



City of New York

OFFICE OF THE COMPTROLLER

John C. Liu
COMPTROLLER



MANAGEMENT AUDIT

Tina Kim

Deputy Comptroller for Audit

Audit Report on Cemusa NY LLC's
Payment of Franchise Fees in
Compliance with Its Coordinated Street
Furniture Franchise Agreement with the
Department of Transportation

MJ12-127A

September 6, 2013

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

John C. Liu
COMPTROLLER

September 6, 2013

Dear Residents of the City of New York:

My office has audited Cemusa NY LLC (Cemusa) to determine whether Cemusa (1) accurately recorded and reported gross advertising revenue and paid the appropriate cash component of the franchise fee and (2) provided the alternative compensation and no-cost advertising panels to the City in compliance with its franchise agreement with the Department of Transportation (DOT). We perform audits of City franchises as a means of increasing accountability and ensuring that City franchisees operate in compliance with their agreements.

This audit concluded that, with the exception of the value of bonus panels provided under certain contracts, Cemusa accurately recorded and reported advertising revenue and paid the appropriate amount of the cash component of the franchise fee to the City in compliance with the franchise agreement for Calendar Year 2011. It also provided advertising panels within the City to NYC & Co. for its purposes.

However, Cemusa needs to provide the City an additional \$11,792,442 in alternative compensation (out-of-home advertising) because it mistakenly included value-added taxes in its calculation of advertising promoting New York City placed in Spain, Italy, and Portugal for the first six years (Fiscal Years 2007 – 2012) of the franchise agreement. Further, the audit found that Cemusa did not report to DOT the fair market value of bonus panels extended to customers. To address these weaknesses, the audit recommended that Cemusa should: (1) compensate the City for the additional \$11.79 million in alternative compensation resulting from mistakenly including value-added taxes for years 1-6 of the franchise agreement; (2) going forward, exclude any value-added taxes when calculating the value of alternative compensation in accordance with the franchise agreement; and (3) track and value bonus panels extended to its customers and report the value of such bonuses in its monthly/quarterly gross revenue reports to DOT.

The results of the audit have been discussed with Cemusa and DOT officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please email my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Liu".

John C. Liu

Table of Contents

AUDIT REPORT IN BRIEF	1
Audit Findings and Conclusions	1
Audit Recommendations	2
Agency Response	3
Introduction	4
Background	4
Objectives	5
Scope and Methodology Statement	5
Discussion of Audit Results	5
FINDINGS AND RECOMMENDATIONS	7
\$11.8 Million in Additional Alternative Compensation Due	7
Value of Bonuses Not Tracked or Reported	11
Recommendations	15
DETAILED SCOPE AND METHODOLOGY	17
APPENDIX A	20
APPENDIX B	21
ADDENDUM I CEMUSA RESPONSE	
ADDENDUM II DOT RESPONSE	

THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER MANAGEMENT AUDIT

Audit Report on Cemusa NY LLC's Payment of Franchise Fees in Compliance with Its Coordinated Street Furniture Franchise Agreement with the Department of Transportation

MJ12-127A

AUDIT REPORT IN BRIEF

This audit determined whether Cemusa NY LLC (Cemusa) (1) accurately recorded and reported gross advertising revenue and paid the appropriate cash component of the franchise fee and (2) provided the alternative compensation and no-cost advertising panels to the City in compliance with the franchise agreement.

On May 19, 2006, the New York City Department of Transportation (DOT) entered into a 20-year franchise agreement with Cemusa, Inc. (subsequently assigned to Cemusa, a wholly-owned subsidiary) to design, construct, install, and maintain coordinated street furniture throughout the City, including at least 3,300 bus stop shelters, 330 newsstands, automatic public toilets, trash receptacles, news-racks, and other public service structures. DOT is responsible for overseeing the franchise agreement.

As compensation for being granted the exclusive right to sell and place advertising on panels affixed to the bus stop shelters and newsstands, Cemusa agreed to pay and/or provide the City with a franchise fee totaling \$1.39 billion over the 20-year term of the agreement, consisting of a minimum cash component of \$999 million and a non-cash component (alternative compensation) valued at nearly \$400 million in the form of advertising promoting New York City in Cemusa's like-kind markets outside of the City and abroad. The cash and non-cash components of the franchise fee are to be rendered to the City in annual amounts specified in the agreement.

In addition to the franchise fee, for each year of the agreement, Cemusa agreed to provide at no cost to the City or its marketing partner and agent, New York City and Company (NYC & Co.), up to 22.5 percent of the inventory of advertising panels citywide for NYC & Co. advertising purposes and public-service advertising.

Audit Findings and Conclusions

This audit concluded that, with the exception of the value of bonus panels provided under certain contracts, Cemusa accurately recorded and reported advertising revenue and paid the

appropriate amount of the cash component of the franchise fee to the City in compliance with the franchise agreement for Calendar Year 2011. It also provided up to 22.5 percent of its inventory of advertising panels within the City to NYC & Co. for their purposes.

