

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: Audit of Compliance with Commercial Solid Waste Franchise Agreement/Waste
Services of Florida, Inc.
Audit No. 12-010

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 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 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, 2010 through September 30, 2011 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". The signature is written in black ink and includes a horizontal line extending to the right.

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
Larry Thogmartin, Region Controller, Waste Services of Florida, Inc.
Janice Larned, Chief Financial Officer, Finance Department
Luis Cabrera, Assistant City Manager/Chief Operations
Cindy Torres, Acting Director, Information Technology Department
Stephen Petty, Director, Finance Department
Julie O. Bru, City Attorney, City Attorney's Office
Keith A. Carswell, Director, Solid Waste 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 SERVICES OF FLORIDA, INC.
OCTOBER 1, 2010 THROUGH SEPTEMBER 30, 2011**

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INTRODUCTION

In accordance with Resolution No. 04-0496, which was enacted by the City of Miami (City) Commission (Commission) on July 22, 2004, the City executed a Commercial Solid Waste Franchise Agreement with 25 solid waste hauler firms. The said agreement allowed the firms to operate commercial solid waste hauling services in the City for the period starting October 1, 2004 through September 30, 2009 (5 years), with a three year renewal option period through September 30, 2012. On September 23, 2010, the Commission enacted Resolution No. 10-0419, which allowed the City to execute a new Non-Exclusive Commercial Solid Waste Agreement (Agreement) with selected firms for the period starting October 1, 2010 through September 30, 2015 (5 years), with three (3) one (1) year option periods through September 30, 2018. The options to renew the Agreement for the additional three (3) one (1) year periods are 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” means “all monies whether paid by cash, check, debit or credit, collected from customers resulting from all transactions and activities in the FRANCHISEE’S regular course of business and trade...or from any other source related directly or indirectly from waste collection services, including without limitations, all income derived from leasing and renting of real or tangible personal property...exclusive of taxes as provided by law, whether wholly or partially collected within the CITY, less bad debts.” During the period October 1, 2004 through September 30, 2009, the franchisee was required to remit to the City the greater of \$500 and 22% of the gross receipts generated. Effective October 1, 2010, the rate increased to 24% (or \$500—whichever is greater). The hauler’s (franchisee’s) failure to remit the previous month’s collections 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.** Franchisees must annually remit the sum of \$8,000 (increased annually by \$500—for example: commencing October 1, 2011, the annual fee due to the City will be \$8,500, and so forth, throughout the Agreement term) 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 (October 1st) 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.** Franchisees must annually remit the sum of \$4,000 (increased annually by \$500—for example: commencing October 1, 2011, the annual fee due to the City will be \$4,500, and so forth, throughout the Agreement term) for the right to provide “Specialized Waste Handling Services” within the City. The Agreement defines “Specialized Waste Handling Services” as the collection and disposal 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 October 1st 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.** Franchisees are required to annually remit \$75 to the City for each account and each roll-off account (booked on October 1st of every new fiscal year) with whom they contract for the provision of 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. In addition, for each new commercial account and new roll-off container acquired after October 1, franchisees must remit \$75.00 for each

new account including \$75.00 for each roll-off placed in the City. Franchisees may only pass on an amount not to exceed \$38 of paid Permit Per Account Fee (PPAF) to each contracted customer. This fee is not transferable. Failure to remit the required PPAF by the October 1st 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.

- **Safety Inspection Fee.** Franchisees must pay to the City an annual \$500 per vehicle inspection fee, which is a regulatory fee described in Section 166.221, Florida Statutes. The said fee is for the municipal inspection of the vehicles being used by the franchisees to operate within City boundaries. Applicable vehicles include, but are not limited to, roll-offs, grapple trucks, front and rear end loaders, vector trucks, dump trucks, trailers, and any other vehicles used for business, collection and disposal of any debris by the franchisee.

Other terms of the Agreement include the following:

Certified Statement of Gross Receipts. On or before 90 days following the close of each fiscal year (September 30th), franchisees must deliver to the Director of the Department of Solid Waste, a certified statement of its annual gross receipts and charge-offs generated during the preceding year from accounts within the City. The said statement must be prepared by an independent Certified Public Accountant (CPA) and indicate that the CPA rendered an unqualified opinion relative to the accounting of all revenues, fees and charge-offs generated from accounts and activity within the City limits.

Insurance and Bonds. During the term of the Agreement, franchisees must maintain a public liability policy in the minimum amount of \$1,000,000; automobile liability insurance policy covering their operations with a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage

liability. The certificate evidencing said coverage must also include workers' compensation coverage. The City shall be listed as in additional insured for liability. In addition, during the term of the Agreement franchisees must maintain a Performance Bond in an amount that should be equal to their previous 12 month franchise fees paid to the City (including the annual franchise fee, monthly 24% franchise fee, annual payment per account fee, and any other franchise fees paid to the City) or a minimum of \$25,000, whichever is greater, as a security for the faithful performance of the Agreement. In lieu of a Performance Bond, the franchisee may submit an irrevocable letter of credit, cash, certified check, treasurer's or cashier's check issued by a responsible bank or trust company payable to the City.

