenue due to 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 fiscal years 2006/2007 and 2007/2008 disclosed that the amount due to the City before including the audit fee is \$84,986.67. Therefore, the related audit fee is \$2,010.

Recommendation:

We recommend that Choice Environmental Services, Inc. enhance its internal control procedures to ensure that service accounts located within City of Miami boundaries are properly identified and properly coded and that the appropriate fees are remitted to the City in a timely manner.

Auditee's Response and Action Plan:

The auditee concurred with all audit findings and recommendations and has remitted to the City the additional franchise fees totaling \$86,996.67. See written response on pages 19 through 26.

LACK OF COMPLIANCE WITH THE COMMERCIAL SOLID WASTE FRANCHISE AGREEMENT AND THE CITY CODE

The Commercial Solid Waste Franchise Agreement (Agreement) between the City and franchisees provides certain operating guidelines and requirements. The operating guidelines are designed to ensure uniformity in the services provided and also to ensure that the City's best interest is well protected. However, our audit disclosed the following deficiencies:

FAILURE TO OBTAIN THE REQUIRED AMOUNT OF SURTY 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 of \$25,000, whichever is greater, as security for the faithful performance of the Franchise AGREEMENT."

Our audit disclosed that the total franchise fees due and payable to the City during the previous 12 months were \$426,081.30. However, Choice maintained a bond amount of \$165,750 for the audit period. We noted that Choice increased the bond amount to \$393,000 as of 10/01/2008 and subsequently to \$426,100 during the audit field work, upon audit inquiry.

FAILURE TO PROVIDE THE CITY WITH THE REQUIRED CERTIFIED STATEMENT OF ANNUAL GROSS RECEIPTS IN A TIMELY MANNER

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 SWD, 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. However, our audit disclosed the following deficiencies:

- The CPA statements provided to the SWD for the fiscal years ended 9/30/07 and 9/30/08 reported the gross receipts that were paid to the City of Miami rather than the gross receipts ‘generated from accounts within the City’ that should have been reported to the City.
- The amounts reported on the CPA statements did not always include gross receipts related to maintenance and environmental fees charged to customers.
- The CPA did not prepare said statement but rather verified the mathematical accuracy of the statement of the annual gross receipts generated from accounts within the City prepared and presented by Choice management.
- Also, our audit disclosed that said CPA statement for fiscal year ended 9/30/2008 was submitted to the SWD 18 days late.

Recommendation:

We recommend that at the end of each fiscal year, Choice Environmental Services, Inc. (Choice) determine the total amount of franchise fees it remitted to the City (including the annual franchise fee, the 22% monthly franchise fee, the annual permit per account fee, and any other franchise fees paid to the City) during the previous 12 months. Upon

such determination Choice should obtain any additional surety bond necessary to comply with the requirements stipulated in Article VII, Section 7.2 of the Agreement. Also, the statement of the annual gross receipts generated from accounts within the City should be prepared in accordance with the provisions of Article V, Section 5.3 of the Agreement.

Auditee's Response and Action Plan:

The auditee concurred with all audit findings and recommendations and has remitted to the City the additional franchise fees totaling \$86,996.67. See written response on pages 19 through 26.

CHOICE ACQUIRED THE CUSTOMER LISTINGS AND OTHER ASSETS OF TWO FRANCHISEES WITHOUT CITY'S CONSENT

Article XIII, Section 13.1 of the Commercial Solid Waste Franchise Agreement between the City of Miami (City) and Choice stipulates that: “There is no right to assign this Agreement. The City Commission may allow an assignment if it is deemed in the best interests of the City of Miami (“City”) to do so. Under no circumstances may the City Commission consider assignment of a Franchise as long as the FRANCHISEE has any outstanding balance to the City or is otherwise not in complete compliance with the Agreement. If the FRANCHISEE is up to date with all payments to the City and is otherwise fully in compliance with the agreement, then a FRANCHISEE may request consideration for assignment only as follows: by Certified letter to the Director of the Department of Solid Waste with reports enclosed reflecting all payments due to the City have been paid through the date of the letter. For the purpose of this paragraph, “assignment” shall include any transfer of a majority of stock in a FRANCHISEE or any significant change in ownership of the FRANCHISEE, its officers, directors or personnel. The Director of the Department of Solid Waste must be notified of any sale of a majority of stock in the FRANCHISEE, its officers, directors or personnel by Certified letter no later than five (5) business days after such action. If assignment is granted, the new FRANCHISEE will assume all obligations set forth in the Agreement and immediately comply with all terms of the Agreement.”

