

City of Miami

THEODORE GUBA, CPA
INDEPENDENT AUDITOR GENERAL



Telephone (305) 416-21044
E-Mail: tguba@miamigov.com

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
Waste Management Inc. of Florida (WM)
Audit No.12-006

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 Management Inc. of Florida (WM). The audit was performed to determine whether WM complied with applicable sections of the City Code and the Commercial Solid Waste Franchise Agreement (Agreement) between the City and 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 Guba, CPA
Independent Auditor General
Office of the Independent Auditor General

C: The Honorable Mayor Tomas Regalado
Johnny Martinez, City Manager
Members of the Audit Advisory Committee
James F. Lambros, Market Area Controller, WM.
Cindy Torres, Acting Director, Information Technology Department
Luis Cabrera, Assistant City Manager/Chief of Operations
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/WASTE MANAGEMENT INC. OF FLORIDA
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%. 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 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. WM is one of the franchisees selected for audit to determine compliance with the provisions of the Franchise Agreement. A separate audit report will be issued for each of the franchisees audited.

The Solid Waste Department (SWD) is responsible for ensuring that commercial solid waste service accounts and applicable fees/transactions are properly assessed and paid to the City. The SWD is also responsible for monitoring the operations of the commercial solid waste franchisees. This audit report describes whether WM and the SWD complied with the terms of the Agreement and applicable sections of the City Code.

SCOPE AND OBJECTIVES

This audit was performed pursuant to the authority set forth in Section 48 of the City's Charter titled, "Office of the Independent Auditor General", and was conducted in accordance with the Fiscal Year 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 Waste Management Inc. of Florida (WM) and the City's Solid Waste Department (SWD) complied with the terms of the Commercial Solid Waste Franchise Agreement (Agreement) and with Chapter 22 of the City's Code, which 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 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 WM. Additionally, to determine whether said statement was submitted to the Solid Waste Department (SWD) within 60 days after the end of the fiscal year.
- To ascertain whether the fees remitted to the City were properly recorded in the City's accounting system and deposited into the City's treasury.

- To verify whether the appropriate public liability insurance and bonds were obtained as required by Article VII of the Agreement.
- To examine the internal control policies and procedures of WM and the City's Solid Waste Department and determine whether they were adequate and effective in administering and overseeing the operation of commercial solid waste hauling services in the City.
- To follow-up on prior audit findings and determine the status of all unresolved and outstanding issues.

METHODOLOGY

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

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

AUDIT CONCLUSION

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

- 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.
- The CPA statement of gross receipts for the fiscal year 2009-2010 is submitted to the Solid Waste Department (SWD) in a timely manner.

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 were properly recorded in the City's accounting system and deposited in the City's Treasury.
- 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 WM could be enhanced to ensure that all customer accounts located in the City are properly coded, assessed the appropriate fees, and said fees be promptly remitted to the City.

SUMMARY OF AUDIT FINDINGS

WASTE MANAGEMENT, INC. OF FLORIDA (WM)

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 WM’s accounting and billing records disclosed that an additional \$10,486.36 was due and payable to the City from the franchise fee transactions assessed and processed during the audit period. Upon audit inquiry, WM subsequently submitted a check in the amount of \$10,486.36 in full payment of the amounts that were due to the City. See detailed discussion on pages 10 through 12 (Also see Exhibit I on page 23).

THE CPA STATEMENT WAS NOT FILED IN A TIMELY MANNER

WM filed the CPA statement 17 days late. See detailed discussion on page 12.

SOLID WASTE DEPARTMENT

INADEQUATE ENFORCEMENT OF THE PROVISION OF THE FRANCHISE AGREEMENT

The Solid Waste Department did not follow-up to obtain the required CPA statement in a timely manner. (See discussion on page 14).

DETAILED AUDIT FINDINGS AND RECOMMENDATIONS

WASTE MANAGEMENT, INC. OF FLORIDA (WM)

ADDITIONAL FEES DUE TO THE CITY

Article V of the Commercial Solid Waste Franchise Agreement (Agreement) titled “Franchise Fees” stipulates the various franchise fees (FF) to be assessed and remitted to the City. Waste Management, inc. of Florida (WM) generated total gross receipts of \$18,800,978 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 \$4,133,849 for 2009-2010. However, our audit of WM’s accounting and billing records disclosed that an additional \$10,486.36 is due and payable to the City from WM as discussed below (Also see Exhibit I on page 23):

ANNUAL FRANCHISE FEES

- Article V, Section 5.4 of the Commercial Solid Waste Franchise 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 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 (1.50%) per month late penalty fee on the balance due to the City. Our audit determined that WM did not remit the annual franchise fee to the City in a timely manner during the audit period. As a result of the late remittance, a late payment penalty fee totaling \$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 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 on the balance due to the City. Our audit determined that the PPAF for seventy eight (78) service accounts that were active as of October 2009 were not assessed and remitted to the City as required. As a result, the unremitted PPAF and the applicable late penalty fees totaling \$5,187.00 (\$3,900.00 + \$1,287.00) are due and payable to the City.

