

City of Miami

THEODORE P. GUBA, CPA, CIA, CFE

INDEPENDENT AUDITOR GENERAL



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July 2, 2013

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 / LOPEFRA
CORPORATION
Audit No. 13-013

Executive Summary

We have completed an audit of records and selected financial transactions of LOPEFRA CORPORATION primarily for the period October 1, 2010 through September 30, 2012. For miscoded accounts, we examined the period January 1, 2008 through December 31, 2012. The audit was performed to determine whether LOPEFRA complied with applicable sections of the City Code and the Commercial Solid Waste Franchise Agreement (Agreement). For the two fiscal years ended 2012, LOPEFRA had total gross receipts of \$804,899 for services provided within the City and remitted franchise fees totaling \$266,565 to the City.

Overall, we have concluded that except for certain controls requiring strengthening, procedures and compliance with the Agreement were generally adequate and being adhered to. Transactions tested were for the most part in compliance with the Agreement and City Code. However, we noted that improvement is needed to ensure that fees are remitted timely, that the performance bond requirement is adhered to for the correct amounts and time period, and that the Finance Department assess late payment penalty fees when due. As a result of these deficiencies, an additional \$128 is owed to the City by LOPEFRA. Details of our findings and recommendations are included on pages four through seven of the report.

We wish to express our appreciation for the cooperation and courtesies extended to us by the LOPEFRA accounting staff and the Solid Waste Department management team while conducting the audit.

Sincerely,

A handwritten signature in cursive script that reads "Theodore P. Guba".

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

Cc: The Honorable Mayor Tomas Regalado
Johnny Martinez, City Manager
Todd Hannon, City Clerk
Rosemary L. Hartigan, Vice-President, Lopefra Corporation
Janice Larned, Chief Financial Officer, Finance Department
Luis Cabrera, Assistant City Manager/Chief Operations
Julie O. Bru, City Attorney, City Attorney's Office
Keith A. Carswell, Director, Solid Waste Department
Vanessa Giron, Fiscal Administrator, Solid Waste Department
Demetrio Constantiny, Accounts Receivable Supervisor, Finance Department
Members of the Audit Advisory Committee
Audit Documentation File

Audit conducted by: Paulino Garcia, Staff Auditor
Mala Khilnani, Senior Auditor

Audit reviewed by: Munirah Daniel, Senior Auditor

**AUDIT OF COMPLIANCE WITH THE COMMERCIAL SOLID WASTE FRANCHISE
AGREEMENT – LOPEFRA CORPORATION
OCTOBER 1, 2010 THROUGH SEPTEMBER 30, 2012**

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SCOPE, OBJECTIVES AND METHODOLOGY

The scope of the audit was to assess and report on whether LOPEFRA CORPORATION 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, 2012. For miscoded accounts, we examined the period January 1, 2008 through December 31, 2012.

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 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 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 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.

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 the internal controls; and,
- Observations of current practices and processing techniques;
- Tests of applicable transactions and records; and,
- 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 them to operate commercial solid waste hauling 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 Agreement (Agreement) with selected firms for the period starting October 1, 2010 through September 30, 2015, with three one year 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, 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%.
- Annual Franchise Fee - franchisees must annually remit the sum of \$8,000 (increased annually by \$500) for the right to provide commercial solid waste handling 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 "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) including each container and/or roll-off utilized by the franchisee in the course of providing solid waste services. In addition, franchisees must remit \$75.00 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 paid Permit Per Account Fee (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 the franchisees to operate 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 (CPA).

- 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, 2012, franchisees remitted a total of \$12,134,949 to the City. LOPEFRA 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) 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 LOPEFRA and the SWD complied with the terms of the Agreement and applicable Sections of the City Code.

AUDIT FINDINGS AND RECOMMENDATIONS

CONCLUSION: Based on our audit of LOPEFRA CORPORATION, we have concluded that except for certain controls requiring strengthening, procedures and compliance with the Agreement were generally adequate and being adhered to. Transactions tested were for the most part in compliance with the Agreement and City Code. However, we noted that improvement is needed to ensure that fees are remitted timely, that the performance bond requirement is adhered to for the correct amounts and time period, and that the Finance Department assess late payment penalty fees when due. As a result of these deficiencies, an additional \$128 is owed to the City by LOPEFRA

Details of our findings and recommendations follow:

FINDING 1: ADDITIONAL FEES DUE TO THE CITY

LOPEFRA CORPORATION generated total gross receipts for the fiscal year 2010-2011 of \$394,511 for services provided within the City. Total fees remitted to the City were \$129,477. For fiscal year 2011-2012 LOPEFRA generated total gross receipts of \$410,388 for services provided within the City. Total fees remitted to the City were \$137,088.

