



TECHNICAL MEMORANDUM

To: Joe Gómez, Director of Public Works, City of Miami Beach
Brad Kaine, Director of Sanitation, City of Miami Beach

From: MSW Consultants

Date: October 17, 2022

Subject: Non-Exclusive Commercial Solid Waste Collection Franchise Strategies to Achieve Price Transparency

Exclusive franchise systems are widely used in Florida and nationally for multiple reasons, including administrative simplicity, enforcement of service standards, and to ensure efficient routing, which can translate into lower prices and decreased vehicle emissions. A particular benefit of exclusive franchise systems, which has been proven effective in countless cities and counties in Florida and nationally, is that a competitive procurement process can be used to establish fair and transparent prices for a wide range of standard and premium services offered to commercial and multi-family customers within the exclusive service territory.

The City of Miami Beach (City) currently offers solid waste collection for commercial and multi-family customers via a non-exclusive franchise system. Commercial and multi-family customers within the City negotiate and contract for solid waste collection directly with either of the two non-exclusive franchisees, Waste Connections or Waste Management. The current non-exclusive commercial solid waste collection franchise contracts expired on September 30, 2022 but have been extended for up to 12 months to allow the City to obtain new services through a competitive procurement process.

As part of the new procurement process, the City has been evaluating opportunities to enhance the system. The City retained MidAtlantic Solid Waste Consultants (MSW Consultants) to assist with the procurement of future commercial solid waste collection services (Project).

As part of the Project, MSW Consultants gathered solid waste system information from other local governments across Florida. This included an initial analysis of systems from 10 cities with exclusive franchise agreements, followed by an expanded survey of some 140 cities to determine the type of solid waste system used (exclusive franchise, non-exclusive, or open market). MSW Consultants was subsequently tasked with researching features from non-exclusive commercial solid waste systems¹ in other states that improve pricing transparency and ensure that market forces are balancing supply and demand to minimize pricing outliers and rate shocks.

Although full pricing transparency and a strong management of the commercial and multi-family solid waste collection system can best be obtained via exclusive franchise, this memorandum summarizes strategies that can be incorporated into a non-exclusive franchise system to better monitor the health of the market.

¹ The memorandum utilizes the term franchise. Note the City of Austin and the City of Denver programs are licenses.

SELECTED BENCHMARK COMMUNITIES

The initial benchmarking research noted above has informed the City's understanding of solid waste systems in Florida. MSW Consultants requested that the haulers attending the August 26th hauler roundtable submit examples of non-exclusive franchises that contained terms associated with pricing transparency but to date no haulers have provided such examples.

As a consequence, at the request of the City, MSW Consultants has reviewed several readily available franchise agreements from jurisdictions in other states, and also drawn from its internal procurement knowledge base, to highlight pricing transparency strategies incorporated into non-exclusive franchise systems nationally. Non-exclusive franchise agreements from the following communities were reviewed specifically:

- ♦ City of Austin, TX
- ♦ City of Denver, CO
- ♦ City of Pasadena, CA
- ♦ Sacramento County, CA
- ♦ City of Los Angeles, CA

Exhibits A through D contains pertinent documentation for the above communities (except for Los Angeles, which transitioned to an exclusive franchise system and is cited later in the memo as an example).

Generally, non-exclusive franchises have built in a number of terms and procedures to improve the management of the franchise, establish accountability for compliance, and streamline reporting requirements. The following sections highlight these noteworthy non-exclusive franchise elements for consideration by Miami Beach.

REPORTING REQUIREMENTS

One of the most basic tools in a non-exclusive franchise is the establishment of reporting requirements. Effective management of the collection system by the local government begins with access to relevant data on tonnage, customers, revenues, service delivery statistics, and potentially other metrics.

Section 11 of the City of Miami Beach's current non-exclusive commercial solid waste collection franchise contract states "Franchisee shall keep accurate set of books....reflecting the Gross Receipts..." However, the City does not require periodic reporting. As shown in Table 1, the California and other benchmark communities not only require periodic reporting, but several have established management systems to compile data.

Table 1 Non-exclusive Hauler Reporting Requirements

	Miami Beach	Austin	Denver	Pasadena	Sacramento County
Periodic Reporting	No	Yes	Yes	Yes	Yes
Reporting Frequency	NA	Quarterly	Quarterly	Monthly	Quarterly
Customer Reporting	No				
Reporting Process	NA	Mail/E-mail	Online Tool	Mail	Online Tool

As shown in this table, in terms of reporting frequency, City of Pasadena requires monthly reporting and Austin, Denver and Sacramento County requires quarterly reporting.

