

MIAMI BEACH

BUDGET AND PERFORMANCE IMPROVEMENT
Internal Audit Division

INTERNAL AUDIT REPORT

TO: Jimmy Morales, City Manager
VIA: Cintya Ramos, OBPI Director
FROM: James J. Sutter, Internal Auditor



DATE: June 27, 2016
AUDIT: Waste Management, Inc. (Non-Exclusive Franchise Contractor)
PERIOD: January 2013 to December 2015

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

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 Franchisee 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.

On July 23, 2014 City Commission Meeting, the Mayor and City Commission adopted resolution No. 2014-2868, accepting the recommendation of the City Manager pertaining to the ranking of proposals pursuant to RFQ, and authorizing the Administration to enter into negotiations for new franchise agreements with the Contractors, as the top (3) ranked proposers, Waste Management Inc. of Florida, Progressive Waste Solutions of FL, Inc. and Southern Waste System LLC (collectively, the Franchisees).

The new Franchise Agreements and the new Service Agreement shall each have an initial term of five years, commencing on October 1, 2014, 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; and that Waste Management Inc. of Florida, a Florida corporation (Franchisee) has indicated to the City that it is ready, willing, and able to provide the aforesaid services within the City of Miami Beach, in accordance with the provisions contained within the following Franchise Agreement or Agreement), Chapter 90 of the City Code, and under the (additional) service agreement (hereinafter), the Service Agreement) executed simultaneously herewith.

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 as follows:

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| | 2013 | 2014 | 2015 | Total |
|---------------------------|-----------------|-----------------|-----------------|-----------------|
| Gross Receipts (Reported) | | | | |
| Waste | \$10,266,646.69 | \$10,729,751.95 | \$10,971,434.74 | \$31,967,833.38 |
| Right of Way (1) | \$10,095,778.09 | \$10,729,751.95 | \$10,971,434.74 | \$31,796,964.78 |
| Roll -offs | 439,671.70 | 594,197.81 | 547,657.33 | 1,581,526.84 |
| Sustainability | \$10,706,318.39 | \$11,323,949.76 | \$11,519,092.07 | \$33,549,360.22 |
| Fees: | | | | |
| Franchise Fees | \$1,847,996.42 | \$1,931,355.29 | \$1,974,858.26 | \$5,754,209.97 |
| Public Right of Way | 201,915.57 | 214,595.05 | 219,428.69 | 635,939.31 |
| Roll-offs | 79,140.89 | 106,955.60 | 98,578.32 | 284,674.81 |
| Sustainability Fees | 160,594.78 | 169,963.24 | 172,819.77 | 503,377.79 |
| Total Fees Paid | \$2,289,647.66 | \$2,422,869.18 | \$2,465,685.04 | \$7,178,201.88 |

(1) Amounts used for reporting on Right of Way returns were \$170,868.60 less than amount reported on franchise fee returns.

BACKGROUND

Previously, Internal Audit conducted an audit of Waste Management for the period of June 2009 to December 2012. Our audit report dated June 21, 2013 produced no audit assessment. A review of the company's invoices showed that franchise fees were charged and collected throughout the audit period. Waste Management records showed that franchise fees were remitted timely to the City of Miami Beach.

OVERALL OPINION

Waste Management properly and timely obtained an annual business tax receipt, submitted the required certificate of liability insurance and timely submitted their annual Certified Public Accountant (CPA) Statements of Gross Receipts to the City. In addition, they provided the In-Kind Services. It was noted according to their agreement. Waste Management has not fully complied with the City Codes as it relates to reporting requirements for waste contractors. The following items were noted during audit:

- Gross receipts in the amount of \$170,868.60 in for Public Right of Way were under reported. Therefore, Waste Management owes the City \$3,417.37 in franchise fees (excluding interest & penalty)
- Gross receipts totaling \$9,158.89 for Roll-offs and Sustainable initiatives were under reported. Hence, Waste Management owes the City \$1,648.60 plus \$137.38 in related fee. (excluding interest & penalty)

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 – Under reported 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. Waste Management failed to report \$170,868.60 in Public-Right-of-Way for the months of May 2013 and June 2013. Additionally, Waste Management under reported Roll-off gross receipts totaling \$9,158.89 during various months from October 2014 to August 2015. This resulted in the underreporting of revenues in the same amount for Sustainable Initiatives fees. The following table summarizes gross receipts from Waste Management:

| | 2013 | 2014 | 2015 | TOTAL |
|---------------------|--------------|------------|------------|--------------|
| Unreported Revenues | | | | |
| Public Right of Way | \$170,868.60 | \$0.00 | \$0.00 | \$170,868.60 |
| Roll-off | 0.00 | 6,932.90 | 2,225.99 | 9,158.89 |
| Sustainability (1) | 0.00 | 6,932.90 | 2,225.99 | 9,158.89 |
| Total (Net) | \$170,868.60 | \$6,932.90 | \$2,225.99 | \$180,027.49 |

(1) The same underreported revenues were not reported for Sustainability.

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The resulting fees are owed as follows:

| | 2013 | 2014 | 2015 | TOTAL |
|---------------------|------------|------------|----------|------------|
| Franchise fees | | | | |
| Public Right of Way | \$3,417.37 | 0.00 | 0.00 | \$3,417.37 |
| Roll-off | 0.00 | 1,247.92 | 400.68 | 1,648.60 |
| Sustainability | 0.00 | 103.99 | 33.39 | 137.38 |
| Total Fees | \$3,417.37 | \$1,351.91 | \$434.07 | \$5,203.35 |
| Interest | 1,076.57 | 184.30 | 48.44 | 1,309.31 |
| Penalties | 1,708.68 | 675.96 | 208.90 | 2,593.54 |
| Total Due | \$6,202.62 | \$2,212.17 | \$691.41 | 9,106.20 |

Recommendation(s)

Waste Management must comply with the designated sections of the City codes by paying the total amount of \$9,106.20 for franchise fees, interest and penalties.

EXIT CONFERENCE

Audit findings were e-mailed on June 22, 2016 to Waste Management. We received an email stating that a check will be mailed for the audit assessment. Waste Management paid \$9,106.20 at the end of the audit.

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
Don Zimmerman, (Financial Analyst for Waste Management)