

CITY OF MIAMI
OFFICE OF INDEPENDENT AUDITOR GENERAL



**AUDIT OF COMPLIANCE WITH COMMERCIAL
SOLID WASTE FRANCHISE AGREEMENT/
WASTE SERVICE USA, INC.**

AUDIT REPORT NO. 010-021

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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August 24, 2010

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

Re: Audit of Compliance with Commercial Solid Waste Franchise Agreement/Waste Services USA, Inc.
Audit No. 10-021

Pursuant to Section 48 of the City of Miami's (City) Charter and the Fiscal year 2010 Audit Plan, we have examined the billing records of Waste Services USA, Inc. (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, 2008 through September 30, 2009 and selected financial transactions that were processed prior and subsequent to this period.

Sincerely,

A handwritten signature in cursive script that reads "Victor Igwe".

Victor I. Igwe, CPA, CIA
Independent Auditor General
Office of the Independent Auditor General

OFFICE OF THE INDEPENDENT AUDITOR GENERAL/444 S.W. 2ND AVENUE, SUITE 711/MIAMI, FLORIDA 33130-1910

C: The Honorable Mayor Tomas Regalado
Carlos A. Migoya, Chief Administrator/City Manager
Members of the Audit Advisory Committee
Tony Crapp, Jr., Assistant City Manager/Chief of Operations
Carol Markus, Vice- President, Waste Services USA, Inc.
Larry M. Spring, Assistant City Manager/Chief Financial Officer
Johnny Martinez, Assistant City Manager/Chief of Infrastructure
Peter W. Korinis, Chief Information Officer, Information Technology Department
Julie O. Bru, City Attorney, City Attorney's Office
Fredrick Hobson, 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 COMPLIANCE WITH COMMERCIAL SOLID WASTE
FRANCHISE AGREEMENT/WASTE SERVICES USA, INC.
OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009**

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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 shall 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 (1.5%) late payment penalty fee is assessed monthly on any balance due to the City.
- **Annual Franchise Fee.** The sum of \$5,000 (increased annually by \$500, thus \$7,000 was due for the audit period 2008-2009) for the right to provide Commercial Solid 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 (1.5%) per month on any balance due to the City.

- Annual Specialized Waste Handling Service Fee. The sum of \$1,000 (increased annually by \$500, thus \$3,000 was due for the audit period 2008-2009) 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. Failure to remit the required annual fee by the due date will result in a one and one-half percent (1.5%) late payment fee on any balance due to the City.
- 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 (PPAF) to each contracted customer. This fee is not transferable. Failure to remit the required PPAF by the due date will result in a one and one-half percent (1.5%) late payment fee on any balance due to the City.

During the fiscal year, October 1, 2008 through September 30, 2009 the twenty five franchisees remitted a total of \$10,796,490 to the City. 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 Waste Services USA Inc. 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 2009/2010 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, 2008 through September 30, 2009 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 Solid Waste Department (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 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 the accounts active as of October 1, 2008 were included in the PPAF List submitted to the City.
- All customer accounts located in the City were properly identified, coded, assessed the appropriate fees, and remitted to the City.

Based upon various test 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 the appropriate 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 could be enhanced to ensure that all customer accounts located in the City are properly identified, coded and assessed the appropriate fees; and all fees collected are promptly remitted to the City.

SUMMARY OF AUDIT FINDINGS

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 accounting and billing records disclosed that additional \$1,931.80 is due and payable to the to the City from the franchise fee transactions assessed and processed during the audit period. See detailed discussions on pages 9 and 10.

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 assessed and remitted to the City. Waste Services USA, Inc. (WSUSA) generated total gross receipts of \$305,167.04 for services provided within the City during the audit period (fiscal years 2008-2009). The total gross receipts were for specialized waste handling services. The total FF remitted to the City during the audit period was \$70,636.64. However, our audit of WSUSA’s accounting and billing records disclosed that an additional \$1,931.80 is due and payable to the City from the franchise fee transactions assessed during the audit period, as itemized below:

PERMIT PER ACCOUNT FEE

- Article V, Section 5.6 of the Agreement requires the franchisee to remit to the City annually (October 15th) 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-of utilized by the franchisee. Failure to remit the required PPAF by the due date will result in a late payment penalty of one and one-half percent (1.5%) per month on the balance due to the City. Our audit determined that the PPAF for eleven (11) customer service accounts that were active as of October 1, 2008, were not assessed and remitted to the City as required. As a result, the unremitted PPAF and the applicable late/penalty fees totaling \$715 (\$550 + \$165) are due to the City.

