



**Joseph M. Centorino**, Inspector General

TO: Honorable Mayor and Members of the City Commission  
FROM: Joseph M. Centorino, Inspector General

DATE: September 7, 2023  
AUDIT: Lopefra Corp. Permit Fee Revenues Audit  
OIG No. 22-08  
PERIOD: January 1, 2017, through May 31, 2021

This report stems from an audit performed of the permit fees charged, collected, and remitted by Lopefra Corp. to the City during the January 1, 2017 through May 31, 2021 audit period. The City of Miami Beach Office of the Inspector General (OIG) Sanitation Tax Auditor examined the contractor's compliance with selected provisions in the City Code, including obtaining annual business tax receipts (BTRs), filing required reports, and maintaining sufficient insurance coverage. The OIG also reviewed the performance of City staff responsible for monitoring Lopefra Corp. and processing all payments received from the contractor.

## **INTRODUCTION**

A roll-off is defined as a container with a minimum capacity of ten cubic yards designed to be transported by a motorized vehicle. Contractors use these containers to collect and dispose of construction and demolition debris and/or large quantities of trash and/or bulky waste, but not garbage or commercial refuse. Bulky waste represents large items of household refuse, such as appliances, furniture, accumulations from major tree cutbacks, large crates, and like articles, while commercial refuse consists of all solid waste produced by commercial establishments.

The City licensing and permitting system, EnerGov, reported 25 contractors obtained their 2022/23 fiscal year BTRs authorizing the performance of roll-off related services on Miami Beach as of June 6, 2023, and three other related contractors BTRs were in "pending" status. "Pending" status means that the BTR is not yet valid or active and missing needed documentation and/or payment.

The number of contractors performing roll-off related services on Miami Beach frequently changes upward as new contractors abide by the City's guidelines and obtain BTRs, and is partially offset when contractors merge or stop conducting business in Miami Beach and do not renew their BTRs. More specifically, the number of active licensed contractors performing roll-off related services in Miami Beach has more than doubled since the 2019/20 fiscal year (25 compared to 11), due to the collaborative efforts of OIG, Code Compliance, and Finance Department staff.

Contractors collecting construction and demolition debris in Miami Beach are required to follow the terms outlined in the City Code, which include the monthly remittance of permit fees equal to

the City Commission approved rate (18% from the beginning of the audit period through October 5, 2019 and 20% for the remainder of the audit period) multiplied by the total gross receipts for each contractor's City operations. City Code Section 90-221 defines gross receipts as the entire amount of fees collected by the contractor (whether wholly or partially collected) for solid waste collection and disposal within the City, excluding any taxes, and gross receipts from servicing roll-off and portable containers.

City Code Section 90-278(3) states, "Each contractor shall provide the City Manager with a current list of the names and addresses of each account upon its initial application, and upon any application for renewal, of its permit, the frequency of service, and the permit number and capacity of each roll-off container or dumpster as per account and the address serviced by each roll-off container or dumpster. No property owner may share an account with another property owner." This list of accounts is typically furnished concurrently with the monthly report to the Finance Department. It is an essential document to verify the accuracy of the contractor's filings during the audit process.

City Code Section 90-278(4) requires the submittal of monthly reports, accompanied by payment of any owed fees, to the City's Finance Department by all authorized contractors at the end of the month after the month in which the gross receipts were generated. For example, the monthly report and any associated permit fees owed for February 2023 are due by March 31, 2023. Any unpaid fees that are not timely received are subject to penalties of 10% per month up to a maximum of 50%, plus interest of 1% per month from the date the permit fee first became delinquent until paid.

When the contractor has annual gross receipts reported to the City of more than \$200,000.00, the contractor is required to deliver to the City Finance Department a statement of annual gross receipts generated from accounts within the City for the preceding fiscal year, certified by an independent Certified Public Accountant. These certified statements of annual gross receipts, if due, are to be furnished within sixty days following the close of the contractor's fiscal year pursuant to City Code Section 90-278(4).

Lastly, City Code Section 90-196 details the required insurance coverage to be maintained by qualified licensed contractors, and Section 90-193 addresses the need to obtain permits for all accounts serviced in the City.

## **OVERALL OPINION**

Due to other commitments and the volume of records requested, Lopefra Corp. requested and was granted several time extensions by the OIG during the audit process. In addition, this audit was delayed pending the receipt of legal opinions from the Office of the City Attorney related to the taxability of construction and demolition debris removal and the usage of grapple service and/or dump trucks. Multiple meetings were held to discuss identified inconsistencies and ambiguities in the City Code and to reach a consensus as to the optimal resolution. Upon the conclusion of this process and discussion with the Office of the City Attorney and City Administration in April 2023, the audit was concluded. The following shortcomings, separated by the deficient party(ies), were identified during the audit process:

- A. Findings pertaining solely to Lopefra Corp.
  - 1. Lopefra Corp. did not report gross receipts totaling \$184.50 to the City during the audit period (excluding April 2020), which resulted in unpaid permit fees due of \$66.72 (including penalties and interest). In addition, associated audit costs may

- also be due pending further guidance from the Office of the City Attorney.
2. Lopefra Corp. did not submit its 2017, 2018, 2019, 2020, and 2021 annual statements of gross receipts certified by an independent Certified Public Accountant pursuant to City Code Section 90-278(4).
  3. Lopefra Corp. records provided to the OIG indicate the performance of roll-off services at a Miami Beach location during the audit period without obtaining the required permit from the Sanitation Division, contrary to City Code and without a Notice of Violation (NOV) being issued.
- B. Findings pertaining solely to the City
4. Lopefra Corp. was assigned thirteen different contact numbers in the EnerGov system thereby complicating the search process to determine whether any outstanding balances exist.
  5. Three customer number accounts were issued to Lopefra Corp. in the Munis system.
- C. Findings pertaining to both Lopefra Corp. and the City
6. Lopefra Corp.'s April 2020 Roll-off Fee Return form and corresponding check totaling \$5,693.80 in fees due to the City were intercepted by a third party and fraudulently cashed. As contractors were not required to file monthly returns to the City during the audit period when no monies were due, the missing submittal went undetected.
  7. Lopefra Corp. did not timely remit its monthly permit fees due, but the contractor was not charged \$3,860.01 in associated penalties and interest pursuant to City Code.
  8. Lopefra Corp.'s lists of accounts were not timely submitted to the City pursuant to City Code Section 90-278(3), and no evidence was provided by City staff indicating that any were requested.