Cemusa reported advertising revenues totaling \$52.3 million for Calendar Year 2011 and paid to DOT the guaranteed minimum of \$42.6 million, which represented the cash component of the franchise fee. The audit also determined that, in all material respects, the total revenues recorded in Cemusa's sales and accounting records for Calendar Year 2011 matched the amount reflected in revenue reports submitted to DOT. Further, Cemusa submitted monthly revenue reports and remitted quarterly payments to DOT in a timely manner. It also maintained adequate internal controls to provide reasonable assurance that revenues derived from advertising sales were appropriately recorded, accounted for, and reported to DOT. In addition, Cemusa followed the accrual basis of accounting to record transactions in accordance with Generally Accepted Accounting Principles and appropriately booked all sales revenue for the New York market.

However, with regard to the alternative compensation component of the franchise fee, the audit determined that Cemusa needs to provide the City an additional \$11,792,442 in alternative compensation (out-of-home advertising) because it mistakenly included value-added taxes in its calculation of advertising promoting New York City placed in Spain, Italy, and Portugal for the first six years (Fiscal Years 2007 – 2012) of the franchise agreement. Also, the audit found that there was limited proof of placement of advertisements in the foreign markets. Therefore, only limited assurance could be obtained about the extent and value of alternative compensation actually provided during the same period. Further, Cemusa did not report to DOT the fair market value of "no-charge" bonus panels extended to its customers.

Audit Recommendations

To address these weaknesses, the audit recommended that Cemusa should:

- Compensate the City for the additional \$11.79 million in alternative compensation resulting from mistakenly including value-added taxes for years 1-6 of the franchise agreement.
- Going forward, exclude any value-added taxes when calculating the value of alternative compensation in accordance with the franchise agreement.
- Track and value bonus panels extended to its customers and report the value of such bonuses in its monthly/quarterly gross revenue reports to DOT.

In addition, the audit recommended that DOT should:

- Meet with Cemusa and NYC & Co. to work out an acceptable plan for Cemusa to compensate the City for the \$11.79 million due in alternative compensation for years 1-6 of the franchise agreement.
- Improve its monitoring of the valuation of alternative compensation each year and require a greater level of assurance in the proof of performance, such as independent verification of proof of performance of advertising in out-of-home markets that Cemusa is obligated to provide each year of the franchise agreement.

Agency Response

Cemusa did not directly address the three audit recommendations directed to it. However, it tacitly disagreed with the recommendations through its disagreement with the audit findings that it mistakenly included value-added taxes in the valuation of alternative compensation and that it did not track and report the fair market value of “no-charge” bonus panels to DOT as part of its gross revenue periodic reports. Similarly, of the two recommendations made to DOT in this audit, DOT did not directly address them. Instead, based on the comments included in its response, DOT appears to support Cemusa’s disagreement with the findings. After carefully reviewing the positions of Cemusa and DOT, we stand by our findings.

INTRODUCTION

Background

On May 19, 2006, DOT entered into a 20-year franchise agreement with Cemusa, Inc. (subsequently assigned to Cemusa, a wholly-owned subsidiary) to design, construct, install, and maintain coordinated street furniture throughout the City, including at least 3,300 bus stop shelters, 330 newsstands, automatic public toilets, trash receptacles, news-racks, and other public service structures.

As compensation for being granted the exclusive right to sell and place advertising on panels affixed to the bus stop shelters and newsstands, Cemusa agreed to pay and/or provide the City with a franchise fee totaling \$1.39 billion over the 20-year term of the agreement, consisting of a minimum cash component of \$999 million and a non-cash component (alternative compensation) valued at nearly \$400 million in the form of advertising promoting New York City in Cemusa's like-kind markets outside of the City and abroad. The cash and non-cash components of the franchise fee are to be rendered to the City in annual amounts specified in the agreement.

In addition to the franchise fee, for each year of the agreement, Cemusa agreed to provide at no cost to the City or its marketing partner and agent, New York City and Company¹ (NYC & Co.), up to 22.5 percent² of the inventory of advertising panels citywide for NYC & Co. advertising purposes and public-service advertising.

During the first year of the franchise agreement, Cemusa paid the City \$118 million, representing the cash component of the franchise fee for the first four years (the build-out phase) of the agreement. Starting in Year 5 of the agreement and for each year thereafter for the remainder of the 20-year term, Cemusa is required to pay the City the greater of 50 percent of its gross revenue or the guaranteed annual minimum toward the cash component of the franchise fee. Cemusa is also required to submit monthly revenue reports and remit quarterly payments to DOT in a timely manner, maintain adequate internal controls, follow the accrual basis of accounting to record transactions in accordance with Generally Accepted Accounting Principles, and record and report all sales revenue generated under the agreement, without offset.

At the beginning of each year, Cemusa is to meet with NYC & Co. to determine the valuation and plan the provision/placement of alternative compensation advertising in markets outside of the City. In addition, Cemusa and NYC & Co. negotiate the media plan under which the no-cost advertising panels within the City are to be provided. For Contract Years 5 and 6 (July 1, 2010–June 30, 2012), Cemusa was required to pay the City the greater of 50 percent of gross revenue or the annualized minimum of \$39.6 million and \$45.7 million, respectively, toward the cash component of the franchise fee and provide alternative compensation valued at \$17.1 million and \$17.5 million, respectively, for the same contract years.

¹ NYC & Co. is New York City's official marketing, tourism, and partnership organization, which functions to maximize tourism and promote New York City around the world. Per § 1.49 of the franchise agreement, as successor to the New York City Marketing Development Corporation, NYC & Co. serves as agent for the City in relation to negotiating media plans under which the no-cost advertising panels are to be provided within the City and abroad.

