

City of Miami

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



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April 22, 2021

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

Re: Audit of Sunshine Recycling Services of S.W. Florida, LLC
Report No. 21-08

Executive Summary

We have completed an audit of selected financial records and transactions of Sunshine Recycling Services of S.W. Florida, LLC, (Sunshine) primarily for the period from October 1, 2019 through September 30, 2020. Coastal Waste & Recycling Holdco, LLC (Coastal Waste) purchased all of the membership interest of Sunshine, effective September 30, 2020. The audit was performed to determine whether transactions complied with applicable sections of the Commercial Solid Waste Franchise Agreement (Agreement) and the City of Miami (City) Code of Ordinances. Additionally, we examined relevant internal control policies and procedures in the City to determine whether they were adequate and effective in enforcing the provisions of the Agreement.

During the audit period, Sunshine reported Gross Receipts of \$649,967 for services provided to City customers and remitted Franchise Fees totaling \$193,991 to the City. Based on the results of our audit, we have concluded that improvement was needed at Sunshine to ensure that Franchise Fee remittances included all Gross Receipts, City customer accounts were properly identified as existing in the City, annual Permit Per Account Fees were remitted on time and in full. Also, the City should improve their method of calculating the performance bond. **As a result of these deficiencies, an additional \$6,566 is owed to the City.** (See Exhibit I, page 7).

We wish to express our appreciation for the cooperation and courtesies extended to us by Coastal Waste and City personnel 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

C: The Honorable Mayor Francis Suarez
Arthur Noriega V, City Manager
Victoria Mendez, City Attorney
Todd Hannon, City Clerk
Fernando Casamayor, Assistant City Manager/Chief of Operations
Natasha Colebrook-Williams, Assistant City Manager
Nzeribe Ihekweba, Assistant City Manager/Chief of Infrastructure
Erica Paschal, Director of Finance, Finance Department
Leon Michel, Assistant Director, Office of Management and Budget
Mario Nunez, Director, Solid Waste Department
Jennifer Moy, Assistant Director, Solid Waste Department
Vanessa Giron, Fiscal Administrator, Solid Waste Department
Demetrio Constantiny, Accounts Receivable Supervisor, Finance Department
Brendon Pantano, Chief Executive Officer, Coastal Waste and Recycling of Florida, Inc.
Members of the Audit Advisory Committee
Audit Documentation File

Audit conducted by: Paulino Garcia, Staff Auditor

Audit supervised by: Robyn E. Sachs, CPA, CIA, CFE, CISA, CISSP
Information Systems Audit Administrator

AUDIT OF SUNSHINE RECYCLING SERVICES OF S.W. FLORIDA, LLC

OCTOBER 1, 2019 THROUGH SEPTEMBER 30, 2020

REPORT No. 21-08

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SCOPE, OBJECTIVES AND METHODOLOGY

The scope of the audit was to assess and report on whether Sunshine and relevant City departments complied with the terms of the Commercial Solid Waste Franchise Agreement (Agreement) and 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 generally accepted accounting principles. The audit primarily covered the period October 1, 2019 through September 30, 2020 and the objectives were:

- To ascertain whether all customer accounts located in the City were properly identified, coded, and assessed the appropriate fees.
- To determine whether all the applicable franchise fees as stipulated in the Agreement were properly computed and remitted to the City.
- To verify whether the appropriate public liability insurance and bonds were obtained as required by the Agreement.
- To determine whether selected financial transactions were processed in accordance with generally accepted accounting principles, properly recorded in the City's accounting system and deposited into the City's treasury.
- To examine the relevant internal controls policies and procedures within the City 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, if any.

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.
- Reviews of written policies and procedures to gain an understanding of internal controls.
- Observations of current practices and processing techniques.
- Reviewing the service addresses of Sunshine's accounts located in Miami-Dade County, then independently determining which accounts were located within the City by utilizing Sunshine's account address 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 March 2016, the City executed an updated version of the Agreement with all haulers, including Sunshine, pursuant to request for qualifications No. 495344. Effective September 30, 2020, Sunshine sold all of their membership interest to Coastal Waste.

According 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 limits, due monthly.
 - **Gross Receipts Definition**: 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 exceptions of recovered materials at commercial establishments as defined in the Florida Statutes.
- **Annual Franchise Fee**: \$10,500 the first year under the Agreement (2016), increased annually by \$500 for the right to be a Franchisee for commercial solid waste services.
- **Permit Per Account Fee**: \$75 for each solid waste hauling account and permanent 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 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.
- **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.