## PURPOSE

The purpose of this audit was to determine whether tested contractor filings were complete and accurate; whether corresponding remittances were correctly calculated using the City Commission approved permit fee rate; whether required filings and monies were timely received and correctly recorded by the City Finance Department; and whether the contractor was compliant with other designated City Code sections.

## SCOPE

1. Determine whether the contractor maintained sufficient records to verify whether its tested permit fee billings were correct; and whether its corresponding Miami Beach gross receipts were correctly computed based on the monthly fees submitted to the City.
2. Determine whether the contractor timely submitted its tested monthly reports of gross receipts and remitted full payment of fees due to the City. If not, determine whether the appropriate penalties and interest charges were assessed pursuant to City Code Section 90-278(6)(a-c).
3. Determine whether the contractor timely obtained its required annual BTRs during the audit period.
4. Determine whether the contractor complied with reporting requirements listed in City Code

- Section 90-278.
5. Determine whether the contractor maintained the required insurance coverage pursuant to City Code Section 90-196.
  6. Determine whether tested monthly permit fee payments remitted were accurately recorded in the City Financial System.

## **FINDINGS AND RESULTS/RECOMMENDATIONS**

The findings below are separated by those pertaining solely to the contractor, those pertaining solely to the City, and those pertaining to both the contractor and the City.

### **A. Findings Pertaining Solely to Lopefra Corp.**

#### **1. *Unreported Permit Fees Totaling \$66.72 (Including Penalties and Interest) Are Due To The City.***

City Code Section 90-221 defines gross receipts as "the entire amount of the fees collected by the contractor (whether wholly or partially collected) for solid waste collection and disposal within the city and including, without limitation, but excluding any taxes, and gross receipts from servicing roll-off and portable containers." City Code Section 278(4) states, "Each contractor shall deliver to the city 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 monthly report shall include the customer names, service addresses, account numbers, and the actual amount collected from each customer. Payments of any fees required in this section shall be made monthly to the finance department, on or before the last day of each month, for gross receipts of the previous month."

The OIG Sanitation Tax Auditor examined all contractor furnished documentation to determine the amount of monthly gross receipts occurring within the City during the January 1, 2017, through May 31, 2021, audit period, which was then compared to its monthly filings. Initial testing identified numerous unreported transactions classified as construction and demolition debris disposal, clean concrete, clean fill hauling, concrete fill, and excess tonnage. After several months waiting for additional requested records in which few were provided, the contractor was informed by email that the audit would be concluded on May 18, 2022, with the documentation furnished to the OIG. Despite being given repeated time extensions and informed of the designated deadline, no other documentation was received from the contractor, so the corresponding draft audit report was concluded based on the best information available and disbursed to all affected parties.

As the thirty working days granted to auditees to submit a written explanation or rebuttal of the findings pursuant to City Code Section 2-256(h) was expiring, the contractor requested a meeting to discuss the contents of the report. The meeting was held on June 30, 2022, and included the following participants, in addition to OIG staff: Michael Band, Esq; Steven Rothstein, Deputy City Attorney; Rafael E. Andrade, Esq.; Rosemary Hartigan, Vice-President, Lopefra Corp; and Carlos Lopez, Director, Lopefra Corp.

The contractor and its attorneys asserted that most of the unreported transactions were related to the removal of material with a dump truck, which they contended was not subject to permit fees as a roll-off container was not used. However, the OIG Sanitation Tax

Auditor explained that in order to load the construction and demolition debris into dump trucks would require “the use of a claw-like device such as, but not limited to, bobcats, self-loaders, loaders, and backhoes, to pick up construction and demolition debris” which the City Code, according to the Office of the City Attorney, is a “grapple service” subject to the permit fee.

The OIG Sanitation Tax Auditor consults regularly with the Office of the City Attorney when any question arises concerning legal interpretation of City Code requirements, both verbally and in writing. Dozens of legal questions have been posed by the OIG Sanitation Tax Auditor and responded to by the Office of the City Attorney via email as well as through Microsoft TEAMS, telephone, and in-person meetings. The Inspector General and Audit Supervisors have been included in some of these consultations.

In addition, a subpoena has been issued in connection with obtaining necessary information to complete the audit. All OIG subpoenas are submitted in advance to the Office of the City Attorney for approval.

In regard to the question of whether sanitation tax provisions would apply to the use of “grapple service” by a contractor to load construction debris onto a truck, the Office of the City Attorney has advised the OIG that such activity is covered under the City Code. The City Code provisions cited have included the following:

Sec. 90-2 Definitions: “*Grapple Service* means the use of a claw-like device such as, but not limited to, bobcats, self-loaders, loaders, and backhoes, to pick up construction and demolition debris; large quantities of trash e.g. rubbish); and bulky waste; but not garbage or commercial refuse, and place it into a **truck for disposal**.” (Emphasis added.)

Sec. 90-192 Business tax receipt required, Subsection (b): “Business tax receipts for private waste contractors shall be classified as follows: (1) Franchise waste contractors; (2) Rolloff and grapple service contractors; (3) Recycling contractors; (4) Hazardous waste contractors; and (5) Biohazardous waste contractors.”