² The franchise agreement provides that, at all times, Cemusa will have 2,557 bus shelters and 256 newsstands under its control for selling advertising space. If the remainder of bus shelters and newsstands after these amounts falls below 22.5 percent of the inventory of total bus shelters and newsstands, the lesser amount will be provided to the City.

Objectives

To determine whether Cemusa (1) accurately recorded and reported gross advertising revenue and paid the appropriate cash component of the franchise fee and (2) provided the alternative compensation and no-cost advertising panels to the City in compliance with the franchise agreement.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The audit scope covered Calendar Year 2011 (January 1 – December 31), representing Cemusa’s operating year. However, the audit scope was expanded for certain tests involving (1) cash receipts, (2) data reliability, (3) alternative compensation, and (4) no-cost advertising panels. Please refer to the Detailed Scope and Methodology section at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with DOT and Cemusa officials during and at the conclusion of this audit. A preliminary draft report was sent to DOT and Cemusa officials on July 15, 2013, and discussed at an exit conference held on July 29, 2013. We submitted a draft report to DOT and Cemusa officials on August 9, 2013, with a request for comments. We received a written response from DOT and Cemusa officials on August 23, 2013. Cemusa did not directly address the three audit recommendations made to it. However, it tacitly disagreed with the recommendations through its disagreement with the audit findings about (1) mistakenly including value-added taxes in the valuation of alternative compensation and (2) the need to track and report the fair market value of “no-charge” bonus panels to DOT as part of its gross revenue periodic reports. Similarly, of the two recommendations made to DOT in this audit, DOT did not directly address them. Instead, based on the comments included in its response, DOT appears to concur with Cemusa’s position.

We disagree with Cemusa’s limited perspective and maintain that value-added taxes are a governmental tax (whether foreign or domestic) that should not be included as a component of alternative (non-cash) compensation that Cemusa agreed to provide under the franchise agreement. The franchise agreement is clear that *no portion of the cash and non-cash compensation rendered to the City under the agreement is to be in the nature of a tax*. Because value-added taxes included in the calculation of alternative compensation provided in Spain, Portugal, and Italy for Years 1-6 of the agreement are, in fact, a governmental tax, the finding remains unchanged. Cemusa mistakenly included \$11.79 million of value-added taxes in its valuation of alternative compensation for which it should recompense the City.

Further, we disagree with Cemusa’s contention that the bonus panels it provides at no charge to certain customers have no value. Contrarily, both in accounting and taxation arenas, “something that is received for nothing” may still possess a value – usually its fair market value (since historical value might not be known). As the franchise agreement provides exclusions from

gross revenue only for “any sales taxes or other taxes imposed by law that Cemusa is obligated to collect or any public service advertising, ‘NYC & Co. advertising,’ or alternative compensation,” we maintain that Cemusa should track and report the fair market value of bonus panels to DOT in accordance with the franchise agreement.

The full text of the Cemusa and DOT responses are included as addenda to this report.

FINDINGS AND RECOMMENDATIONS

With the exception of the value of bonus panels provided under certain contracts, Cemusa accurately recorded and reported advertising revenue and paid the appropriate amount of the cash component of the franchise fee to the City in compliance with the franchise agreement for Calendar Year 2011. It also provided up to 22.5 percent of its inventory of advertising panels within the City to NYC & Co. for their purposes.

As reflected in Appendix A, Cemusa reported advertising revenues totaling \$52.3 million for Calendar Year 2011 and paid to DOT the guaranteed minimum of \$42.6 million, which represented the greater of 50 percent of gross revenue or the guaranteed minimum cash component of the franchise fee. The audit also determined that for the period under review, in all material respects, the total revenues recorded in Cemusa's sales and accounting records for Calendar Year 2011 matched the amount reflected in revenue reports submitted to DOT. Further, Cemusa submitted monthly revenue reports and remitted quarterly payments to DOT in a timely manner. It also maintained adequate internal controls to provide reasonable assurance that revenues derived from advertising sales were appropriately recorded, accounted for, and reported to DOT. In addition, Cemusa followed the accrual basis of accounting to record transactions in accordance with Generally Accepted Accounting Principles and appropriately booked all sales revenue for the New York market.

However, with regard to the alternative compensation component of the franchise fee, the audit determined that Cemusa needs to provide the City with an additional \$11,792,442 in alternative compensation (out-of-home advertising) because it mistakenly included value-added taxes in its calculation of advertising promoting New York City placed in Spain, Italy, and Portugal for the first six years (Fiscal Years 2007 – 2012) of the franchise agreement. Also, we found that there was limited proof of placement of advertisements in the foreign markets. Therefore, only limited assurance could be obtained about the extent and value of alternative compensation actually provided during the same period. Further, the audit found that Cemusa did not report to DOT the fair market value of bonus panels extended to customers. The value of these panels should be included in Cemusa's calculation of gross revenue and subsequently used in calculating the cash component of the franchise fees due the City.

These matters are discussed in the following sections of this audit report.

\$11.8 Million in Additional Alternative Compensation Due

Cemusa needs to provide the City an additional \$11,792,442 in alternative compensation (out-of-home advertising) as a result of mistakenly including value-added taxes in its calculation of advertising (promoting New York City) placed in Spain, Italy, and Portugal for the first six years (Fiscal Years 2007 – 2012) of the franchise agreement. Also, we found that there was limited proof of placement of advertisements in the foreign markets. Therefore, only limited assurance could be obtained about the extent and value of alternative compensation actually provided.

