

# City of Miami

THEODORE P. GUBA, CPA, CIA, CFE  
INDEPENDENT AUDITOR GENERAL



Telephone (305) 416-2044  
E-Mail: tguba@miamigov.com

August 12, 2016

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

Re: Audit of Southern Waste Systems, LLC (SWS)  
Report No. 16-06

## Executive Summary

We have completed an audit of billing records and selected financial transactions of Southern Waste Systems, LLC (SWS), primarily for the period October 1, 2012 through September 30, 2013. The audit was performed to determine if SWS complied with applicable sections of the City Code and the Non-Exclusive Commercial Solid Waste Franchise Agreement (Agreement).

During the audit period, SWS reported total gross receipts of \$3,691,096 for services provided within the City and remitted franchise and other fees totaling \$917,063. As a result of our audit, we determined that SWS underreported its gross receipts by \$235,210 and **owes the City an additional \$129,237 in franchise fees, non-payment penalties and audit costs**. However, they agreed to pay \$57,650 in additional franchise fees, but they are disputing \$34,391 in penalties and \$37,196 in audit fees. Penalties and audit fees are recoverable per the Agreement and we will refer the matter to the City Attorney's Office.

We have also concluded that controls and procedures require strengthening to ensure compliance with the Agreement. Transactions that we audited were not in compliance with the Agreement and City Code, and improvement is needed to ensure that fees are remitted timely, revenue for all accounts located within City limits is reported, applicable franchise fees are remitted, and that solid waste accounts are not misclassified as recovered materials, but are reported to the City. These and other findings are included on pages four through seven of the report.

During the course of our audit, Waste Management, Inc. of Florida (WMIF) purchased substantially all of the assets of SWS and its affiliated companies. The closing took place on January 8, 2016. Consequently, we are in the process of performing an additional audit covering the period from October 1, 2013 through the closing date of the transaction.

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

Sincerely,



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

Cc: The Honorable Mayor Tomas Regalado  
Daniel J. Alfonso, City Manager  
Victoria Mendez, City Attorney  
Henry Hunnefeld, Senior Assistant City Attorney  
Todd Hannon, City Clerk  
Fernando Casamayor, Assistant City Manager/Chief Financial Officer  
Nzeribe Ihekweba, Assistant City Manager/Chief of Operations  
Alberto Parjus, Assistant City Manager  
Jose M. Fernandez, Director, Finance Department  
Mario Nuñez, Director, Solid Waste Department  
Christopher Rose, Director, Office of Management and Budget  
Vanessa Giron, Fiscal Administrator, Solid Waste Department  
Demetrio Constantiny, Accounts Receivable Supervisor, Finance Department  
Tony Badala, Southern Waste Systems, LLC  
Members of the Audit Advisory Committee  
Audit Documentation File

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

Audit reviewed by: Lewis Blake, CPA, CIA, Audit Manager

**AUDIT OF SOUTHERN WASTE SYSTEMS, LLC (SWS)  
OCTOBER 1, 2012 THROUGH SEPTEMBER 30, 2013  
REPORT NO. 16-06**

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## **SCOPE, OBJECTIVES AND METHODOLOGY**

The scope of the audit was to assess and report on whether Southern Waste Systems, LLC (SWS) complied with the terms of the 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 primarily covered the period October 1, 2012 through September 30, 2013, and focused on the following objectives:

- 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 timely remitted to the City.
- To calculate the amount of franchise and other fees due to the City that resulted from SWS's solid waste hauling and other services.

We conducted the 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
- Review of applicable provisions within the City Code, Commercial Solid Waste Franchise Agreement, and State of Florida legislation
- Observations of current practices and processing techniques
- Tests of applicable transactions and records
- Other review procedures as deemed necessary

## **BACKGROUND**

On September 23, 2010, the City executed a new Non-Exclusive Commercial Solid Waste 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. Southern Waste Systems, LLC (SWS) was selected as one of the franchisees.

