

CITY OF MIAMI  
**OFFICE OF INDEPENDENT AUDITOR GENERAL**



**WASTE SERVICES USA, INC.**  
**AUDIT REPORT NO. 09-017**

Prepared By  
**Office of Independent Auditor General**

Victor I. Igwe, CPA, CIA  
*Independent Auditor General*

**PAULINO GARCIA, STAFF AUDITOR**

# City of Miami

VICTOR I. IGWE, CPA, CIA  
INDEPENDENT AUDITOR GENERAL



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May 19, 2009

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

Re: Waste Services USA, Inc.  
Audit No.09-017

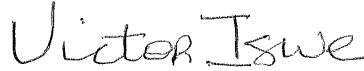
Pursuant to Section 48 of the City of Miami's (City) Charter and the Fiscal year 2008/2009 audit plan, we have examined the billing records of Waste Services, USA (WSUSA). The audit was performed to determine whether WSUSA complied with applicable Sections of the City Code and the Commercial Solid Waste 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, 2004 through September 30, 2008 and selected financial transactions that were processed prior and subsequent to this period.

Sincerely,

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  
Percy Markus, Waste Services USA, Inc., President  
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

OFFICE OF INDEPENDENT AUDITOR GENERAL/444 S.W. 7TH AVENUE, SUITE 715/MIAMI, FLORIDA 33130-1910

OFFICE OF INDEPENDENT AUDITOR GENERAL/444 S.W. 7TH AVENUE, SUITE 715/MIAMI, FLORIDA 33130-1910

**AUDIT OF WASTE SERVICES USA, INC.  
OCTOBER 1, 2004 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 one-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) for the right to provide commercial solid waste services and special waste handling

services within the City. A one and one-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) 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 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 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 one-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. Waste Services USA, Inc. (WSUSA) is one of the franchisees selected for audit 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 WSUSA 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 Waste Services USA, Inc. (WSUSA) 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, 2004 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 WSUSA. 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 WSUSA 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 (if any) 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.
- The Annual Franchise Fee and Permit Per Account Fee were remitted to the City in a timely manner.
- All active service accounts as of October 1 are properly identified, reported to the City, and the related Permit Per Account Fees paid to the City.
- The statement of its annual gross receipts is certified by a licensed CPA and filed with the Solid Waste Department (SWD) in a timely manner.
- The performance bond is issued by a surety company that has a rating classification of “A” and a financial category of Class “VII” as required by the 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 certificates as required by the City Code and the Agreement.

Overall, we conclude that the internal control policies and procedures in place at WSUSA 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 of the operation of commercial solid waste handling services in the City.

## **SUMMARY OF AUDIT FINDINGS**

### **WASTE SERVICES USA, 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 Waste Services USA, Inc. (WSUSA), the Solid Waste Department (SWD), and the Finance Department (FD) materially complied with the following:

- The FD properly recorded the sampled payments from WSUSA to the City. The sampled payments received by the FD were also traced to the City's treasury.
- WSUSA complied with the vehicle insurance requirement as stipulated in Section 22-47 (4a) of the City Code.
- The SWD obtained vehicle insurance records as stipulated in Section 22-47(4) a of the City Code.

**WASTE SERVICES USA, 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 Waste Services USA, Inc.’s (WSUSA) accounting and billing records disclosed that \$6,767.92 is due to the City. See detailed discussions on pages 10 through 14.

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

- Our audit determined that WSUSA’s statement of annual gross receipts for the fiscal year 2004-2005 was certified by an Accounting and Bookkeeping Service Company and not by a licensed CPA, as required.
- Also, we noted that WSUSA’s statement of annual gross receipts for the fiscal years 2004-2005 and 2005-2006 were submitted 12 and 98 days late, respectively.
- Our audit determined that the surety company that issued WSUSA’s performance bond did not have the rating classification of “A” and a financial category of Class “VII” as required by the agreement.

## **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, as we have 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.

- WSUSA's statement of annual gross receipts for the 2004-2005 fiscal year was not certified by a licensed CPA.
- WSUSA's statement of annual gross receipts for the fiscal years 2004-2005 and 2005-2006 were not submitted in a timely manner as required by Section 22-56(b) of the City Code and Article V, Section 5.3 of the Agreement.
- The surety company that issued WSUSA's performance bond did not have the required rating classification of "A" and a financial category of Class "VII" as required by the agreement.

