

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



**AUDIT OF COMPLIANCE WITH SOLID WASTE  
FRANCHISE AGREEMENT/EASTERN  
WASTE SYSTEMS, INC.**

**AUDIT REPORT NO. 010-012**

Prepared By

**Office of Independent Auditor General**

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

**ZEWDITU WOLDEGIORGIS, STAFF AUDITOR**

# City of Miami

VICTOR I. IGWE, CPA, CIA  
AUDITOR GENERAL



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December 28, 2009

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

Re: Audit of Compliance With Solid Waste Franchise Agreement/Eastern Waste  
Systems, Inc.  
Audit No. 010-012

Pursuant to Section 48 of the City of Miami's (City) Charter and the Fiscal year 2009 audit plan, we have examined the billing records of Eastern Waste Systems, Inc. (EWS). The audit was performed to determine whether EWS complied with applicable Sections of the City Code and the Commercial Waste Franchise Agreement (Agreement) between the City and commercial solid waste hauling companies. Chapter 22 of the City Code and said Agreement regulates the operation of commercial solid waste services in the City.

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

The audit covered the period October 1, 2007 through September 30, 2008 and selected financial transactions that were processed prior and subsequent to this period.

Sincerely,

A handwritten signature in black ink that reads "Victor Igwe". The signature is written in a cursive style with a large, sweeping initial "V".

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  
Michael C. Marzona, President  
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  
Barbara L. Pruitt, Assistant 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 EASTERN WASTE SYSTEMS, INC.  
OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008**

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## INTRODUCTION

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

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

- **Gross Receipts Franchise Fees.** In accordance with Article II, Section 2.2 of the Agreement, the term “Gross Receipts” shall mean, “all monies whether paid by cash, check, debit or credit, collected from customers for garbage, solid waste, fuel surcharge, construction and demolition debris, roofing materials, trash, litters, refuse and/or rubbish collection removal and disposal services rendered, or from any other source related directly from waste collection services by the FRANCHISEE, exclusive of taxes as provided by law, whether wholly or partially collected within the CITY, less bad debts.” During the period October 1, 1999 through September 30, 2004, the franchisee was required to remit to the City 20% of the gross receipts generated. Effective October 1, 2004, the rate increased to 22%. A one and one-half percent (1.5%) late payment penalty fee would be assessed per month on any balance due.
- **Annual Franchise Fee.** The sum of \$5,000 (increased annually by \$500, thus \$6,500.00 was due for the audit period) for the right to provide commercial solid waste services and special waste handling services within the City. A one and

one-half percent (1.5%) 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 no. 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 (1.5%) 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 (1.5%) late payment penalty fee is assessed monthly on any balance due.

During the fiscal year, October 1, 2007 through September 30, 2008 the twenty five franchisees remitted a total of \$13,334,898 to the City. Eastern Waste Systems, Inc. (EWS) 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 EWS 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 2008/2009 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 Eastern Waste Systems, Inc. (EWS) and the City's Solid Waste Department (SWD) complied with the terms of the Commercial Solid Waste Franchise Agreement (Agreement) and with Chapter 22 of the City's Code, which govern the operation of commercial solid waste collection services in the City. The audit also included examinations of various transactions to determine whether they were processed in accordance with the generally accepted accounting principles. The audit covered the period October 1, 2007 through September 30, 2008 and focused on the following broad objectives:

- To ascertain whether all customer accounts located in the City were properly identified, coded, and assessed the appropriate fees.
- To determine whether all the applicable franchise fees as stipulated in Article V of the Agreement were properly computed and remitted to the City.
- To review the annual statement of gross receipts that was prepared by the independent Certified Public Accountant retained by EWS. 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 EWS 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 test 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 stipulated in the Franchise Agreement.

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 CPA statement was obtained as required by the City Code and Franchise Agreement.
- The SWD obtained vehicle insurance as required by the City Code and the Agreement.

Overall, we conclude that the internal control policies and procedures in place at EWS and at the City's Solid Waste Department could be enhanced to ensure a more effective operation of commercial waste hauling services in the City.

## **SUMMARY OF AUDIT FINDINGS**

### **EASTERN WASTE SYSTEMS, 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 EWS’s accounting and billing records relative to franchise fees, disclosed that \$1,014.27 is due and payable to the City from franchise fees transactions assessed during the audit period. See detailed discussions on pages 9 through 11.

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

Our audit determined that the correct amount of performance bond was not obtained. See detailed discussions on page 13.

