

City of Miami

THEODORE GUBA, CPA
INDEPENDENT AUDITOR GENERAL



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July 3, 2012

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

Re: Eastern Waste Systems, Inc. (EWS)
Audit No. 12-004

Pursuant to Section 48 of the City of Miami's (City) Charter and the Fiscal Year 2012 audit plan, we have examined the billing records of Eastern Waste Systems, Inc. (EWS). The audit was performed to determine whether EWS complied with applicable Sections of the City Code and the Commercial Solid Waste Franchise Agreement (Agreement) between the City and commercial solid waste hauling companies. Chapter 22 of the City Code and the 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, 2010 and selected financial transactions that were processed prior and subsequent to this period.

Sincerely,

A handwritten signature in cursive script that reads 'Theodore P. Guba' with a horizontal line extending to the right.

Theodore Guba, CPA
Independent Auditor General
Office of Independent Auditor General

C: The Honorable Mayor Tomas Regalado
Johnny Martinez, City Manager
Members of the Audit Advisory Committee
Michael C. Marzano, President, Eastern Waste Systems, Inc.
Janice Larned, Chief Financial Officer, Finance Department
Luis Cabrera, Assistant City Manager/Chief of Operations
Cindy Torres, Acting Director, Information Technology Department
Julie O. Bru, City Attorney, City Attorney's Office
Keith A. Carswell, Director, Solid Waste Department
Stephen Petty, Director, Finance Department
Priscilla A. Thompson, City Clerk, City Clerk's Office
Demetrio Constantiny, Accounts Receivable Supervisor, Finance Department
Audit Documentation File

Audit conducted by: Paulino Garcia
Audit reviewed by: Mala Khilnani
Lewis R. Blake

**AUDIT OF COMPLIANCE WITH COMMERCIAL SOLID WASTE
FRANCHISE AGREEMENT - EASTERN WASTE SYSTEMS, INC.
OCTOBER 1, 2008 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 commencing 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 (1-1/2%) late payment penalty fee is assessed per month on any balance due.
- Annual Franchise Fee. The sum of \$5,000 (increased annually by \$500, thus \$7,000.00 and \$7,500.00 respectively were due for the audit period 2008-2010) 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

monthly assessment of a one and one-half percent (1-1/2%) late payment penalty fee on the balance due to the City.

- Annual Specialized Waste Handling Service Fee. The sum of \$1,000 (increased annually by \$500, thus \$3,000.00 was due for the audit period 2008-2010) 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. A one and one-half percent (1-1/2%) 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 the franchisee in the course of providing solid waste services. The franchisee may only pass on an amount not to exceed \$24 of the paid Permit Per Account Fee to each contracted customer. This fee is not transferable. A one and one-half percent (1-1/2%) late payment penalty fee is assessed monthly on any balance due.

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. EWS is one of the franchisees selected for audit to determine compliance with the provisions of the Franchise Agreement. A separate audit report will be issued for each of the franchisees audited.

The Solid Waste Department (SWD) is responsible for ensuring that commercial solid waste service accounts and applicable fees/transactions are properly assessed and paid to the City. The Solid Waste Department is also responsible for monitoring the operations

of the commercial solid waste franchisees. This audit report describes whether Eastern Waste Systems, Inc. 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 2011/2012 Audit Plan. As part of our oversight responsibilities, the Office of the Independent Auditor General performs financial and operational audits to determine the extent of compliance with terms of contracts, programs, and/or lease agreements between the City and private companies. This audit focused primarily on whether Eastern Waste Systems, Inc. (EWS) and the City's Solid Waste Department (SWD) complied with the terms of the Commercial Solid Waste Franchise Agreement (Agreement) and with Chapter 22 of the City's Code, which govern the operation of commercial solid waste collection services in the City. The audit also included examinations of various transactions to determine whether they were processed in accordance with the generally accepted accounting principles. The audit covered the period October 1, 2008 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 Eastern Waste Systems, Inc. (EWS). 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 Eastern Waste Systems, Inc. (EWS) and the City's Solid Waste Department and determine whether they were adequate and effective in administering and overseeing the operation of commercial solid waste hauling services in the City.
- To follow-up on prior audit findings and determine the status of all unresolved and outstanding issues.

