

City of Miami

THEODORE P. GUBA, CPA, CIA
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: Audit of Compliance with Commercial Solid Waste Franchise Agreement/
Lopetra Corporation.
Audit No.12-005

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 Lopetra Corporation. The audit was performed to determine whether Lopetra 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,

A handwritten signature in cursive script that reads 'Theodore P. Guba' followed by a horizontal line.

Theodore P. Guba, CPA, CIA
Auditor General
Office of the Independent Auditor General

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

Audit completed by: Paulino Garcia, Staff Auditor

Audit reviewed by: Robyn Sachs, Senior Information Systems Auditor
Lewis Blake, Senior Staff Auditor

**AUDIT OF COMPLIANCE WITH COMMERCIAL SOLID WASTE
FRANCHISE AGREEMENT/LOPEFRA CORPORATION
OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010
Audit No. 12-005**

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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%. Failure to remit the previous month’s collection on or before 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 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 Number 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 penalty fee per month on any balance due to the City.

During the fiscal year, October 1, 2009 through September 30, 2010, franchisees remitted a total of \$9,699,683 to the City. Lopefra 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 Lopefra 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 2010-2011 Audit Plan. As part of our oversight responsibilities, the Office of the Independent Auditor General performs 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 Lopefra 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 governs 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 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 Lopefra. 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 Lopefra 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.
- The Permit Per Account Fee is remitted to the City in a timely manner.
- All Franchise Fees generated by accounts within the City limits were collected by the City as required.

Based upon various tests 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 were properly recorded in the City's accounting system and deposited in the City's Treasury.
- The CPA Statement was obtained in a timely manner as required by Article V, Section 5.3 of the Agreement.
- The appropriate public liability insurance was obtained as required by Article VII of the Agreement.
- The appropriate vehicle insurance certificates were obtained by the SWD as required by the City Code and the Agreement.

Overall, we conclude that the internal control policies and procedures in place at Lopefra could be enhanced to ensure that all customer accounts located in the City are properly coded, assessed the appropriate fees, and said fees are promptly remitted to the City.

SUMMARY OF AUDIT FINDINGS

LOPEFRA CORPORATION

ADDITIONAL FEES DUE TO THE CITY

Article V of the Commercial Solid Waste Franchise Agreement (Agreement) titled “Franchise Fees” stipulates certain fees the franchisee is required to remit to the City. Our review of Lopefra’s accounting and billing records disclosed that an additional \$366.58 is due and payable to the City from the franchise fee transactions assessed and processed during the audit period. Subsequently, Lopefra submitted a check in the amount of \$366.58 in full payment of the amounts that were due to the City. See detailed discussion on pages 9 through 11.

DETAILED AUDIT FINDINGS AND RECOMMENDATION

LOPEFRA CORPORATION

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. Lopefra Corporation (Lopefra) generated total gross receipts of \$339,480.34 in fiscal year 2009-2010 for services provided within the City limits during the audit period. The total FF remitted to the City during the audit period was \$74,681.27 for 2009-2010. However, our audit of Lopefra’s accounting and billing records disclosed that an additional \$366.58 was due and payable to the City from Lopefra as discussed below:

ANNUAL FRANCHISE FEES

- Article V, Section 5.7 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 \$1,000.00 (increased annually by \$500, thus \$3,500.00 was due for the audit period) for the right to provide only 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 half percent (1-1/2%) per month late payment penalty fee on the balance due to the City. Our audit disclosed that Lopefra Corporation remitted its annual franchise fee for the fiscal year 2009-2010 on October 22, 2009, or one (1) month late. As a result of the late remittance, a late payment penalty fee of \$52.50 is due to the City.

PERMIT PER ACCOUNT FEE

- Article V, Section 5.6 of the Agreement requires the franchisee to annually remit to the City (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 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 (1.5%) per month of the balance due to the City. Our audit determined that the PPAF was received by the City on October 22, 2009 (one month late). As a result of the late remittance, a late payment penalty fee of \$32.25 is 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 half percent (1-1/2%) late payment penalty fee per month on the balance due. Our review disclosed that Lopefra did not remit the 22% franchise fee, generated by one (1) account, as required. The unremitted 22% franchise fees and the applicable late fees totaling \$281.83 (\$231.00 + 50.83) are due to the City.

