

City of Miami

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September 30, 2013

Honorable Members of the City Commission
City of Miami
3500 Pan American Drive
Coconut Grove, FL 33133-5504

Re: Review of the Solid Waste Department's Administration, Monitoring, and Enforcement of
Commercial Solid Waste Franchise Agreements with Private Haulers
Review No. 13-019

Executive Summary

We have completed a review of the Solid Waste Department (SWD) to assess and report on whether the SWD enforced the provisions of Chapter 22 of the City Code and the City's Commercial Solid Waste Franchise Agreement (Agreement) executed with private haulers. Specifically, we examined the internal control policies and procedures in the SWD to determine whether they were adequate and effective in administering and overseeing the financial aspects of the Agreement. During the fiscal year ended September 30, 2012, franchisees billed \$59,159,036 to commercial customers and remitted a total of \$11,450,136 in franchise fees to the City.

Overall, internal controls and procedures within the SWD were inadequate to ensure compliance with the financial requirements of the Agreement. Specifically, 1) there are no checks and balances to ensure that haulers remit franchise fees due to the City when a commercial account within the City is billed and pays for solid waste hauling services; and 2) the haulers did not calculate and remit franchise fees to the City based on gross receipts collected as intended by the Ordinance. Instead, the haulers directly charged customers the 24% franchise fee due to the City based on the amounts billed for services rendered rather than remitting to the City 24% of gross receipts collected. (e.g., services rendered of \$100 at 24% = \$24 fee remitted to the City and \$124 charged to the customer; rather than using gross receipts of \$124 at 24% = \$29.76). **This resulted in a shortfall of 4.6%, or \$2.75 million (\$11,450,136 rather than \$14,198,169), of franchise fees remitted to the City during fiscal year 2012 based on reported gross receipts of \$59,159,036.** These and other findings and recommendations are detailed on pages four through six of the report.

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

Sincerely,



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
Victoria Mendez, City Attorney
Henry Hunnefeld, Assistant City Attorney
Todd Hannon, City Clerk
Alice Bravo, Assistant City Manager/Chief of Infrastructure
Luis Cabrera, Assistant City Manager/Chief Operations
Jose M. Fernandez, CPA, Director, Finance Department
Daniel J. Alfonso, Assistant City Manager/Chief Financial Officer
Keith Carswell, Director, Solid Waste Department
Vanessa Giron, Fiscal Administrator, Solid Waste Department
Members of the Audit Advisory Committee
Audit Documentation File

Review conducted by: Karuna Khilnani, CPA, CISA, Senior Staff Auditor
Robyn Sachs, CPA, CIA, CISA, CFE, CAMS, CISSP, Senior IS Auditor

Reviewed by: Munirah Daniel, CPA, Senior Staff Auditor

**Review of the Solid Waste Department’s Administration, Monitoring,
and Enforcement of Commercial Solid Waste Franchise Agreements
with Private Haulers
OCTOBER 1, 2011 THROUGH April 30, 2013
REVIEW NO. 13-019**

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SCOPE, OBJECTIVES AND METHODOLOGY

The scope of the review was to assess and report on whether the Solid Waste Department (SWD) enforced the provisions of Chapter 22 of the City Code and the City's Commercial Solid Waste Franchise Agreement (Agreement) executed with private haulers. Specifically, we examined the internal control policies and procedures in the SWD to determine whether they were adequate and effective in administering and overseeing the financial aspects of the Agreement.

The primary objectives of the review were:

- To examine the internal control policies and procedures of 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 ascertain whether the SWD monitors that all customer accounts located in the City are properly identified, coded, and assessed the appropriate fees.
- To determine whether the SWD ensures that haulers remit franchise fees on all gross receipts in a timely manner; include all active accounts in the permit per account fee list; and, meet all Agreement stipulations.

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

- Interviews and inquiries of appropriate personnel
- Reviews of the Commercial Solid Waste Franchise Agreement, City Code, and State of Florida legislation
- Calculation and verification of gross receipts and related fees
- Tests of applicable transactions and records
- Other review procedures as deemed necessary

BACKGROUND

On July 22, 2004, the City executed the Commercial Solid Waste Franchise Agreement with 25 firms which allowed them to provide 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 renewal option periods through September 30, 2018.

Pursuant to the Agreement and the City Code, 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 or 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 handling services within the City limits.
- Permit Per Account Fee (PPAF) –franchisee must annually remit \$75 to the City for each permanent 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 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 to each contracted customer.
- Temporary Roll-off/Container Permit Fee – franchisees must pay a temporary roll-off/container permit fee of \$75 when the container is placed in service and every 90 days that such container is in service.
- 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.
- 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.