Sec. 90-280 Use restrictions: “Rolloff, portable containers, or dumpsters are to be used for the removal of construction and demolition debris or for the removal of large quantities of bulky waste. **Construction and demolition debris, and bulky waste, is never to be stored directly on the ground, as rolloff and portable containers must be used at all times.** Rolloff and portable containers shall not be used for the removal of garbage or commercial waste.” (Emphasis added.)

Section 90-2 defines *Portable Container* as “a dumpster, rollaway (not defined in Section 90), or similar container designed for mechanized collection.” Therefore, a contractor’s use of dump trucks to remove construction and demolition debris stored on the ground is contrary to Section 90-280 and may also fall under the broad definition of a portable container based on the legal reviews by the Office of the City Attorney.

Email communications related to grapple service issues between the Office of the City Attorney and the OIG Sanitation Tax Auditor in connection with this or other audits, have included the following answers to questions posed by the auditor:

Question: “In regard to containers less than 10 cubic yards – is a franchise fee owed? And please identify the code section.”

Answer: "Yes; if a grapple service is used then there is no size restriction. The size restriction is limited to a rolloff as defined in section 90-2 of the City Code (*Rolloff* means a container with a minimum capacity of ten cubic yards designed to be transported by a motorized vehicle). However, *grapple service* as defined in section 90-2 would apply when construction and demolition debris; large quantities of trash (e.g. rubbish); and bulky waste; but not garbage or commercial refuse; are placed into a **truck** for removal." (Emphasis supplied in Email.) [Email dated 12/12/2021]

Question: "Is the use of a bobcat (or similar loading equipment) to load a dumpster truck considered to be a grapple service?"

Answer: "Yes, see section 90-2. Grapple service means the use of a claw-like device such as, but not limited to bobcats, self-loaders, and backhoes, to pick up construction and demolition debris; large quantities of trash (e.g. rubbish); and bulky waste; but not garbage or commercial refuse, and place it into a truck for disposal." [Email dated 2/27/2022]

Question: "Could it still be considered a grapple service if the loading of the dumpster truck is performed by gravity from the 3<sup>rd</sup> floor or above?"

Answer: "Under the current definition of grapple service, no. If the debris is going directly into a roll-off container, then a grapple service would not be required." [Email dated 2/27/2022]

Question: "Could it still be considered a grapple service if the loading of the dumpster truck (or smaller truck) is performed manually?"

Answer: "Under the current definition of grapple service, no. If the debris going directly into a roll-off container, then a grapple service would not be required." [Email dated 2/27/2022]

Question: "If after the revision is conducted and only assessments related to the violations (no roll-off permit and failure to provide the recycling report) are sustained. Can we still charge the audit cost as per City Code Section 90-278(6)?"

Answer: "Yes. In connection with 90-278(6), failure to pay permit fee, if the contractor fails to [sic] full permit fee as set forth in subsections (1) and (2) of the section, the contractor shall pay any and all of the city's expenses for collection of such fees. In short, the permit fee is required for roll-offs and grapples for both on-street and off-street permits. The focus is on the use of the roll-offs and grapples; not whether or not the recycling exemption might apply. Additionally, Section 276(2) requires payment of the annual permit fee in the amount of \$1,000 to cover the city's annual administrative and processing cost. The requirement for a BTR is codified in 90-276(1) and proof of insurance is codified in 90-276(3)." [Email dated 10/14/2022]

These email exchanges indicating the applicability of the City Code to the use of grapple service, have been supplemented by verbal discussions between the Office of the City Attorney and the OIG, which have confirmed that the intent of the ordinance is to cover the use of grapple service used to load dump trucks. It has been explained to the OIG that Chapter 90 of the City Code was amended through the adoption of Ordinance No. 2008-3616, effective September 27, 2008, to include grapple service among other revisions in response to a particular situation that developed with a contractor (not Lopefra Corp.) at that time.

As a result of the aforementioned June 30, 2022 meeting, additional documentation was requested from Lopefra Corp. to validate the accuracy of these assertions and to determine the taxability of each questioned transaction. Based on further guidance from the Office of the City Attorney, if the records were to show that either a roll-off container or grapple service was utilized in the removal of construction and demolition debris, then the transaction would be considered taxable.

The contractor provided documentation on July 8, 2022, related to eight of the 243 questioned transactions. Some additional records were received on September 1, 2022, and November 29, 2022, containing more specific details of transactions. Examination of all these records by the OIG Sanitation Tax Auditor concluded the following:

- four transactions were included in the contractor's prior filed Roll-Off Fee Return forms filed with the Finance Department, and are not subject to the permit fee
- six transactions occurred outside the boundaries of Miami Beach and are not subject to the permit fee
- two transactions were subject to the permit fee, as agreed by the contractor

After subsequent communication with the contractor's attorney and the issuance of a subpoena, the OIG finally received additional documentation related to the remaining 231 (243 – 12) questioned transactions totaling \$124,512.00. It was then determined that these transactions were related to the removal of construction and demolition debris, clean fill, and concrete with Lopefra Corp. owned dump trucks, and did not involve the usage of roll-off containers to remove and dispose of the corresponding materials. The records did not disclose, however, whether a grapple service was used. Further investigation would have been necessary to make such a determination, which, as explained below, was deemed unnecessary by the OIG at that time, due to questions related to the enforceability of the latter provision, as explained below.

Multiple discussions were held over several months with staff from the City Administration, OIG, Office of the City Attorney, Public Works Department, and the Code Compliance Department to determine whether the the permit fee provisions in the City Code were applicable to the referenced dump truck transactions which likely involved the use of grapple service. The City Code emphasizes the permit fee based on the equipment used and not on the nature of the transaction (removal of construction and demolition debris), which has resulted in inconsistencies in some sections of City Code Chapter 90, causing some uncertainty concerning the taxability of transactions in which grapple service is used to fill dump trucks.