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

- Gross Receipts Franchise Fees – The greater of \$500 or 24% of the Gross Receipts generated from accounts within the City.
- Annual Franchise Fee – \$8,000 the first year under the Agreement, (increased annually by \$500) for the right to provide commercial solid waste handling services within the City limits.
- Permit Per Account Fee (PPAF) – \$75 for each solid waste hauling account and roll-off container active as of October 1st of each fiscal year, of which the franchisee may pass on \$38 to the customer. Temporary roll-off containers placed in service after October 1st must obtain permits valid for 90-day intervals at the prevailing per-account rate, and new accounts acquired after October 1st are subject to the per-account fee.
- Safety Inspection Fee – Annual \$500 regulatory fee per vehicle used by the franchisee in the City, assessed in accordance with Florida Statute, Section 16.221.
- Late Payment Penalty – All late payments of the above-listed fees will cause the franchisee a one and one-half percent (1.5%) penalty per month on the balance payable to the City.

Other terms of the Agreement require the following:

- Insurance: Franchisee must maintain a public liability policy in the minimum amount of \$1,000,000; automobile liability insurance policy covering franchisee's operations with a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage liability. Franchisee's certificate shall also include workers' compensation coverage. The City shall be listed as an additional insured for liability.
- Performance Bond: Franchisee agrees to maintain, for the term of the Agreement, a Performance Bond, executed by a surety company duly authorized to do business in the State of Florida, which shall be counter-signed by an agent for the company. The amount of the bond shall be the greater of \$25,000 or the franchisee's previous 12 months' franchise fees paid to the City.

In order to determine that the City received all applicable fees due, we requested and reviewed SWS's electronic billing records for all Miami-Dade County recycling and solid waste hauling activity from October 2012 through September 2013. We then independently determined which SWS accounts were located within the geographic boundaries of the City and whether the account activity pertained to recycling, construction and demolition hauling (C&D), or solid waste hauling. According to Florida Statutes source separated recovered material is exempt from franchise fees.

However, the Agreement states that all other solid waste hauling activity, including C&D, is subject to franchise fees. In order to determine an SWS account's service location we used: SWS's account address records; the Miami-Dade County Property Appraiser website; and, information provided by the City's Geographical Information Service (GIS) sub-group of the Information Technology Department (ITD).

## **AUDIT FINDINGS AND RECOMMENDATIONS**

As a result of our audit, we determined that SWS underreported its gross receipts by \$235,210 and **owes the City an additional \$129,237 in franchise fees, non-payment penalties and audit costs**. However, they agreed to pay \$57,650 in additional franchise fees, but they are disputing \$34,391 in penalties and \$37,196 in audit fees. Penalties and audit fees are recoverable per the Agreement and we will refer the matter to the City Attorney's Office.

We have also concluded that controls and procedures require strengthening to ensure compliance with the Agreement. Transactions that we audited were not in compliance with the Agreement and City Code, and improvement is needed to ensure that fees are remitted timely, revenue for all accounts located within City limits is reported, applicable franchise fees are remitted, and that solid waste accounts are not misclassified as recovered materials, but are reported to the City.

Details of our findings and recommendations follow:

### **FINDING 1: REVENUE COLLECTED FROM CITY CUSTOMERS WAS UNREPORTED**

According to Section 5.2 of the Agreement, the franchisee agrees to remit to the City monthly, a percentage of its Gross Receipts (24%) generated from accounts within the City limits, or \$500 whichever is greater. Failure to remit payments in a timely manner results in a one and one-half percent (1.5%) late payment penalty fee per month on the balance due.

However, comparison of what we extracted from SWS's database to what they reported as Gross Receipts collected from City customers, showed that SWS did not report \$154,402 of revenue generated from City customers. Therefore, \$37,056 ( $\$154,402 \text{ unreported revenue} \times 24\% \text{ franchise fee rate}$ ) in unpaid franchise fees are due, with late fees of \$21,736. Accordingly, the total amount due from un-remitted activity is \$58,792 (See Schedule A, page 7).

### **FINDING 2: CITY OF MIAMI CUSTOMERS WERE MISCODED AS EXISTING OUTSIDE THE BOUNDARIES OF THE CITY**

According to Section 5.2 of the Agreement, the franchisee agrees to remit monthly to the City, a percentage of its gross receipts, generated from accounts within the City limits.