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). The CPA statement shall render an unqualified opinion.

- 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.

The SWD is responsible for administering, monitoring, and enforcing compliance with the provisions of Chapter 22 of the City Code and the Franchise Agreement between the City and the franchisees (private haulers). This review report describes whether the SWD ensured compliance with the terms of the Agreement and applicable Sections of the City Code.

FINDINGS AND RECOMMENDATIONS

Based on our review, we have concluded that internal controls and procedures in the SWD were inadequate to effectively administer, monitor, and enforce the provisions of Chapter 22 of the City Code and the Agreement. Improvement is needed to ensure that haulers properly identify, code, and assess all accounts within the City; include all active accounts in the permit per account fee list; remit franchise fees on all gross receipts in a timely manner; and, meet all Agreement stipulations.

Details of our findings and recommendations follow:

FINDING 1: INADEQUATE CONTROLS FOR MONITORING AND ENFORCING FINANCIAL ASPECTS OF THE FRANCHISE AGREEMENT

The SWD is responsible for administering, monitoring, and enforcing the provisions of Chapter 22 of the City Code and the Franchise Agreement between the City and the franchisees (private haulers). However, controls and procedures within the SWD were inadequate to ensure compliance with the Agreement. Specifically, there were no checks and balances within the SWD to ensure that when a City commercial account is billed and pays for hauling services, that the private haulers remit the appropriate franchise fees due to the City.

Each hauler solicits customers, provides hauling services, bills and collects customer payments, and remits franchise fees to the City (including monthly franchise fees of 24% of gross receipts generated from accounts within City limits). Accompanying the monthly remittances of gross receipts franchise fees, haulers are required to provide the City with reports indicating the customers' names, addresses and total amount collected. Based on our review, we determined that the monthly reports of gross receipts submitted by haulers were not adequately reviewed by the SWD.

In order for the SWD to perform the necessary gross receipts review, the customer accounts reported by the haulers would need to be reconciled against a database of active City commercial accounts; however, since this database does not currently exist, the monthly reports cannot be verified by the SWD to ensure that all customer receipts are included. Consequently, since the SWD relies solely on the haulers to correctly code and report all commercial accounts serviced and receipts collected, there is a very high risk of unreported receipts for Miami customers.

Furthermore, the SWD did not enforce the Agreement provision which requires that haulers submit audited statements of annual gross receipts prepared by an independent Certified Public Accountant (CPA). Our review indicated that the statements submitted by haulers were only compilations of revenue and not certified audits of gross receipts. Therefore, they could not be relied upon to assure that all gross receipts collected were reported to the City.

Lastly, the SWD did not have an annual audit plan and did not perform audits of the haulers to ensure the necessary monitoring for compliance with the Agreement. Due to this deficiency and the tremendous potential for financial losses to the City, audits of the commercial solid waste haulers have routinely been performed by the Office of Independent Auditor General. During the last five years, 40 hauler audits were performed resulting in additional amounts due to the City of \$1,482,435 due to un-reported (miscoded) accounts, under-reported/misreported gross receipts, and late payment penalties. Also, in 2013 we audited a hauler that owed the City an additional \$3.5 million for an eight year period. However, monitoring the haulers is the

responsibility of the SWD, and an audit plan should be developed to monitor haulers for compliance with the Agreement, including insurance and performance bond requirements.

RECOMMENDATION 1:

In order to maximize the City's collection of gross receipts franchise fees, permit per account fees, and temporary roll-off/container fees and minimize losses due to un-reported accounts or under-reported receipts, we recommend that the SWD implement a system of checks and balances to capture/verify all receipts from commercial solid waste services provided to customer accounts within the City.

Rather than allowing the haulers to bill and collect from City customers and subsequently remit the franchise fees to the City, consideration should be given to shifting control of the billing and collections to the City by either: 1) creating an in-house billings and collections department for all commercial accounts serviced by private haulers, or 2) outsourcing the billings and collections function to a third party vendor. Under either scenario, the City would control the billings and collections for services rendered by the haulers and ensure that the proper amount of franchise fees would be paid to the City by withholding 24% of the collections received. The remaining amounts would then be credited to the haulers for services rendered.

A third alternative is to create a database of all commercial accounts in the City of Miami using tax or other available records to assign a unique folio or other identifying number to each customer account. These unique account numbers would then be used by the haulers as the customer number and included on customer invoices, remittance reports, and reports to the City. Additionally, monthly billings and collections information generated by the haulers would be uploaded to SWD's database and reconciled.

Lastly, we recommend that the SWD require certified annual audits of gross receipts for all haulers, and create and implement an annual audit plan to monitor the haulers for compliance with all provisions of the Agreement including insurance, performance bond, and franchise fee requirements.

