

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. 010-006

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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February 10, 2010

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

Re: Audit of Compliance with Commercial Solid Waste Franchise Agreement/Waste Services of Florida, Inc.
Audit No. 10-006

Pursuant to Section 48 of the City of Miami's (City) Charter and the Fiscal Year 2009/2010 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, 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

C: The Honorable Mayor Tomas Regalado
Pedro G. Hernandez, Chief Administrator/City Manager
Members of the Audit Advisory Committee
Larry Thogmartin, Region Controller, WSI
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 COMPLIANCE WITH COMMERCIAL SOLID WASTE
FRANCHISE AGREEMENT/WASTE SERVICES OF FLORIDA, 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 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 \$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 would be assessed per month on the 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 fiscal year 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. 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, 2008 through September 30, 2009 the twenty five franchisees remitted a total of \$10,796,490 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 Solid Waste Department is also responsible for monitoring the operations of the commercial solid waste franchisees. This audit report describes whether WSI and

the Solid Waste Department 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 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, 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 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 SWD 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, 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:

- The timely remittance of the annual franchise fee to the City.
- The timely remittance of the permit per account fee (PPAF) to the City and also that all active accounts as October 1, 2008 are included in the PPAF list submitted to the City.
- The timely remittance of the monthly franchise fees to the City.
- That all the franchise fees generated from accounts within the City are properly 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 the franchise fees remitted to the City was properly recorded in the City's accounting system and deposited in the City's treasury.
- That the appropriate public liability insurance was obtained as required by Article VII of the Agreement.
- That the SWD obtained the appropriate vehicle insurance certificates as required by the City Code and the Franchise Agreement.

Overall, we conclude that the internal control policies and procedures in place at Waste Services of Florida, Inc. could be enhanced to ensure that all customer accounts located in the City are properly identified, coded and assessed the appropriate fees; and all fees collected are promptly remitted to the City.

SUMMARY OF AUDIT FINDINGS

WASTE SERVICES 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 \$5,832.91 is due to the City from the franchise fee transactions assessed during the audit period. See detailed discussions on pages 9 through 11.

AUDIT FINDINGS AND RECOMMENDATIONS

WASTE SERVICES OF FLORIDA, INC.

ADDITIONAL FEES DUE TO THE CITY

Article V, Section 5.2 of the Commercial Solid Waste Franchise Agreement (Agreement) titled “Franchise Fees” stipulates the various franchise fees (FF) to be remitted to the City. Waste Services of Florida, Inc. (WSI) generated total gross receipts of \$7,761,685 for services provided within the City during the audit period (fiscal years 2008-2009). The total gross receipts include revenues generated from commercial and specialized waste handling services. The total FF remitted to the City during the audit period was \$1,707,570. However, our audit of WSI’s accounting and billing records disclosed that an additional \$5,832.91 is due and payable to the City from the franchise fee transactions assessed during the audit period, as itemized below:

ANNUAL FEE

- 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 (increased annually by \$500, thus \$7,000 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%) per month on the balance due to the City. Our audit disclosed that WSI did not remit its annual franchise fee to the City by the due date. As a result of the late remittance, a late payment penalty fee of \$105 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%) per month on the balance due to the City. Our audit determined that WSI remitted its PPAF for the fiscal year 2008-2009 late. As a result of the late remittance a late payment penalty fee of \$1,308.75 is due and payable to the City.

Also, our audit determined that the PPAF for one (1) service account that was active as of October 1, 2008 was not assessed and remitted to the City as required. As a result, the un-remitted PPAF and the applicable late/penalty fees totaling \$61.25 (\$50.00+11.25) 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 one and one-half percent (1.5%) penalty per month on the balance due. Our audit determined that:

- The 22% franchise fees and the related permit per account fee (PPAF) generated from one (1) customer account was not remitted to the City as required. The un-remitted 22% franchise fees, the related PPAF and the applicable late

payment penalty fees totaling \$338.27 (\$263.76+\$50+\$24.51) are due to the City.

- Due to computation error additional 22% franchise fees including late payment penalty totaling \$72.27 (\$59.73+\$12.54) are due and payable to the City.
- The 22% franchise fees for the months of December 2008 and February 2009 were not remitted to the City in a timely manner. As a result of the late remittances, a late payment penalty totaling \$3,947.37 (\$2,128.93 + 1,818.44) is due to the City.

Recommendation:

We recommend that the City's Finance Department bill Waste Services of Florida, Inc. (WSI) for the total amount of \$5,832.91 due and payable to the City. We also recommend that WSI enhance its internal control procedures to ensure that service accounts located within the City boundaries are properly identified and coded and that all appropriate fees are remitted to the City in a timely manner.

