

# MIAMIBEACH

BUDGET AND PERFORMANCE IMPROVEMENT  
Internal Audit Division

## INTERNAL AUDIT REPORT

TO: Jimmy L. Morales, City Manager  
VIA: Ramon Suarez, Interim Budget and Performance Improvement Director  
FROM: James J. Sutter, Internal Auditor

DATE: March 7, 2016  
AUDIT: Progressive Waste Solutions, Inc. (Non-Exclusive Franchise Contractor) ;  
PERIOD: October 2012 to September 2015

This report is the result of a regularly scheduled audit of the Franchise Service Agreement with Progressive Waste Solutions, Inc. (Progressive Waste) which includes any revenues reported for Franchise Waste, Public Right-of-Way, Roll-offs and Sustainable Initiatives (Green initiatives). A separate audit will be performed at a later date of their contract for Residential Waste.

### 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 multiple waste contractors. These contractors provide waste collection and recycling services for Commercial and Residential for multi-family residences with nine (9) 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.

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.

On November 16, 2012, Waste Service of Florida, Inc. purchased all of the shares of capital stock of Choice Environmental Services, Inc. Thereafter, on May 31, 2013 Waste Services of Florida, Inc. changed its name to Progressive Waste Solutions of FL, Inc.; further on September 9, 2013 Choice Environmental, Services, Inc. was merged into Progressive Waste Solutions of FL, Inc. with Progressive Waste Solutions of FL, Inc., being the surviving entity.

The City has three haulers: Progressive Waste Solution, Southern Waste and Waste Management. Commencing on October 1, 2014 the new Franchise Agreements and the Service agreement shall each now have an initial term of five years commencing and ending on September 30, 2019 along with a possible renewal term of up to three (3) years, at the City Commission's sole discretion, the Contractors and the City have also agreed to the terms contained in the Service Agreements; which shall run concurrently with the term of the Franchise Agreements.

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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 is 18% of said gross receipts, Public Right-of-way franchise fees 2%, Sustainability Fees 1.5% and providing in-kind services to the City. Gross receipts reported and fees paid by the contractor for the audit period were as follows:

	2012	2013	2014	2015	Total
<b>Gross Receipts</b>					
Waste	\$1,344,406	\$7,104,114	\$7,196,295	\$5,472,584	\$21,117,399
Roll -offs	107,095	462,975	290,017	203,236	1,063,323
Total Receipts reported	\$1,451,501	\$7,567,089	\$7,486,312	\$5,675,820	\$22,180,722
<b>Fees:</b>					
Franchise Fees	\$241,993	\$1,278,741	\$1,295,333	\$985,065	\$3,801,132
Public Right of way	29,033	143,211	143,370	105,146	420,760
Roll-offs	19,277	83,336	52,203	36,582	191,398
Sustainability Fees	22,189	121,583	114,442	83,299	341,513
Total Fees Paid	\$312,492	\$1,626,871	\$1,605,348	\$1,210,092	\$4,754,803

## BACKGROUND

Previously, Internal Audit conducted an audit of Progressive Waste for the period of April 2009 to September 2012. Our audit report dated August 23, 2013 produced an audit assessment of \$33,699.11. A review of the company's invoices showed that gross receipts in the amount of \$141,048 (Administrative fees) were not reported. Therefore, the company paid the total amount of \$33,699.11 (Including interest & late fees).

## OVERALL OPINION

Progressive Waste 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.

Progressive Waste has not fully complied with the City Codes and contract as it relates to reporting requirements for waste contractors. As a result, the following items were noted during audit:

- Additional amount of franchise and related fees in the amount of \$60,143 were collected but not remitted to the City. Therefore, Progressive Waste owes the City \$103,994 in franchise fees. (Including interest and penalties)
- Progressive Waste improperly made a reduction of revenues in the amount of \$251,404.77 from the Monthly Sanitation Franchise Fee Return resulting in the contractor taking a credit of \$45,252.86 in Franchise Fees against that monthly return. Upon notification of the audit finding, Progressive Waste refunded immediately the credit taken in the amount of \$45,252.86 during the audit.