During the fiscal year, October 1, 2010 through September 30, 2011, franchisees remitted a total of \$11,414,500 to the City. WSI is one of the franchisees selected for audit in order to determine compliance with the provisions of the Franchise Agreement. A separate audit report will be issued for each of the franchisees audited.

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

SCOPE AND OBJECTIVES

This audit was performed pursuant to the authority set forth in Section 48 of the City's Charter titled, "Office of the Independent Auditor General", and was conducted in accordance with the Fiscal Year 2011-2012 Audit Plan. As part of our oversight responsibilities, the Office of the Independent Auditor General performs financial and performance audits to determine the extent of compliance with terms of contracts, programs, and/or lease agreements between the City and private companies. This audit focused primarily on whether Waste Services of Florida, Inc. (WSI) and the City's Solid Waste Department (SWD) complied with the terms of the Commercial Solid Waste Franchise Agreement (Agreement) and with Chapter 22 of the City's Code, which govern the operation of commercial solid waste collection services in the City. The audit also included examinations of various transactions to determine whether they were processed in accordance with the generally accepted accounting principles. The audit covered the period October 1, 2010 through September 30, 2011 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 90 days after the end of the fiscal year.
- To ascertain whether the fees remitted to the City were properly recorded in the City's accounting system and deposited into the City's treasury.

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

METHODOLOGY

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

- Interviewed and inquired of appropriate personnel; reviewed and observed applicable written policies and procedures in order to gain an understanding of the internal controls; assessed control risk; and planned substantive testing.
- Performed substantive testing consistent with the audit objectives.
- Examined, on a test basis, applicable transactions and records.
- Determined compliance with all the objectives noted on pages 5 and 6.
- 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: opportunities

- The Annual Franchise Fee is remitted to the City in a timely manner.
- All the accounts active as of October 1, 2010 were included as part of the permit per account fee (PPAF) list submitted to the City.
- All the accounts within the City of Miami limits were properly coded and reported 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 the appropriate vehicle insurance certificates as required by the City Code and the Agreement.
- The applicable safety inspection fee was paid in a timely manner.

Overall, we conclude that the internal control policies and procedures in place at WSI could be enhanced to ensure that all fees collected are promptly remitted to the City.

SUMMARY OF AUDIT FINDINGS

WASTE SERVICES OF FLORIDA, INC.

ADDITIONAL FEES DUE TO THE CITY

Article V of the Agreement titled “Franchise Fees” stipulates certain fees the franchisee is required to remit to the City. Our review of WSI’s accounting and billing records disclosed that an additional \$11,151.43 is due and payable to the City from the franchise fee transactions assessed and processed during the audit period. See Exhibit I and detailed discussion on pages 10 through 11.

AUDIT FINDINGS AND RECOMMENDATION

WASTE SERVICES OF FLORIDA, INC.

ADDITIONAL FEES DUE TO THE CITY

Article V of the Commercial Solid Waste Franchise Agreement (Agreement) titled “Franchise Fees” stipulates the various franchise fees (FF) to be assessed and remitted to the City. Waste Services of Florida, Inc. (WSI) generated total gross receipts of \$14,934,793 for services provided within the City during the audit period (fiscal year 2010-2011). The total FF remitted to the City during the audit period was \$3,584,350. However, our audit of WSI’s accounting and billing records disclosed that an additional \$11,151.43 is due and payable to the City (See Exhibit I) from WSI as discussed below:

ANNUAL FRANCHISE FEES

- Article V, Section 5.4 of the Commercial Solid Waste Franchise Fee Agreement (Agreement) stipulates that the franchisee agrees to remit to the City annually (due October 1) the sum of \$8,000 (increased annually by \$500), 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 late payment penalty of one and one-half percent (1.50%) per month on the balance due to the City. Our audit disclosed that WSI remitted its annual franchise fee for the fiscal year 2010-2011, one month late. As a result of the late remittance, a late payment penalty fee of \$120.00 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 1) a permit per account fee (PPAF) in the amount of \$75 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 (1.50%) per month on the balance due to the City. Our review of WSI and the City Finance Department's accounting records disclosed that WSI failed to report the existence of ten (10) accounts. As result, \$930 in additional late fees, including late payment penalty fees, is due to the City (\$750 + \$180).