Auditee's Response and Action Plan:

Auditee concurred with all audit findings and recommendation. See written response on pages 12 through 15.

City of Miami

VICTOR I. IGWE, CPA, CIA
INDEPENDENT AUDITOR GENERAL



Telephone (305) 416-2040
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February 1, 2010

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 Franchise Agreement/Waste
Services of Florida, Inc. (WSI)
Audit No. 10-006

Dear Mr. Thogmartin:

In connection with our audit of Waste Services of Florida, Inc. (WSI) for the period October 1, 2008 through September 30, 2009, and selected transactions prior and subsequent to this period, our audit disclosed that additional franchise fees totaling \$5,832.91 (W/P T-5) is due 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 \$500, thus \$7,000.00 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 one-half percent (1-1/2%) per month on the balance due to the City. Our audit disclosed that WSI remitted its annual franchise fee for the fiscal year 2008-2009 late. As a result of the late remittance, a late payment penalty fee of \$105 is due to the City. (W/P T-7)

I agree I disagree _____ Please initial: LT
Explanation _____

II. Article V, Section 5.6 of the Agreement requires the franchisee to remit to the City annually (due October 15) a permit per account fee (PPAF) in the amount of \$50 for each account contracted within the City for commercial solid waste handling services, including each container and/or roll-off utilized by franchisee. Failure to remit the required PPAF by the due date will result in a one and one-half percent (1-1/2%) per month on the balance due to the City. However, our audit determined that WSI remitted its PPAF for the fiscal year 2008-2009 late. As a result of the late remittance a late payment penalty fee of \$1,308.75 is due and payable to the City. (W/P T-9)

Also, our audit determined that the PPAF for one (1) service account that was active as of October 1, 2008 was not assessed and remitted to the City as required. As a result, the unremitted PPAF and the applicable late/penalty fees totaling \$61.25 (\$50.00 + 11.25) are due to the City. (W/P T-9)

I Agree I Disagree _____ Please initial: LT
Explanation _____

III. Article V, Section 5.2 of the Commercial Solid Waste Franchise Agreement (Agreement) requires the Franchisee to remit monthly to the City 22 percent (22%) of its Gross Receipts generated from accounts within the City limits, or \$500 whichever is greater. The remittance

of the previous month's collection should be received by the City on or before the last day of each month. Failure to remit by the last day of the following month will result in one and one-half percent (1-1/2%) penalty per month on the balance due. Our audit determined that:

- The 22% franchise fees and the related permit per account fee (PPAF) generated from one (1) customer account was not remitted to the City as required. The unremitted 22% franchise fees, the related PPAF and the applicable late payment penalty fees totaling \$338.27 (\$263.76 + \$50 + 24.51) are due to the City.
(W/P T-202)
- Due to computation error additional 22% franchise fees including late payment penalty totaling \$72.27 (\$59.73 + \$12.54) are due and payable to the City. (W/P T-51)
- The 22% franchise fees for the months of December 2008 and February 2009 were not remitted to the City in a timely manner. As a result of the late remittances, a late payment penalty totaling \$3,947.37 (\$2,128.93 + 1,818.44) is due to the City. (W/P T-51)

I agree I disagree Please Initial: LT
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 10, 2010.

Page 4 of 4
Mr. L. Thogmartin
February 1, 2010

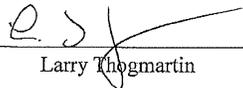
A summary schedule is attached for your reference. If you have any questions, please feel free to contact me at (305) 416-2042 or Victor Igwe (Independent Auditor General) at (305) 416-2044.

Thank you for your attention to this matter.

Sincerely,


Pauline Garcia
Staff Auditor
Office of Independent Auditor General

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


Larry Thogmartin

2/9/2010
Date

C: Barbara L Pruitt, Director, Solid Waste Department
Steven Margolis, Principal Auditor, Solid Waste Department
Victor Igwe, CPA, CIA, Auditor General

EXHIBIT I

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

DESCRIPTION	ITEMIZED AMOUNT	TOTAL FEES DUE
	\$	\$
<u>Annual Franchise Fee</u>		
1.50% Penalty on Late Remittance		105.00
<u>Permit Per Account Fee</u>		
1.50% Penalty on Late Remittance	1,308.75	
Fee and Penalty on unreported Account	<u>61.25</u>	1,370.00
<u>Franchise Fees (22%)</u>		
Penalty on Late Remittance during 2 months	3,947.37	
Franchise Fees differential not remitted	<u>72.27</u>	4,019.64
<u>Miscoded Accounts</u>		
Unremitted Franchise Fees	286.77	
PPAF c on Miscoded Account	<u>51.50</u>	338.27
TOTAL DUE TO THE CITY		<u>\$ 5,832.91</u>