Our review of franchise fees, related records, and audit inquiry disclosed that Choice Environmental Services, Inc. (Choice) acquired certain assets of the business operations of Mac-Pac Waste Services and Simco Recycling. The President of Choice stated that it acquired only the customer listings, trucks and containers of Mac-Pac and Simco. He (President) noted that prior consideration and approval of the City of Miami Commission, as noted above, was not necessary because Choice did not acquire the stocks, franchise licenses, other assets, and liabilities of the two franchisees. However, the determination of whether the nature of the acquisitions

described by the President constitutes an “assignment,” or significant change in the ownership of the franchisees (Mac-Pac Waste Services and Simco Recycling) as stipulated in Article XIII, Section 13.1 of the Commercial Solid Waste Franchise Agreement, is currently being reviewed by the Office of the City Attorney.

Recommendation:

If the Office of the City Attorney determines that the acquisition as described by the President of Choice constitutes an “assignment,” or significant change in the ownership of the franchisees (Mac-Pac Waste Services and Simco Recycling), we recommend that Choice provide the City with all the pertinent documents indicating that Mac-Pac and Simco Recycling were in full compliance with the Agreement and also pay to the City any outstanding franchise fees that may be due from Mac-Pac and Simco Recycling.

Auditee’s Response and Action Plan:

The President stated that prior consideration and approval of the City of Miami Commission, as noted above, was not necessary because Choice did not acquire the stocks, franchise licenses, other assets, and liabilities of the two franchisees.

City of Miami

VICTOR I. IGWE, CPA, CIA
INDEPENDENT AUDITOR GENERAL



Telephone (305) 416-2040
Telecopier: (305) 416-2046
E-Mail: lag@ci.miami.fl.usa

April 23, 2009

Neal Rodrigue, President
Choice Environmental, Inc,
2860 State Road 84, Suite 103
Fort Lauderdale, FL 33312

RE: Audit of Choice Environmental Services, Inc. – Audit #09-009

Dear Mr. Rodrigue:

In connection with our audit of Choice Environmental Services, Inc. for the period October 1, 2006 through September 30, 2008, and selected transactions prior and subsequent to this period, our audit disclosed that additional franchise fees totaling \$86,996.67 (\$37,662.71 + \$1,591.44 + \$44,151.52 + \$1,213.50 + \$367.50 + \$2,010) is due to the City as summarized below: [WP: T-30]

- I. Article V, Section 5.2 of the Commercial Solid Waste Franchise Fee Agreement (Agreement) requires the franchisee to remit monthly to the City 22 percent (22%) of its Gross Receipts generated from account within the City limits, or \$500 whichever is greater. [WP: R-6]. 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 payment by the last day of the following month will result in a one and one-half percent (1-1/2%) penalty per month on the balance due. Our audit disclosed that:

- Choice improperly excluded maintenance and environmental fees, from its calculation of the franchise fee percentage due to the City for the months October 2006 through March 2007. As a result, the un-remitted franchise fees and the related late payment penalty totaling \$37,662.71 (\$28, 383.55 + \$9,279.16) are due to the City. [WP: T-30 & 34].