During the fiscal year ended September 30, 2020, franchisees remitted a total of \$16,548,913 in fees under the Agreement to the City. During the audit period, Sunshine reported Gross Receipts of \$649,967 for services provided to City customers and remitted Franchise Fees totaling \$193,991 to the City. Sunshine was one of the franchisees selected for audit 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 RECOMMENDATIONS

Based on the results of our audit, we have concluded that improvement was needed at Sunshine to ensure that Franchise Fee remittances included all Gross Receipts, City customer accounts were properly identified as existing in the City, annual Permit Per Account Fees were remitted on time and in full. Also, the City should improve their method of calculating the performance bond. As a result of these deficiencies, an additional \$6,566 is owed to the City. (See Exhibit I, page 7).

Details of our findings and recommendations follow:

FINDING 1: GROSS RECEIPTS WERE EXCLUDED FROM FRANCHISE FEE REMITTANCES

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.”

Sunshine did not include Gross Receipts of \$109 and \$12,023 (totaling \$12,132) in their May 2020 and September 2020 monthly reports, respectively. The May 2020 exclusion was due to an error in the formula used by the hauler to compute Gross Receipts. The September 2020 exclusion was due to incomplete preparation of the file used to compute Gross Receipts. As a result, monthly 24% Franchise Fees of \$26 and \$2,886 are due, respectively. Additionally, late fees of \$4 and \$130 are due, respectively.

Additionally, Sunshine excluded two (2) City customer accounts from Gross Receipts, although these accounts were included in remittances of temporary roll-off permit fees. Gross Receipts of \$5,743 were earned from these City accounts during the audit period. As a result, monthly 24% Franchise Fees of \$1,378 and late fees of \$271 are due.

The total due on excluded Gross Receipts is \$4,695, as shown in Table 1 below:

Table 1. Gross Receipts Excluded and Fees Due				
Description	Gross Receipts	Franchise Fees	Late Fees	Total Due
May 2020	\$109	\$26	\$4	\$30
September 2020	\$12,023	\$2,886	\$130	\$3,016
Two (2) Accounts	\$5,743	\$1,378	\$271	\$1,649
Total:	\$17,875	\$4,290	\$405	\$4,695

FINDING 2: CITY OF MIAMI CUSTOMER ACCOUNTS WERE MISCODED AS EXISTING OUTSIDE THE BOUNDARIES OF THE CITY

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.”

Sunshine miscoded two (2) City customer accounts as existing outside the boundaries of the City. Gross Receipts of \$2,772 were earned from these City accounts during the audit period. As a result, monthly 24% Franchise Fees of \$665, and late fees of \$191 are due, totaling \$856.

Additionally, Section 5.5 of the Agreement states, “Franchisee agrees to remit to the City annually a Permit Per Account Fee (PPAF) in the amount of seventy-five (\$75) (due October 1st), which shall be prorated the first year of each account according to the month of account inception, pursuant to a fee scale provided by the City, for each account effective October 1st of every new fiscal year to those accounts booked as of October 1st of every new fiscal year with whom they contract for the provision of commercial solid waste services. 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.”

Sunshine owes the annual PPAF for two (2) fiscal years for one miscoded account, and one (1) fiscal year for one miscoded account, totaling \$225 (\$75 annual PPAF x 3 years) plus late fees of \$65, totaling \$290.

FINDING 3: ANNUAL PERMIT PER ACCOUNT FEES WERE REMITTED LATE

Section 5.5 of the Agreement states, “Franchisee agrees to remit to the City annually a Permit Per Account Fee (PPAF) in the amount of seventy-five (\$75) (due October 1st), which shall be prorated the first year of each account according to the month of account inception, pursuant to a fee scale provided by the City, for each account effective October 1st of every new fiscal year to those accounts booked as of October 1st of every new fiscal year with whom they contract for the provision of commercial solid waste services. 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.”

Sunshine remitted payment of the fiscal year 2020 annual PPAF totaling \$21,150 two (2) months late. As a result, a late fee of \$635 (\$21,150 x 2 x 1.5%) is due.

Additionally, Sunshine did not include one account in the payment. As a result, an annual PPAF of \$75 is due, plus a late fee of \$15, totaling \$90.

- **Auditee Response to Findings 1 through 3:** We have reviewed your findings and agree.
- **Recommendation for Findings 1 through 3: FINANCE DEPARTMENT**

We recommend that the City's Finance Department bill and collect the total additional fees due to the City in the amount of \$6,566.