METHODOLOGY

We conducted this performance audit in accordance with *Generally Accepted Government Auditing Standards*. Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence in order to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The audit methodology included the following:

- Interviewed and inquired of appropriate personnel; reviewed and observed applicable written policies and procedures in order to gain an understanding of the internal controls; assessed control risk; and planned substantive testing.
- Performed substantive testing consistent with the audit objectives.
- Examined, on a test basis, applicable transactions and records.
- Determined compliance with all the objectives noted on pages 4 and 5.
- Performed other audit procedures as deemed necessary.
- Drew conclusions based on the results of the testing and made corresponding recommendations and obtained the auditee's responses and corrective action plans.

AUDIT CONCLUSION

Based upon various tests performed and the audit findings noted, we conclude that adequate internal controls were **not** in place to ensure that:

- Permit Per Account Fees were remitted to the City in a timely manner.
- Franchise Fees (22%) were remitted to the City in a timely manner every month.
- All the franchise fees generated from accounts within the City were reported and remitted to the City.

Based upon various tests 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 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 Eastern Waste Systems, Inc. (EWS) could be enhanced to ensure a more effective operation of commercial solid waste hauling services in the City.

SUMMARY OF AUDIT FINDINGS

EASTERN WASTE SYSTEMS, INC., THE CITY'S SOLID WASTE AND FINANCE DEPARTMENTS

COMPLIANCE WITH CERTAIN SECTIONS OF THE CITY CODE AND THE FRANCHISE AGREEMENT

We conducted various audit tests, on a sample basis, to determine compliance with certain provisions of the City Code, the Commercial Solid Waste Franchise Agreement, and other guidelines. Our tests disclosed that Eastern Waste Systems, Inc. (EWS) the City's Solid Waste Department (SWD) and the Finance Department (FD) materially complied with the following:

- The Finance Department properly recorded the sampled payments from EWS to the City. The sampled payments received by the Finance Department were also traced to the City's treasury.
- Eastern Waste Systems, Inc. (EWS) complied with the vehicle insurance requirement as stipulated by Section 22-47 (4a) of the City Code.
- The Solid Waste Department obtained vehicle insurance records as stipulated by Section 22-47(4)a of the City Code.
- The Solid Waste Department obtained the statement of annual gross receipts prepared by an independent Certified Public Accountant as required by the City Code and the Agreement.

EASTERN WASTE SYSTEMS, INC.

ADDITIONAL FEES DUE TO THE CITY

Article V, Section 5.2 of the Agreement titled “Franchise Fees” stipulates certain fees the franchisee is required to remit to the City. Our review of EWS’s accounting and billing records disclosed that \$756.55 is due to the City from the franchise fee transactions assessed during the audit period. See detailed discussions on pages 10 and 11.

DETAILED AUDIT FINDINGS AND RECOMMENDATIONS

EASTERN WASTE SYSTEMS, INC.

ADDITIONAL FEES DUE TO THE CITY

In connection with our audit of Eastern Waste Systems, Inc. (EWS) for the period October 1, 2008 through September 30, 2010, and selected transactions prior and subsequent to this period, our audit disclosed that additional franchise fees totaling \$756.55 are due to the City as summarized below (See Exhibit I):

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 (1-1/2%) penalty fee per month on the balance due. Our audit disclosed that EWS paid its monthly 22% franchise fees late for the month of September 2010. As a result of the late payment, a penalty fee in the amount of \$77.46 is due to the City.

- Also our review of the list of customers located in unincorporated Miami-Dade County and other municipalities disclosed that the 22% franchise fees for one (1) miscoded account were not remitted to the City. This resulted in additional franchise fees and late payment penalty fees totaling \$587.09 (\$444.63 + \$142.46) due to the City.

PERMIT PER ACCOUNT FEES

Article V, Section 5.6 of the Agreement requires the franchisee to remit to the City annually (due October 15th) 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 the franchisee. Failure to remit the required PPAF by the due date will result in a late payment penalty fee of one and one-half percent (1.5%) per month of the balance due to the City. Our audit disclosed that EWS remitted the PPAF payment one (1) month late for the fiscal years 2008-2009 (FY 09) and 2009-2010 (FY 10). This resulted in late payment penalty fees due to the City of \$12.75 and \$9.75 for FY 09 and FY 10 respectively.