Each year Cemusa is to provide alternative compensation in amounts established in the agreement. Prior to the beginning of each year of the agreement, Cemusa provides NYC & Co. an electronic workbook detailing each of Cemusa's affiliates' commitment for the upcoming year along with the projected value of the alternative compensation. At the end of the year, Cemusa provides another workbook detailing the actual valuation and placement of advertisements, which is compared to the year's commitment. If the overall fair-market value (FMV) of the actual alternative compensation provided is within +/- 15 percent of the amount established in the

franchise agreement, Cemusa is considered to have complied with providing the alternative compensations for the year.

As per the franchise agreement, Cemusa is prohibited from including taxes (other than income taxes), charges, or fees paid in determining the amount of alternative compensation provided to the City. Specifically, under section 9.11(a)(i-iv) of the agreement, Cemusa and its affiliates are prohibited from deducting, claiming credit for, or applying to any of the “compensation or other payments to be made or Services to be provided to the City” pursuant to the franchise agreement “any part of the amount of any City or other governmental taxes or other fees or charges of general applicability (other than income taxes), each of which shall be deemed separate and distinct obligations of the Company.” The value-added taxes are a “separate and distinct obligation of” Cemusa and, therefore, should not have been included as part of the valuation of alternative compensation that Cemusa is obligated to provide to the City.

Our initial analysis found that Cemusa included the value-added tax in the alternative compensation valuation analysis for Year 6. We expanded our review of the alternative compensation to include Years 1 through 5 of the agreement and found that value-added tax had also been included for those years. Accordingly, we determined that Cemusa needs to either recompense or provide the City with an additional \$11,792,442 in alternative compensation for Years 1-6 of the contract, as reflected in Table I.

Table I

Summary of Additional Alternative Compensation due the City for Years 1-6 (FYs 2007- 2012) of the Franchise Agreement

Contract Year (Fiscal Year)	<i>a</i>	<i>b</i>	<i>c</i>	<i>d</i>	<i>e</i>	<i>f</i>
	Net FMV of Alternative Compensation (Including Value-added Tax) per Cemusa's Calculations	Net FMV of Alternative Compensation (excluding Value-added Tax) per Auditor Analysis	Difference of Alternative Compensation Between Cemusa and Auditor Calculations (Col <i>a</i> – <i>b</i>)	Alternative Compensation Minimum per Franchise Agreement (Commitment less 15% allowance)	Alternative Compensation Min (Col <i>d</i>) is Greater than Net FMV Alt Comp per Auditor Analysis (Col <i>b</i>)	Additional Alternative Compensation Due (Col <i>d</i> – <i>b</i>)
<i>In USD (\$)</i>			<i>In USD (\$)</i>			
Year 1 (FY 07)	13,873,255.85	12,051,385.47	1,821,870.38	13,175,000	YES	1,123,614.53
Year 2 (FY08)	16,060,858.26	13,822,150.66	2,238,707.60	13,515,000	NO*	n/a*
Year 3 (FY09)	14,128,148.49	11,986,721.87	2,141,426.62	13,855,000	YES	1,868,278.13
Year 4 (FY10)	11,237,394.15	9,415,503.18	1,821,890.98	14,195,000	YES	4,779,496.82
Year 5 (FY11)	13,764,148.67	11,751,077.71	2,013,070.95	14,535,000	YES	2,783,922.29
Year 6 (FY12)	15,896,108.49	13,637,870.16	2,258,238.33	14,875,000	YES	1,237,129.84
Total	84,959,913.91	72,664,709.05	12,295,204.86	84,150,000		11,792,441.61

*Note: For Year 2 of the agreement, the valuation Net FMV of alternative compensation per auditor analysis exceeded the Alternative Compensation Minimum by \$307,151. Therefore the alternative compensation minimum was met and no addition alternative compensation was due for the year.

Cemusa Response: “Cemusa disagrees with the finding that it owes the city additional alternative (non-cash) compensation because it ‘mistakenly included value added taxes

in its calculation of advertising placed in Spain, Italy and Portugal...’ In fact, Cemusa properly calculates the value of alternative compensation according to market comparables. We do not believe that section 9.11 [of the Franchise Agreement] is applicable – among other reasons, because it applies to domestic taxes, whether federal, state or local.”

Auditor Comment: We disagree with Cemusa’s perspective and maintain that value-added taxes are a governmental tax (whether foreign or domestic) that should not be included as a component of alternative (non-cash) compensation that Cemusa agreed to provide under the franchise agreement. Section 9 of the agreement, entitled “Compensation and Other Payments,” wholly addresses cash and non-cash (alternative) compensation and sets forth all provisions that both Cemusa and the City committed to under that agreement, including (section 9.11) “Limitations on Credits or Deductions.”

The section expressly states that the compensation and other payments to be made or services to be provided by Cemusa “**shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes and fees or charges** which the Company or any Affiliated Person shall be required to pay to the City or any state or federal agency or authority, all of which shall be separate and distinct obligations of the Company” It goes further to state that Cemusa “**shall not . . . make any claim for any deduction or other credit of the amount of the compensation or other payments to be made or Services to be provided pursuant to this Agreement from or against any City or other governmental taxes of general applicability or other fees or charges which the company** or any Affiliated person is required to pay to the City or other governmental agency.” [Emphasis added.]

