CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO:	**Ralph Tonseth, Director of Aviation**	**FROM:**	Gerald A. Silva City Auditor
SUBJECT:	**An Audit of Avis Rent A Car**	**DATE:**	June 2, 2004

In accordance with the City Auditor's 2003-04 Audit Workplan, we have audited Avis Rent A Car (Avis). We conducted this audit in accordance with generally accepted government auditing standards and limited our work to those areas specified in this memorandum.

During our review of Avis for the period July 2002 to May 2003, we found that Avis owes the City of San Jose $1,084.50 in understated Customer Transportation Fees plus an additional $163.09 in interest for a total due to the City of $1,247.59. In addition, the Airport should continue to monitor rents due to insure that billing instructions for rent reallocation are received in a timely manner and reflected on the monthly invoices. The Airport should also request that Avis implement controls to track the portion of pre-paid fuel returned in cars when customers purchase the gas service option (GSO). Avis should include this unused portion of gas in its calculation of gross revenues. Furthermore, the Airport should consider renegotiating the terms of its agreement with Avis to eliminate several exclusions from future gross revenue calculations with a countervailing concession fee percentage reduction.

Customer Transportation Fee

In accordance with the On-Airport Rental-Car Amended & Restated Operations Agreement and Lease between the City of San Jose and Avis Rent A Car Systems, Inc. (agreement), and San Jose Municipal Code section 25.08.630, Avis is required to collect, and pay to the City of San Jose (City), a Customer Transportation Fee (CTF), or busing fee, on each customer contract where the transaction derives from passenger activity at the airport. The City established CTF is set at $5.00 per rental contract. We reviewed an 11-month period from July 2002 to May 2003. Based on our review, we found that Avis underreported the number of completed rental contracts by an average of 16 contracts per month, resulting in an underpayment to the City of $1,084.50 for the audit period. Furthermore, the agreement calls for Avis to pay interest on any late payment at the maximum rate allowed by law. The maximum interest rate currently allowed by law is an annual rate of 10 percent. At such a rate, Avis would owe the City an additional $163.09 in interest through April 1, 2004 on the understated CTF for a total due to the City of $1,247.59. Furthermore, the terms of the agreement allow the City to audit for a period of four years. Should our audit period be representative of the previous three years, Avis would owe the City about $3,400 in understated CTF plus interest.

In accordance with the terms of the agreement, "in the event that an audit of Tenant's books, ledgers or records, which is conducted in accordance with generally accepted auditing standards determines that Tenant has … understated the Busing Fee then due and payable, … Tenant shall reimburse City for the costs of [the] audit." Due to the understated CTF of $1,084.50, the City is entitled to recover the costs of this audit.

We recommend that the Norman Y. Mineta San Jose International Airport:

Recommendation #1

- **Provide a written demand to Avis for payment of $1,247.59 in understated Customer Transportation Fee and interest for the period July 2002 to May 2003.**
- **Review Customer Transportation Fee payments for the previous three years and verify that Avis correctly reported the number of customer contracts and the Customer Transportation Fee.**
- **In accordance with the terms of the agreement, recover costs of this audit. (Priority 2)**

Square Footage And Return Stall Rent

Based on the terms of the agreement, Avis is required to pay the City rents based on the number of ready/return stalls assigned and the square footage allocated to Avis. We reviewed an 11-month period beginning with July 2002 to May 2003 to determine if Avis rent payments with respect to the square footage and number of return stalls assigned, were accurate and in compliance with the terms of the agreement. We found that Avis made a series of over and under payments due to a variance between what the Airport invoiced for rent and what it should have invoiced. For example, during some months, Avis made past due payments to the City to correct the under invoiced amounts, resulting in Avis overpaying for those months. We determined that the difference in the invoiced amounts and what should have been invoiced was the result of delayed billing instructions. In one instance, the Airport's Contract Administrator gave billing instructions in August 2003 to correct square footage amounts as far back as August 2002. According to accounts receivable staff, the contract administrator is currently entering data from the billing instructions in the PROPworks system. This should result in future reallocations of rents being timely reflected on the invoices. We expanded our audit scope for the square footage rents to include June 2003 to December 2003. In our opinion, the Airport should continue to monitor rents due to insure that it issues billing instructions for rent reallocation in a timely manner and they are reflected on the monthly invoices.

We recommend that the Norman Y. Mineta San Jose International Airport:

Recommendation #2

Continue to monitor rents due to insure that it issues billing instructions for rent reallocations in a timely manner and they are reflected on the monthly invoices. (Priority 2)

Concession Revenue

This agreement expires in March 2005 and requires Avis to pay concession revenue to the City on a monthly basis. The concession revenue is either 10 percent of annual gross revenues or the Minimum Annual Guarantee (MAG), whichever is greater. During the audit period, Avis gross revenues after exclusions were less than the MAG in eight of the 11 months by an average of $34,000 per month. Our review of the 11-month period beginning with July 2002 and ending in May 2003 revealed that Avis made timely payments to the Airport and properly excluded most specified items from its gross revenue calculations. The Airport should, however, require Avis to implement controls which will account for the amount of pre-paid fuel returned in cars and consider renegotiating the agreement to eliminate several exclusions from future gross revenue calculations.

