



MIAMIBEACH

BUDGET AND PERFORMANCE IMPROVEMENT
Internal Audit Division

INTERNAL AUDIT REPORT

TO: Jimmy Morales, City Manager
VIA: Kathie G. Brooks, Assistant City Manager
FROM: James J. Sutter, Internal Auditor

DATE: April 23, 2013
AUDIT: Waste Service of Florida, Inc. (Non-Exclusive Franchise Contractor)
PERIOD: April 2009 to September 2012

This report is the result of a regularly scheduled audit of the Franchise Service Agreement with Waste Service of Florida, Inc. (Waste Service) it includes any revenues reported for Franchise Waste, Public Right-of-Way and Roll-offs.

INTRODUCTION

Chapter 90, Article IV Solid Waste of the City Code provides for the City to have Non-Exclusive Franchise Waste Contractor Agreements and Service Agreements with five waste contractors. These contractors provide waste collection and recycling services for Commercial and Residential for multi-family residences with eight (8) or more units in the City of Miami Beach. According to the Non-Exclusive Franchise Waste Contractor Agreement, the waste contractor is granted the franchise and is required to undertake and perform each and every obligation set forth in this Agreement. The "Service Agreement" covers the provision of additional solid waste collection and disposal and recycling services at certain City owned facilities and properties. The Service Agreement is intended to have a term that will run concurrent with the terms of the Non-Exclusive Franchise Waste Contractor Agreement.

The City Commission under resolution 2003-25385 renewed Waste Service and the other waste contractor's franchise service agreement on October 15, 2003 for an additional five-year term expiring September 30, 2008. Subsequently, the City Commission adopted Resolution (#2008-26923) authorizing the further renewal of the City's existing four franchise waste contractors including Waste Service for the collection and disposal of solid waste, to also include recycling services. The waste contractors' renewal was for three years, commencing retroactively on October 1, 2008 and ending on September 30, 2011.

For the past several years, the City had franchise waste contractor and service agreements with four waste contractors to provide commercial service within its boundaries. On May 25, 2009 the City Commission by resolution 2009-27020 approved a new waste contractor to be the fifth hauler. Out of the five haulers, All Service of Florida and General Hauling were merged with other haulers. Subsequently, leaving the City of Miami Beach with three haulers and they are Choice Environmental, Waste Management and Waste Services of Florida.

Whereas, at the May 9, 2012 City Commission meeting, the City Commission determined that, premised upon the contractors' agreement to provide the City with certain additional contributions, which would be allocated by the City toward additional public waste collection and disposal, recycling, and sustainability initiatives and programs, it would be in the City's best interest to not issue the RFQ for a fourth hauler and, in the alternative, renew the three (3) existing franchise agreements for an additional (1) year (with such renewal term commencing October 1, 2014, and

ending September 30, 2015;) and, further, condition such renewal upon the successful negotiation of an amendment to the existing Service Agreement by and among the City and three(3) franchisees, to provide for additional, public benefits (in addition to what is already being provided under such Agreement) (including, without limitations, additional monetary contributions to the City, in the amount of \$390,000 per year and \$25,000 per year). It was approved as to form & language & for execution on December 27, 2012.

Section 90-221 City Code 1964, 14A-16 (a) requires each franchise waste contractor to pay the City a franchise fee consisting of a percentage of the licensee's total monthly gross receipts established by resolution of the City Commission. Currently, the franchise fee paid to the City by its franchise waste contractors (18%) of said gross receipts and the Public Right-of-way franchise fees (2%).

Waste Service has been operating as a Non-Exclusive Franchise Contractor in the City of Miami Beach since April 1, 2007. They have been remitting franchise fees on a monthly basis for Waste, Public Right-of-Way and Roll-offs.

BACKGROUND

Previously, Internal Audit conducted an audit of Waste Services for the period of May 2007 to March 2009. Our audit report dated August 24, 2009 produced no audit assessment. A review of the company's invoices showed that franchise fees were charged and collected throughout the audit period. Waste Service records showed that franchise fees were remitted timely to the City of Miami Beach.

OVERALL OPINION

Waste Service properly and timely obtained an annual business tax receipt, submitted the required certificate of liability insurance and timely provided their annual Certified Public Accountant (CPA) Statements of Gross Receipts to the City. In addition, they provided the In-Kind Services and remitted payments on the Sustainable Initiatives Fees.

Waste Service has not fully complied with the City Codes as it relates to reporting requirements for waste contractors. As a result, gross receipts were under reported and the franchise fees were not paid to the City. The following items were noted during audit:

- Gross receipts in the amount of \$141,048 (Administrative fees) were not reported. Therefore, Waste Service owes the City \$33,699.11 in franchise fees. (including interest charges)
- Waste Service improperly charged the Roll-off customers 2% Right of Way fees. Effective January 2013 this practice was discontinued and no further action is required.
- Waste Service did not comply with the City Code sections requiring monthly reports of recyclable materials.

PURPOSE

The purpose of this audit is to determine whether the franchise waste contractor reported all gross receipts to the City, were correctly calculated, received timely and accurately recorded by the City, and the contractor was in compliance with designated sections of the City Code and related Ordinances.