Generally, these communities require haulers to report tonnage and disposal/processing site information, although in the case of Miami Beach the disposal sites will be designated pursuant to the City's interlocal agreement with Miami-Dade County. Some communities require haulers to report customer information, such as the City of Pasadena. The following information is illustrative of standard requirements in each community:

- ◆ Total number of accounts served, identified by source type (commercial, multi-family, etc.)
- ◆ Tonnage by material type identified by source type
- ◆ Disposal and processing site for material collected
- ◆ Vehicle information including compliance with applicable law
- ◆ Company contact information
- ◆ Operation or diversion plans, which can touch on a variety of subjects for which elected officials might wish to monitor

It is also noteworthy that none of these communities require haulers to report rate information. Due to the nature of non-exclusive agreements, which leave intact the ability of the market to set pricing dynamically, no mechanisms exist to impose oversight on actual rates. Additionally, none of the communities reviewed addressed the regulation of brokers or other companies that secure collection services on behalf of multi-family or commercial customers. Once again, non-exclusive franchise systems leave in place the open market dynamics that give rise to brokerage businesses.

On another note, in the opinion of MSW Consultants, the form of reporting can be significant in obtaining and tracking collection system operational and financial data. Historically, the form of required reporting has not been a focus of many franchises, which leaves significant leeway to the franchisee to deliver data in a disorganized format. Even among the communities reviewed for this analysis, the reporting process varied with some communities relying on email or even mail transmittal of data. However, the City of Denver and Sacramento County have taken a more progressive approach, establishing online tools for hauler reporting. Such tools standardize the data compilation across multiple franchisees and automate the process for assembling one or more databases to track franchise performance and franchise fee payments.

If City staff are directed by the City Commission to continue with a non-exclusive system, MSW Consultants recommends the City revise the current non-exclusive commercial solid waste collection franchise contract to require periodic comprehensive reporting. Expanding reporting requirements will provide the City needed information to better administer the system. However, the reporting requirements will not provide the City the ability to regulate or otherwise control commercial and multi-family property rates.

RIGHT TO AUDIT

Although it can be considered invasive or heavy-handed, a contractual right to audit is important to include in non-exclusive franchises. Section 11 of the City's current non-exclusive commercial solid waste collection franchise contract states "The City shall have the right to audit Franchisee's books and records..." which is appropriate to retain at a minimum.

All of the communities researched reserve the right to audit haulers, in some cases to a high level of open book detail. It is important to note the importance of establishing an audit process that protects the proprietary data for each franchisee. Typically, this entails the use of an independent third-party auditor who is required to sign a non-disclosure agreement that prevents sharing of any proprietary data with the city. As an example, Austin City Code includes a business-friendly limit on the right to copy or remove proprietary information during audits such as customer list, price information, etc., which further protects proprietary information being disclosed by the independent auditor

MSW Consultants recommends the City retain the right to audit non-exclusive commercial solid waste collection franchisees. Auditing rights provide the City needed information to confirm accurate remittance of franchise fees. Although an audit could conceivably test the dispersion of charges for similar services and identify highly variable rate structures, like reporting requirements, the right to audit will not provide the City the ability to act directly on such findings to regulate or control rates.

CONCLUSION

While the strategies presented in this memorandum may improve customer service, reporting, and overall hauler performance in a non-exclusive system, they do not address critical issues such as pricing transparency. It is MSW Consultants' professional opinion that the regulatory limitations inherent in non-exclusive systems are among the key reasons our research found that more than 80 percent of the 140 Florida jurisdictions surveyed utilize an exclusive franchise system with either commercial hauler or municipally-provided services. Moreover, the regulatory controls that are made more possible through exclusive franchise systems are what have driven the two largest cities in the U.S. to move from non-exclusive ("open market") to exclusive systems (Los Angeles in 2017 and New York City in 2023).

In light of the obstacles to attaining pricing transparency in a non-exclusive commercial solid waste collection franchise program, the City should integrate the strategies discussed in this memorandum if directed to retain its non-exclusive system approach. However, these strategies will uniformly increase the administrative demands on City staff (in the case of reporting and

franchise fee payment processing), and/or impose additional third-party costs on the City's budget for franchise management (independent audits; development of an online reporting interface).²

EXHIBITS:

- A. Austin, TX – Hauler Application Forms
- B. Denver, CO – Online Hauler Licensing Portal
- C. Pasadena, CA – Franchise Agreement Forms and Documents
- D. Sacramento, CA – Franchise Agreement Forms and Documents

² Under appropriate circumstances, it may be possible to charge the cost of any audit to the franchisee and deflect this cost from the City.