## **AUDIT FINDINGS AND RECOMMENDATIONS**

### **EASTERN WASTE SYSTEMS, 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. Eastern Waste Systems, Inc. (EWS) generated total gross receipts of \$3,302,002.12 for services provided within the City during the audit period (fiscal year 2007-2008). The total gross receipts were revenues generated exclusively from commercial solid waste handling services. The total FF remitted to the City during the audit period was \$726,440.47. However, our review of EWS’s accounting and billing records disclosed that an additional \$1,014.27 is due to the City, as itemized below:

#### ***FRANCHISE FEES (22%) DUE FROM MISCODED ACCOUNTS***

- 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 by the last day of the following month will result in one and one half percent (1.5%) penalty per month on the balance due. Our audit determined that one (1) customer account located in the City was incorrectly miscoded to another municipality during the period April 2008 through September 2008. We determined that the miscoded error was corrected in the month of October 2008, prior to the start of the audit fieldwork relative to this audit engagement. However, the 22% franchise fee and the applicable permit per account fee for the period April through September 2008, as noted above, are due and payable to the

City. The un-remitted franchise fees, the permit per account fees, and the applicable late/penalty fees totaling \$682.77 (\$526.41 + \$98.86 + \$50.00 + 7.50) are due to the City.

### ***ANNUAL FEES***

- 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 \$6,500 was due for the fiscal year 2007-2008) 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 (1.5%) penalty per month on the balance due to the City.” However, our audit determined that EWS remitted its annual fees for the fiscal year 2007-2008 late. As a result of the late remittance, a total late penalty fee of \$292.50 is due and payable 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 the assessment of a late payment penalty of a one and one-half percent (1.5%) per month on the balance due to the City. However, our audit determined that EWS remitted its PPAF for the fiscal year 2007-2008 late. As a result of the late remittance, a late penalty fee of \$39 is due to the City.

Recommendation:

We recommend that the Finance Department bill Eastern Waste Systems, (EWS) for the total amount of \$1,014.27 due and payable to the City. Also, we recommend that EWS enhance its internal control procedures to ensure that all service accounts are properly 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 the audit findings and recommendations. See written response on pages 14 through 17.

**FAILURE TO OBTAIN THE REQUIRED AMOUNT OF SURETY BOND**

Article VII, Section 7.2 of the Agreement provides that “FRANCHISEE agrees to maintain, for the term of this AGREEMENT, a Performance Bond, executed by a surety company duly authorized to do business in the State of Florida, which shall be countersigned 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 determined that the total franchise fees due and payable to the City during the previous 12 months were \$734,240.47. However, EWS maintained a performance bond amount of \$565,000.00 for the audit period. As a result, it needs to increase the bond amount by \$169,240.47.

**Recommendation:**

We recommend that at the end of each fiscal year, EWS should review its records and 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 WM should obtain any additional surety bond necessary to comply with the requirement stipulated in Article VII, Section 7.2 of the Agreement.

**Auditee’s Response and Action Plan:**

The auditee concurred with the audit finding and recommendation. See written response on pages 14 through 17.

## **SOLID WASTE DEPARTMENT (SWD)**

### **FAILURE TO OBTAIN THE REQUIRED AMOUNT OF SURETY BOND**

In accordance with Chapter 22 of the City Code and the Commercial Solid Waste Franchise Agreement (Agreement), the SWD is responsible for administering, monitoring, and enforcing the provisions of the said City Code and Agreement. However, as has been previously disclosed in prior audit reports, adequate internal control procedures have not been implemented to ensure that performance bonds submitted to the SWD are in compliance with the requirements of the agreement, as discussed on page 12.

It is essential to ensure that the proper amount of performance bond is posted in the event of default and/or non-compliance with the provisions of the Franchise Agreement.

#### **Recommendation:**

We recommend that the SWD enhance its internal control procedures to ensure that franchisees comply with all applicable provisions of the City Code and the franchise Agreement.

#### **Auditee's Response and Action Plan:**

The auditee concurs with the audit finding and recommendation. See written response on page 18.

