

CITY OF MIAMI
OFFICE OF INDEPENDENT AUDITOR GENERAL



**AUDIT OF COMPLIANCE WITH COMMERCIAL
SOLID WASTE FRANCHISE AGREEMENT/
WASTE MANAGEMENT, INC. OF FLORIDA**

AUDIT REPORT NO. 11-006

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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December 16, 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 Management, Inc. of Florida (WM).
Audit No. 11-006

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 Management, Inc. of Florida (WM). The audit was performed to determine whether WM complied with applicable Sections of the City Code and the Commercial Solid Waste Franchise Agreement (Agreement) between the City and the 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., Deputy City Manager
Luis Cabrera, Assistant City Manager/Chief of Operations
James F. Lambros, Area Controller, Waste Management, Inc. of Florida.
Mike Adams, World Waste Services, 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
Richard Otruba, Assistant City Attorney
Veronica A. Xiques, Assistant City Attorney
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%) late payment penalty fee is assessed monthly 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. WM 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 WM 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 Management, Inc. of Florida (WM) 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 WM. 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 WM 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 as part of the Permit Per Account Fee (PPAF) List submitted to the City.
- All Franchise Fees billed and collected were remitted to the City as required.

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 WM could be enhanced to ensure that all customer accounts located in the City are properly coded, assessed the appropriate fees, and assessed fees are promptly remitted to the City.

SUMMARY OF AUDIT FINDINGS

WASTE MANAGEMENT, INC. OF FLORIDA

ADDITIONAL FEES DUE TO THE CITY

Article V of the Commercial Solid Waste Franchise Agreement (Agreement) titled “Franchise Fees” stipulates the various franchise fees (FF) to be remitted to the City. Our review of WM’s accounting and billing records disclosed that an additional \$5,423.30 is due and payable to the City from the franchise fee transactions assessed and processed during the audit period. See detailed discussion on pages 10 through 12.

WASTE MANAGEMENT INC OF FLORIDA PURCHASED THE CUSTOMER SERVICE ACCOUNTS OF A FORMER FRANCHISEE (WORLD WASTE SERVICES, INC.)

Pursuant to a purchase agreement dated August 19, 2009, Waste Management, Inc. purchased the commercial solid waste customer accounts of a former franchisee (World Waste Services, Inc.). Our review of the assigned accounts determined that the 22% franchise fees for the months of October 2008 through December 2008, and also the months of July 2009 and August of 2009, were not remitted to the City in a timely manner as required. As a result of the late remittances, a total of \$7,957.62 late/penalty fees are due and payable to the City from World Waste Services, Inc. See detailed discussion on pages 13 and 14.

THE REQUIRED AMOUNT OF PERFORMANCE BOND WAS NOT OBTAINED

Waste Management, Inc. did not obtain the required amount of performance bond. See detailed discussion on pages 15 and 16.

SOLID WASTE DEPARTMENT

INADEQUATE ENFORCEMENT OF THE PROVISION OF THE FRANCHISE AGREEMENT

The Solid Waste Department did not follow-up to obtain the required amount of performance bond. See detailed discussion on page 17.

AUDIT FINDINGS AND RECOMMENDATION

WASTE MANAGEMENT INC. OF FLORIDA

ADDITIONAL FEES DUE TO THE CITY

Article V 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 Management, Inc. (WM) generated total gross receipts of \$15,828,224 for services provided within the City during the audit period (fiscal year 2008-2009). The total FF remitted to the City during the audit period was \$3,482,209. However, our audit of WM’s accounting and billing records disclosed that an additional \$5,423.30 is due and payable to the City from Waste Management, Inc., as discussed below:

PERMIT PER ACCOUNT FEE

- 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 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 \$2,421 (\$1,800 + \$621) are due and payable 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, accompanied with a list of the customers' names, addresses and total amount collected, should be received by the City on or before the last day of each month. Failure to remit the fee by the last day of the following month will result in a one and one half percent (1.5%) penalty per month on the balance due. Our audit determined that:

In June 2009, Waste Management Inc. (WM) changed its method for recognizing (accounting and reporting) the receipt of franchise fee payments from a cash-basis to an accrual basis. During the period October 2008 through May 2009, WM recognized franchise fee receipts on a cash-basis (i.e., when payment was actually received) and subsequently, franchise fee receipts were recognized on an accrual basis (i.e., at the time when services was performed and billed). Due to this change in accounting method, WM performed a detailed analysis in the month of June 2009 to properly determine the actual franchise fees due and payable to the City for the month of May 2009. However, our review of the said analysis indicated that the 22% franchise fees for 33 service accounts that were billed and collected for the month of May 2009, were not remitted to the City as required. As a result, the unremitted 22% franchise fees and the applicable late/penalty fees totaling \$3,002.30 (\$2,521.50 + \$480.80) are due and payable to the City.

Recommendation

We recommend that the Finance Department bill Waste Management, Inc. of Florida (WM) for the \$5,423.30 due and payable to the City. Also, we recommend that WM enhance its internal control procedures to ensure that service accounts located within the City boundaries are properly identified, 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 19 through 23.

WASTE MANAGEMENT INC OF FLORIDA PURCHASED THE CUSTOMER SERVICE ACCOUNTS OF A FORMER FRANCHISEE (WORLD WASTE SERVICES, INC.)

Pursuant to a purchase agreement dated August 19, 2009, Waste Management, Inc. purchased the commercial solid waste customer service accounts of a former franchisee (World Waste Services, Inc.). Our review of the assigned accounts to determine whether the related 22% franchise fees were properly assessed and remitted to the City in a timely manner, disclosed that the 22% franchise fees for the months of October 2008 through December 2008, and also the months of July 2009, and August of 2009 were not remitted to the City in a timely manner as required. Our audit determined that as a result of the late remittances, a total of \$7,957.62 late/penalty fees are due and payable to the City.

In response to our audit inquiry, Waste Management stated: “Waste Management only acquired certain World Waste Services’ assets. WM did not assume any liabilities prior to September 11, 2009, therefore any late fee prior to this date are due from World Waste Services.” World Waste Services, Inc. declined to pay the \$7,957.62 late/penalty fees and stated that an earlier settlement agreement reached between the City and World Waste Services, Inc. precludes the City from asserting any future claims whatsoever in connection with the Franchise Agreement. The said settlement agreement was reached in connection with audit report # 09-010 (dated June 30, 2009), which determined that World Waste Services, Inc. did not remit certain franchise fees to the City, as required, during the period October 1, 2007 through September 30, 2008. Waste Management, Inc and World Waste Services declined to provide us with a copy of the Purchase Agreement that would clearly establish the party liable for the \$7,957.62.

In response to audit inquiry, the Assistant City Attorney that negotiated the settlement agreement between World Waste Services, Inc and the City indicated that the said agreement appears to pertain only to the period October 1, 2007 through September 30, 2008 and any claims for a subsequent audit period would be a separate matter.

Therefore, we conclude that if Waste Management, Inc did not assume any liabilities prior to September 11, 2009, World Waste Services, Inc. will be liable for the \$7,957.62.

Recommendation

We recommend that the Finance Department bill World Waste Services, Inc for the \$7,957.62 late/penalty fees that are due and payable to the City

Auditee's Response and Action Plan:

World Waste Services, Inc. stated that an earlier agreement reached between the City and World Waste Services, Inc. precludes the City from asserting any future claims in connection with the Franchise Agreement.

THE REQUIRED AMOUNT OF PERFORMANCE BOND WAS NOT OBTAINED

Article VII, Section 7.2 of the Franchise Agreement stipulates that franchisee agrees to maintain a Performance Bond executed by a surety company duly authorized to do business 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 fee, monthly 22% franchise fee, annual permit per account fee, and any 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." Also the Agreement states that "...the performance bond may be reduced, at the City's discretion, 25% per year to a maximum of 50%, if payments due the City were remitted timely during the previous 12 month period."

Our audit determined that Waste Management Inc. obtained a performance bond totaling \$2,735,092.21. The amount of the performance bond obtained is \$922,416.99 less than the amount required. Upon audit inquiry, we were not provided with any document to evidence a City Commission resolution formally authorizing the reduction of the required performance bond. The required performance bond safeguards the City's interest against claims and/or non-performance by the franchisee. The City Commission is ultimately responsible for granting such reduction. Accordingly, the amount of bond needs to be increased by \$922,416.99.