FRANCHISE FEES (22%)

- Article V, Section 5.2 of the Commercial Solid Waste Agreement (Agreement) requires the franchisee to remit monthly to the City 22 percent (22%) of the Gross Receipts generated from accounts within the City limits, or \$500 whichever is greater. The remittance of the previous month's collection should be received by the City on or before the last day of each month. Failure to remit by the last day of the following month will result in a one and one half percent (1.5%) late penalty fee per month on the balance due. Our audit determined that WM remitted franchise fees for the month of January 2010 eight (8) days late. As a result, a late payment penalty fee of \$5,186.86 should be assessed and due to the City.

Recommendation:

We recommend that Waste Management, Inc. of Florida (WM) enhance its internal control procedures to ensure that service accounts located within the City boundaries are properly identified, coded, and that all appropriate fees are remitted to the City in a timely manner.

Auditee's Response and Action Plan:

The auditee concurred with all of the audit findings. In addition, the auditee submitted a check in the amount of \$10,486.36 in full payment of the amounts that were due to the City described above (See page 20). Please see written responses on pages 15 through 20.

THE CPA STATEMENT WAS NOT FILED IN A TIMELY MANNER

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 (CPA). However, our audit determined that the statement of annual gross receipts submitted to the City was dated December 17, 2010 (17 days late).

Recommendation

We recommend that WM enhance its internal control procedures so as to ensure compliance with Article V, Section 5.3 of the Commercial Solid Waste Agreement described above.

Auditee's Response and Action Plan:

The auditee concurred with the audit finding and recommendation. See auditee response on page 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 12) for accuracy will ensure that any additional fees due to the City will be collected. However, as discussed on page 12, Waste Management, Inc. of Florida (WM) did not submit the CPA statement to SWD 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 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 21 through 22.

City of Miami

LEWIS R. BLAKE, CPA, CIA
INTERIM AUDIT SUPERVISOR



Telephone (305) 416-2173
Telecopier: (305) 416-2046
E-Mail: lblake@miamigov.com

September 21, 2011

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

RE: Audit of Compliance with Commercial Solid Waste Franchise Agreement/
Waste Management, Inc. of Florida (WM).
Audit No. 11-018

Dear Mr. Lambros:

In connection with our audit of Waste Management, Inc. of Florida's franchise fees records for the period October 1, 2009 through September 30, 2010 as well as, selected transactions prior and subsequent to this period, our audit disclosed that additional franchise fees totaling \$10,486.36 (W/P T-5) are due to the City as summarized below:

- I. Article V, Section 5.6 of the Agreement requires the franchisee to remit to the City annually (due October 15) a permit per account fee (PPAF) in the amount of \$50 for each account contracted for commercial solid waste handling services within the City, including each container and/or roll-off utilized by franchisee. Failure to remit the required PPAF by the due date will result in a late payment penalty fee of one and one-half percent (1.5%) per month on the balance due to the City. Our audit determined that the PPAF for Seventy

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

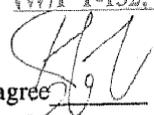
eight (78) service accounts that were active as of October 2009 were not assessed and remitted to the City, as required. As a result, the unremitted PPAF and the applicable late penalty fees totaling \$5,187.00 (\$3,900.00 + \$1,287.00) are due and payable to the City.

(W/P T-12)

I Agree  I disagree _____ Please Initial _____
Explanation: _____

II. Article V, Section 5.2 of the Commercial Solid Waste Franchise Agreement (Agreement) requires the Franchisee to remit monthly to the City 22 percent (22%) of the Gross Receipts generated from accounts within the City limits, or \$500 whichever is greater. The remittance of the previous month's collection should be received by the City on or before the last day of each month. Accompanying the remittance, Franchisee must provide the City with a list of the customers' names, addresses and total amount collected. Failure to remit by the last day of the following month will result in a one and one half percent (1.5%) late penalty fee per month on the balance due.