# City of Miami

VICTOR I. IGWE, CPA, CIA  
INDEPENDENT AUDITOR GENERAL



Telephone (305) 416-2040  
Telecopier (305) 416-2048  
E-Mail: iag@ci.miami.fl.us

December 12, 2009

Mr. Michael C. Marzano, President  
Eastern Waste Systems, Inc.  
1660 NW 19<sup>th</sup> Ave.,  
Pompano Beach, FL 33069

RE: Audit of Eastern Waste Systems, Inc. (EWS) – Audit #10-011

Dear Mr. Marzano:

In connection with our audit of Eastern Waste Systems Inc. (EWS) for the period October 1, 2007 through September 30, 2008, and selected transactions prior and subsequent to this period, our audit disclosed that additional franchise fees totaling \$1,013.52 (\$682.02 + \$39 + 292.50) is due to the City as summarized below: [WP: T-19]

1. 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 review of EWS's customer listings for the unincorporated Miami-Dade County (County) and other municipalities for the audit period disclosed that 1 customer account located in the City was incorrectly miscoded to another municipality during the period April through September 2008. We determined that the miscoded error was corrected in the month of October 2008, prior

OFFICE OF INDEPENDENT AUDITOR GENERAL  
444 S.W. 2<sup>nd</sup> Avenue, Suite 711/Miami, FL 33128





Page 4 of 4  
Mr. Michael C. Marzano  
December 4, 2009

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 explanations and attach all supporting documents/records. Please respond by December 29, 2009.

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

Thank you for your attention in this matter.

  
Michael C. Marzano, President

  
Date

Sincerely,

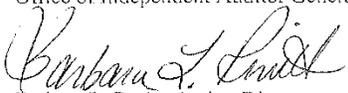
Zewditu Woldegiorgis  
Staff Auditor  
Office of Independent Auditor General

Cc: Victor Igwe, Independent Auditor General  
Barbara L. Pruitt, Assistant Director, Solid Waste Department  
Diana Gomez, CPA, Director, Finance Department  
Steven Margolis, Principal Auditor, Solid Waste Department

OFFICE OF INDEPENDENT AUDITOR GENERAL  
444 S.W. 2<sup>ND</sup> AVENUE, SUITE 711/MIAMI, FL 33135

CITY OF MIAMI, FLORIDA  
INTER-OFFICE MEMORANDUM

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TO :	Zewditu Woldegiorgis, Staff Auditor Office of Independent Auditor General	DATE :	December 23, 2009	FILE :	
		SUBJECT :	Response to Memo of Understanding-EWS		
FROM :	Barbara L. Pruitt, Acting Director Department of Solid Waste	REFERENCES :	Audit # 10-012		
		ENCLOSURES :			

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I. Performance Bond:

We recognize the importance of all haulers obtaining the required amount of performance bond, which are necessary to safeguard City's best interest in the event of noncompliance. At the commencement of each fiscal year, our department sends every commercial solid waste hauler (haulers) a letter reminding them of their financial and fiduciary responsibilities to the City. Subsequent to a meeting held with your Office on December 15, 2009, we have also directed all haulers to remit all franchise fees payments henceforth to the City's Finance Department and no longer to the Solid Waste Department (SWD) as some of the haulers had done in the past. When said payments are remitted directly to the Finance Department, the payment receipt date as documented on the check logging sheet will be timelier. We will monitor the timeliness of all payments due and payable to the City and will prepare the appropriate legislation to request the City Commission to consider adjusting the performance bond of haulers accordingly, as provided in Article VII of the Franchise Agreement.

As evidenced by your Memorandum of Understanding, EWS had concurred that its Performance Bond was short by \$169,240.00. As soon as our department receives the new Bond, we will forward a copy to your Office.

c: Steven Margolis, Auditor  
Joe Tang, Fiscal Administrator

**EXHIBIT I**

**EASTERN WASTE SYSTEMS (EWS)  
SCHEDULE OF FEES DUE TO THE CITY  
OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008**

<b>DESCRIPTION</b>	<b>ITEMIZED AMOUNT</b>	<b>TOTAL FEES DUE</b>
	<b>\$</b>	<b>\$</b>
<u>Miscoded Accounts</u>		
20% or 22% unpaid Franchise Fee	<b>526.41</b>	
1% or 1.50% penalty	<b>98.86</b>	
Permit per account	<b>50.00</b>	
Penalty on permit per Account	<b>7.50</b>	<b>682.77</b>
<u>Annual Franchise Fee</u>		
1.50% Penalty on Late Remittance	<b>292.50</b>	<b>292.50</b>
<u>Permit Per Account Fee</u>		
1.50% Penalty on Late Remittance	<b>39.00</b>	<b>39.00</b>
<b>TOTAL DUE TO THE CITY</b>		<b>\$ 1,014.27</b>