We reviewed all SWS customer account addresses serviced in Miami-Dade County in order to identify revenues and related franchise fees that were incorrectly reported, or "miscoded", as being generated outside City boundaries. As a result, we identified revenue totaling \$80,808 from accounts that were miscoded and not reported to the City. Consequently, \$19,394 in unpaid franchise fees and penalties of \$11,751 (totaling \$31,145) are due on these miscoded accounts

In addition, for accounts that were miscoded, roll-off permit fees of \$1,200 and penalties of \$769 (totaling \$1,969) are due to the City. Accordingly, the total amount due to miscoded accounts totaled \$33,114 (See Schedule B, page 7).

### **FINDING 3: THE ANNUAL FRANCHISE FEE WAS PAID LATE**

Article V, Section 5.4 of the Agreement requires the franchisee to remit to the City annually (due October 1) the sum of \$8,000 (increased by \$500 for year after fiscal year 2010) for the right to be a franchisee for commercial solid waste services within the City. Failure to remit the required annual franchise fee by the due date will result in a one and one-half percent (1.5%) penalty per month on the balance due.

Our audit disclosed that SWS remitted its annual franchise fee one month late for the fiscal year 2012-2013. As a result of the late remittance, a late payment penalty fee of \$135 is due.

### **FINDING 4: AUDIT FEE**

Article VI, Section 6.2 of the Agreement stipulates that “if a City audit reveals that franchisee under reported gross receipts, and results in additional revenue due the City in the amount of \$20,000 (per fiscal year) or more, franchisee agrees to pay the cost of said audit.”

Our review disclosed that SWS underreported gross receipts by \$235,210 resulting in additional franchise fees including penalties, due to the City of \$92,041. Therefore, the audit fee of \$37,196 is due to the City.

### **OVERALL COMMENT AND RECOMMENDATION:**

It should be noted that SWS agreed to pay \$57,650 in additional franchise fees, but they are disputing \$34,391 in penalties and \$37,196 in audit fees. Penalties and audit fees are recoverable per the Agreement and we will refer the matter to the City Attorney’s Office.

We recommend that the Finance Department bill and SWS immediately remit the total additional fees and penalties due to the City totaling \$129,237 as outlined on Exhibit 1 (See page 6).



**SCHEDULE A: Schedule of Unreported Revenue, Franchise Fees and Penalties Due  
October 2012 through September 2013**

<b>Date</b>	<b>Unreported Revenue</b>	<b>Franchise Fees Due</b>	<b>Penalty Due</b>
Oct-12	\$ 27,387	\$ 6,573	\$ 4,295
Nov-12	14,278	3,427	2,186
Dec-12	13,468	3,232	2,012
Jan-13	14,699	3,528	2,147
Feb-13	13,600	3,264	1,936
Mar-13	14,242	3,418	1,976
Apr-13	13,378	3,211	1,806
May-13	8,330	1,999	1,095
Jun-13	8,192	1,966	1,046
Jul-13	9,432	2,264	1,169
Aug-13	10,714	2,571	1,290
Sep-13	6,683	1,604	779
<b>Total</b>	<b>\$ 154,402</b>	<b>\$ 37,056</b>	<b>\$ 21,736</b>

**SCHEDULE B: Schedule of Miscoded Revenue, Franchise Fees and Penalties Due  
October 2012 through September 2013**

<b>Date</b>	<b>Miscoded Revenue</b>	<b>Franchise Fees Due</b>	<b>Penalty Due</b>	<b>Permit Fees Due</b>	<b>Penalty Due on Permit fees</b>
Oct-12	\$ 17,522	\$ 4,205	\$ 2,704	\$ 825	\$ 553
Nov-12	15,414	3,699	2,321	-	-
Dec-12	14,481	3,475	2,127	75	48
Jan-13	13,291	3,190	1,907	-	-
Feb-13	11,024	2,646	1,541	-	-
Mar-13	1,540	370	210	150	86
Apr-13	1,265	304	168	-	-
May-13	2,235	536	288	75	42
Jun-13	872	209	109	-	-
Jul-13	1,221	293	148	75	40
Aug-13	1,462	351	172	-	-
Sep-13	484	116	55	-	-
<b>Total</b>	<b>\$ 80,808</b>	<b>\$ 19,394</b>	<b>\$ 11,751</b>	<b>\$ 1,200</b>	<b>\$ 769</b>