CITY OF MIAMI
OFFICE OF INDEPENDENT AUDITOR GENERAL

AUDIT OF COMPLIANCE WITH COMMERCIAL SOLID WASTE FRANCHISE AGREEMENT/ WASTE SERVICES OF FLORIDA, INC

AUDIT REPORT NO. 11-007

Prepared By
Office of Independent Auditor General

Victor I. Igwe, CPA, CIA
Independent Auditor General

PAULINO GARCIA, STAFF AUDITOR
February 15, 2011

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 of Florida, Inc.
Audit No. 11-007

Pursuant to Section 48 of the City of Miami’s (City) Charter and the Fiscal year 2011 Audit Plan, we have examined the billing records of Waste Services of Florida, Inc. (WSI). The audit was performed to determine whether WSI 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, 2009 through September 30, 2010 and selected financial transactions that were processed prior and subsequent to this period.

Sincerely,

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
   Tony Crapp, Jr. Chief Administrator/City Manager
   Members of the Audit Advisory Committee
   Larry Thogmartin, Region Controller, Waste Services of Florida, Inc.
   Johnny Martinez, Deputy City Manager/Chief of Infrastructure
   Larry M. Spring, Assistant City Manager/Chief Financial Officer
   Peter W. Korinis, Chief Information Officer, Information Technology Department
   Johnny Martinez, Deputy City Manager/Chief of Infrastructure
   Larry M. Spring, Assistant City Manager/Chief Financial Officer
   Peter W. Korinis, Chief Information Officer, Information Technology Department
   Luis Cabrera, Assistant City Manager/Chief of Operations
   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 OF FLORIDA, INC. 
OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010

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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 one-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 $7,500 was due for the audit period 2009-2010) 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 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 $3,500 was due for the audit period 2009-2010) 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 penalty fee per month 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 per month on any balance due to the City.

During the fiscal year, October 1, 2009 through September 30, 2010, the twenty five franchisees remitted a total of $9,699,683 to the City. WSI 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 WSI 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 2010-201 Audit Plan. As part of our oversight responsibilities, the Office of the Independent Auditor General performs financial and performance 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 of Florida, Inc. (WSI) 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, 2009 through September 30, 2010 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 WSI. 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 WSI 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:

- The Annual Franchise Fee is remitted to the City in a timely manner.
- All the accounts active as of October 1, 2009 were included as part of the permit per account fee (PPAF) list submitted to the City.
- All Franchise Fees billed and collected are remitted to the City as required.
- All the franchise fees generated from accounts within the City limits are reported 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 WSI could be enhanced to ensure that all fees collected are promptly remitted to the City.
SUMMARY OF AUDIT FINDINGS

WASTE SERVICES OF FLORIDA, 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 WSI’s accounting and billing records disclosed that an additional $48,107.45 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.

THE REQUIRED AMOUNT OF PERFORMANCE BOND WAS NOT OBTAINED

Waste Services of Florida, Inc. did not obtain the required amount of performance bond. See detailed discussion on page 13.
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 14.
AUDIT FINDINGS AND RECOMMENDATION

WASTE SERVICES OF FLORIDA, INC.

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 Services of Florida, Inc. (WSI) generated total gross receipts of $14,091,638 for services provided within the City during the audit period (fiscal year 2009-2010). The total FF remitted to the City during the audit period was $3,121,804. However, our audit of WSI’s accounting and billing records disclosed that an additional $48,107.45 is due and payable to the City from WSI as discussed below:

ANNUAL FRANCHISE FEES

- Article V, Section 5.4 of the Commercial Solid Waste Franchise Fee Agreement (Agreement) stipulates that the franchisee agrees to remit to the City annually (due October 1) the sum of $5,000 (increased annually by $500, thus $7,500 was due for the audit period) for the right to provide Commercial Solid Waste Services and 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 (1.5%) late payment penalty fee per month on the balance due to the City. Our audit disclosed that WSI remitted its annual franchise fee for the fiscal year 2009-2010 one month late. As a result of the late remittance, a late payment penalty fee of $112.50 is due to the City.