FINDING 4: THE METHOD OF CALCULATING THE PERFORMANCE BOND RESULTS IN INSUFFICIENT COVERAGE

Section 7.2 of the Agreement states, “Franchisee agrees to maintain, for the term of this 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, resident in the State of Florida. The amount of the bond shall be equal to the Franchisee’s previous 12-month franchise fees paid to the City (including the annual franchise fee, monthly 24% franchise fee, annual per account fee, and any other franchise fees paid to the City) or a minimum of \$25,000, whichever is greater, as security for the faithful performance of the Franchise Agreement.”

The City’s method of calculating the performance bond does not include the annual franchise fee, annual per account fee, or the roll-off container permit fees. In 2018, the Solid Waste Department provided the Procurement Department with a spreadsheet for determining the amount of the performance bond. However, the spreadsheet did not show a breakdown of the fees that were included. Additionally, the City calculates the amount of the performance bond based on remittances made from July through June of each year as were shown in the 2018 spreadsheet, instead of the City’s fiscal year, which runs from October through September.

The Procurement Department has continued using the same spreadsheet format, but they did not include aforementioned annual fees or roll-off permit fees in the performance bond calculations. Only the monthly 24% franchise fees and pro-rated permit per account fees for new accounts obtained during the fiscal year were included. Procurement notifies each franchisee of the amount required for their performance bond based on this calculation. As a result, the performance bond for Sunshine is short by \$36,278 (\$193,990 total franchise fees paid during fiscal year 2020, less \$157,712 performance bond obtained for fiscal year 2021).

The total risk or potential loss to the City as a result of excluding these fees from the performance bond calculations is **\$1,058,550**, as shown in the Table 2 below:

Table 2. Franchise Fees Excluded from Bond Calculations	
Franchise Fee Description (Fiscal Year 2020)	Amount Excluded
Annual Franchise Fee	\$121,500
Annual Per Account Fee	703,050
Roll-Off Container Permit Fee	234,000
Grand Total:	\$1,058,550

RECOMMENDATION 4: SOLID WASTE DEPARTMENT

We recommend that the City’s Solid Waste Department implement a template for calculation of the performance bond, with discrete presentation of each franchise fee included in the calculation, for hauler, by month, based on the prior fiscal year.

Auditee Response: The Solid Waste Department (SWD) will implement, for Procurement Department's use, a template for calculation of the performance bond to ensure that all franchisee fees are captured. The requests from the Procurement Department have not been on a fiscal year basis; however, more on a contract basis which starts in March or as requested yearly. The Procurement Department and the Solid Waste Department will coordinate the change in the Performance Bond period used for calculation of the bond to coincide with the City's fiscal year.

Implementation Date: The template will be implemented on the next submission to the Procurement Department for the calculation of Performance Bond. On April 13, 2020, the SWD sent a new spreadsheet to the Procurement Department of the franchise fees from the period of October 2019 to September 2020.

AUDIT OF SUNSHINE RECYCLING SERVICES OF S.W. FLORIDA, LLC

OCTOBER 1, 2019 THROUGH SEPTEMBER 30, 2020

REPORT No. 21-08

EXHIBIT I

SCHEDULE OF FEES DUE TO THE CITY	
Description	Amount Due (\$)
Excluded Gross Receipts (Finding 1, Page 3) –	
Monthly 24% Franchise Fees (May 2020)	26
Late Fees on Unpaid Franchise Fees (May 2020)	4
Monthly 24% Franchise Fees (September 2020)	2,886
Late Fees on Unpaid Franchise Fees (September 2020)	130
Monthly 24% Franchise Fees (Two Excluded Accounts)	1,378
Late Fees on Unpaid Franchise Fees (Two Excluded Accounts)	271
Miscoded City Customer Account (Finding 2, Page 4) –	
Monthly 24% Franchise Fees	665
Late Fees on Unpaid Franchise Fees	191
Annual Permit Per Account Fee	225
Late Fees on Unpaid Annual Permit Per Account Fee	65
Annual Permit Per Account Fee (Finding 3, Page 4) –	
Late Fees on Annual Permit Per Account Fee Payment (FY20)	635
Unpaid Permit Per Account Fee (One Account / FY20)	75
Late Fess on Unpaid Permit Per Account Fee (One Account / FY20)	15
Total Due to the City:	\$6,566