The franchise agreement is clear that *no portion of the cash and non-cash compensation rendered to the City under the agreement is to be in the nature of a tax*. Because value-added taxes included in the calculation of alternative compensation provided in Spain, Portugal, and Italy for Years 1-6 of the agreement are, in fact, a governmental tax, the finding remains unchanged. Cemusa mistakenly included \$11.79 million of value-added taxes in its valuation of alternative compensation for which it should recompense the City.

DOT Response: “The issue of whether value added taxes should be included in any way in calculating the value of non-cash compensation is a contract interpretation matter which DOT will work with Cemusa to resolve.”

Auditor Comment: The franchise agreement is clear and explicitly excludes taxes of any kind (other than income taxes) from being included in the value or payments of any compensation or service Cemusa is required to provided to the City. If it is the intention of both Cemusa and DOT that value-added taxes should be included in the valuation of alternative compensation, then DOT should modify the franchise agreement. However, until such time, the provisions of the franchise agreement stand and value-added taxes should not be included in the valuation of the alternative compensation that Cemusa provides to the City under the agreement.

In 2007, NYC & Co. had an assessment performed of the valuation of Cemusa’s advertising rates in major cities in Italy, Spain, Portugal, and Brazil. Based on this evaluation, an FMV discount factor for each market was determined. The value of the alternative compensation—the placement of advertising promoting New York City—in those markets is calculated as the number of panels by the number of weeks of each campaign by the full rate per market less the FMV discount for each market in each respective country’s currency. The resulting figure represents the FMV of advertising for each market, per the franchise agreement, which is then

converted into US dollars (US\$) and reported in aggregate to NYC & Co. and DOT. In general, the rate per market is stated as an average price per panel in each market.

With the exception of including value-added taxes, our evaluation of the alternative compensation workbooks for Years 1 – 6 of the franchise agreement determined that the currency exchange rates used were generally accurate as were the workbook calculations and footings. However, no source documentation was available to independently assess the reliability of the information recorded in the workbooks, such as to verify the total number of panels for each market and number of weeks run. Therefore, we only have limited assurance that the data reflected in the alternative compensation workbooks for Years 1 - 6 of the franchise agreement provided an accurate accounting of advertisement placed in markets outside of the City as part of Cemusa's alternative compensation to be provided to the City under the agreement.

When we asked about the means used to obtain assurance about the placement of advertising in other markets detailed in the workbooks, NYC & Co. officials stated that each of Cemusa's individual affiliates in Italy, Spain, Portugal, and Brazil provide proof of postings to Cemusa's headquarters in Madrid, Spain, where it is aggregated and sent on to NYC & Co. They also stated that in the foreign markets, campaigns are run each year to coincide with peak travel seasons. Within the first few weeks of each campaign flight, Cemusa provides to NYC & Co. samples of photo images from all metropolitan areas to illustrate the breadth and depth of the NY City promotional campaigns. In addition, Cemusa provides NYC & Co. with an electronic spreadsheet listing weekly/bi-weekly locations of units by metropolitan area/market for every campaign effort. Cemusa also provides all reports on disks after the contract year as a proof of performance recap. Although NYC & Co. provided us with a copy of the weekly/biweekly spreadsheets it received from Cemusa, we were only provided with a small number of photographs to support NYC & Co. officials' assertions about the proof of placement. However, none of the photographs provided a clear indication of the location of the shelter and the date the image was taken. Further, we could not reconcile the images to information presented in the spreadsheet.

Cemusa Response: "Cemusa respectfully notes that it provides the City with a similar level of service and value with respect to the alternative compensation as it does to any other customer in line with the commitment made in the Franchise Agreement. The service provided includes the submission of a detailed list of postings by location and date and pictures of some locations showing each of the NYC campaigns effectively posted in Cemusa's inventory. This comprehensive posting information is consistent with well-recognized industry standards."

Auditor Comment: Although Cemusa believes that the information it provides to NYC & Co. and DOT regarding the posting of out-of-home advertising (promoting New York City in other cities) is comprehensive and in accordance with industry standards, we found it to be limited. As noted herein, the information is self-reported by Cemusa and its affiliates. Further, we found that the information did not provide sufficient evidence or details to verify the locations and dates of the campaign runs. Therefore, only limited assurance could be obtained about the value of alternative compensation provided.

The explanations provided by NYC & Co. and DOT officials regarding the valuation and placement of alternative compensation seem reasonable. However, the lack of sufficient evidence, such as proof of placement or other source documentation, to test the workbook data and the fact that neither NYC & Co. nor DOT questioned Cemusa's including value-added taxes in its valuation calculations raises concerns as to the adequacy of NYC & Co.'s and DOT's oversight of the alternative compensation. To account for the annual alternative compensation

due the City, DOT relies on NYC & Co. to negotiate with Cemusa regarding the placement of the advertisements in the other markets and determining the coverage and the duration of those campaigns. DOT's monitoring of NYC & Co.'s activities, however, are limited. According to officials, DOT receives a copy of Cemusa's alternative compensation workbook, reviews the rates posted in the spreadsheet for fluctuations outside of the inflation rate, and communicates with NYC & Co. regarding any concerns with respect to shortfalls in the alternative compensation below 85 percent of the value listed in the franchise agreement. Neither DOT nor NYC & Co. have sought to obtain independent verification of or more reliable, confirmable information demonstrating proof of performance with regard to Cemusa's provision of alternative compensation in foreign markets. Such information should provide evidence of the location and date of the sampled locations.