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 franchisee.
Failure to remit the required PPAF by the due date will result in a one and one-half percent (1.5%) late payment penalty fee per month on the balance due to the City. Our review of WSI and the City Finance Department’s accounting records disclosed that WSI remitted its PPAF for the fiscal year 2009-2010 one month late and as a result of the late remittance, a late payment penalty fee of $1,695 is due to the City.

Also, our audit determined that the PPAF for three (3) service accounts that were active as of October 1, 2009 were not assessed and remitted to the City as required. As a result, the un-remitted PPAF and the applicable late payment penalty fee totaling $183.75 ($150 + $33.75) 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 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 a one and one-half percent (1.5%) late payment penalty fee per month on the balance due. Our audit of WSI’s billing records and listing of customers in unincorporated Miami-Dade County and other municipalities disclosed that:
  - The 22% franchise fees and the related permit per account fee (PPAF) due from twenty three (23) customer accounts located in the City were not assessed and remitted to the City as required. Said customer accounts were miscoded and/or were incorrectly exempt from the assessment of franchise fees. The un-remitted 22% franchise fees, the related PPAF and the applicable late penalties related to these accounts are due to the City.
payment penalty fees totaling $63,217.06 ($52,825.72+$2,850 + $7,541.34) are due and payable to the City.

- Additionally, our reconciliation of the total gross receipts generated by WSI and the franchise fees remitted to the City determined that WSI overpaid the City franchise fees totaling $19,600.86. A credit of the equivalent amount will be netted from the total additional franchise fees due to the City.

**AUDIT FEE**

- Article VI, Section 6.2 of the Agreement stipulates that “.....If a City Audit reveals that FRANCHISEE under reported gross receipts, and results in additional revenue due the City in the amount of $20,000 (per fiscal year) or more, FRANCHISEE agrees to pay for the cost of said Audit”. Our audit disclosed that additional franchise fees including penalties due to the City totaled $45,607.45. Therefore, an Audit Fee of $2,500 is due to the City.

**Recommendation**

We recommend that the Finance Department bill Waste Services of Florida (WSI) for the $48,107.45 due and payable to the City. Also, we recommend that WSI 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 15 through 19.
THE REQUIRED AMOUNT OF PERFORMANCE BOND WAS NOT OBTAINED

Article VII, Section 7.2 of the Agreement provides that “FRANCHISEE agrees to maintain for the term of this AGREEMENT, a Performance Bond, executed by a surety company duly authorized to do business in the State of Florida, which shall be counter-signed by an agent for the company, resident in the State of Florida. The amount of the bond shall equal to the FRANCHISEE’S previous 12 month franchise fees paid to the City (including the annual franchise fee, monthly 22% franchise fee, annual per account fee, and other franchise fees paid to the City) or a minimum of $25,000, whichever is greater, as security for the faithful performance of the Franchise AGREEMENT.”

Our audit disclosed that the total franchise fees due and payable to the City during the previous 12 months was $3,330,053.53. Our audit field work determined that WSI maintained a performance bond amount totaling $3,241,224.91, which was $88,828.62 less than the required amount. However, upon audit inquiry, the additional bond amount was obtained.

Recommendation

We recommend that Waste Services of Fl., Inc monitor and evaluate annually the previous 12 month franchise fees paid to the City (including the annual franchise fee, monthly 22% franchise fee, annual per account fee, and other franchise fees paid to the City) and obtain any additional bond necessary in order to be in compliance with the provisions of Article VII, Section 7.2 of the franchise agreement.

Auditee’s Response and Action Plan:

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

Our audit determined that Waste Services of Fl., Inc. (WSI) obtained $88,823.62 less than the required amount of performance bond. Upon audit inquiry, the Solid Waste Department notified WSI of this noncompliance with the provisions of the franchise agreement and WSI obtained the additional required bond amount. However, our audit procedures should not be a substitute to effective internal control, which would require monitoring and enforcing of the provisions of the franchise agreement.

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 in a timely manner.