Recommendation:

We recommend that Lopefra 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. In addition, the auditee submitted a check in the amount of \$366.58 in full payment of the amounts that were due to the City described above (See page 15). Please see written responses on pages 12 through 14.

City of Miami

LEWIS R. BLAKE, CPA, CIA
INTERIM AUDIT SUPERVISOR



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Telecopier: (305) 416-2046
E-Mail: lblake@ci.miami.fl.us

October 25, 2011

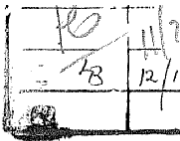
Ms. Rosemary L. Hartigan, Vice-President
Lopefra Corporation
2601 SW 69th Court
Miami, Florida 33165

RE: Audit of Lopefra Corporation – Audit #12-005

Dear Ms. Hartigan:

In connection with our audit of Lopefra Corporation 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 \$366.58 (W/P T-5) are due to the City as summarized below:

- Article V, Section 5.7 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 \$1,000.00 (increased annually by \$500, thus \$3,500.00 was due for the audit period) for the right to provide only 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 half percent (1-1/2%) per month late payment penalty fee on the balance due to the City. Our audit disclosed that Lopefra Corporation remitted its annual franchise fee for the fiscal year 2008-2009 on October 22, 2009 one (1) month late). As a result of the late remittance, a late payment penalty fee of \$52.50 is due to the City. (W/P T-9)



I agree I disagree Please initial: _____

Explanation _____

- 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 half percent (1-1/2%) late payment penalty fee per month on the balance due. Our review disclosed that Lopetra did not remit the 22% franchise fee, generated by one (1) account, as required. The unremitted 22% franchise fees and the applicable late fees totaling \$281.83 (\$231.00 + 50.83) are due to the City. (W/P T-130)

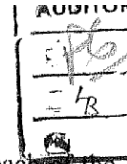
I agree I disagree Please Initial: _____

Explanation: _____

- Article V, Section 5.6 of the Agreement requires the franchisee to annually remit to the City (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 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 (1.5%) per month of the balance due to the City. Our audit determined that the PPAF was received by the City on October 22, 2009 (one month late). As a result of the late remittance, a late payment penalty fee of \$32.25 is due to the City. (W/P T-12)

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 November 8, 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 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.

Ms. Rosemary L. Hartigan

11/23/11
Date

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

THIS CHECK IS VOID WITHOUT A BLUE BACKGROUND AND AN ARTIFICIAL WATERMARK ON THE BACK - HOLD AT ANGLE TO VIEW

LOPEFRA CORP.
2601 SW 69TH CT.
MIAMI, FL 33155
305-266-3896

CONTINENTAL NATIONAL BANK OF MIAMI
5785 S.W. 40TH ST.
MIAMI, FL 33155
63-945660

60251

DATE 11/28/2011

I TO THE ORDER OF

City of Miami

AUDIT # 11-019
PERIOD: 10/09 to 9/10

✓ \$ **366.58

Three Hundred Sixty-Six and 58/100***** DOLLARS

MEMO
City of Miami
Finance Department
444 SW 2nd Avenue, Suite 711
Miami, FL 33130-1910

Schedule of Fees Due to the City

AUTHORITY	DATE
<i>[Signature]</i>	11/28/11

[Signature]

SIGNATURE AREA HAS A COLORED BACKGROUND - BORDER CONTAINS MICROPRINTING

⑈060251⑈ ⑆066009456⑆ 30015584⑈

LOPEFRA CORP.
City of Miami

11/28/2011

60251

366.58

✓ = To Report

Continental Bank

Schedule of Fees Due to the City

✓ 366.58

✓ ACC FINANCE RECEIPT
on W/P 5-28

Rec'd 12/1/11 -
2:22 PM S. J. [Signature]

EXHIBIT I

LOPEFRA CORPORATION SCHEDULE OF ADDITIONAL FEES DUE TO THE CITY OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010							
DESCRIPTION						ITEMIZED AMOUNT	TOTAL FEES DUE
						\$	\$
<u>Annual Franchise Fee</u>							
Late Fee Penalty on Late Remittance							52.50
<u>Permit Per Account Fee</u>							
Late Fee Penalty on Late Remittance							32.25
<u>Miscoded Account</u>							
22% Franchise Fees and Late Fees on one (1) miscoded Account							281.83
TOTAL DUE TO THE CITY							366.58