- Also EWS failed to report to the City one (1) account during FY 2010 resulting in additional fees and penalties totaling \$69.50 (\$50.00 + \$19.50) due to the City.

ANNUAL GROSS RECEIPTS REPORT NOT TIMELY SUBMITTED

Article V, Section 5.3 of the Agreement stipulates that the franchisee shall, on or before 60 days (November 30th) following the close of each fiscal year, deliver to the Director of Solid Waste Department (SWD), a statement of its annual gross receipts generated from accounts within the City for the preceding fiscal year. Such statement must be prepared by an independent Certified Public Accountant (CPA). Our review disclosed that the statement that was due November 30, 2010 was issued on March 17, 2011 (3 months and 17 days late).

Recommendation:

We recommend that Eastern Waste Systems, Inc. (EWS) enhance its internal control procedures to ensure compliance with the Commercial Solid Waste Franchise Agreement. We also recommend that the Finance Department bill EWS the total amount of \$756.55 due and payable to the City of Miami.

Auditee's Response and Action Plan:

Auditee concurred with all of the findings (See written responses on pages 15 through 17).

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 (SWD) is responsible for administering, monitoring and enforcing the provisions of the said City Code and Agreement. As such, timely receipt and review of the CPA statement (described on page 11) for accuracy will ensure that any additional fees due to the City will be collected. However as discussed on page 11, Eastern Waste Systems, Inc. (EWS) did not submit the CPA statements in a timely manner.

Recommendation:

We recommend that the Solid Waste Department enhance its internal control procedures so as to ensure that the provisions of the Commercial Solid Waste Agreement are properly monitored and enforced in a timely manner.

Auditee's Response and Action Plan:

Auditee concurred with our findings (See written response on pages 18 through 19).



City of Miami

LEWIS R. BLAKE, CPA, CIA
INTERIM AUDIT SUPERVISOR



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January 11, 2012

Mr. Michael C. Marzano, President
Eastern Waste Systems, Inc. (EWS)
1660 N.W. 19th Avenue
Pompano Beach, FL 33069

RE: Audit of Compliance with Commercial Solid Waste Agreement/ Eastern Waste Systems,
Inc. (EWS) - Audit No. 12-004

Dear Mr. Marzano:

In connection with our audit of EWS for the period October 1, 2008 through September 30, 2010, and selected transactions prior and subsequent to this period, our audit disclosed that additional franchise fees totaling \$756.55 (W/P T-10) are due to the City as summarized below:

- 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 (1-1/2%) penalty fee per month on the balance due. Our audit disclosed that EWS paid its monthly 22% franchise fees late for the month of September 2010. As a result of the late payment, a penalty fee in the amount of \$77.46 is due to the City. (W/P T-151)

I agree I disagree _____ Please Initial: _____

Explanation: _____

- o Also our review of the list of customers located in unincorporated Miami-Dade County and other municipalities disclosed that the 22% franchise fees for one (1) miscoded account were not remitted to the City. This resulted in additional franchise fees and late payment penalty fees totaling \$587.09 (\$444.63 + 142.46) due to the City (W/P T-227).

I agree I disagree _____ Please Initial: _____

Explanation: _____

- Article V, Section 5.6 of the Agreement requires the franchisee to remit to the City annually (due October 15th) 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 the franchisee. Failure to remit the required PPAF by the due date will result in a late payment penalty fee of one and one-half percent (1.5%) per month of the balance due to the City. Our audit disclosed that EWS remitted the PPAF payment one (1) month late for the fiscal years 2008-2009 (FY 09) and 2009-2010 (FY 10). This resulted in late payment penalty fees due to the City of \$12.75 and \$9.75 for FY 09 and FY 10 respectively. (W/P T-17 and T-21)
 - o Also EWS failed to report to the City one (1) account during FY 10 resulting in additional fees and penalties totaling \$69.50 (\$50.00 + 19.50) due to the City. (W/P T-17)

I agree I disagree Please Initial: _____

Explanation: _____

- Article V, Section 5.3 of the Agreement stipulates that the franchisee shall, on or before 60 days (November 30th) following the close of each fiscal year, deliver to the Director of Solid Waste Department (SWD), a statement of its annual gross receipts generated from accounts within the City for the preceding fiscal year. Such statement must be prepared by an independent Certified Public Accountant (CPA). Our review disclosed that the statement that was due November 30, 2010 was issued on March 17, 2011 (3 months and 17 days late) (W/P T-217)

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 written explanations and attach all supporting documents/records. Please respond by January 25, 2012.