Value of Bonuses Not Tracked or Reported

Our audit disclosed that Cemusa provides bonus "no-charge" advertising panels to clients as an incentive to promote business. In accordance with the franchise agreement, the value of these panels should be included in Cemusa's calculation of gross revenue to ensure that the proper cash component of the franchise fee is paid to the City. However, we found that Cemusa did not track the value of these bonuses nor did it report the fair market value of the bonus panels to DOT.

Section 9.1 (c) of the franchise agreement defines gross revenue as:

"all revenues (from whatever source derived, and without any deduction whatsoever for commissions, fees, brokerage, labor charges or other expenses or costs), . . . as a result of the installation of the Coordinated Franchise Structures and, including without limitation, the display of advertising thereon . . . In the event that . . . the transaction involves the Company's including or grouping advertising on the Coordinated Franchise Structures with other assets in the Company's inventory, the amount to be included in Gross Revenues with respect to such transactions will be the fair market value of the advertising space . . ."

Per the franchise agreement, Cemusa may not "divert or recharacterize revenue that would otherwise have been considered Gross Revenues for purposes of this Agreement." The only exclusions from gross revenue allowed under the agreement include any sales taxes or other taxes imposed by law that Cemusa is obligated to collect or any public service advertising, "NYC & Co. advertising," or alternative compensation.

We randomly selected for review 60 of the 604 contracts in effect during Calendar Year 2011. These 60 contracts, for which Cemusa recorded total advertising sales of \$4,757,207 for the year, covered a total of 2,930 advertising panels. A further analysis revealed that 717 (24.5 percent) of them were provided by Cemusa to clients at no charge, as shown in Table II.

Table II

Analysis of Sampled Contracts

<i>a</i>	<i>b</i>	<i>c</i>	<i>d</i>	<i>e</i>	<i>f</i>
# of sampled contracts	Paid Panels	Calendar Year 2011 Sales	Estimated Value per Panel (c ÷ b)	Bonus Panels	Total Panels
39	1,802	\$3,227,710	\$1,791.18	717	2,519
21	411	\$1,529,497	\$3,721.40	-	411
60	2,213	\$4,757,207	\$2,150.66	717	2,930

According to Cemusa officials, the offering of bonuses is a common practice in the outdoor street furniture advertising industry. Hence, to assess the effect that the value of the bonus panels would have on gross revenues associated with our sample, we first reviewed Cemusa's standard rate card. However, because Cemusa's pricing per client campaign varied widely from the rates listed, we did not use it in our analysis. According to Cemusa, pricing is negotiated contract-by-contract and is based on a number of factors including placement of advertising (location), length of campaign, and coverage (number of panels). We requested but were told that Cemusa did not have a minimum valuation per panel across the City. Alternatively, we used the information from our sample because it was the best information available.

Accordingly, as detailed in Appendix B, we calculated the estimated value of the bonus panels to be \$1,284,276 by multiplying the 717 bonus panels for the 39 sampled contracts by the estimated per panel value of \$1,791.18. This brings the total estimated value for the 39 sampled contracts to \$4,511,986 (\$3,227,710 + \$1,284,276) and the total estimated value for all 60 sampled contracts to \$6,041,483 (\$4,511,986 + \$1,529,497). The estimated value of the bonus panels is equal to 27 percent of the total actual sales associated with the 60 sampled contracts (\$1,284,276 ÷ \$4,757,207).

Cemusa Response: "We disagree with the proposed finding of the audit report that 'Cemusa did not track the value of bonus panels nor did it report the fair market value of the bonus panels to DOT.' In fact, Cemusa reported all panels associated with each of its advertising campaigns; where panels in these agreements are characterized as bonus panels they are also reported as such to DOT."

Auditor Comment: We respectfully disagree with Cemusa's perspective. During the audit, Cemusa provided us with copies of its monthly "Sales Control Report," which reflects (among other things) each campaign (contract) code, associated contract (revenue) amount, and the number of charged panels and bonus panels, if applicable, under each contract. However, the report does not reflect a value associated with bonus panels provided. A summarized version of this report is provided to DOT on a monthly basis as a means of reporting gross revenue. However, the version of the report provided to DOT does not indicate the quantity of panels associated with each contract or the number of bonus panels provided, if applicable. These reports, in conjunction with our review of Cemusa's Quattro database, found that there is no direct means by which Cemusa tracked and reported to DOT the quantity of panels (either charged or bonus) nor the fair market value associated with bonus panels that Cemusa extended to certain customers.

Cemusa Response: "Indeed, bonus panels are part of the intrinsic value of an advertising contract, as is recognized throughout our industry. Assessing a dollar value to bonus panels beyond the value of an underlying advertising contract would result in the posting of revenues that would exceed the contract amount, and hence would

overstate gross revenue. Furthermore, section 9.1 [of the Franchise Agreement] specifically stipulates that gross revenue shall be deemed to include any kind of compensation to Cemusa, whether in the form of monetary receipts or any non-monetary consideration the company may receive. Cemusa receives no compensation whatsoever in any form in exchange for the bonus panels, beyond the contract amounts which are duly reported to the City. The Franchise Agreement requires gross revenue to be determined in accordance with GAAP, and Cemusa's current reporting protocol as to bonus panels is consistent with GAAP."

