CITY OF MIAMI
OFFICE OF INDEPENDENT AUDITOR GENERAL

THE CITY OF MIAMI
FLORIDA

AUDIT OF COMPLIANCE WITH COMMERCIAL SOLID WASTE FRANCHISE AGREEMENT/EASTERN WASTE SERVICES, INC. (EWS)
DECEMBER 20, 2012

AUDIT NO. 13-003

Prepared By
Office of Independent Auditor General

Theodore Guba, CPA, CIA, CFE
Independent Auditor General
December 20, 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/Eastern Waste Services, Inc. (EWS).
Audit No. 13-003

Executive Summary

We have completed an audit of records and selected financial transactions of Eastern Waste Services, Inc. (EWS) primarily for the period October 1, 2010 through September 30, 2011. The audit was performed to determine whether EWS complied with applicable sections of the City Code and the Commercial Solid Waste Franchise Agreement (Agreement). Additionally, we examined the internal control policies and procedures in the City's Solid Waste Department (SWD) to determine whether they were adequate and effective in administering and overseeing the operation of commercial solid waste services in the City. During the audit period, EWS had total gross receipts of $585,602 for services provided within the City and remitted franchise fees totaling $153,135 to the City.

Overall, except for certain controls requiring strengthening, procedures and compliance with the Agreement were generally adequate. However, improvement is needed to ensure that franchise fees are remitted in a timely manner and that the Performance Bond is obtained in the required amount. As a result of these deficiencies, an additional $273 is owed to the City by EWS and the performance bond should be increased by $13,359. Details are included on pages 4 and 5 of the report.

We wish to express our appreciation for the cooperation and courtesies extended to us by the EWS accounting staff and the SWD management team while conducting the audit.

Sincerely,

Theodore P. Guba, CPA, CIA, CFE
Independent Auditor General
Office of the Independent Auditor General
C: The Honorable Mayor Tomas Regalado
    Johnny Martinez, City Manager
    Julie O. Bru, City Attorney, City Attorney's Office
    Dwight S. Danie, City Clerk, City Clerk's Office
    Luis Cabrera, Assistant City Manager/Chief Operations
    Janice Larned, Chief Financial Officer, Finance Department
    Keith A. Carswell, Director, Solid Waste Department
    Demetrio Constantiny, Accounts Receivable Supervisor, Finance Department
    Michael C. Marzano, President, EWS
    Members of the Audit Advisory Committee
    Audit Documentation File

Audit conducted by: Paulino Garcia, Staff Auditor
Audit reviewed by: Mala Khilnani, CPA, CISA, Senior Auditor
                 Munirah J. Daniel, CPA, Senior Auditor
AUDIT OF COMPLIANCE WITH THE COMMERCIAL SOLID WASTE FRANCHISE AGREEMENT – EASTERN WASTE SYSTEMS, INC. (EWS) OCTOBER 1, 2010 THROUGH SEPTEMBER 30, 2011

TABLE OF CONTENTS

SCOPE, OBJECTIVES AND METHODOLOGY ...........................................................................................................1

BACKGROUND ..........................................................................................................................................................2

FINDINGS AND RECOMMENDATIONS ..................................................................................................................4
  ADDITIONAL FEES DUE TO THE CITY ..............................................................................................................4
    1. ANNUAL FRANCHISE FEES .......................................................................................................................4
    2. FRANCHISE FEES (24%) ............................................................................................................................4
    3. PERFORMANCE BOND AMOUNT NOT SUFFICIENT ..............................................................................5

EXHIBIT I ..................................................................................................................................................................6
SCOPE, OBJECTIVES AND METHODOLOGY

The scope of the audit was to assess and report on whether Eastern Waste Services, 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, 2010 through September 30, 2011, during which fees collected from EWS totaled $153,135.

The primary objectives of the audit were:

- To ascertain whether all customer accounts located in the City were properly identified, coded, and assessed the appropriate fees.
- To determine whether all applicable franchise fees as stipulated in the Agreement were properly computed and remitted timely to the City.
- To review the annual statement of gross receipts that was prepared by an independent Certified Public Accountant, and, to determine if it was submitted to the 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 the Agreement.
- To examine the internal control policies and procedures of EWS and the SWD and determine whether they were adequate and effective in administering and overseeing the operation of commercial solid waste hauling services in the City.
- To follow-up on prior audit findings and determine the status of all unresolved and outstanding issues.

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:

- Interviews and inquiries of appropriate personnel
- Reviews of written policies and procedures in order to gain an understanding of internal controls
- Observations of current practices and processing techniques
- Tests of applicable transactions and records
- Other audit procedures as deemed necessary
BACKGROUND

On July 22, 2004, the City executed a Commercial Solid Waste Franchise Agreement with 25 firms which allowed said firms to provide commercial solid waste services in the City for the period starting October 1, 2004 through September 30, 2009, with a three year renewal option period through September 30, 2012. On September 23, 2010, a resolution allowed the City to execute a new Non-Exclusive Commercial Solid Waste Franchise Agreement (Agreement) with selected firms for the period starting October 1, 2010 through September 30, 2015, with three one-year renewal option periods through September 30, 2018.