FRANCHISE FEES (22%)

- Article V, Section 5.2 of the Commercial Solid Waste Franchise 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. Accompanying the remittance, FRANCHISEE must provide the CITY with a list of the customers' names, addresses and total amount collected. Failure to remit by the last day of the following month will result in one and one-half percent (1.5%) penalty per month on any balance due to the City. Our audit determined that the 22% franchise fees and the related permit per account fees (PPAF) generated from two (2) customer service accounts were not remitted to the City as required. The un-remitted 22% franchise fees, the related PPAF and the applicable late payment penalty fees totaling \$1,216.80 (\$942.79 + \$209.76 + \$50.00 + \$14.25) are due and payable to the City.

Recommendations:

We recommend that the Finance Department bill Waste Services USA, Inc (WSUSA) for the total amount of \$1,931.80 due and payable to the City. Also, we recommend that WSUSA enhance its internal control procedures to ensure that service accounts located within the City boundaries are properly identified and coded and that all appropriate fees are remitted to the City in a timely manner.

Auditee's Response and Action Plan:

The auditee concurred with all the audit findings. Please see written responses on pages 11 through 13.

City of Miami

VICTOR I. IGWE, CPA, CIA
INDEPENDENT AUDITOR GENERAL



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July 20, 2010

Ms. Carol Markus, Vice-President
Waste Services USA, Inc. (WSUSA)
811 NW 143th. Street
Miami, Florida 33147

RE: Audit of Compliance with Commercial Solid Waste Franchise Agreement/
Waste Services USA, Inc.
Audit No. 10-021

Dear Ms. Markus:

Our audit of Waste Services USA, Inc. (WSUSA) for the period October 1, 2008 through September 30, 2009, and selected transactions prior and subsequent to this period, has determined that additional franchise fees totaling \$1,931.80 (W/P T-5) is due and payable to the City as summarized below:

Article V, Section 5.6 of the Agreement requires the franchisee to remit to the City annually (October 15th) 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 the franchisee. Failure to remit the required PPAF by the due date will result in a late payment penalty of one and one-half percent (1.5%) per month on the balance due to the City. Our audit determined that the PPAF for eleven (11) service accounts that were active as of October 1, 2008 were not assessed and remitted to the City as required. As a result, the unremitted PPAF and the applicable late/penalty fees totaling \$715.00 (\$550.00 + \$165.00) are due to the City (W/P T-10).

Page 2 of 3
Ms. Carol Markus

I agree I disagree Please initial: CM
Explanation: _____

II 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. Accompanying the remittance, FRANCHISEE must provide the CITY with a list of the customers' names, addresses and total amount collected. Failure to remit by the last day of the following month will result in one and one-half percent (1.5%) penalty per month on any balance due to the City. Our audit determined that the 22% franchise fees and the related permit per account fees (PPAF) generated from two (2) customer service accounts was not remitted to the City as required. The un-remitted 22% franchise fees, the related PPAF and the applicable late payment penalty fees totaling \$1,216.80 (\$942.79 + \$209.76 + \$50.00 + \$14.25) are due and payable to the City. (W/P T-142)

I agree I disagree Please Initial CM
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, provide your written explanations and attach all supporting documents/records. Please respond by July 30, 2010.

Page 3 of 3
Ms. Carol Markus

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.

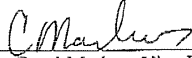
Thank you for your attention to this matter.

Sincerely,



Paulino Garcia
Staff Auditor
Office of Independent Auditor General

I have read this Memorandum of Understanding and responded accordingly.



Carol Markus, Vice-President

8-6-10

Date

- C: Fredrick Hobson, Director, Solid Waste Department
- Steven Margolis, Principal Auditor, Solid Waste Department
- Victor Igwe, CPA, CJA, Independent Auditor General

EXHIBIT I

**WASTE SERVICES USA, INC.
SCHEDULE OF ADDITIONAL FEES DUE TO THE CITY
OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009**

DESCRIPTION	ITEMIZED AMOUNT	TOTAL FEES DUE
	\$	\$
<u>Permit Per Account Fee</u>		
Accounts not reported (11)	550.00	
Penalty on accounts not reported	<u>165.00</u>	715.00
<u>Miscoded Accounts</u>		
Unremitted Franchise Fees	992.79	
Late Fee Panalty	<u>224.01</u>	1,216.80
TOTAL DUE TO THE CITY		<u><u>1,931.80</u></u>