Auditor Comment: We disagree with Cemusa's contention that bonus panels have no value. Contrarily, both in accounting and taxation realms, "something that is received for nothing" may still possess a value – usually its fair market value (since historical value might not be known), which can be established based on a number of factors.

We recognize that there are variants of pricing schemes and marketing strategies that include providing incentives to customers, such as Cemusa does in providing bonus panels to certain customers. We also recognize that there are various accounting methods that address the treatment of such sales incentives. We neither endorse nor prescribe any of these pricing structures or accounting methods. Further, we recognize that the agreement prescribes that Cemusa determine gross revenue in accordance with GAAP and that Cemusa maintain its books and records and provide to DOT, as requested, certified financial reports in compliance with GAAP.

We do not venture to establish or recommend that Cemusa should overinflate or misstate its accounting records by assessing and recording a value for bonus panels in its accounting records. Rather, in accordance with the franchise agreement, Cemusa should track the fair market value of any bonus panels it provides and report that amount to DOT as part of its monthly reporting of gross revenue. The amount could be reported and tracked separately; however, the format of such reporting is a matter to be decided between Cemusa and DOT.

The provisions established in the franchise agreement between Cemusa and the City take precedent over common practices or industry standards. Accordingly, as the agreement provides exclusions from gross revenue only for "any sales taxes or other taxes imposed by law that Cemusa is obligated to collect or any public service advertising, 'NYC & Co. advertising,' or alternative compensation," we maintain that Cemusa should track and report the fair market value of bonus panels to DOT in accordance with the franchise agreement.

DOT Response: "Although the Report did not direct any recommendations regarding the so-called 'bonus panels' to DOT, it is DOT's understanding of industry practices that in general 'bonus panels' do not generate additional revenue (whether cash or in-kind) to the ad space providers, such as Cemusa, which provide them to their customers. Rather, the general effect of issuing 'bonuses panels' is similar to when a consumer retailer offers its customers a 'buy-one-get-one-free' sale – the second product does not generate any additional revenue or value to the seller beyond the price paid for the first. We do note that in the event any additional value is received by Cemusa in connection with bonus panels, Cemusa is required to report this revenue. DOT will work with Cemusa and NYC & Co. to make sure that Cemusa continues to clearly indicate the use and effect of its bonus panel practices."

Auditor Comment: The franchise agreement is clear in establishing what should comprise gross revenue and be included as such. Despite cited "industry standards," the provisions of the franchise agreement take precedence. As to what should or should not

be reported to DOT as gross revenue, if, as Cemusa asserts and DOT appears to support, bonus panels have no value and, therefore, do not have to be included in gross revenue, DOT should take steps to modify the franchise agreement. However, until such time, the agreement's provisions remain in force under which we maintain that the fair market value of bonus panels should be tracked by Cemusa and reported to DOT.

To determine the possible effect that bonus panels would have on the total value of gross revenues for Calendar Year 2011, we used the above results to calculate an estimated fair market value for the entire population of contracts. (Our calculations are shown in Appendix B.) If the characteristics for the 60 sampled contracts were consistent with the entire population of contracts, we estimate that the value of bonus panels for all contracts would be equal to 27 percent of the \$52,328,363 in total sales reported for Calendar Year 2011, or \$14,128,658. Subsequently, the total value of gross revenue—including the estimated value of bonus panels—would be \$66,457,021, for which Cemusa was required to pay the greater of 50 percent of gross revenue, totaling \$33,228,511 (\$66,457,021 x 50 percent) or the annual guaranteed minimum of \$42,634,500 toward the cash component of the franchise fee, as shown in Table III.

Table III

Analysis of Payment Due the City for Calendar Year 2011
Based on Estimated Value of Bonus Panels

Gross Revenue (Sales) Reported by Cemusa	\$52,328,363
Add: Estimated Value of Bonus Panels	\$14,128,658
Total Estimated Gross Revenue	\$66,457,021
Amount due the City is the greater of:	
Guaranteed Annual Minimum Payment	\$42,634,500
50% of Gross Revenue (\$66,457,021 x 50%)	\$33,228,511
Amount Paid to the City	\$42,634,500

Under this scenario, the guaranteed minimum of \$42,634,500 that Cemusa paid the City for Calendar Year 2011 was appropriate. However, because Cemusa did not track the value of the bonus panels it provided to clients, we cannot affirm that the actual value of the bonus panels was not greater than the estimated value in the table above nor that the guaranteed minimum that Cemusa paid was the appropriate amount. This issue could result in additional fees due the City in the future if the number or value of bonus panels significantly increases. Therefore, Cemusa needs to keep track of and report to DOT the fair market value of bonus panels that it provides to its customers.

When we discussed this matter with Cemusa officials, they stated that including the value of bonus panels in the company's accounting records would overstate its actual sales. While we understand Cemusa's position from a financial statement accounting perspective, it needs to ensure that it complies with the franchise agreement by tracking bonus panels and reporting their value to DOT.

Recommendations

Cemusa should:

1. Compensate the City for the additional \$11.79 million in alternative compensation resulting from mistakenly including value-added taxes for years 1-6 of the franchise agreement.
2. Going forward, exclude any value-added taxes when calculating the value of alternative compensation, as per the franchise agreement.