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- Progressive Waste did not comply with the City Code sections requiring monthly reports of recyclable materials.
- Progressive Waste did not comply with complaints and complaints resolution per section (14.1) in the Terms of contract.
- Progressive Waste needs to enhance its system of recordkeeping in order for the audit not to be hindered.

## 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 waste contractor has complied with the Sustainable Initiative agreement. (Green Initiatives)

## FINDINGS, RECOMMENDATIONS AND MANAGEMENT RESPONSE

1. Finding - Difference in Fees Collected by the Contractor and fees paid to the City  
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. For the thirty six months audited (October 2012 to September 2015), Progressive Waste collected the amount of \$4,814,946 in City related fees and paid the City of Miami Beach the lessor of \$4,754,803 in various franchise and related fees. Progressive Waste collected an additional amount of \$60,143 but failed to remit these

franchise fees to the City. This resulted in franchise fees due in the amount of \$60,143 with corresponding interest of \$13,780 and penalties of \$30,071. As a result, the total amount owed to the City is \$103,994.

Recommendation(s)

Progressive Waste must comply with the designated sections of the City codes and remit the total amount of \$103,994 for franchise fees, interest and penalties. Upon notification of the audit finding, Progressive Waste paid the total amount of \$103,994.

2. Finding – *Credit Taken Against Monthly Report*

City Code Section 90 - 223 defines as "*The licensed contractors shall deliver to the finance department a true and correct monthly report of gross receipts generated during the previous month from accounts within the city on or before the last day of each month. This detailed monthly report shall include the customer names service addresses, account numbers and the actual amount of waste/solid waste and of any recyclable materials collected from each customer. Payment of the fee shall be made monthly to the finance department on or before the last day of each month, for gross receipts of the previous month*". Out of thirty-six (36) monthly reports submitted to the City of Miami Beach, one month (June 2013) Progressive Waste improperly made a reduction of revenues in the amount of \$251,404.77 from the Monthly Sanitation Franchise Fee Return resulting in the contractor taking a credit of \$45,252.86 in Franchise Fees against that monthly return. As noted in our previous audit report dated August 23, 2013, Progressive Waste incorrectly charged a 2% Right of Way Fee on Roll-off customers which was incorrectly charged and remitted these fees to the City. Hence, they were not authorized to make a deduction from the Monthly Sanitation Franchise Fee-Return for this amount; providing they refund the amounts to individual accounts and submit proper documentation to the City of Miami Beach. Upon notification of this finding, Progressive Waste repaid immediately the credit taken in the amount of \$45,252.86 during the audit.

Recommendation(s)

Progressive Waste needs to communicate with the City's Finance department prior to deducting any amount from the Monthly Sanitation Franchise Fee Return.

3. Finding – *Required Reporting*

Progressive Waste 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.*" Progressive Waste did not deliver to the City Manager the required monthly report of recyclable materials as required by the City Code.

Recommendation(s)

Progressive Waste 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 designee.

4. Finding – Terms of Contract

Contractor shall prepare and maintain a register of all complaints and indicate the disposition of each complaint (Section 14.1). Complaints shall be identified and such record shall be available for City inspections at all times during business hours. All complaints must be addressed within 24 hours. Progressive Waste did not have a log of all complaints and the disposition of each complaint.

Recommendation(s)

Progressive Waste must prepare and maintain a register of all complaints and indicate the disposition of each complaint.

5. Finding- Records Maintenance

Progressive Waste needs to enhance its system of recordkeeping in order for the audit not to be hindered. Upon several request during the audit, copies of the original monthly revenues reported to the city were not available. In addition, supporting documentation was no available for some months.

Recommendation(s)

Contractor should maintain their records in an organized manner so that specific documents can be provided during the audit. Monthly reports should be printed by categorizing Commercial Waste, Public Right of Way, Roll-offs and Sustainable Initiatives. In addition, the supporting documents must be included when submitting to the City.

**EXIT CONFERENCE**

Audit findings were e-mailed on February 24, 2016 to Progressive Waste Solutions. We confirmed their agreement to our findings on March 4, 2016.

JJS: CD

Audit performed by Carmin Dufour

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cc: Eric Carpenter, Assistant City Manager  
Alberto Zamora, Sanitation Director  
Allison Williams, Chief Financial Officer  
Susana Martinez, (District Controller of Progressive Waste Solutions, Inc.)