CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION - #14-001

TO: Mario Nunez, Director, Solid Waste

FROM: Victoria Méndez, City Attorney

DATE: August 19, 2014

RE: City of Miami Franchise Fee Exemption for Dade County School Projects

You have requested a legal opinion on the following question:

You have asked whether franchisees are required to pay the 24% of monthly total gross receipt franchise fee, pursuant to City of Miami Code Sec. 22-56, in relation to receipts generated by Miami-Dade County School Board construction.

For the reasons set forth below, your question is answered in the affirmative.

ANALYSIS

The City of Miami Code, in Sec. 22-46, imposes a franchise fee on any person, firm, or corporation who removes or transports any solid waste material over the streets or public rights of way of the City or its real property for hire or salvage. The franchise fee is assessed because the franchisee is removing solid waste material from areas where the City has jurisdiction and using City streets and public right of ways to transport said solid waste material. The source of the waste (customer) is irrelevant.

The 24% franchise fee is charged on monthly total gross receipts. Because the fee is assessed on the total gross receipts, this is not a fee passed on to the customer. In fact, this is a fee that cannot be passed on to the customer, because if it were to be passed through to the customer, it would raise the total gross receipt, leading to an increase in the franchise fee.

The Office of the City Attorney issued an opinion on September 2, 2003 (the "2003 opinion"), which stated that the Miami-Dade County public schools were exempted from franchise fees under FS §1013.371(1)(a). That opinion focused on a 1984 Attorney General Opinion and limited case law to determine that franchise fees would "most likely be declared service availability fees."

The 2003 Opinion relies on two cases. The first of those cases, Hernando County Water and Sewer Dist. v. Hernando County Bd. of Public Instruction, 610 So. 2d 6 (Fla. 5th DCA 1992), sought to determine whether the Hernando County School Board was required by law to pay certain fees to the county water and sewer district as a prerequisite to connect to the system. The court determined that because the water and sewer plant was already operational and there was no

immediate specific requirement for capital improvement expansion or installation and the district was seeking a fee directly from the school board for the privilege of connecting to their system, this was an impact or service availability fee that was exempted under the statute.

The second case the 2003 Opinion relies upon is Loxahatchee River Environmental Control District v. School Board of Palm Beach County, 496 So. 2d 930 (Fla. 4th DCA 1986). As in the Hernando County case, the court determined that an attempt by a taxing district to impose line charges as a precondition to connecting to a sewer system that was already in place was actually an impact or service availability fee from which the school board enjoyed an exemption.

Both of these cases involve the taxing authority directly charging the school board a fee for the right to connect to the water and sewer system. This is not analogous to the Solid Waste Department imposing franchise fees on the franchisee where the franchisee's client is the school board. The franchise fee is not charged to the School Board by the Solid Waste Department, and is not a fee that should be passed through to the School Board by the franchisee.

Further, the franchise fee charged to all of the City's franchisees is calculated according to each franchisee's monthly total gross receipts. The City of Miami Code, in Sec. 22-1, defines gross receipts as "all monies. . . resulting from all transactions and activities, within the city, in the franchisee's regular course of business and trade including garbage, industrial, [and] solid waste." Also, Sec. 22-1 of the Code defines franchisee as "a private commercial solid waste/firm that is granted a nonexclusive franchise by the city, to remove and dispose of solid waste from commercial properties, which is required to pay a percentage of its gross monthly earnings to the city." The definition of each term references the other term without considering the identity of the franchisee's customer because the franchise fee is imposed on the franchisee, not the customer.

CONCLUSION

Because the amount of franchise fees due to the City each month is based exclusively on the total gross receipts of the franchisee, which is the commercial waste firm and not the School Board, the commercial waste firm is not exempt from franchise fees simply because its client is the School Board. The source of the solid waste is irrelevant. The franchise fee is charged on the total gross receipts of the franchisee for the right to remove and transport solid waste within the City of Miami.

PREPARED BY: REVIEWED BY:

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cc: Honorable Mayor and Members of the City Commission
Daniel J. Alfonso, City Manager

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