A consensus was finally reached in April 2023 for referral to the City Commission of possible revisions of the City Code to correct identified ambiguities and inconsistencies, with the goal of providing a clear baseline that would give notice to all waste haulers of any revised City Code requirements, leading to a more level competitive playing field. As a result, it was concluded that Lopefra Corp.'s 231 transactions related to the usage of dump trucks would not be considered taxable at this time, as any City Code amendments approved by the City Commission would likely be prospectively enforced.

In sum, the OIG Sanitation Tax Auditor concluded that only two of Lopefra Corp.'s questioned Miami Beach transactions involved the use of roll-off containers and permit fees were due. After making the corresponding adjustments, it was determined that \$66.72

in permit fees is due to the City (including penalties and interest), as shown in the following table.

<i>Period</i>	<i>Unreported Gross Receipts</i>	<i>Permit Fee Rate *</i>	<i>Permit Fees Due</i>	<i>Penalties **</i>	<i>Interest **</i>	<i>Total Due</i>
<i>Jan. 2018 – Dec. 2018</i>	\$55.50	18%	\$9.99	\$5.00	\$5.29	\$20.28
<i>Jan. 2019 – Sept. 2019</i>	\$129.00	18%	\$23.22	\$11.61	\$11.61	\$46.44
<b>Total</b>	<b>\$184.50</b>		<b>\$33.21</b>	<b>\$16.61</b>	<b>\$16.90</b>	<b>\$66.72</b>

\* City Commission approved permit fees equaled 18% from January 1, 2017, through October 5, 2019, and 20% from October 6, 2019, through the end of the audit period, May 31, 2021.

\*\* Penalties and interest were waived and not charged for late payments received during the period of March 1, 2020, through November 30, 2020, pursuant to City Resolution Nos. 2020-31237 and 2020-31390.

In addition, City Code Section 90-278 (6) states, “Failure to pay permit fee; penalties for late payment. If the contractor fails to timely pay the full permit fee as set forth in subsections (1) and (2) of this section, the contractor shall pay any and all of the city's expenses for collection of such fees, including, but not limited to, court costs, audit costs and reasonable attorney fees.” Audit costs related to the completion of this audit may be due to the City pending further guidance received from the Office of the City Attorney. At the conclusion of this process, the Finance Department will be notified of the final determination of audit costs for billing purposes.

Illustrations:

Given the April 2023 consensus reached regarding the usage of roll-off containers, dump trucks, and grapple service, the OIG decided to use illustrations to help put the issues into context. Figure 1 below compares two similar, but slightly different ways, to remove construction and demolition debris (C&D) from the City and its corresponding impact.

Option 1 involves C&D being loaded directly into a roll-off container, either by manual labor and/or grapple service, where it is stored until the entire container is placed on the back of a truck, and taken to a disposal facility. All parties agree that in this scenario, the contractor is required to obtain a roll-off BTR from the City Finance Department (City Code Section 90-276), a permit issued by the City Sanitation Division (Section 90-277), and remit the applicable permit fees due to the City Finance Department (Section 90-278). Roll-off containers are used primarily by homeowners and small business owners for small and some medium-sized demolition projects.

Option 2 involves the usage of grapple service and/or manual labor to load C&D directly into dump trucks to be transported to a disposal facility. In this scenario, a roll-off container is not used to store the debris before it is taken to a disposal facility. Most large and some medium sized demolition projects typically use dump trucks to remove the corresponding debris.

Despite many similarities to the first option, the contractor using dump trucks does not obtain a BTR, or a permit, or remit any permit fees to the City due to the lack of clarity in the City Code to use grapple service to fill a dump truck. Storage of construction and demolition debris on the ground for removal by grapple service or manually would violate Section 90-280. Consequently, any contractors that do not use roll-off containers, as



defined in Section 90-2, to collect and store debris have a significant competitive advantage over those contractors that do and its customers may be charged less than in Option 1 as a result.

Figure 1. Two Ways to Remove Construction and Demolition Debris

Option 1

BTR & Permit Required  
Roll-Off Permit Fees Due



Roll-off container being loaded onto a truck to be transported to a disposal site



Grapple Service



Option 2

No BTR or Permit Obtained  
No Roll-Off Permit Fees Collected



Dump truck being used to load C&D without the use of a roll-off container being transported to a disposal site

Results/Recommendations:

The City Chief Financial Officer should instruct staff to invoice Lopefra Corp. \$66.72 for unreported permit fees, including penalties and interest, stemming from two unreported taxable Miami Beach transactions. In addition, the Finance Department may also invoice the contractor for audit-related costs pursuant to City Code Section 90-278(6) pending further guidance received from the Office of the City Attorney. Once received, the contractor should timely remit full payment to avoid additional penalties under the City Code. Lopefra Corp. should consistently and accurately file its future monthly Roll-Off Permit Fee Return forms to the City and timely submit all requested documents to OIG audit staff.

It is recommended that Miami Beach update Chapter 90 of its City Code to remove any identified ambiguities or inconsistencies regarding the taxability of Miami Beach transactions involving removal of construction and demolition debris (e.g. Sections 90-2, 90-192, and 90-276 through 90-280). Among the issues that should also be considered is the adoption of a clearer definition of gross receipts similar to that adopted by the City of Miami, which includes the usage of dump trucks in its definition of gross receipts applicable to the imposition of its sanitation tax provisions.

The OIG believes that permit fees should be based on the nature of the transaction (removal of construction and demolition debris), and not be dictated by the use of specific equipment, as advances in technology may prospectively allow contractors to circumvent the City Code. The revision of the City Code should help eliminate confusion concerning the taxability of grapple and dump truck transactions and clearly define when the City

Code Compliance Department should issue NOVs to detected contractors non-compliant with City permitting regulations.

In the event that the City makes more explicit the intent behind current City Code provisions to include the use of grapple service in loading construction debris onto dump trucks, the increased revenue to the City, particularly from major demolitions, could add substantial funds to Sanitation revenues and/or be applied to a reduction in related fees.

Finance Department Response:

The Finance Department has invoiced (# 44507) Lopefra Corp for \$66.72 for unreported permit fees, including penalties and interest.

