

City of Miami

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



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October 25, 2019

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

Re: Audit of Waste Management Inc. of Florida
Report No. 20-01

Executive Summary

We have completed an audit of selected transactions and records of Waste Management Inc. of Florida (WM), primarily for the period March 1, 2013 through December 31, 2015. The audit was performed to determine whether WM complied with applicable sections of the Non-Exclusive Commercial Solid Waste Franchise Agreement (Agreement) and the City of Miami (City) Code.

During the audit period, WM reported Gross Receipts of \$63,646,462 and remitted monthly franchise fees totaling \$15,279,940. Overall, WM's controls and procedures require strengthening to ensure compliance with the Agreement and City Code. Improvement is needed to ensure that Gross Receipts excluded from franchise fee payments on the basis of recovered materials hauling is in compliance with exemption standards; all monies collected from City customers are included in Gross Receipts; all accounts located within the City are identified and reported; permits are obtained for all City accounts; and, payments are remitted timely.

As a result of these deficiencies, we determined that WM underreported its Gross Receipts by \$1,341,995 and owes the City an **additional \$691,092 in franchise and permit fees, non-payment penalties, and the audit cost.** (See Exhibit 1, page 6). Details of our findings and recommendations are included on pages three through five of the report.

We wish to express our appreciation for the cooperation and courtesies extended to us by personnel at WM and the City during 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

C: The Honorable Mayor Francis Suarez
Emilio T. Gonzalez, City Manager
Victoria Mendez, City Attorney
Todd Hannon, City Clerk
Joseph Napoli, Deputy City Manager
Sandra Bridgeman, Assistant City Manager/Chief Financial Officer
Fernando Casamayor, Assistant City Manager/Chief of Operations
Nzeribe Ihekweba, Assistant City Manager/Chief of Infrastructure
Mario Nunez, Director, Solid Waste Department
Erica Paschal, Director, Finance Department
Christopher Rose, Director, Office of Management and Budget
Jennifer Moy, Assistant Director, Solid Waste Department
Vanessa Giron, Fiscal Administrator, Solid Waste Department
Demetrio Constantiny, Accounts Receivable Supervisor, Finance Department
James Lambros, Waste Management
Stephen Zelitt, Waste Management
Eileen Simone, Waste Management
Jason Neal, Waste Management
Members of the Audit Advisory Committee
Audit Documentation File

Audit conducted by: Robyn Sachs, CPA, CIA, CISA, CFE, CISSP
Information Systems Audit Administrator

Work papers reviewed by: Mala Khilnani, CPA, CISA, Assistant to the Director

AUDIT OF WASTE MANAGEMENT INC. OF FLORIDA

MARCH 1, 2013 THROUGH DECEMBER 31, 2015

Report No. 20-01

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SCOPE, OBJECTIVES, AND METHODOLOGY

The scope of the audit was primarily to assess and report on whether Waste Management Inc. of Florida (WM) complied with the terms of the Non-Exclusive Commercial Solid Waste Franchise Agreement (Agreement) which, along with Chapter 22 of the City Code, govern the operation of commercial solid waste collection services in the City. The audit covered the period March 1, 2013 through December 31, 2015.

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.
- Determine whether all the applicable franchise fees as stipulated in the Agreement were properly computed and remitted to the City.
- Verify whether recovered materials met the exemption standards described in the Agreement, City Code and Florida Statutes.
- Follow-up on prior audit findings and determine the status of all unresolved and outstanding issues, if any.
- Recommend corrective actions to address the instances of noncompliance with the Agreement and City Code.

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, appropriate evidence 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.
- Reviewing relevant sections of the Agreement, City Code and Florida Statutes.
- Reviewing WM's monthly reports, customer lists, billing records, and, routing and disposal records for recovered materials.
- Reviewing the service addresses of WM's accounts located in Miami-Dade County, then independently determining which accounts were located within the City by utilizing WM's billing records; the Miami-Dade County Property Appraiser website; and Google maps.
- Tests and examinations of applicable financial transactions and records.
- Other audit procedures as deemed necessary.