## **AUDIT FINDINGS AND RECOMMENDATIONS**

### **WASTE SERVICES USA, INC.**

#### **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. Waste Services USA, Inc. (WSUSA) generated total gross receipts of \$1,344,215 for services provided within the City during the audit period (fiscal years 2004-2008). The total gross receipts were generated exclusively from Specialized Waste Handling. The total FF remitted to the City during the audit period was \$295,727. Our review of WSUSA’s accounting and billing records disclosed that an additional \$6,767.92 is due to the City, as itemized below:

#### **ANNUAL FEES**

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 (increased annually by \$500, thus \$1,000 was due in 2004-2005; \$1,500 was due in 2005-2006; \$2,000 was due in 2006-2007; and \$2,500 was due in 2007-2008) 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 one-half percent (1-1/2%) late payment penalty per month on the balance due to the City. Our audit disclosed that WSUSA remitted its annual franchise fees late during the audit period. As a result of the late remittances, a late payment penalty fee of \$195 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 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 one and one-half percent (1-1/2%) per month on the balance due to the City. Our audit disclosed that:

- WSUSA remitted its annual PPAF late during the audit period. As a result of the late remittances, a late payment penalty of \$69 is due to the City.
- Also, WSUSA did not remit to the City the PPAF for four (4) service accounts that were active as of October 2006. The PPAF relative to said accounts and the applicable late payment penalty totaling \$287 (\$200 + \$87) are 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 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%) late payment penalty per month on the balance due. Our audit of WSUSA's billing records and listing of customers in unincorporated Miami-Dade County and other municipalities disclosed that:



- WSUSA did not remit to the City, the 22% franchise fees and the related permit per account fees (PPAF) generated from four (4) customer accounts as required. The un-remitted 22% franchise fees, the related PPAF and the applicable late payment penalty fees totaling \$5,865.19 (\$5,794.19 + \$71) are due to the City.
- Franchise fees were not remitted in a timely manner in 7 (or 14.5%) of the 48 monthly payments that were made to the City during the audit period. The number of days late ranged from 1 to 13 days. As a result of the untimely remittance, a late payment penalty totaling \$351.73 is due to the City.

Recommendation:

We recommend that Waste Services USA, Inc. (WSUSA) enhance its internal control procedures to ensure that service accounts located within City of Miami boundaries are properly identified and coded and the appropriate fees be remitted to the City in a timely manner. Also, we recommend that the Finance Department bill WSUSA for the total amount of \$6,767.92 due and payable to the City.

Auditee's Response and Action Plan:

The auditee concurred with all audit findings and recommendations. See written response on pages 17 through 21.

**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 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 statement of annual gross receipts for the fiscal years 2004-2005 and 2005-2006 were submitted 12 and 98 days late, respectively.
- The statement of annual gross receipts for the fiscal year 2004-2005 was certified by an Accounting and Bookkeeping Service Company and not by a licensed CPA, as required.

- **PERFORMANCE BOND WAS ISSUED BY A SURETY WITH LOWER THAN THE REQUIRED RATING CLASSIFICATION AND FINANCIAL CATEGORY**

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 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. The surety shall have a rating classification of “A” and a financial category of Class VII as evaluated in the current Best’s Key Rating Guide, Property Liability.”

Our audit determined that the surety company that issued performance bond to WSUSA had a rating classification of “B-“ and a financial category of Class “V”, which are lower than the rating requirements stipulated in the Agreement. Upon inquiry, WSUSA obtained a new performance bond with a rating classification of “A-“ and a financial category of Class VI. The City’s Risk Management Department reviewed the new performance bond and deemed it to be sufficient and acceptable.

**Recommendation:**

We recommend that the statement of the annual gross receipts generated from accounts within the City be prepared in accordance with the provisions of Article V, Section 5.3 of the Agreement and submitted to the City in a timely manner.

Auditee's Response and Action Plan:

The auditee concurred with all the audit findings and recommendations. See written responses on pages 17 through 21.