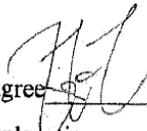
- Our audit determined that Waste Management Inc. (WM) remitted to the City franchise fees for the month of January 2010 that were eight (8) days late. As a result, a late payment penalty fee of \$5,186.86 should be assessed and due to the City. (W/P T-132, T-140)

I agree  I disagree _____ Please Initial: _____
Explanation: _____

III. Article V, Section 5.4 of the Commercial Solid Waste Franchise 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 \$7,500 was due for the audit period) for the right

to provide 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 (1.50%) per month late penalty fee on the balance due to the City. Our audit determined that WM did not remit the annual franchise fee to the City in a timely manner during the audit period. As a result of the late remittance, a late payment penalty fee totaling \$112.50 is due to the City (W/P T-7)

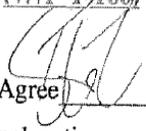
I agree  I disagree _____ Please Initial: _____
Explanation: _____

IV. 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 annual gross receipts submitted to the City was dated December 17, 2010 (17 days late). (W/P T-160)

I Agree  I disagree _____ Please Initial _____
Explanation: _____

Please confirm our understanding by indicating whether you agree or disagree with each of the observations described above by checking the appropriate box and include your initials on the space provided for each observation. Also, sign on the space provided below and return this memorandum to us. In the event that you disagree with any of the items listed above, please provide your explanations and attach all supporting documents/records. Please respond by October 5, 2011.

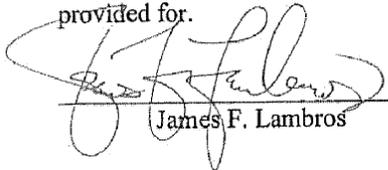
A summary schedule is attached for your reference. If you have any questions, please feel free to contact me at (305) 416-2047 or Lewis R. Blake, CPA, CIA, Interim Audit Supervisor at (305) 416-2173.

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.


James F. Lambros

10/18/2011
Date

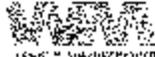
C: Keith A. Carswell, Director, Solid Waste Department

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

Page 5 of 5
Mr. James F. Lambros
September 21, 2011

Erica Paschal, Fiscal Administrator, Solid Waste Department
Lewis R. Blake, CPA, CIA, Interim Audit Supervisor

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



Waste Management
 P.O. Box 3007
 Houston, TX 77205

0010025327
 0010025327

Doc. Date	Check Number	Amount Paid	Debit Amount	Account Type
10/18/2011	2154 093010A *01249* ADDITIONAL FRANCHISE FEE-GL-1-00 1% 0000010	10,486.36	0.00	0,486.36

Check Number	Date	Total Amount	Transaction	Debit Amount
0010025327	10/18/2011	\$10,486.36	\$0.00	\$10,486.36

THIS DOCUMENT HAS A COLORED BACKGROUND AND MICROPRINTS IN THE ENVELOPE SIGNATURE LINE. THE REVERSE SIDE OF THIS DOCUMENT HAS AN APPROVAL MICRO MARK.



Waste Management
 P.O. Box 3007
 Houston, TX 77205

Waste Management
 P.O. Box 3007
 Houston, TX 77205

0010025327

10/18/2011

10/18/2011

\$10,486.36***

WASTE MANAGEMENT

DATE: 10/18/2011

STYLED DIGITALLY

TEN THOUSAND FOUR HUNDRED EIGHTY-SIX AND 36/100 DOLLARS

Cherie C. Rice

TO THE
 ORDER

CITY OF MIAMI FL
 444 SW 3rd Ave
 Miami, FL 33130

ALL CHECKS MUST BE DEPOSITED WITHIN 60 DAYS OF THE DATE OF THE CHECK.

ALL CHECKS MUST BE DEPOSITED WITHIN 60 DAYS OF THE DATE OF THE CHECK.

⑈0010025327⑈ ⑆071423284⑆ 87654⑈03⑆76⑈

INTER-OFFICE MEMORANDUM

TO: Keith A Carswell, Director
Solid Waste Department

DATE: September 21, 2011

SUBJECT: Memorandum of Understanding
Waste Management, Inc. of Florida

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

REFERENCES: Audit # 11-018

ENCLOSURES:

In connection with our audit of Waste Management, Inc. of Florida (WM) for the period October 1, 2009 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 annual gross receipt submitted to the City was dated December 17, 2010 (17 days late). (W/P T-160)

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 accuracy will ensure that any additional fees due to the City will be collected in a timely manner.

Your Understanding is Correct: X Incorrect _____ Please Initial _____

Explanation: The Department of Solid Waste is recently in the process of implementing a number of internal procedures aimed at providing better management and oversight of the City's commercial solid waste franchisees in order to minimize such occurrences.

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 October 5, 2011. 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

WASTE MANAGEMENT, INC. OF FLORIDA (WM) 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							112.50
<u>Permit Per Account Fee</u>							
Fiscal Year 2009-2010, 78 accounts not reported						3,900.00	
Late fees						1,287.00	5,187.00
<u>Franchise Fees (22%)</u>							
Late penalty fee on late remittance (January 2010)							5,186.86
TOTAL DUE TO THE CITY							10,486.36