**2. *Lopefra Corp. Did Not File Its 2017, 2018, 2019, 2020, And 2021 Annual Statements Of Gross Receipts Certified By An Independent Certified Public Accountant Pursuant To City Code Section 90-278(4).***

City Code Section 90-278(4) states, "...Contractors having annual gross receipts reported to the city over \$200,000.00 shall, on or before 60 days following the close of their fiscal year, deliver to the finance department a statement of annual gross receipts (generated from the city) certified by an independent certified public accountant, reflecting gross receipts within the city for the preceding fiscal year." Lopefra Corp. exceeded the \$200,000.00 annual gross receipts threshold for the 2017, 2018, 2019, 2020, and 2021 calendar years (see the table below), but the required statements of annual gross receipts were not delivered to the Finance Department, contrary to City Code Section 90-278(4). No evidence was presented by City staff to the OIG indicating that the contractor was notified of this deficiency. The furnishing of these required statements, verified by an independent certified public accountant, would allow City staff to more easily determine the accuracy of a contractor's reporting and lessen the City's reliance on audits performed by the OIG Sanitation Tax Auditor.

<i>Calendar Year</i>	<i>Gross Receipts</i>	<i>Statement of Annual Gross Receipts Date Filed</i>
<i>2017</i>	\$265,982.60	Not Submitted
<i>2018</i>	\$373,320.20	Not Submitted
<i>2019</i>	\$396,884.30	Not Submitted
<i>2020</i>	\$312,483.06	Not Submitted
<i>2021</i>	\$295,473.52	Not Submitted
<b><i>Total</i></b>	<b>\$ 1,644,143.68</b>	

Results/Recommendation(s):

Lopefra Corp. should comply with the requirements of City Code Section 90-278(4) by timely delivering its annual statement of gross receipts certified by an independent Certified Public Accountant to the Finance Department for each year in which it exceeds the designated threshold. Also, the City should maintain documented evidence indicating that it has promptly notified a contractor of its noncompliance with City Code Section 90-278(4).

Furthermore, Finance Department staff should reconcile the reported revenues in the annual statement of gross receipts with the total amount of the Roll-Off Permit Fee Return forms filed by the contractor. Any unsubstantiated differences should result in the issuance of an invoice for the amount of the deficiency, or a credit for any confirmed overpayments.

The OIG also recommends revising the City Code to include a provision allowing the levying of penalties, interest, and/or other actions against related non-compliant contractors that do not timely file the required annual audited statements of gross receipts. This would lead to greater compliance with this requirement and reduce the City's reliance on audits for oversight of this process.

The affected City departments should examine their related internal processes and procedures and implement internal controls aimed at timely detecting unreported permit fee revenues, including the implementation of electronic filing (or electronic records submission). This could produce greater efficiencies and significant City revenues, particularly in light of the increased number of contractors obtaining BTRs due to OIG audits and investigations.

Finance Department Response:

The Finance Department already has internal processes and procedures whereby active vendors are monitored to ensure they are submitting monthly reports with the Finance Department. These reports provide the total gross receipts (if any) for each month. As part of those control procedures, the Finance Department notifies vendors regarding any issues of noncompliance via phone call and mail notifications.

The City's Finance Department will reconcile the reported revenues in the annual statement of gross receipts with the total amount of the monthly Roll-Off Fee Return forms once Lopefra Corp complies with the requirements to file the annual statement of gross receipts.

Additionally, the Finance Department has already met with the Information Technology department regarding the implementation of electronic filing. A project plan has been established and is ongoing to accomplish this goal.

**3. *Lopefra Corp. Records Provided To The OIG Indicate The Performance Of Roll-Off Services At A Miami Beach Location During The Audit Period Without Obtaining The Required Permit From The Sanitation Division, Contrary To City Code And Without A Notice Of Violation Being Issued.***

City Code Section 90-193 states, "The city manager shall require, and will issue, a permit for each garbage facility, recycling, hazardous and biohazardous waste, rolloff and portable container, for all solid waste accounts in the city serviced by a private waste contractor. The permit for solid waste collection and disposal shall be issued by the city manager after the contractor has complied with all requirements for obtaining a business tax receipt; any and all other requirements prescribed by this chapter; and has been cleared by the city's finance department. Rolloffs, portable containers and containers for recycling or hazardous and biohazardous wastes shall be included, except that all recycling containers situated in a single location on a property shall require only one permit."

Permits are issued to contractors by the Sanitation Division upon satisfying all the designated requirements. If contractors perform roll-off services without timely obtaining the required permit, then each address is subject to the issuance of a NOV by the Code Compliance Department.

Upon reviewing all the documentation provided by the contractor as of the May 18, 2022, issuance of the initial draft audit report, the OIG Sanitation Tax Auditor determined that

roll-off services were performed at 5775 Collins Avenue without obtaining the required permit. As the Code Compliance Department is primarily complaint-driven, no evidence was found indicating that it was notified of this unpermitted job site. The Office of the City Attorney had previously opined in a separate May 25, 2022, email to the OIG, that if a contractor performed roll-off services without a BTR in a specific fiscal year, a related NOV could be issued retroactively by the Code Compliance Department.

In addition, the contractor did not respond to multiple requests for additional documentation related to 29 other Miami Beach locations serviced, so the OIG Sanitation Tax Auditor assumed that roll-off containers were similarly used at each location. The Code Compliance Department was notified of these unsubstantiated 29 Miami Beach locations serviced by Lopefra Corp. in the OIG's May 18, 2022, draft report, which it used as support for the issuance of 29 related NOVs. Permits are the main indicator of possible permit fees due and provide significant information about the locations where revenues are being collected.

More specifically, the City Code Compliance Department issued NOV SV2022-18881 for \$100.00 to Lopefra Corp. related to 5775 Collins Avenue, which was paid in full on August 19, 2022. Of the remaining 29 NOVs issued to Lopefra Corp. by the Code Compliance Department, 25 were appealed to the Special Magistrate, pending adjudication.