# City of Miami

VICTOR I. IGWE, CPA, CIA  
INDEPENDENT AUDITOR GENERAL



Telephone (305) 416-2040  
Telecopier: (305) 418-2046  
E-Mail: lag@ci.miami.fl.usa

April 22, 2009

Mr. Percy Marcus, President  
Waste Services, USA  
811 NW 143rd. Street  
Miami, Florida 33147

RE: Audit of Waste Services, USA  
Audit No. 09-017

Dear Mr. Marcus:

In connection with our audit of Waste Services, USA (WSU) for the period October 1, 2004 through September 30, 2008, and selected transactions prior and subsequent to this period, our audit disclosed that additional franchise fees totaling \$6,767.92 (W/P T-11) 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 \$1,000 was due in 2004-2005; \$1,500 was due in 2005-2006; \$2,000 was due in 2006-2007; and \$2,500 was due in 2007-2008) 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 one-half percent (1-1/2%) per month on the balance due to the City. However, our audit disclosed that WSU remitted all annual franchise fees late during the audit period. As a result of the late remittances, a late fee of \$195.00 is due to the City. (W/P T-13)

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 late payment penalty of one and one-half percent (1-1/2%) per month on the balance due to the City. Our audit disclosed that:

- WSU remitted all annual PPAF late during the audit period. As a result of the late remittances, a late payment penalty of \$69.00 is due to the City (W/P T-20)
- Also WSA did not remit to the City the PPAF for four (4) service accounts that were active as of October 2006. As a result the PPAF and the applicable late payment penalty totaling \$287 (\$200 + \$87) are due to the City. (W/P T-20)

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 one-half percent (1-1/2%) penalty per month on the balance due. Our review of WSU's billing records and listing of customers in unincorporated Miami-Dade County and other municipalities disclosed that:

- WSU did not remit to the City, the 22% franchise fees and the related permit per account fees (PPAF) generated from four (4) customer accounts as required. The un-remitted 22% franchise fees, the related PPAF and the applicable late fees totaling \$5,865.19 (\$5,794.19 + \$71.00) are due to the City. (W/P T-427).

I agree  I disagree \_\_\_\_\_ Please Initial:             
Explanation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- Franchise fees were not remitted in a timely manner in 7 (or 14.5%) of the 48 monthly payments that were made to the City during the audit period. The number of days late ranged from 1 to 13 days. As a result of the untimely remittance, a late payment penalty totaling \$351.73 due to the City. (W/P T-274 and T-347)

I agree  I disagree \_\_\_\_\_ Please Initial:             
Explanation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IV. Article V, Section 5.3 of the Agreement stipulates that the franchisee shall, on or before 60 days (November 30<sup>th</sup>) 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 for the fiscal years 2004-2005 and 2005-2006 were submitted 12 and 98 days late, respectively. (W/P T-97)
- The CPA statement for the fiscal year 2004-2005 was issued by an Accounting and Bookkeeping Service company and not by a CPA firm as required. (W/P T-173)

I agree  I disagree  Please Initial PM

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V. 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 countersigned by an agent for the company, resident in the State of Florida. The amount of 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. The surety company shall have a rating classification of "A" and a financial category of Class "VII" as evaluated in the current Best's Key Rating Guide. Our audit determined that the surety company that issued performance bond to WSU has a rating classification of "B-" and a financial rating classification of Class "V" which are lower than the rating requirements stipulated in the Agreement. (W/P T-53.1)

I agree  I disagree  Please Initial PM

Explanation: \_\_\_\_\_



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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 May 4, 2009.

A summary schedule is attached for your reference. If you have any questions, please feel free to contact me at (305) 416-2047 or Victor Igwe (the Independent Auditor General) at (305) 416-2044.

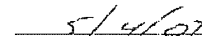
Thank you for your attention in this matter.

Sincerely,

Paulino Garcia  
Staff Auditor  
Office of Independent Auditor General

I have read this Memorandum of Understanding and responded accordingly in the spaces provided for.

  
Percy Marcus

  
Date

C: Mario E. Soldevilla, Director, Solid Waste Department  
Steven Margolis, Principal Auditor, Solid Waste Department  
Victor Igwe, CPA, CIA, Auditor General

## **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, as we have 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.

- **CERTIFIED STATEMENTS OF ANNUAL GROSS RECEIPTS**

The SWD did not follow-up and ensure that the statement of annual gross receipts was properly certified by a licensed CPA and submitted to the city in a timely manner. Please see detailed discussion on page 14.

- **PERFORMANCE BOND WAS ISSUED BY A SURETY WITH LOWER THAN THE REQUIRED RATING CLASSIFICATION AND FINANCIAL CATEGORY**

The SWD did not properly review the performance bond submitted by WSUSA to determine whether it was issued by a surety with the appropriate rating classification and financial category, as stipulated in the Agreement. Please see detailed discussion on page 15.

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.