The Agreement stipulates that the “Franchisee agrees to remit to the City annually (due October 1st) the sum of \$4,000 (increased annually by \$500) 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 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 audit of LOPEFRA's accounting and billing records disclosed that during fiscal years 2010-2011 and 2011-2012 LOPEFRA remitted its annual franchise fee one (1) month late resulting in late payments penalty fees of \$128 due to the City (See Exhibit I).

RECOMMENDATION 1 – LOPEFRA CORPORATION

We recommend that LOPEFRA immediately remit the total additional fees due to the City (\$128). Also, moving forward LOPEFRA should make arrangements to ensure that all amounts due to the City are paid in a timely manner, as required.

- ***Auditee Response:*** We will get a check to the City by June 21, 2013.
- ***Implementation Date:*** June 21, 2013

FINDING 2: FINANCE DEPARTMENT DID NOT ASSESS LATE PAYMENT PENALTY

As indicated in “Finding 1: Additional Fees Due to the City” above, LOPEFRA remitted its annual franchise fee one (1) month late resulting in late payments penalty fees of \$128 due to

the City. The City's Finance Department is responsible for ensuring that Franchisees who have not remitted franchise (and other) fees in a timely manner are assessed the appropriate late payment penalties in accordance with the Agreement.

Our examination disclosed that the Finance Department did not assess late payment fees on Annual Franchise Fees as required by Article V, Section 5.4 of the Commercial Solid Waste Franchise Agreement. Failure to remit the required annual fee by the due date will cause the franchisee a 1.50% penalty per month on the balance due

RECOMMENDATION 2 - FINANCE DEPARTMENT

We recommend that the Finance Department bill LOPEFRA for the total additional fees due to the City (\$128).

In addition, we recommend the Finance Department send collection notices and assess all late payment penalty fees as stipulated in the Commercial Solid Waste Franchise Agreement, in a timely manner, in order to maximize the City's collection efforts.

- **Finance Department Response:** We have suggested that the Solid Waste Department provide us a list of names and amounts to bill for all the Private Hauler companies by the first week of September each year so we can bill the Annual Fees by October 1st each year. Again, we can also bill the interest on a monthly basis based on the amount owed.
- **Implementation Date:** Immediately

FINDING 3: SHORTAGES & GAP IN LETTER OF CREDIT COVERAGE

Article VII, Section 7.2 of the Agreement states that 'Franchisee agrees to maintain, for the term of this Agreement, a Performance Bond or an acceptable alternative in an amount equal to the Franchisee's previous 12-month franchise fees paid to the City.'

Our audit disclosed that as an acceptable alternative, LOPEFRA obtained Letters of Credit (LOC) in lieu of a Performance Bond. For fiscal year 2010-2011 and 2011-2012 LOPEFRA paid franchise fees to the City totaling \$129,477 and \$137,088, respectively; therefore, the LOCs for fiscal years 2011-2012 and 2012-2013 should equal said amounts. However, for fiscal year 2011-2012 the LOC obtained was deficient in the amount of \$42,392 from October 1st through November 22nd (1.7 months) when the LOC was increased to an appropriate amount. Similarly, for fiscal year 2012-2013 the LOC obtained was deficient in the amount of \$7,837 from October 1st through January 9th (3.3 months) when the LOC expired. LOPEFRA did not obtain a new LOC until May 6, 2013; consequently, the City's interests were unprotected for 3.8 months. The Performance Bond (LOC) requirement safeguards the City and represents security for the faithful performance of the Agreement. As such, it is important that LOPEFRA obtain the correct amount of coverage and for the correct period of time (the entire fiscal year). The current LOC extends through January 9, 2014 for a total of \$138,531 which meets the requirement for the fiscal year.

RECOMMENDATION 3 – LOPEFRA CORPORATION

At the end of each fiscal year, LOPEFRA should review its records and determine the total amount of franchise fees it remitted to the City (including the annual franchise fee, 24% monthly gross receipts franchise fees, permit per account fees, and any other franchise fees paid to the City) during the previous 12 months. Upon such determination LOPEFRA should obtain any additional Performance Bond/Letter of Credit coverage necessary to comply with the requirements stipulated in Article VII, Section 7.2 of the Agreement. Overall, we recommend that LOPEFRA enhance its internal control procedures in order to obtain future Performance Bonds/Letters of Credit for the required amounts, on a timely basis, and provide coverage for the entire fiscal year as required by the Agreement.

- ***Auditee Response:*** We will work with our bank to try and get bond more timely.
- ***Implementation Date:*** Immediately