Auditee’s Response and Action Plan:
Auditee concurred with our findings. Please see written response on pages 20 through 24.
City of Miami

February 11, 2011

Mr. Larry Thogmartin, Region Controller
Waste Services of Florida, Inc. (WSI)
3840 NW 37th Avenue
Miami, Florida 33142

RE: Audit of Compliance with Commercial Solid Waste Agreement/ Waste Services, Inc. of Florida (WSI)
Audit No. 11-007

Dear Mr. Thogmartin:

In connection with our audit of Waste Services of Florida, Inc. (WSI) for the period October 1, 2009 through September 30, 2010, and selected transactions prior and subsequent to this period, our audit disclosed that additional franchise fees totaling $48,107.45 (W/P T-4) is due and payable to the City as summarized below:

I. Article V, Section 5.4 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 $5,000.00 (increased annually by $300, thus $7,500.00 was due for the audit period) for the right to provide Commercial Solid Waste Services and 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 a one-half percent (1.5%) per month on the balance due to the City. Our audit disclosed that WSI remitted its annual franchise fee for the fiscal year 2009-2010 one month late. As a result of the late remittance, a late payment penalty fee of $112.50 is due to the City. (W/P T-7)
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 one and one-half percent (1.5%) per month on the balance due to the City. Our review of WSI and the City Finance Department’s accounting records disclosed that WSI remitted its PPAF for the fiscal year 2009-2010 one month late and as a result of the late remittance, a late payment penalty fee of $1,695 is due to the City, (W/P T-13).

Also, our audit determined that the PPAF for three (3) service accounts that were active as of October 1, 2009 were not assessed and remitted to the City as required. As a result, the unremitting PPAF and the applicable late payment penalty fee totaling $183.75 (6150.00 + 33.75) are due to the City. (W/P T-13).

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 a one and one-half percent (1.5%) late payment penalty fee per month on the balance due. Our audit of WSI's billing records and listing of customers in unincorporated Miami-Dade County and other municipalities disclosed that:

- The 22% franchise fees and the related permit per account fee (PPAF) due from twenty three (23) customer accounts located in the City were not assessed and remitted to the City as required. Said customer accounts were miscoded and/or were incorrectly exempt from the assessment of franchise fees. The un-remitted 22% franchise fees, the related PPAF and the applicable late payment penalty fees totaling $63,217.06 ($52,825.72+$2,830 + $7,541.34) are due and payable to the City. (W/P T-176)

I agree [X] I disagree Please Initial: [ ]
Explanation: _____________________________________________________________

- Additionally, our reconciliation of the total gross receipts generated by WSI and the franchise fees remitted to the City determined that WSI overpaid the City franchise fees totaling $19,600.86. A credit of the equivalent amount will be netted from the total additional franchise fees due to the City. (W/P T-26)

I agree [X] I disagree Please Initial: [ ]
Explanation: _____________________________________________________________

IV. Article VI, Section 6.2 of the Agreement stipulates that "...If a City Audit reveals that Franchisee under reported gross receipts, and results in additional revenue due the
City in the amount of $20,000 (per fiscal year) or more, FRANCHISEE agrees to pay for the cost of said Audit. Our audit disclosed that additional franchise fees including penalties due to the City totaled $45,697.45. Therefore, an Audit Fee of $2,500 is due to the City. (W/P T-4)

I agree   X    I disagree   Please Initial:   
Explanation: ________________________________

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 the bond shall equal to the FRANCHISEE'S previous 12 month franchise fees paid to the City (including the annual franchise fee, monthly 22% franchise fee, annual per account fee, and other franchise fees paid to the City) or a minimum of $25,000, whichever is greater, as security for the faithful performance of the Franchise AGREEMENT."

Our audit disclosed that the total franchise fees due and payable to the City during the previous 12 months was $3,330,053.53. However, WSI currently maintains a performance bond amount totaling $3,241,224.91. Therefore, WSI needs to increase the amount of its performance bond by $88,828.62 ($3,350,053.53-$3,241,224.91). (W/P T-29)

I agree   X    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 written explanations and attach all supporting documents/records. Please respond by February 16, 2011.