I agree; I disagree. Please initial: NR

Explanation _____

- The franchise fees were not remitted in a timely manner in 7 (or 29%) of the 24 monthly payments that were made to the City during the audit period. The number of days late ranged from 1 to 30 days. As a result of the untimely remittance, a late payment penalty totaling \$1,591.44 is due to the City. [WP: T-34]

I agree; I disagree. Please initial: NR

Explanation _____

- Our review of Choice's customer listings for the unincorporated Miami-Dade County (County) and other municipalities for the audit period disclosed that 26 customer accounts located in the City were miscoded to the County and the 22% franchise fees and the permit per account fees relative to said miscoded accounts were not remitted to the City as required. As a result, the un-remitted franchise fees, the permit per account fees, and the applicable late/penalty fees totaling \$44,151.52 (\$30,130.74 + \$10,268.72 + \$2,908.31 + \$843.75) are due to the City. [WP:T-299]

I agree; I disagree. Please initial: NR

OFFICE OF INDEPENDENT AUDITOR GENERAL
444 s.w.2nd Avenue, suite 715/Miami, FL 33128

Explanation _____

II. Article V, Section 5.4 of the Agreement stipulates that "FRANCHISEE agrees to remit to the City annually (due October 1) the sum of \$5,000 (increased annually by \$500, thus \$6,000 and \$6,500 were due for the fiscal years 2006-2007 and 2007-2008 respectively) 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 result in a one and one-half percent (1-1/2%) penalty per month on the balance due to the City. [WP: R-7]. However, our audit disclosed that Choice remitted its annual fees for the fiscal year 2006-2007 and 2007-2008 on 12/6/06 and 10/3/07 respectively (3 and 1 months late). As a result of the late remittance, a total late fee of \$367.50 is due to the City. [WP: T-220]

I agree; I disagree. Please initial: NR

Explanation _____

III. Article V, Section 5.6 of the Agreement requires the franchisee to remit to the City annually (due October 15) 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 late payment penalty of a one and one-half percent (1-1/2%) per month will be assessed on the balance due to the City. [WP: R-7]. However, our audit disclosed that Choice remitted its PPAF three (2) months for the fiscal year 2006-2007. As

OFFICE OF INDEPENDENT AUDITOR GENERAL
444 s.w.2nd Avenue, suite 715/Miami, FL 33128

a result of the late remittance, a late penalty fee of \$1,213.50 is due to the City. [WP: T-227]

I agree; I disagree. Please initial: NR

Explanation _____

IV. 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 of \$25,000, whichever is greater, as security for the faithful performance of the Franchise AGREEMENT."

Our audit disclosed that the total franchise fees due and payable to the City during the previous 12 months were \$426,081.30 [WP: T-5]. However, Choice maintained a bond amount of \$165,750 for the audit period. We noted that Choice increased the bond amount to \$393,000 as of 10/01/2008 [T-9] and subsequently to \$426,100 during the audit field work, upon audit inquiry. [T-10.1]

I agree; I disagree. Please initial: NR

Explanation _____

V. Article VI, Section 6.2 of the Agreement stipulates that: "If a City Audit reveals that FRANCHISEE under reported gross receipts, and results in additional revenue due to 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 fiscal years 2006/2007 and 2007/2008 disclosed that the amount due to the City before including the audit fee is \$84,986.67. Therefore, the related audit fee is \$2,010 [WP: R-8] [WP: T-31]

I agree; I disagree. Please initial: NR

Explanation * AUDIT FEE # NEEDS TO BE CORRECTED

VI. 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 SWD, 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. However, we noted that the following deficiencies:

- The CPA statements provided to the SWD for the fiscal years ended 9/30/07 and 9/30/08 reported the gross receipts that were **paid** to the City of Miami rather than the gross receipts '**generated from accounts within the City**' that should have been reported to the City.
- The amounts reported on the CPA statements did not always include gross receipts related to maintenance and environmental fees charged to customers. [T- 25/26] [T- 25.1/27] [T- 34]
- The CPA did not prepare and certify said statement but rather verified the mathematical accuracy of the statement of the annual gross receipts generated from accounts within the City prepared and presented by Choice. [T- 25/26]
- Also, our audit discloses that said CPA statement for fiscal year ended 9/30/2008 was submitted to the SWD 18 days late. [T- 26]