The other four NOVs were mistakenly issued to the customer and not to Lopefra Corp. and were related to 500 Alton Road, 5774 Pine Tree Drive, 5840 N. Bay Road, and 640 Ocean Drive. Of these, NOV SV2022-18887 issued at 5840 N. Bay Road for \$100.00 was paid by the customer while the remaining three NOVs were re-issued to Lopefra Corp. in April 2023.

Results/Recommendations:

Lopefra Corp. finally provided documentation to the OIG after multiple requests indicating that the remaining 29 identified Miami Beach locations serviced involved the usage of dump trucks, and not roll-off containers. Although prior legal opinions from the Office of the City Attorney, noted above, have indicated that the use of grapple service to load dump trucks may provide a basis for imposition of the same permitting and sanitation tax requirements for roll-offs, the OIG has decided not to include those issues in the context of this report, and expects those issues to be addressed in future action by the City Commission. While the NOVs on these transactions were issued in good faith by the Code Compliance Department based on a draft audit report, it is recommended that only final audit reports be used as the basis for investigating, issuing violations, or taking other enforcement actions unless other corroborating evidence is available.

Code Compliance Response:

Pursuant to Resolution no. 2023—32654 adopted by the City Commission on June 28, 2023, Code Compliance will not be issuing retroactive violations. Furthermore, going forward Code Compliance will not take action on OIG findings that are in draft form and not in final form. The violations issued pursuant to the first draft report OIG No. 22-08 have been held in abeyance and the contractor's attorney is dealing with the Office of the City Attorney on the matter.

## **Findings Pertaining Solely to the City**

4. ***Multiple Contact Numbers Were Assigned To Lopefra Corp. In The EnerGov System.*** The Tyler Technologies EnerGov system Citizen Self Services (CSS) portal is the web-based interface that customers use to engage with the City. Customers, such as Lopefra Corp., create password-protected contact numbers through the CSS portal containing all relevant information.

Individuals and businesses with email accounts often create numerous contact numbers because there are insufficient internal controls to limit the number of contact numbers in the EnerGov system. Although there may be many reasons why multiple contact numbers were issued to the same individual or corporation, obsolete or outdated numbers are not inactivated. Examples include the following: several individuals interacting separately with the City but working at the same property address; failure of a customer to remember a selected password; and a customer acquiring a new email account. Regardless of the reason, the number of contact numbers has grown substantially over time, significantly complicating the search process and the determination of outstanding balances.

The creation of more than one contact number in the EnerGov system may cause confusion as permits, Code Compliance violations, or outstanding balances may be entered under any of the contact numbers. Consequently, the reviewer must be aware of all contact numbers and examine them in totality to accurately represent the individual or organization's status.

The OIG Sanitation Tax Auditor's examination of the EnerGov system determined that Lopefra Corp. was issued thirteen contact numbers, but only the eight contact numbers listed below, were assigned any of its 257 permits issued during the period of October 21, 2016 through May 31, 2021, as shown in the following table:

<i>Contact Numbers</i>	<i># Permits Issued</i>
408506	175
C000013447	48
C000014549	13
C000015237	2
C000024521	1
C000030800	2
C000034966	2
ID-000082371	14
<b>Total</b>	<b>257</b>

Of the thirteen pertinent contact numbers in the EnerGov system, contact numbers 408506 and C000013447 included most (87%) of the issued roll-off permits. Furthermore, only 408506 and ID-000082371 were linked to Lopefra Corp.'s issued annual BTR.

### **Results/Recommendation(s):**

Only one active contact number is recommended to be assigned to each address, whenever possible, to facilitate effective and accurate searches. It is also recommended that the City Information Technology Department begin a database debugging by deleting

these multiple contact numbers and transferring any corresponding transactions to a contact number under the control of the property or business owner. The OIG understands that this is a time-consuming and labor-intensive task but believes that this issue should be addressed. Finally, Code Compliance Department information related to violations should include a contact number linked to the customer's BTR and any relevant permits.

Information Technology (I.T.) Department Response:

On the EnerGov contacts item, I.T. would need to engage Tyler to delete or deactivate users. This is something that should only be done programmatically to contacts that don't have any records linked to it. We are assuming that some of them probably transferred from Permit Plus during the implementation of EnerGov. However, for the rest of the contacts that have records linked to them, I.T. will need to work with departmental SME's to grant access to the "Merge Account" tool inside of EnerGov. Departments can then make changes as they feel are appropriate to meet the OIG's findings. In the past, we use this strategy for cleanup with the Building Department. Our experience shows that departmental involvement would be the most successful because while some contacts might be easy to identify as the same business, others might not be related even after having the same name. Our support team has seen instances when contacts might have the same name however, they are related to different divisions of the same company. A programmatic purging of contacts may lead to affecting contacts that are not related. How the City handles this is critical since any merging of contacts cannot be undone.

**5. *Three Customer Number Accounts Were Issued To Lopefra Corp. In The Munis System.***

Examination of the Munis system determined that Lopefra Corp. was issued the following three customer numbers: 9705, 27784, and 9032. The Munis system is the City enterprise resource planning system. When questioned by the OIG Sanitation Tax Auditor, a Financial Analyst III responded in an email that customer number 9705 is the main account for roll-offs, while the other two, 27784 and 9032, were pre-Munis conversion accounts and were never to be used. As a result, customer numbers 27784 and 9032 were subsequently inactivated.

Results/Recommendation(s):

It is recommended that only one customer number be assigned to each contractor to facilitate effective searches and to better ensure that complete and accurate financial data is obtained.

I.T. Department Response:

On Munis item number 5, this issue was already resolved by Finance by disabling the old or additional customer numbers. The OIG's discovery findings refer to this action here: "email that customer number 9705 is the main account for roll-offs, while the other two, 27784 and 9032, were pre-Munis conversion accounts and were never to be used, so they were inactivated.