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.

[Signature]

Larry Thogmartin

[Date]

C: Fredrick Hobson, Director, Solid Waste Department
Steven Margolin, Principal Auditor, Solid Waste Department
Victor Igwe, CPA, CIA, Independent Auditor General
On February 4, 2011, we advised Waste Services of Florida, Inc. of the audit determination and in accordance with the non-exclusive commercial solid waste franchise agreement we have provided them with 14 days to respond. Please refer to attached email for your reference.

Waste Services of Florida, Inc. acknowledged the need to increase the amount of its performance bond, and as a result, submitted the increase rider performance bond with the require increase. Please refer to attached performance bond for your reference.

Lastly, the Department of Solid Waste has recently amended the City Code and franchise agreement, as well as, implemented a number of internal procedures aimed at providing better management and oversight of the City’s commercial solid waste franchisees. One such internal procedure that will aide in this effort and minimize the occurrence of this particular audit finding, is the specific and documented annual review of insurance for each franchisee. This will coincide with the annual financial review.

C: Steven Margolis, Principal Staff Auditor
Department of Solid Waste
Agreement. Our audits of the franchisees have consistently identified noncompliance with this provision.

(W/P T-20)

Your understanding is: Correct. X Incorrect. Please Initial: ________

Explanation: Please refer to attached memorandum with our response.

Please review the above audit findings, check the appropriate box, and provide written response addressing above concern, no later than January 31, 2011. 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, Independent Auditor General
From: Carswell, Keith  
Sent: Friday, February 04, 2011 3:40 PM  
To: George Acevedo, Hobson, Frederick; Paschal, Erica; Margolis, Steven  
Subject: Proposed increase in performance bond for Waste Services of Florida, Inc.

George:

Once again, it was a pleasure talking to you. Per our conversation, the City’s Office of Independent Auditor General recently advised that Waste Services of Florida, Inc (WSI) remitted a total of $3,330,053.53 in franchise fees to the City for the prior fiscal year as opposed to $3,241,224.91. The $88,828.62 difference is attributed to revenues remitted by All Services f/k/a Imperial Sanitation that was acquired by WSI during the prior fiscal year. As you are aware, the performance bond for each franchisee is to equal the total revenues received by the City for the prior fiscal year.

Within the next fourteen (14) working days, please review your records and advise as to whether you concur with this determination. If you are not in agreement, please advise and provide supporting documentation. If you concur with this determination, please increase your performance bond to $3,330,053.53 and provide said bond to the City in accordance with Article VII of your non-exclusive commercial solid waste franchise agreement.

Should you have any questions, please feel free to e-mail or give me a call.

Sincerely,

Keith
Keith A. Carswell, Assistant Director
Department of Solid Waste
1200 NW 20th Street
Miami, Florida 33142

(305) 960-2804 Office
Increase RIDER

BOND NO. 5927914

To be attached and form a part of Bond No. 5927914 dated the 1st day of October, 2010, executed by Bond Safeguard Insurance Company, as surety, on behalf of Waste Services of Florida, Inc. as current principal of record, and in favor of The City of Miami, as Obligee, and in the amount of Three Million Two Hundred Forty One Thousand Two Hundred Twenty Four Dollars and 91/100 (.3,241,224.91)

In consideration of the agreed premium charged for this bond, it is understood and agreed that Bond Safeguard Insurance Company hereby consents that effective from the 8th day of February, 2011, said bond shall be amended as follows:

THE BOND AMOUNT SHALL BE Increased:

FROM: Three Million Two Hundred Forty One Thousand Two Hundred Twenty Four Dollars and 91/100 (.3,241,224.91)

TO: Three Million Three Hundred Thirty Thousand Fifty Three Dollars and 53/100 (.3,330,053.53)

The Increase of said bond amount shall be effective as of the 8th day of February, 2011, and does hereby agree that the continuance of protection under said bond subject to changes in amount shall not be impaired hereby, provided that the aggregate liability of the above mentioned bond shall not exceed the amount of liability assumed by it at the time the act and/or acts of default were committed and in no event shall such liability be cumulative.