FRANCHISE FEES (24%)

- Article V, Section 5.2 of the Commercial Solid Waste Franchise Agreement (Agreement) requires the Franchisee to remit monthly to the City 24 percent (24%) (Note: the rate was 22% during the previous Franchise Agreement term) of its Gross Receipts generated from accounts within the City limits, or \$500 whichever is greater. The remittance of the previous month's collection should be received by the City on or before the last day of each month. Failure to remit by the last day of the following month will result in a one and one-half percent (1.5%) late payment penalty fee per month on the balance due. Our audit of WSI's billing records and listing of customers in unincorporated Miami-Dade County and other municipalities disclosed that:
 - The franchise fees and the related permit per account fee (PPAF) due from five (5) customer accounts located in the City were not assessed and remitted to the City as required. Said customer accounts were miscoded and/or were incorrectly exempt from the assessment of franchise fees. The un-remitted franchise fees, the related PPAF and the applicable late payment penalty fees totaling \$10,101.43 (\$7,281.26+\$1,926.79+\$725+\$168.38) are due and payable to the City.

Recommendation

We recommend that the Finance Department bill Waste Services of Florida (WSI) for the \$11,151.43 due and payable to the City (See Exhibit I). Also, we recommend that WSI enhance its internal control procedures to ensure that service accounts located within the City boundaries are properly identified, coded, and that all appropriate fees are remitted to the City in a timely manner.

Auditee's Response and Action Plan:

The auditee concurred with all the audit findings. Please see written responses on pages 13 through 16

City of Miami

LEWIS R. BLAKE CPA, CIA
INTERIM AUDIT SUPERVISOR



Telephone (305) 416-2173
Telecopier: (305) 416-2046
E-Mail: lag@ci.miami.fl.usa

April 13, 2012

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

RE: Audit of Compliance with Commercial Solid Waste Agreement/ Waste Services, Inc.
of Florida (WSI)
Audit No. 12-010

Dear Mr. Thogmartin:

In connection with our audit of Waste Services of Florida, Inc. (WSI) for the period October 1, 2010 through September 30, 2011, and selected transactions prior and subsequent to this period, our audit disclosed that additional franchise fees totaling \$11,151.43 (W/P T-5) is due and payable to the City as summarized below:

- 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 \$8,000.00 (increased annually by \$500) 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 late payment penalty fee of one and a one-half percent (1.5%) per month on the balance due to the City. Our audit disclosed that WSI remitted its annual franchise fee, for fiscal year 2010-2011, one month late. As a result of the late remittance, a late payment penalty fee of \$120.00 is due to the City. (W/P T-7)

I agree I disagree _____ Please initial: LT
Explanation _____

- 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 \$75 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 late payment penalty fee of one and one-half percent (1.5%) per month on the balance due to the City. Our review of WSI and the City Finance Department's accounting records disclosed that WSI failed to report the existence of ten (10) accounts. As a result, \$930.00 in additional fees, including late payment penalty fees, is due to the City (\$750 + \$180) (W/P T-10)

I Agree I Disagree _____ Please initial: LT
Explanation _____

- Article V, Section 5.2 of the Commercial Solid Waste Franchise Agreement (Agreement) requires the Franchisee to remit monthly to the City 24 percent (24%) (Note: the rate was 22% during the previous Franchise Agreement term) of its Gross Receipts generated from accounts within the City limits, or \$500 whichever is greater. The remittance of the previous month's collection should be received by the City on or before the last day of each month. Failure to remit by the last day of the following month will result in a one and one-half percent (1.5%) late payment penalty fee per month on the balance due. Our audit of WSI's billing records and listing of customers in unincorporated Miami-Dade County and other municipalities disclosed that:
 - The franchise fees and the related permit per account fee (PPAF) due from five (5) customer accounts located in the City were not assessed and remitted to the

City as required. Said customer accounts were miscoded and/or were incorrectly exempt from the assessment of franchise fees. The un-remitted franchise fees, the related PPAF and the applicable late payment penalty fees totaling \$10,101.43 (\$7,281.26+\$1,926.79+\$725+\$168.38) are due and payable to the City. (W/P T-211)


I agree I disagree Please Initial: PT
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 April 20, 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 R. Blake (Interim Audit Supervisor) at (305) 416-2173.

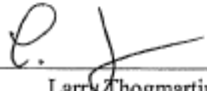
Thank you for your attention in this matter.

Sincerely,


Paulino Garcia
Staff Auditor
Office of Independent Auditor General

Page 4 of 4
Mr. L. Thogmartin
April 3, 2012

I have read this Memorandum of Understanding and responded accordingly.



Larry Thogmartin

4/16/2012
Date

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

EXHIBIT I

DESCRIPTION					ITEMIZED AMOUNT	TOTAL FEES DUE
					\$	\$
Annual Franchise Fee						
			Late Fee Penalty on Late Remittance			120.00
Permit Per Account Fee						
			Accounts Not Reported	750.00		
			Late Fee on Accounts Not Reported	180.00		930.00
Miscoded Accounts						
			Franchise Fees on five(5) miscoded	7,281.26		
			Late Fee Penalty on miscoded accounts	1,926.79		9,208.05
			Permit Per Account Fee on miscoded accounts	725.00		
			Late Fee Penalty	168.38		893.38
			TOTAL DUE TO THE CITY			11,151.43