Finance Department Response:

As stated, Lopefra Corp had three customer number accounts (#27784, #9705, and #9032). The Finance Department reviewed the customer numbers and related transactions and has taken the following actions:

1. Customer # 27784 (Lopetra Corp) had only one transaction for a bill of \$1,000 from January, 2022. This bill has been paid and customer number had already been deactivated. The City opened a ticket with Munis to determine if the activity (the one transaction in January 2022) from this customer number could be moved over to customer # 9705 (the active account). However, to transfer customer data from one account to another would eliminate appropriate audit trails – so no further action will be taken. As the customer number has been deactivated no further transactions should be recorded to this account number.
2. Customer # 9032 had no activity for Lopetra. This customer number has been deleted.
3. Customer # 9705 is the only active customer number for Lopetra Corp-RO (Entity). All transactions except for the one noted above for customer # 27784 are recorded here.

For purposes of Roll Off Customers – the Finance Department will ensure that only one customer number is opened for customers for this particular revenue stream. However, it should be noted that the varied nature of the City's business operations and various revenue streams fosters the decentralization of customer account creation, resulting billings and accounts receivable. Consequently, other departments outside of Finance can create customer numbers for their specific department.

#### **Findings Pertaining to Both Lopetra Corp. and the City**

**6. *Lopetra Corp.'s April 2020 Roll-off Fee Return Form And Associated \$5,693.80 Payment To The City Was Fraudulently Cashed By A Third Party And Went Unnoticed Until Being Discovered During The Audit Process.***

City Code Section 90-221 defines gross receipts as "the entire amount of the fees collected by the contractor (whether wholly or partially collected) for solid waste collection and disposal within the city and including, without limitation, but excluding any taxes, and gross receipts from servicing roll-off and portable containers." The OIG Sanitation Tax Auditor examined all documentation furnished by the contractor to determine the amount of monthly gross receipts occurring within the City during the January 1, 2017, through May 31, 2021, audit period.

In doing so, the OIG Sanitation Tax Auditor initially determined that Lopetra did not submit its April 2020 Roll-Off Fee Return form and the \$5,693.80 in associated permit fees due to the City. When questioned, the contractor researched its records and discovered that check number 93070, dated May 12, 2020, and payable to the City of Miami Beach, was fraudulently cashed by a third party. The cancelled check provided to the OIG clearly indicates that someone manually wrote over the typed wording and amounts on the check. These modifications were apparently not questioned by the contractor's bank, as it was cashed on May 18, 2020.

Contractors were not required by the City Code during the audit period to file monthly Roll-Off Fee Return forms when no monies were due to the City. Consequently, the Finance Department would not have been aware that the missing April 2020 permit fee payment was fraudulently cashed, as it would have most likely assumed that the contractor did not perform any related taxable transactions on Miami Beach during the month.

Once notified by the OIG Sanitation Tax Auditor, the City Finance Department promptly created invoice #36615 on April 22, 2022, for \$5,693.80 related to the April 2020 missing

payment. Upon receipt, Lopefra timely remitted full payment via check #97531 dated April 29, 2022.

Results/Recommendations:  
No further action is necessary.

**7. Lopefra Corp. Did Not Timely Remit Its Monthly Permit Fees Due During The Examined Period, But The Contractor Was Not Charged \$3,860.01 In Associated Penalties And Interest Pursuant To City Code.**

City Code Section 90-278(4) states, "Each contractor shall deliver to the city's 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 monthly report shall include the customer names, service addresses, account numbers, and the actual amount collected from each customer. Payments of any fees required in this section shall be made monthly to the finance department, on or before the last day of each month, for gross receipts of the previous month." In addition, City Code Section 90-278(6)(a-c) provides that late contractor remittances are subject to penalties of ten percent per month with a maximum of fifty percent and interest at the highest legal rate of interest permitted by law from the date which the permit fee first became delinquent until paid.

Although the audit period ended in May 2021, the OIG Sanitation Tax Auditor reviewed all contractor submittals to the City from January 1, 2017, through December 31, 2021. This period includes seven months outside the designated audit period of January 1, 2017, through May 31, 2017, to prompt corrective action.

It was determined that seven of the 59 permit fee payments received by the City during this period (11.86%) were received after the due dates specified in City Code Section 90-278(4). As shown in the table below, the late submitted permit fee payments ranged from a low of one day for December 2018 and January 2021 to a high of twelve days for November 2021.

Month	Due Date	Date Paid	# of Days Late
December 2018	01/31/19	02/01/19	1
January 2019	02/28/19	03/04/19	4
August 2019	09/30/19	10/02/19	2
November 2020	12/31/20	01/06/21	6
January 2021	02/28/21	03/01/21	1
October 2021	11/30/21	12/06/21	6
November 2021	12/31/21	01/12/22	12

Despite the tardiness of these payments, the contractor was not charged any related late charges during the audit period. As a result, the OIG Sanitation Tax Auditor calculated that the contractor owes the City \$3,860.01 in late charges as indicated in the following table.



Month	Amount Paid	Penalties	Interest	Amount Due
December 2018	\$6,461.48	\$646.15	\$2.15	\$648.30
January 2019	\$6,069.87	\$606.99	\$8.09	\$615.08
August 2019	\$6,902.10	\$690.21	\$4.60	\$694.81
November 2020	\$5,014.70	\$501.47	\$10.03	\$511.50
January 2021	\$6,007.10	\$600.71	\$2.00	\$602.71
October 2021	\$4,395.20	\$439.52	\$8.79	\$448.31
November 2021	\$3,262.50	\$326.25	\$13.05	\$339.30
<b>Total</b>		<b>\$3,811.30</b>	<b>\$48.71</b>	<b>\$3,860.01</b>

Results/Recommendation(s):

The City Finance Department should create an invoice for \$3,860.01, charging Lopefra Corp. penalties and interest associated with its late payments during the examined period. The contractor should timely remit its future permit fee payments to the City to avoid having late charges levied. If not received timely, the contractor should be invoiced pursuant to City Code.