Signed, sealed and dated this 8th day of February, 2011.

Waste Services of Florida, Inc.
Principal

Bond Safeguard Insurance Company
Surety

Mary Ann Cardillo, Attorney-in-Fact

The above bond is hereby agreed to and accepted by:

The City of Miami
Obligee

Title
POWER OF ATTORNEY

Bond Safeguard
INSURANCE COMPANY

KNOW ALL MEN BY THESE PRESENTS, that BOND SAFEGUARD INSURANCE COMPANY, an Illinois Corporation with its principal office in Lombard, Illinois, does hereby constitute and appoint: David G. Jenson, Maryann Carroll-Jolton, Brandy L. Raich, * Stathan M. Baker, ****************************************************

its true and lawful Attorney(s)-in-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of BOND SAFEGUARD INSURANCE COMPANY on the 7th day of November, 2001 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-in-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed $1,000,000.00, One Million Dollars, which the Company might execute through its duly elected officers, and attch the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Vice President, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company.

Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS WHEREOF, BOND SAFEGUARD INSURANCE COMPANY has caused this instrument to be signed by its President, and its Corporate seal to be affixed this 7th day of November, 2001.

BOND SAFEGUARD INSURANCE COMPANY

BY

David E. Campbell
President

ACKNOWLEDGEMENT

On this 7th day of November, 2001, before me, personally came David E. Campbell to me known, who being duly sworn, did deprecate to say that he is the President of BOND SAFEGUARD INSURANCE COMPANY, the corporation described in and which executed the above instrument, that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

"OFFICIAL SEAL"
MAUREEN K. AYE
Notary Public, State of Illinois
My Commission Expires 09/21/13

CERTIFICATE

I, the undersigned, Secretary of BOND SAFEGUARD INSURANCE COMPANY, an Illinois Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the foregoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Sealed at Lombard, Illinois this 7th Day of February, 2011

Donald D. Buchanan
Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."
**EXHIBIT I**

**WASTE SERVICES OF FLORIDA, INC.**  
**SCHEDULE OF ADDITIONAL FEES DUE TO THE CITY**  
**OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010**

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>ITEMIZED AMOUNT</th>
<th>TOTAL FEES DUE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Annual Franchise Fee</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Late Fee Penalty on Late Remittance</td>
<td>112.50</td>
<td></td>
</tr>
<tr>
<td><strong>Permit Per Account Fee</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Late Fee Penalty on Late Remittance</td>
<td>1,695.00</td>
<td></td>
</tr>
<tr>
<td>Accounts Not Reported</td>
<td>150.00</td>
<td>183.75</td>
</tr>
<tr>
<td>Late Fee on Accounts Not Reported</td>
<td>33.75</td>
<td></td>
</tr>
<tr>
<td><strong>Franchise Fee (22%)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unremitted Fees - Month of January 2010</td>
<td>1,437.14</td>
<td></td>
</tr>
<tr>
<td>Late Fee Penalty on Unremitted Fees</td>
<td>237.13</td>
<td></td>
</tr>
<tr>
<td>Franchise Fee Overpayment - Month of September 2010</td>
<td>(21,275.13)</td>
<td>(19,600.86)</td>
</tr>
<tr>
<td><strong>Miscoded Accounts</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Franchise Fees on twenty three (23) miscoded</td>
<td>52,825.72</td>
<td></td>
</tr>
<tr>
<td>Late Fee Penalty on miscoded accounts</td>
<td>7,212.84</td>
<td>60,038.56</td>
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<tr>
<td>Permit Per Account Fee on miscoded accounts</td>
<td>2,850.00</td>
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</tr>
<tr>
<td>Late Fee Penalty</td>
<td>328.50</td>
<td>3,178.50</td>
</tr>
<tr>
<td><strong>Audit Fee</strong></td>
<td>2,500.00</td>
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</tr>
<tr>
<td><strong>TOTAL DUE TO THE CITY</strong></td>
<td></td>
<td>48,107.45</td>
</tr>
</tbody>
</table>