Page 4 of 4
Mr. Michael C. Marzano
January 11, 2012

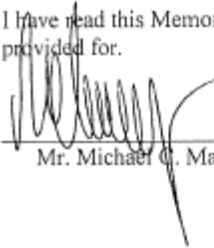
A summary schedule is attached for your reference. If you have any questions, please feel free to contact me at (305) 416-2047 or Lewis Blake (Interim Audit Supervisor) at (305) 416-2173.

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.



Mr. Michael C. Marzano



Date

C: Keith A. Carswell, Director Solid Waste Department
Erica Paschal, Solid Waste Department Fiscal Administration
Lewis R. Blake, CPA, CIA, Interim Audit Supervisor

INTER-OFFICE MEMORANDUM

TO: Keith A. Carswell, Director Solid Waste Department	DATE: January 11, 2012
FROM: Paulino Garcia, Staff Auditor Office of Independent Auditor General	SUBJECT: Memorandum of Understanding Eastern Waste Systems, Inc. (EWS)
	REFERENCES: Audit # 12-004
	ENCLOSURES:

In connection with our audit of Eastern Waste Systems, Inc. (EWS) for the period October 1, 2008 through September 30, 2010, please review the following preliminary and tentative audit finding and respond accordingly:

- I. Article V, Section 5.3 of the Agreement stipulates that the franchisee shall, on or before 60 days (November 30th) following the close of each fiscal year, deliver to the Director of the Solid Waste Department (SWD), a statement of its annual gross receipts (Statement) generated from accounts within the City for the preceding fiscal year. Such statement must be prepared by an independent Certified Public Accountant. However, our audit determined that the certified statement of annual gross receipts due November 30, 2010 was issued on March 17, 2011 (3 months and 17 days late) (W/P T-217)

In accordance with Chapter 22 of the City Code and the Commercial Solid Waste Franchise Agreement (Agreement), the SWD is responsible for administering, monitoring, and enforcing the provisions of the said City Code and Agreement. A timely receipt and review of the Statement for correctness will ensure that any additional fees due to the City will be collected in a timely manner.

Your Understanding is Correct: Incorrect Please Initial _____

Explanation: The Solid Waste Department has recently hired two (2) Special Project Assistants to assist in administering, monitoring, and enforcing the provisions of the said City Code and Agreement. With their primary emphasis on the monitoring of the day to day activities of Franchisees, that allows for the senior staff to better concentrate on administrative matters related to monitoring the Agreement.

Please review the above audit findings and supporting document, check the appropriate box, and provide written responses addressing the concern noted above, no later than January 25, 2012. If you have any questions or comments please feel free to contact me at 305-416-2047.

C: Erica Paschal, Fiscal Administrator, (SWD)
Lewis R. Blake, CPA, CIA, Interim Audit Supervisor

EXHIBIT I

EASTERN WASTE SYSTEMS, INC. SCHEDULE OF FEES DUE TO THE CITY OCTOBER 1, 2008 - SEPTEMBER 30, 2010

<u>DESCRIPTION</u>	<u>ITEMIZED AMOUNT</u>	<u>TOTAL FEES DUE</u>
	\$	\$
<u>Permit Per Account Fee</u>		
Fiscal Year Ended 9/30/2010		
Remitted to the City 1 month late	9.75	
Unreported Roll-Off (Including Late payment penalty Fee)	<u>69.50</u>	79.25
Fiscal Year Ended 9/30/2009		
Remitted to the City 1 month late (Late payment penaoty Fee)	<u>12.75</u>	12.75
<u>Franchise Fees (22%)</u>		
Fiscal Year Ended 9/30/2010		
Remitted to the City late (Late payment penalty Fee)	<u>77.46</u>	77.46
<u>Miscoded Accounts (Franchise Fees Due)</u>		
One (1) Miscoded Account	444.63	
Late payment penalty Fee	<u>142.46</u>	587.09
TOTAL DUE TO THE CITY		<u>\$ 756.55</u>