I agree; I disagree. Please initial: NR

Explanation CHOICE WILL HIRE A NEW FIRM & DIRECT THEM TO DELPOLA

VII. Article XIII, Section 13.1 of the Commercial Solid Waste Franchise Agreement between the

City of Miami (City) and Choice stipulates that: "There is no right to assign this Agreement. The City Commission may allow an assignment if it is deemed in the best interests of the City of Miami ("City") to do so. Under no circumstances may the City Commission consider assignment of a Franchise as long as the FRANCHISEE has any outstanding balance to the City or is otherwise not in complete compliance with the Agreement. If the FRANCHISEE is up to date with all payments to the City and is otherwise fully in compliance with the agreement, then a FRANCHISEE may request consideration for assignment only as follows: by Certified letter to the Director of the Department of Solid Waste with reports enclosed reflecting all payments due to the City have been paid through the date of the letter. For the purpose of this paragraph, "assignment" shall include any transfer of a majority of stock in a FRANCHISEE or any significant change in ownership of the FRANCHISEE, its officers, directors or personnel. The Director of the Department of Solid Waste must be notified of any sale of a majority of stock in the FRANCHISEE, its officers, directors or personnel by Certified letter no later than five (5) business days after such action. If assignment is granted, the new FRANCHISEE will assume all obligations set forth in the Agreement and immediately comply with all terms of the Agreement." [R-12]

Our review of franchise fees, related records, and audit inquiry disclosed that Choice Environmental Services, Inc. (Choice) acquired certain assets of the business operations of

OFFICE OF INDEPENDENT AUDITOR GENERAL
444 s.w.2nd Avenue, suite 715/Miami, FL 33128

Mac-Pac Waste Services and Simco Recycling. The President of Choice stated that it acquired only the customer listings, trucks and containers of Mac-Pac and Simco. He (President) noted that prior consideration and approval of the City of Miami Commission, as noted above, was not necessary because Choice did not acquire the stocks, franchise licenses, other assets, and liabilities of the two franchisees. However, the determination of whether the nature of the acquisitions described by the President constitutes an "assignment," as Article XIII, Section 13.1 of the Commercial Solid Waste Franchise Agreement, is currently being reviewed by the Office of the City Attorney.

I agree; I disagree.

Please initial: NR

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.

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.

Neal Rodrigue
Neal Rodrigue

4/27/09
Date

Sincerely,

OFFICE OF INDEPENDENT AUDITOR GENERAL
444 s.w. 2nd Avenue, suite 715/Miami, FL 33128

Page 8 of 8
Mr. Neal Rodrigue
April 23, 2009



Zewditu Woldegiorgis
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, Independent Auditor General

OFFICE OF INDEPENDENT AUDITOR GENERAL
444 s.w.2nd Avenue, suite 715/Miami, FL 33128

SOLID WASTE DEPARTMENT (SWD)

INADEQUATE MONITORING AND ENFORCEMENT OF THE PROVISIONS OF THE COMMERCIAL SOLID WASTE 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 Solid Waste Franchise Agreement (Agreement) between the City and the franchisees. However, as we have previously reported in prior audit reports, adequate internal control procedures have not been implemented to ensure that the provisions of said agreement are properly monitored for compliance as summarized below:

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 SWD, 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. However, we noted that the CPA statements provided to the SWD for the fiscal years ended 9/30/07 and 9/30/08 reported the gross receipts that were paid to the City of Miami rather than the gross receipts ‘generated from accounts within the City’ that should have been reported to the City. Also, the amounts reported on the CPA statements did not always include gross receipts related to maintenance and environmental fees charged to customers.
- As indicated above, the statement of annual gross receipts generated from accounts within the City should be prepared by a CPA. However, we noted that said Statement was not prepared by a CPA as required. The CPA engaged by Choice merely verified the mathematical accuracy of the schedule prepared by Choice management.

- Also, our audit disclosed that the statement of annual gross receipts generated from accounts within the City for fiscal year ended 9/30/2008 was submitted to the Department of Solid Waste 18 days late.

PERFORMANCE 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 of \$25,000, whichever is greater, as security for the faithful performance of the Franchise AGREEMENT.”