Gas Service Option

In accordance with the terms of its agreement, Avis is allowed to specifically exclude from gross revenues monies collected for the "resale of petroleum products, including fuel and oil…" One option Avis gives to its customers is a pre-paid gas service option (GSO), in which the customer pays for a full tank of gas when renting the car and then has the option of returning the car empty. When customers purchase the GSO and return the car with some fuel remaining in it, Avis does not refund the unused portion of fuel to the customer. Under the terms of its agreement with the Airport, this unused, non-refunded, portion of fuel is not considered the "resale of petroleum." As a result, it is a source of profit for Avis and should be included in gross revenues. At least one source indicates that when customers opt for the GSO, they return most cars with some gas in the tank. This means that Avis in return can turn around and resell the same gas to another customer, therefore making a profit on this unused fuel. Currently, Avis does not keep records on the amount of fuel returned in cars when the customers opt for the GSO. Rather, we found that when customers purchase the GSO, Avis indicates on the rental agreement that the customers returned the rental cars full. Therefore, due to Avis current record keeping, we could not determine the amount of unused GSO fuel.

Including this pre-paid, unused fuel in gross revenues would impact monthly concession revenue due to the Airport when gross revenues are in excess of the MAG. The monthly gross revenues for the period we audited were below the monthly MAG of $221,122.66 in eight of the 11 months by an average of $34,000 per month. We estimate that the total GSO charges average $32,000 per month. Accordingly, including GSO in gross revenues would have only impacted monthly concession revenue due to the Airport in three of the 11 months that we reviewed. However, the Airport uses actual gross revenues for the year to determine the next year's MAG. As such, including the cost of unused gas in gross revenues could impact future concession payments to the City by increasing the MAG. In our opinion, Avis should implement procedures to capture the amount of gas returned in cars when the customers purchase the GSO and include this amount in its calculation of monthly gross revenues.

We recommend that the Norman Y. Mineta San Jose International Airport:

Recommendation #3

Require Avis to implement controls to track the amount of gas returned in cars when customers purchase the gas service option and include this amount in its gross revenue calculations. (Priority 3)

Terms Of The Agreement

The agreement between the City of San Jose and Avis states that Avis may specifically exclude the following eight items from gross revenues:

- Federal, state, or local sales tax;
- Amount of any busing fee;
- Fees paid for acceptance of CDW or LDW only;
- Sale of uniforms or clothing;
- Resale of petroleum products, including fuel and oil;
- Corporate discounts and rebates;
- Employee discounts and promotional discounts; and
- Revenues derived from the sale of used, fleet, motor vehicles.

We reviewed a sample of over 200 rental agreements to determine if Avis was properly excluding these eight items from gross revenues. In addition, we reviewed corporate contracts to ensure that the Loss Damage Waiver (LDW) was separately stated and identified in these contracts. We found that Avis is properly excluding federal, state, and local sales tax, the busing fee, and fees paid for LDW, as well as all corporate and promotional discounts, from gross revenues. However, in our opinion, the eight exclusions specifically mentioned in the agreement create the potential threat that Avis will filter funds which should not be excluded from gross revenues through one or more of these eight exclusions.

The Tampa International Airport (Tampa) renegotiated its concession agreements in 2002 to 1) reduce the number of exclusions from gross revenues and 2) reduce the concession fee percentage from 10 percent of gross revenues to 9.5 percent. According to the Hillsborough County Aviation Authority Director, these charges were relatively revenue neutral. The advantage to Tampa was a simplification of the audit process. The agreement between Avis and the City of San Jose expires in March 2005. In our opinion, the Airport should consider renegotiating its agreement to eliminate several exclusions from future gross revenue calculations with a countervailing concession fee percentage reduction.

We recommend that the Norman Y. Mineta San Jose International Airport:

Recommendation #4

Renegotiate the terms of its agreement with Avis to eliminate several exclusions from future gross revenue calculations with a countervailing concession fee percentage reduction. (Priority 3)

Conclusion

We found that Avis owes the Airport at least $1,247.59 in understated CTF and interest thru April 1, 2004. We also found that for square footage rents there was a variance between what the Airport invoiced for rent and what it should have invoiced. Furthermore, we found that Avis is currently excluding from gross revenues a portion of unused pre-paid gas that should be included when calculating the concession revenue due to the Airport. In our opinion, the Airport should seek reimbursement for the understated CTF of at least $1,247.59 and, in accordance with the terms of the agreement, seek reimbursement for the cost of this audit based on the understated CTF. In addition, the Airport should continue to monitor rents due to insure that billing instructions for rent reallocation are received in a timely manner and reflected on the monthly invoices. The Airport should also request that Avis implement controls to track the portion of unused fuel returned in cars when customers purchase the GSO. This unused portion of gas should then be included in the calculation of gross revenues. Finally, the Airport should renegotiate the terms of its agreement with Avis to eliminate several exclusions from future gross revenue calculations with a countervailing concession fee percentage reduction.

Gerald A. Silva
City Auditor

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GS:lg

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: Jerry Silva

FROM: Nina S. Grayson

SUBJECT: **RESPONSE TO QUESTIONS RAISED AT 4/14/04 MGWB COMMITTEE MEETING**

DATE: 04-27-04

Approved

Date

It is my understanding that questions were raised at the April 14 Making Government Work Better Committee regarding compliance with prevailing and living wage policies. The following information responds to those questions.

Rental Car Agreements

The rental car agreements do not include wage requirements.

Airport Shuttle Bus Management and Rental Car Shuttle Bus Management Agreement

The City entered into an agreement with ShuttlePort California, LLC on October 1, 2000. The City's agreement with ShuttlePort requires the payment of prevailing wages for shuttle bus drivers and living wage for curb monitors. ShuttlePort submitted the required documentation to the Office of Equality Assurance in January 2001 and is in compliance with the City's wage requirements. They are paying their drivers the proper prevailing wage rate. The prevailing wage rate is that included in ShuttlePort's collective bargaining agreement with S.E.I.U. Local 1877 dated January 1, 2003 – December 2005. ShuttlePort has discontinued the use of curb monitors.

Should you have any questions or require additional information, please contact me at x4899.

Nina S. Grayson
Director, Office of Equality Assurance
Department of Public Works

c Kay Winer
Katy Allen