- **Auditee Response:**

- 1) The SWD is responsible for administering, monitoring, and enforcing provisions of Chapter 22 of the City Code (Code) and the Franchise Agreement (Agreement) relative to compliance with specifications of said Code and Agreement. For example, Franchisees are required to submit monthly reports and supporting documentation. As part of our audit plan, the SWD reviews the documentation relative to timeliness, completeness and mathematical accuracy. Verification of accounts is limited to roll-off accounts reported by solid waste inspectors and cursory review of monthly supporting documentation.
- 2) Based on folios for commercial addresses, there are over fifteen thousand five hundred (15,500) locations being serviced by Franchisees. Given the number of commercial addresses with more than forty thousand (40,000) businesses being serviced by Franchisees within the City of Miami, the SWD does the following:

- Monthly reports received from Franchisees are “reviewed” as opposed to “verified” because of limited manpower and an inability to reconcile the various customer lists against a potential commercial account database.
 - In order to enhance oversight and enforcement of the commercial solid waste franchisee contract, the SWD has recommended development of a database to monitor Franchisee accounts and reconcile against a City-wide database.
 - The development of the database and necessary parameters are being reviewed to determine the best approach and implementation strategy for fiscal year 2014.
 - As necessary, the SWD will need the continuous support of the Office of the Independent Auditor General to conduct in-depth financial audits.
 - Additionally, the SWD is exploring the possibility of eliminating the Annual Safety Inspection Fee and the Permit per Account Fee to reduce the number of fee categories with a corresponding 2% increase in the Monthly Franchise Fee to compensate for the associated loss in revenue.
 - While the SWD does implement an audit plan for compliance with specifications of the franchisee contract, the activities will be codified in a written document.
 - Finally, the SWD performed a Franchisee group training on July 12th, 2013. The training addressed contract compliance; accuracy of form completion and submission; timeliness of reporting; and, expectations with audit procedures from the Office of the Independent Auditor General. The SWD will continue to have individual meetings with each of the Franchisees. The first of these individual meetings was held on August 5th, 2013. The SWD personnel will go over reconciliation, compliance and proper application of ALL franchise fees.
- **Implementation Date:** We plan to work with the Office of the Independent Auditor General to implement our plan by the end of FY 2013-2014

FINDING 2: REQUIRE CALCULATION OF FRANCHISE FEES ON TOTAL GROSS RECEIPTS TO ENHANCE YEARLY FRANCHISE FEE REVENUE TO THE CITY BY APPROXIMATELY \$2.75 MILLION

The commercial Solid Waste Franchise Agreement between The City of Miami (City) and Franchisees (private haulers) and City Code requires the haulers to remit the City 24% of Gross Receipts generated from accounts within the City limits.

We noted that when the haulers billed customers for services rendered, they directly charged (or passed on to customers) an additional 24% fee, collected both amounts from the customers, but only calculated and paid the franchise fee to the City based upon the portion collected for services rendered as opposed to the total amount of gross receipts collected from the customer. (e.g., services rendered of \$100 at 24%=\$24 fee remitted to the City and \$124 charged to the customer; rather than using gross receipts of \$124 at 24% = \$29.76 to calculate the franchise fee remitted to the City). The effect of haulers passing the fee on to customers effectively reduces the gross receipts franchise fee percentage from 24% to 19.35%. This calculation of franchise fees has been practiced by the franchisees and accepted by City Management since the adoption of the franchisee agreements in 2004. However, we believe that the intention of the ordinance was to collect the fee based on total gross receipts received by the franchisee.

During the fiscal year ended September 30, 2012, franchisee fees remitted by private commercial haulers totaled \$11,450,136 (amount charged/passed on to customers) calculated on receipts for services rendered totaling \$47,708,900. Had the franchise fee been calculated on actual gross receipts of \$59,159,036 (\$47,708,900 plus \$11,450,136), franchise fees of 24% would have totaled \$14,198,169, an increase of \$2,748,033 in revenues to the City.

To collect Franchise Fee revenue to the City in accordance with the intention of the ordinance, we believe, and management concurs, that haulers should be required to charge and remit fees on total gross receipts. The Solid Waste Department should consider taking steps to amend the City Code and applicable franchise agreements to both implement and clarify the method of calculating the franchise fees with the franchisees.

RECOMMENDATION 2:

We recommend that the City consider amending City Code relating to the calculation of franchise fees with private haulers to require them to remit franchise fees calculated at 24% of gross receipts collected.

- **Auditee Response:**

We will seek legal guidance to amend the code and take appropriate action.

- **Implementation Date:**

First quarter of 2013 – 2014.