Auditee's Response and Action Plan:

The auditee concurred with all audit findings and recommendations. See written responses and pages 22 through 26.

INTER-OFFICE MEMORANDUM

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TO: Mario E Soldevilla, Director Solid Waste Department	DATE: April 22, 2009
FROM: Paulino Garcia, Staff Auditor Office of Independent Auditor General	SUBJECT: Memorandum of Understanding Waste Services, USA
	REFERENCES: Audit #09-017
	ENCLOSURES:

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In connection with our audit of Waste Services, USA for the period October 1, 2004 through September 30, 2008, please review the following preliminary and tentative findings and respond accordingly.

I. Article V, Section 5.3 of the Agreement stipulates that the franchisee shall, on or before 60 days (November 30<sup>th</sup>) 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 for the fiscal years 2004-2005 and 2005-2006 were submitted 12 and 98 days late, respectively. (W/P T-97)
- The CPA statement for the fiscal year 2004-2005 was issued by an Accounting and Bookkeeping Service company and not by a CPA firm as required. (W/P T-173)

Your understanding is: Correct  Incorrect  Please initial: \_\_\_\_\_

Explanation: \_\_\_\_\_

\_\_\_\_\_

II. 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 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. The surety company shall have a rating classification of "A" and a financial category of Class "VII" as evaluated in the current Best's Key Rating Guide. Our audit determined that the surety company that issued performance bond to WSU has a rating classification of "B-" and a financial rating classification of Class "V" which are lower than the rating requirements stipulated in the Agreement.

(W/P T-53.1)

Your understanding is: Correct  Incorrect  Please Initial

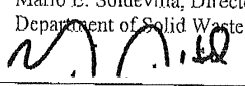
Explanation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In accordance with Chapter 22 of the City Code and the Commercial Solid Waste Franchise Agreement (Agreement), the Solid Waste Department is responsible for administering, monitoring, and enforcing the provisions of the said City Code and Agreement. Please review the above audit findings, check the appropriate box, and provide written responses addressing each of the concerns noted above, no later than May 4, 2009. If you have any questions or comments please feel free to contact me at 305-416-2047.

C: Steven Margolis, Principal Auditor, SWD  
Victor Igwe, CPA, CIA, Auditor General

CITY OF MIAMI, FLORIDA  
INTER-OFFICE MEMORANDUM

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TO :	Paulino Garcia, Staff Auditor Office of Independent Auditor General	DATE :	May 19, 2009	FILE :	
		SUBJECT :	Response to Memo of Understanding-Waste Services		
FROM :	Mario E. Soldevilla, Director Department of Solid Waste 	REFERENCES :	Audi #09-017		
		ENCLOSURES:			

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I. CPA Statement of Annual Gross Receipts

Andre S. Burton, the CPA for Waste Services USA, Inc (WSU), was notified of the deficiencies as noted in your audit report by our department. Mr. Burton agreed to have all future CPA Statements delivered to our department by the due date of November 30<sup>th</sup>.

II. Performance Bond

Please see the attached copy of Performance Bond No. ASB-510556 for WSU, in the amount of \$83,200.00, signed, sealed and dated 10/01/2008. Our department verified with the City's Risk Management department that the new surety company has a rating classification of A- and a financial category of Class VI.

c: Steven Margolis, Auditor  
Joe Tang, Fiscal Administrator

**EXHIBIT I**

**WASTE SERVICES USA, INC.  
SCHEDULE OF FEES DUE TO THE CITY  
OCTOBER 1, 2004 THROUGH SEPTEMBER 30, 2008**

<b>DESCRIPTION</b>	<b>ITEMIZED AMOUNT</b>	<b>TOTAL FEES DUE</b>
	<b>\$</b>	<b>\$</b>
<b><u>Annual Franchise Fee</u></b>		
1.50% Penalty on Late Remittance		195.00
<b><u>Permit Per Account Fee</u></b>		
1.50% Penalty on Late Remittance	69.00	
Unreported Accounts (4)	287.00	356.00
<b><u>Franchise Fees (22%)</u></b>		
Remitted to the City Late FYE 9/30/2007	216.46	
Remitted to the City Late FYE9/30/2008	135.27	351.73
<b><u>Miscoded Accounts</u></b>		
Four (4) Accounts Miscoded	5,794.19	
Permit Per Account Fee on Miscoded Accounts	71.00	5,865.19
<b>TOTAL DUE TO THE CITY</b>		<b>\$ 6,767.92</b>