BACKGROUND

Pursuant to request for qualifications No. 222246, the City executed a Non-Exclusive Commercial Solid Waste Franchise Agreement (Agreement) with selected haulers effective from October 1, 2010 through September 30, 2015, with three one-year renewal options through September 30, 2018. In 2016, the City executed an updated version of the Agreement with all haulers, including WM, pursuant to request for qualifications No. 495344.

Pursuant to the Agreement, the City shall assess and collect the following fees:

- Gross Receipts Franchise Fees – The greater of \$500 or 24% of the Gross Receipts generated from accounts within the City, due monthly (“Monthly 24% Franchise Fee”).
 - Gross Receipts are defined as all monies collected from customers resulting from all transactions and activities in the Franchisee’s regular course of business and trade, including recycling with the exception of recovered materials at commercial establishments as defined in the Florida Statutes.
- Annual Franchise Fee – \$8,000 the first year under the Agreement, increased annually by \$500 for the right to be a Franchisee for Commercial Solid Waste Services within the City.
- Permit Per Account Fee – \$75 for each account booked as of October 1st of every new fiscal year and for each new account and roll-off box acquired after October 1st.
- 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 due.
- Audit Cost – If a City audit reveals that a Franchisee underreported Gross Receipts and results in additional revenue due to the City in the amount of \$20,000 (per Fiscal Year) or more, Franchisee agrees to pay for the cost of said Audit.

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.

During the fiscal year ended September 30, 2018, franchisees remitted a total of \$17,551,425 in fees to the City. During the audit period, WM reported Gross Receipts of \$63,646,462 for services provided to City customers and remitted monthly Franchise Fees totaling \$15,279,940. WM is one of the franchisees selected for audit in order to determine compliance with the Agreement and City Code. A separate audit report will be issued for each of the franchisees audited.

AUDIT FINDINGS AND OVERALL RECOMMENDATION

Overall, WM's controls and procedures require strengthening to ensure compliance with the Agreement and City Code. Improvement is needed to ensure that Gross Receipts excluded from franchise fee payments on the basis of recovered materials hauling is compliance with exemption standards; all monies collected from City customers are included in Gross Receipts; all accounts located within the City are identified and reported; permits are obtained for all City accounts; and, payments are remitted timely.

As a result of these deficiencies, we determined that WM underreported its Gross Receipts by \$1,341,995 and owes an **additional \$691,092 in franchise and permit fees, non-payment penalties, and the audit cost.** (See Exhibit 1, page 6).

Details of our findings and recommendations follow:

FINDING 1: SOLID WASTE SERVICES WERE MISCLASSIFIED AS EXEMPT MATERIALS AND EXCLUDED FROM GROSS RECEIPTS AND FRANCHISE FEE PAYMENTS

The Agreement defines Gross Receipts in Article II Definitions, 2.2. as "all monies, whether paid by cash, check, debit or credit, collected from customers resulting from all transaction and activities in the Franchisee's regular course of business and trade including garbage, industrial, solid waste [...] construction and demolition debris, trash, litter, maintenance, compactors [...] recycling (excluding recovered materials at commercial establishments as defined by section 403.7046, Florida Statutes)."

Florida Statute 403.703 defines recovered materials as "metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but the term does not include materials destined for any use that constitutes disposal. Recovered materials as described in this subsection are not solid waste." The Statute also states that recovered materials are not considered source separated when they "contain more than 10 percent solid waste by volume or weight."

Section 5.2 of the Agreement states, "Franchisee agrees 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 by the last day of the following month will cause the Franchisee a one- and one-half percent (1.5%) penalty per month on the balance due."

We reviewed WM's billing records and found that they excluded from Gross Receipts monies related to hauling of "recovered materials." To determine whether these monies were properly excluded from Gross Receipts (i.e., if the hauling was in compliance with the Agreement and Florida Statutes concerning recovered materials), we reviewed relevant financial, routing, and disposal records and found that a portion of this hauling activity was 1) serviced by a solid waste route rather than a recycling route, or 2) disposed of at a landfill or at a transfer station. We determined that Gross Receipts of \$521,185 should not have been exempted as the recovered materials hauling did not comply with applicable standards.

As a result, Monthly 24% Franchise Fees of \$125,084, plus late payment penalties of \$110,896 are due, totaling \$235,980.