SCOPE

1. Review the private waste contractor's books and records to confirm that their billings were correct; their gross receipts were correctly calculated and support the monthly franchise fee and public right-of-way payments submitted to the City.
2. Confirm that the private waste contractor timely sent the City the required reports in adherence with the terms listed in the City Code.
3. Confirm that the private waste contractor is timely sending the required Monthly Report of Gross Receipts along with their remittance to the City.
4. Confirm that the private waste contractor timely obtained their required annual City business tax receipt.
5. Confirm that the private waste contractor timely submitted their annual Certified Public Accountant (CPA) Statements of Gross Receipts to the City, and that amounts reported therein agree with corresponding totals reported on the waste contractor's Monthly Reports of Gross Receipts.
6. Confirm that the private waste contractor has obtained the required insurance in adherence with Section 90-223 of the City Code and the signed service agreement.
7. Confirm that all monthly franchise and public right-of-way fee payments were timely and correctly recorded in the City's Financial System.
8. Confirm that the private contractors are purchasing recycling bins for the City.

FINDINGS, RECOMMENDATIONS AND MANAGEMENT RESPONSE

1. Finding – *Unreported gross receipts*
City Code Section 90 - 221 defines gross receipts as "*the entire amount of the fees collected by the licensee, exclusive of taxes as provided by law, whether wholly or partially collected, within the city, for solid waste removal and disposal*". Therefore, all monies collected by the waste contractor from Miami Beach service addresses, including administrative fees, dump fees, fuel surcharges, environmental fees, dry run and overload should be included in reported gross receipts. Out of \$21,251,347 audited gross receipts, Waste Service paid the City of Miami Beach \$4,220,492 in franchise fees for \$21,102,463 reported gross receipts. Additionally, Waste Service collected administrative fees for the amount of \$141,048 and failed to report these revenues from April 2009 to March 2012 to the City. This resulted in franchise fees due in the amount of \$28,209.60 with corresponding interest of \$5,489.51 for a total of \$33,699.11 due to the City. Upon notification of the unreported administrative fees, Waste Service's adjusted their software to commence remitting the franchise fees to the City.

The following table summarizes the total amount of gross receipts reported and related fees paid:

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	2009 (Apr.-Dec.)	2010 (Jan-Dec.)	2011 (Jan-Dec.)	2012 (Jan-Sept.)	TOTAL
Audited Gross Receipts	\$4,024,378.74	\$6,268,140.84	\$6,499,926.81	\$4,451,065.54	\$21,243,511.93
Less Reported Gross Receipt	3,989,116.74	6,221,124.84	6,452,910.81	4,439,311.54	21,102,463.93
Unreported Revenues	\$35,262.00	\$47,016.00	\$47,016.00	\$11,754.00	\$141,048.00
Franchise fees Due	7,052.40	9,403.20	9,403.20	2,350.80	28,209.60
Interest	2,161.88	2,074.50	1,120.02	133.11	5,489.51
Total Due	\$9,214.28	\$11,477.70	\$10,523.22	\$2,483.91	\$33,699.11

Recommendation(s)

Waste Service must comply with the designated sections of the City Codes by paying the franchise fees on administrative fees. Upon notification of the unreported administrative fees, Waste Service adjusted their software to commence remitting the franchise fees to the City.

2. Finding – Fees and Requirement

Waste Service did not comply in accordance with the listed City Code Sections during the audit period: The City Code Section 90-278 Monthly Report, *“On street permit fee -When the roll-off container is to be located on the street, the permit fee shall be 18 percent of the licensed contractor’s total monthly gross receipts for the month in which the permit was issued and every month thereafter that the permit is valid”*. *“Off-street permit fee- When the roll-off container is to be located inside private property line , the permit fee shall be 18 percent of the licensed contractor’s total monthly gross receipts for the month in which the permit was issued and every month thereafter that the permit is valid.* Waste Service incorrectly charged 2% Right of Way fees on Roll-off customers and remitted these fees to the City.

Recommendation(s)

Upon notification of this finding during the audit, Waste Service adjusted their software to charge Roll-off customers 18% franchise fees per City Code; no further action is required.

3. Finding – Required Reporting

Waste Service did not submit the following documents in accordance with the listed City Code sections during the audit period: The City Code Section 90-308 Monthly Report, *“Each recycling contractor shall deliver monthly to the city manager an accurate report regarding the nature and disposition and volume of Recyclable Materials collected by it from each account within the limits of the city. Upon request by the City Manager, each contractor shall also furnish the city with verifiable information regarding the method and place of final disposal or distribution of said materials.”* Waste Service did not deliver to the City Manager the required monthly report of recyclable materials as required by the City Code.

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Recommendation(s)

Going forward, Waste Service must comply with the designated sections of the City Codes by delivering monthly to the City Manager an accurate report regarding the nature and disposition and volume of Recyclable Materials collected by it from each account within the limits of the city. In lieu of sending the report to the City Manager, the report should be forwarded to the Sanitation Director as his or her designee.

EXIT CONFERENCE

Audit findings were e-mailed on March 19, 2013 to Waste Service of Florida. We confirmed their agreement to our findings on April 9, 2013.

JJS: CD

Audit performed by Carmin Dufour

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cc: Jay Fink, Assistant Director of Public Works
Alberto Zamora, Sanitation Director
Patricia Walker, Chief Financial Officer
Kristin Stock (District Revenue Manager of Waste Service)