Pursuant to the Agreement, the following franchise fees shall be assessed and collected:

- Gross Receipts Franchise Fees - during the period October 1, 2004 through September 30, 2010, franchisees were required to remit to the City the greater of $500 and 22% of the gross receipts generated from accounts in the City. Effective October 1, 2010, the rate increased to 24%.
- Annual Franchise Fee - franchisees must annually remit the sum of $8,000 (increased annually by $500) for the right to provide commercial solid waste services within the city limits.
- Annual Specialized Waste Handling Service Fee - franchisees must annually remit the sum of $4,000 (increased annually by $500) for the right to provide only "Specialized Waste Handling Services" within the City. These services include the collection and disposal of solid waste such as white goods (appliances), waste tires, used oil, lead-acid batteries, construction and demolition debris, ash residue, biomedical and biological waste.
- Permit Per Account Fee (PPAF) - franchisees must annually remit $75 to the City for each account and each roll-off account (booked as of October 1st each fiscal year) utilized by the franchisee in the course of providing solid waste services. In addition, franchisees must remit $75 for each new commercial account and new roll-off container acquired after October 1st. Franchisees may only pass on an amount not to exceed $38 of said PPAF to each contracted customer.
- Failure to remit the required fees mentioned above by the prescribed due dates results 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 for the municipal inspection of the vehicles being used by franchisees within City boundaries.
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 City, a certified statement of its annual gross receipts and charge-offs generated during the preceding year from accounts within the City, prepared by an independent Certified Public Accountant.

- Insurance and Bonds - franchisees must maintain a public liability policy in the minimum amount of $1,000,000; automobile liability insurance policy with a combined single limit of $1,000,000 per occurrence for bodily injury and property damage liability; and coverage for workers' compensation. Franchisees must maintain a Performance Bond equal to their previous 12 month franchise fees paid to the City, or a minimum of $25,000, whichever is greater, as a security for the performance of the Agreement.

During the fiscal year ended September 30, 2011, franchisees remitted a total of $11,414,501 to the City. EWS 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 SWD ensures that commercial solid waste service accounts, and applicable fees/transactions, are properly assessed and paid to the City. The SWD also monitors the operations of the franchisees. This audit report describes whether EWS and the SWD complied with the terms of the Agreement and applicable Sections of the City Code.
FINDINGS AND RECOMMENDATIONS

Based on our audit, we have concluded that except for certain controls requiring strengthening, procedures and compliance with the Agreement were generally adequate. However, we noted that improvement is needed to ensure that fees are remitted timely and the Performance Bond is obtained in the required amount as stipulated in the Agreement.

As a result of these deficiencies, an additional $273 is owed to the City by EWS and the performance bond should be increased by $13,359.

Details of our findings and recommendations follow:

ADDITIONAL FEES DUE TO THE CITY

EWS generated total gross receipts of $585,603 for services provided within the City during the audit period (fiscal year 2010-2011). Total fees remitted to the City during the audit period were $153,135. However, our audit of EWS’s accounting and billing records disclosed that an additional $273 is due and payable to the City (See Exhibit I) as discussed below.

1. ANNUAL FRANCHISE FEE

The Agreement stipulates that the Franchisee agrees to remit to the City annually (due October 1st) the sum of $8,000 (increased annually by $500) for the right to provide commercial solid waste services within the City limits. Failure to remit the required annual fee by the due date results in a late payment penalty fee of one and one-half percent (1-1/2%) per month on the balance due to the City.

Our review disclosed that during fiscal year 2010-2011, EWS remitted its annual franchise fee nine (9) months late incurring $1,080 in late fees. The City’s Finance Department only billed and collected $960 from EWS; therefore $120 is still due to the City.

2. GROSS RECEIPTS - FRANCHISE FEES (24%)

The Agreement requires the Franchisee to remit monthly to the City twenty-four percent (24%) of its Gross Receipts generated from accounts within the City limits, or $500 whichever is greater. Failure to remit payments on time results in a one and one-half percent (1.5%) late payment penalty fee per month on the balance due.

Our review of EWS’s billing records disclosed that it remitted the franchise fees for the month of October 2010 late. As a result, a late payment penalty fee of $153 is due to the City.
3. PERFORMANCE BOND AMOUNT NOT SUFFICIENT

The Agreement stipulates that franchisee agrees to maintain a performance bond in an amount equal to the contractor’s previous 12-month franchise fees paid to the City or a minimum of $25,000 whichever is greater.

Our review disclosed that EWS remitted to the City during the fiscal year 2010-2011 franchise fees in the amount of $153,135 and obtained a bond for $139,776. Therefore, EWS should increase the amount of the bond by $13,359.

RECOMMENDATION

We recommend that the City’s Finance Department bill and collect the total additional fees due to the City ($273) from EWS. Also, SWD should follow-up on the required bond increase.

MANAGEMENT RESPONSE/ACTION PLAN

EWS has acknowledged the amounts due ($273) as described above and summarized on Exhibit I; and the required bond increase. We will follow up for compliance with these issues.
EXHIBIT I

EASTERN WASTE SERVICES, INC. (EWS)
SCHEDULE OF ADDITIONAL FEES DUE TO THE CITY
OCTOBER 1, 2010 THROUGH SEPTEMBER 30, 2011

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