Our audit disclosed that the total franchise fees due and payable to the City during the previous 12 months were \$426,081.30. However, Choice maintained a bond amount of \$165,750 for the audit period. Upon audit inquiry, during our audit field work, Choice increased the bond amount to \$393,000 as of 10/01/2008 and subsequently to \$426,100.

Recommendation:

We recommend that SWD implement more effective internal control procedures to ensure that the provisions of the Franchise Agreement are properly monitored for compliance. Also, we recommend that the SWD follow-up with the Office of the City Attorney in connection with the acquisition of Mac-Pac Waste Services and Simco Recycling as described on pages 17 and 18 and ensure that Choice is in full compliance

with the Agreement including payment of any outstanding franchise fees that may be due from Mac-Pac and Simco Recycling.

Auditee's Response and Action Plan:

Please see written response on pages 28 and 29.

INTER-OFFICE MEMORANDUM

TO :	Zewditu Woldegiorgis, Staff Auditor Office of Independent Auditor General	DATE :	March 15, 2009	FILE :	
FROM :	 Mario E. Soldevilla, Director Department of Solid Waste	SUBJECT :	Response to Memo of Understanding-Choice	REFERENCES :	Audit # 09-009
		ENCLOSURES:			

I. CPA Statement of Annual Gross Receipts

Mchenry Hamilton, the CPA for Choice was notified of the deficiencies as noted in your audit report by our department. Mr. Hamilton agreed to discuss these audit findings with his client Choice Environmental Services, Inc. Mr. Hamilton also agreed to have future CPA Statements delivered to our department by the due date and not be 18 days late. In addition, he agreed the CPA Statements would be prepared in accordance with Article V, Section 5.3 of the Franchise Agreement.

II. Performance Bond

Please see the attached copy of Performance Bond No. 102,170 for Choice Environmental Services, Inc., in the amount of \$426,100.00, effective 10/01/2008.

c: Steven Margolis, Auditor
Joe Tang, Fiscal Administrator

Lexon Insurance Company
1919 S. Highland Avenue, Bldg. A-Suite 300, Lombard, Illinois 00140-4079

BOND RIDER

To be attached to and form a part of Solid Waste Collection
Bond No. 1021170 Dated March 5, 2008 of _____
Choice Environmental Services, Inc. as Principal, and
Lexon Insurance Company, as Surety, in favor of _____
City of Miami as Obligee.
It is understood and agreed that the Bond is changed or revised in the particulars as indicated below:
Increasing Bond Amount from \$393,000 to \$426,100 effective 10/01/08

Said Bond shall be subject to all terms, conditions, and limitations, except as herein expressly modified.
This Bond Rider shall become effective: October 1, 2008
IN WITNESS WHEREOF, Lexon Insurance Company caused its corporate seal to be hereunto affixed
this: December 16, 2008

Lexon Insurance Company

James H. Martin
Attorney-in-Fact
James H. Martin

EXHIBIT I

**CHOICE ENVIRONMENTAL SERVICES, INC
SCHEDULE OF FEES DUE TO THE CITY
OCTOBER 1, 2006 THROUGH SEPTEMBER 20, 2008**

DESCRIPTION	ITEMIZED AMOUNT	TOTAL FEES DUE
	\$	\$
<u>Monthly 22% Franchise Fees</u>		
22% Unpaid Franchise Fee	28,383.55	
1.50% Penalty	10,870.60	39,254.15
<u>Miscoded Accounts</u>		
20% or 22% unpaid Franchise Fee	30,130.74	
1% or 1.50% penalty	10,268.72	
Permit per account	2,908.31	
Penalty on permit per Account	843.75	44,151.52
<u>Annual Franchise Fee</u>		
1.50% Penalty on Late Remittance	367.50	367.50
<u>Permit Per Account Fee</u>		
1.50% Penalty on Late Remittance	1,213.50	1,213.50
Audit Cost	2,010.00	2,010.00
 Total Due to the City		<u><u>\$ 86,996.67</u></u>