FINDING 2: ACCOUNTS LOCATED WITHIN THE CITY WERE UNREPORTED

According to Section 5.2 of the Agreement, “Franchisee agrees 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 by the last day of the following month will cause the Franchisee a one- and one-half percent (1.5%) penalty per month on the balance due.”

We obtained WM’s database of City accounts and compared it to the detailed support for their Monthly 24% Franchise Fee payments. We found that accounts with Gross Receipts of \$788,718 were included in the database of City accounts but were excluded from WM’s monthly reports and Franchise Fee payments.

As a result, Monthly 24% Franchise Fees of \$189,292, plus late payment penalties of \$173,508 are due, totaling \$362,800.

FINDING 3: CITY OF MIAMI CUSTOMER ACCOUNTS WERE MISCODED AS EXISTING OUTSIDE THE BOUNDARIES OF THE CITY

According to Section 5.2 of the Agreement, “Franchisee agrees 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 by the last day of the following month will cause the Franchisee a one- and one-half percent (1.5%) penalty per month on the balance due.”

We reviewed WM’s Miami-Dade County customer list and found that WM miscoded thirteen (13) customers located within the City as non-City and did not report Gross Receipts of \$32,092 from these customers.

As a result, Monthly 24% Franchise Fees of \$7,702 plus late penalties of \$6,335 are due, totaling \$14,037.

FINDING 4: PERMIT FEES WERE NOT REMITTED FOR ALL ACCOUNTS

Section 5.6 of the Agreement states, “Franchisee agrees to remit to the City annually a Permit Per Account Fee in the amount of seventy-five (\$75.00) (due October 1) for each account and each roll-off effective October 1st of every new fiscal year. All late payments of this fee will cause the Franchisee a one- and one-half percent (1.5%) penalty per month on the balance due.”

Through review of WM's permit per account fee detail files, Miami-Dade and City customer lists, and permit records maintained by the City's Solid Waste Department, we found that WM did not remit permit payments for all accounts active as of October 1st of each fiscal year.

As a result, as shown in Table 1, permit fees of \$11,325, plus late penalties of \$9,101 are due, totaling \$20,426.

Table 1. Permit Per Account Fees and Late Penalties Due			
Fiscal Year	No. of Accounts	Permit Per Account Fees Due	Late Penalties Due
2014	14	\$1,050	\$1,106
2015	67	\$5,025	\$4,355
2016	70	\$5,250	\$3,640
Totals:	151	\$11,325	\$9,101

FINDING 5: MONTHLY 24% FRANCHISE FEES WERE REMITTED LATE

Section 5.2 of the Agreement states, “Franchisee agrees 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 by the last day of the following month will cause the Franchisee a one- and one-half percent (1.5%) penalty per month on the balance due.”

WM remitted the Monthly 24% Franchise Fee payment for October 2015 in the amount of \$478,401 one month late.

As a result, a late payment penalty of \$7,176 is due.

FINDING 6: AUDIT COST

Article VI Audit and Inspection Rights, paragraph 6.2 of the Agreement states, “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.” The cost of auditing WM for the period March 1, 2013 through December 31, 2015 was \$50,673 and is due to the City.

OVERALL RECOMMENDATION

We recommend that the Finance Department bill, and WM immediately remit, the total due to the City as a result of the audit, \$691,092, as shown in Exhibit 1, page 6.

EXHIBIT 1: SCHEDULE OF AMOUNTS DUE

AUDIT OF WASTE MANAGEMENT INC. OF FLORIDA

MARCH 1, 2013 THROUGH DECEMBER 31, 2015

Report No. 20-01

AUDIT FINDING	GROSS RECEIPTS	FRANCHISE FEES DUE	PENALTIES DUE	TOTAL DUE
Misclassified Exempt Materials Hauling	\$521,185	\$125,084	\$110,896	\$235,980
Unreported Revenue	788,718	189,292	173,508	362,800
Miscoded Customers	32,092	7,702	6,335	14,037
Unpaid Permit Per Account Fees	-	11,325	9,101	20,426
Late Payment of Monthly Franchise Fees	-	-	7,176	7,176
Audit Cost	-	-	-	50,673
TOTAL:	\$1,341,995	\$333,403	\$307,016	\$691,092