Recommendation

We recommend that Waste Management, Inc. obtain the required amount of performance bond.

Auditee's Response and Action Plan:

The auditee concurred with the audit finding and recommendation. See auditee response on pages 21 and 22.

SOLID WASTE DEPARTMENT

INADEQUATE ENFORCEMENT OF THE PROVISION OF THE FRANCHISE AGREEMENT

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.

As discussed on page 15, the amount of the performance bond obtained is \$922,416.99 less than the amount required. The required performance bond safeguards the City's interest against claims and/or non-performance by the franchisee. The City Commission is ultimately responsible for granting such reduction. Upon audit inquiry, we were not provided with any document to evidence a City Commission resolution formally authorizing the reduction of the required performance bond amount. However, in a written response dated November 15, 2010, (see page 24) the Director of the Solid Waste Department (SWD) stated that he has requested a legal opinion and that SWD will proffer an amendment to the City Code for City Commission approval on November 18, 2010 that will reduce the required performance bond amount from the previous 12 month franchise fees paid to the City to the 4 month franchise fees paid to the City.

However, we expressed a concern with the proposed legislation that would have reduced the required performance bond amount. This concern is due to the inadequate monitoring and enforcement of the provisions of the City Code and Franchise Agreement by the SWD Department as evidenced by our audits of selected franchisee's records and accounts over the years. The said audits have consistently identified substantial additional franchise fees owed to the City and other noncompliance issues. Due to our concern the proposed legislation was withdrawn. Such reduction in performance bond amount would have increased the City's risk exposure to claims

and/or limit the City's ability to fully recover all outstanding franchise fees that may be owed to the City.

Recommendation

We recommend that the Solid Waste Department enhance its internal control procedures to ensure that the provisions of the Commercial Solid Waste Franchise Agreement are properly monitored and enforced.

Auditee's Response and Action Plan:

Due to our concern as discussed on page 17, the proposed legislation as indicated on the written response on page 24 was withdrawn.

REC'D OCT 20 2010

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

October 15, 2010

Mr. James F. Lambros, Area Controller
Waste Management, Inc. of Florida (WM)
2700 NW Wiles Road
Pompano Beach, FL 33073

RE: Audit of Compliance with Commercial Solid Waste Franchise Agreement/
Waste Management, Inc. of Florida (WM).
Audit No. 11-006

Dear Mr. Lambros:

Our audit of Waste Management, Inc. of Florida's franchise fees records for the period October 1, 2008 through September 30, 2009 as well as, selected transactions prior and subsequent to this period indicated that an additional franchise fees totaling \$13,380.92 (W/P T-6) is due to the City for said period, as summarized below:

- I. Article V, Section 5.6 of the Agreement requires the franchisee to remit to the City annually (due October 15) a permit per account fee (PPAF) in the amount of \$50 for each account contracted for commercial solid waste handling services within the City, including each container and/or roll-off utilized by 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 thirty-six (36) service accounts that were active as of October 2008 were not assessed and remitted to

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

the City, as required. As a result, the unremitted PPAF and the applicable late/penalty fees totaling \$2,421 (\$1,800 + \$621) are due and payable to the City. **(W/P T-10)**


I Agree I disagree Please Initial JFL

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 the balance due.


- Our audit determined that in June 2009, Waste Management Inc. (WM) changed its method for recognizing (accounting and reporting) the receipt of franchise fee payments from cash-basis to accrual basis. During the period October 2008 through May 2009, WM recognized franchise fee receipts on cash-basis (i.e., when payment was actually received) and subsequently franchise fee receipts was recognized on accrual basis (i.e., at the time when services was performed and billed). Due to this change in accounting method, WM performed a detailed analysis in the month of June 2009 to properly determine the actual franchise fees due and payable to the City for the month of May 2009. However, our review of the said analysis indicated that the 22% franchise fees for 33 service accounts that were billed and collected for the month of May 2009, were not remitted to the City as required. As a result, the unremitted 22% franchise fees and the applicable late/penalty fees

totaling \$3,002.30 (\$2,521.50 + \$480.80) are due and payable to the City. **(W/P T-105)**