Finance Department Response:

The Finance Department has invoiced (# 44509) Lopefra Corp for \$3,860.01, charging Lopefra Corp penalties and interest associated with its late payments during the examined period.

**8. *Lopefra Corp.'s Did Not Timely Submit Its Lists Of Accounts To the City Manager Pursuant To City Code Section 90-278(3) And No Evidence Was Provided From City Staff Indicating That Any Were Requested.***

City Code Section 90-278(3) states, "Each contractor shall provide the city manager with a current list of the names and addresses of each account, upon initial application, and upon any application for renewal, of its permit, the frequency of service, and the permit number and capacity of each roll-off container or dumpster as per account and the address serviced by each roll-off container or dumpster. No property owner may share an account with another property owner."

Lopefra Corp. did not provide the City Manager with its lists of accounts during the audit period, nor was evidence provided indicating that any were requested by the City. Upon request, the contractor provided the lists of accounts to the OIG Sanitation Tax Auditor. These listings are essential in verifying the accuracy of the contractor's filings during the audit process, as its customer data is subsequently reconciled with the supporting documentation provided.

The lists of accounts furnished was used to prepare and mail positive confirmation letters to identified Lopefra Corp. customers, requesting a listing of all Miami Beach transactions with the contractor during the specified period. The OIG Sanitation Tax Auditor's corresponding reconciliation of all returned confirmation letters with the furnished list of accounts did not reveal any material differences.

Results/Recommendation(s):

Lopefra Corp. should prospectively comply with City Code Section 90-278(3) and timely submit its lists of accounts to the City Manager. The OIG recommends that the City Code be revised to establish a due date for the submittal of these lists of accounts and to allow the charging of interest and/or penalties to non-compliant contractors.

Overall Comments: OIG followed Subsection 2-276(h) which states, " ... whenever the Inspector General concludes a report or recommendation which contains findings as to the person or entity being reported on, or who is the subject of the recommendation, the Inspector General shall provide the affected person or entity a copy of the report or recommendation, and such person or entity shall have thirty (30) working days to submit a written explanation or rebuttal of the findings before the report or recommendation is finalized, and such timely submitted written explanation or rebuttal shall be attached to the finalized report or recommendation."

Lopefra Corp.'s Response:

1. (paragraph 3) The issue of the use of dump trucks services as a "roll-off" without statutory authority caused Lopefra needless expense and time. Code Enforcement at the behest of the OIG issued 30 Notices of Violations which caused the client to retain counsel and engage in an unwieldy appellate process.
2. (paragraph 7) The claim that Lopefra did not timely remit monthly permit fees and should be charged \$3,860.01. We observe the following: the client has until the end of the month to submit reports and payments to the city. In their (OIG) graph on page 15 of the opinion, they calculate the # of days late depending on their "date paid" column. We have updated the graph with 2 additional columns (attached here) to include our check number and show the date we made our check that was mailed shortly thereafter. None of the months except October should have been late. These late fees are unjustified and arbitrary since:
  - a. we don't know what the City mail intake procedure is, or
  - b. what the delay time is from when they receive our check to when they deposit it.
  - c. we have the same routine every month, we wait to close out the prior month, prepare our reports, issue check request and pair approved check with report for mailing out. This procedure usually takes until mid-month the next month. This is enough time to reasonably receive it prior to the end of the month.
  - d. with the exception of October 2021 when we made our check 11/30/21 (day it was due), there should be no other late months.

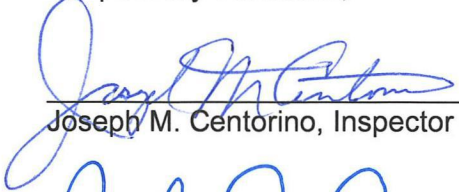
All but one of our checks are all dated around mid-month (see graph for exact dates). We mail checks the same day we make them or the next day. The city can't justify charging a late fee if they don't provide proof of when they receive our reports and payments. No other city that we mail checks and reports to charges us late fees. One other City has an online pay system which produces an immediate receipt, eliminating any ambiguity of when payment was received. If that city charges us a late fee, it is justified.

3. (paragraph 8) . The List of Accounts was not provided because Lopefra doesn't have accounts in the traditional sense. True "accounts" are for companies that have a contract for service on a customer's property with a contracted frequency (weekly or bi monthly service for example). Since we only provide roll-offs, we don't have accounts, we don't have a regular service schedule and we don't have long term contracts. To place a roll-off, customers call or order a container and call us for pickup when it's full. This language can be clarified for future requests. If what the city needs is to mail positive confirmation letters to Lopefra Customer's, they can request a list of permits issued by their own City permitting department since all roll-offs are permitted before we deliver the container. The City permit application designates a spot for Contractor

information if the city wants to use that for their corresponding reconciliation.

4. The audit's finding of permit fees due of \$66.72 (including penalties and interest) is de minimis and does not identify where the error was made.

Respectfully submitted,

  
\_\_\_\_\_  
Joseph M. Centorino, Inspector General

09/07/2023  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Mark D. Coolidge, Chief Auditor

09/07/2023  
\_\_\_\_\_  
Date

cc: Alina T. Hudak, City Manager  
Eric Carpenter, Deputy City Manager  
Joe Gomez, Public Works Department Director  
Bradford Kaine, Sanitation Division Director  
Jason Greene, Chief Financial Officer  
Hernan D. Cardeno, Esq., Code Compliance Department Director  
Frank Quintana, Chief Information Officer  
Rosemary L. Hartigan, Vice-President, Lopefra Corp.  
Rafael Paz, City Attorney  
Rob Rosenwald, Chief Deputy City Attorney  
Steven Rothstein, Deputy City Attorney

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