I agree I disagree _____ Please Initial: 

Explanation: _____

- Pursuant to a purchase agreement dated August 19, 2009, World Waste Services, Inc. (a former franchisee) sold/assigned its commercial solid waste customer accounts to Waste Management, Inc. Our review of the assigned accounts to determine whether the related 22% franchise fees were properly assessed and remitted to the City in a timely manner, disclosed that the 22% franchise fees for the months of October 2008 through December 2008, the months of July 2009 and August of 2009 were not timely remitted to the City as required. As a result of the late remittances, a total of \$7,957.62 late/penalty fees are due and payable to the City. **(W/P T-159)**

I agree _____ I disagree Please Initial: 

Explanation: Waste Management only acquired certain World Waste Services' assets. WM did not assume any liabilities prior to September 11, 2009, therefore any late fees prior to this date are due from World Waste Services.

III Article VII, Section 7.2 of the Franchise Agreement stipulates that franchisee agrees to maintain a Performance Bond, executed by a surety company duly authorized to do business 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 fee, monthly 22% franchise fee, annual permit per account fee, and any 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." Also the Agreement states that "...the performance bond may be reduced, at the City's discretion, 25% per year to a maximum of 50%, if payments due the City were remitted timely during the previous 12 month period."

Our audit determined that Waste Management Inc. obtained a performance bond of only \$2,735,092.21. The amount of bond obtained is \$922,416.99 less than the amount required. We were not provided with any document to evidence City Commission Resolution formally authorizing the reduction of the required performance bond. The required performance bond safeguards the City's interest against claims and/or non-performance by the franchisee. The City Commission is ultimately responsible for granting such reduction. Accordingly, the amount of bond needs to be increased by \$922,416.99. **(W/P T-90)**

I agree I disagree Please Initial: 

Explanation: _____


Please confirm our understanding by indicating whether you agree or disagree with each of the observations described above by checking the appropriate box and include your initials on the space provided for each observation. Also, sign on the space provided below and return this memorandum to us. In the event that you disagree with any of the items listed above, please provide your explanations and attach all supporting documents/records. Please respond by October 27, 2010.

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.

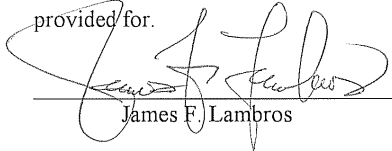
Page 5 of 5
Mr. James F. Lambros
October 15, 2010

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.


James F. Lambros

10/15/10
Date


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

CITY OF MIAMI, FLORIDA

INTER-OFFICE MEMORANDUM

TO: Paulino Garcia, Staff Auditor
Office of Independent Auditor General

DATE: November 15, 2010


FROM: Frederick Hobson, Director
Department of Solid Waste

SUBJECT: Response to Memo of
Understanding – Waste Mgm't.

REFERENCES: Audit No. 11-006

ENCLOSURES:

Re: Performance Bond Reduction:

The Solid Waste Department has requested a legal opinion from the City Attorney's Office regarding this matter. Additionally, the Department is proffering an amendment to the current Code, for City Commission approval on November 18, 2010, which proposes to amend the Franchise Agreements for all Commercial Haulers to reduce the Performance Bond requirement from the Franchisees' previous 12 months Franchise Fees paid to the City to the Franchisees' previous 4 months Franchise Fees paid to the City.

Upon receipt of the legal opinion, we will forward a copy to your office.

If you have any further questions, please do not hesitate to contact me at 305-960-2802.
Thank you.

c: Keith Carswell, Assistant Director
Erica Paschal, Fiscal Administrator
Steven Margolis, Staff Auditor, Pr.
Victor Igwe, Auditor General

EXHIBIT I

**WASTE & WASTE MANAGEMENT, INC. OF FLORIDA
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 (36)	1,800.00	
Penalty on accounts not reported	<u>621.00</u>	2,421.00
<u>Franchise Fee (22%)</u>		
Unremitted Franchise Fees	2,521.50	
Late Fees	<u>480.80</u>	3,002.30
Late Penalty Fees due from World Waste Services, Inc.		<u>7,957.62</u>
		<u><u>13,380.92</u></u>