Cemusa Response: Cemusa did not directly address recommendations #1 and #2. However, it tacitly disagreed with the recommendations through its disagreement with the related audit finding.

Auditor Comment: The franchise agreement is clear that cash and non-cash compensation and payments rendered to the City are not to be in the nature of a tax. Value-added taxes included in the calculation of alternative compensation provided in Spain, Portugal, and Italy for Years 1-6 of the agreement are, in fact, a tax. Therefore, the finding that Cemusa mistakenly included \$11.79 million worth of value-added taxes in its valuation of alternative compensation for which it should recompense the City remains unchanged and Cemusa should exclude such taxes from its calculation of alternative compensation in accordance with the franchise agreement.

3. Track and value bonus panels extended to its customers and report the value of such bonuses in its monthly/quarterly gross revenue reports to DOT.

Cemusa Response: Cemusa did not directly address this recommendation. However, in disagreeing with the related audit finding, it tacitly disagreed with the recommendation.

Auditor Comment: The franchise agreement is clear on what should and should not be included in gross revenues reported to DOT. Accordingly, we maintain that, in accordance with the agreement, Cemusa should track and report the fair value of bonus panels to DOT in its monthly/quarterly gross revenue reports to DOT.

In addition, we recommend that DOT should:

4. Meet with Cemusa and NYC & Co. to work out an acceptable plan for Cemusa to compensate the City for the \$11.79 million due in alternative compensation for years 1-6 of the franchise agreement.

DOT Response: DOT did not directly address the recommendation. Instead, it stated, "The issue of whether value added taxes should be included in any way in calculating the value of non-cash compensation is a contract interpretation matter which DOT will work with Cemusa to resolve."

Auditor Comment: The franchise agreement is clear and explicitly excludes taxes of any kind (other than income taxes) from being included in the value or payments of any compensation or service Cemusa is required to provide to the City. If it is the intention of DOT and Cemusa that value-added taxes should not be excluded from the valuation of alternative compensation, then DOT should modify the franchise agreement. However, until such modification in language is made, the provisions of the franchise agreement stand. Accordingly, value-added taxes should not be

included in the valuation of the alternative compensation Cemusa provides to the City under the agreement.

5. Improve its monitoring of the valuation of alternative compensation each year and require a greater level of assurance in the proof of performance, such as independent verification of proof of performance of advertising in out-of-home markets that Cemusa is obligated to provide each year of the franchise agreement.

DOT Response: DOT generally agreed, stating, “DOT will work with Cemusa and NYC & Co. on ways that Cemusa could provide more detailed documentation regarding advertisements posted in foreign markets, which may include providing a larger sample size of photographs for those advertisements, and more clearly correlating the dates and locations of the advertisements depicted in the photographs.”

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The audit scope covered Calendar Year 2011 (January 1–December 31), representing Cemusa’s operating year. However, the audit scope was expanded for certain tests involving cash receipts, data reliability, alternative compensation, and no-cost advertising panels. To accomplish our objective, we carried out various audit procedures, discussed below.

To gain an understanding of Cemusa’s responsibilities and obligations regarding the accounting and reporting of gross revenues and the payment of franchise fees to the City, we read and abstracted relevant provisions of the franchise agreement, which formed the basis of our audit criteria. We also reviewed prior audit and compliance reports issued by our office³ and DOT⁴, respectively, and noted findings and conditions in those reports relevant to this current audit.

To understand and evaluate Cemusa’s operations, accounting policies, practices, and controls regarding the recognition, accounting, and reporting of gross revenue, we interviewed key Cemusa officials, conducted walk-throughs of its sales and accounting functions, reviewed relevant documentation and reports, and performed tests of controls. We documented our understanding of Cemusa’s operations and controls in written narratives, memoranda, and flow diagrams.

To obtain assurance about the reliability of Cemusa’s two computer systems, Quattro and Axapta, used to administer sales and accounting of advertising revenue, respectively, we interviewed Cemusa personnel responsible for supporting its computer network. On a limited basis, we assessed the general controls and backup policies in place to protect the data from unauthorized access and unplanned interruption.

We read the user manual for Quattro, obtained read-only access, and reviewed various reporting functions to understand the system’s functionality. Quattro is used to generate, record, track, and report on advertising campaign proposals, contracts, sales invoices, and sales revenue. Quattro also tracks the inventory of street furniture with advertising panels, along with the current advertising placement and availability of panels, and the history of advertising campaigns by location and client. Accordingly, to assess the accuracy, completeness, and reliability of the data recorded therein, we evaluated the campaign codes (contract numbers) assigned to sales proposal and sales contracts to determine whether the codes were sequentially numbered, without gaps or duplication, and assigned in consecutive order covering Calendar Years 2009 – 2011. We randomly selected 30 bus shelters that were visited by the auditors on August 23 and 24, 2011 (during the prior audit), and five newsstand visited by the auditors on August 29, October 2, 10, and 24, 2012, and traced the advertising observed on the panels to the

³ Office of the New York City Comptroller, “*Audit Report on the Cleaning and Maintenance of Bus Stop Shelters by Cemusa NY, LLC in Compliance with Its Franchise Agreement with the Department of Transportation*,” (#MJ11-121A), issued July 10, 2012.

⁴ DOT reviews of Cemusa’s Compliance dated November 2008, April 2009, March 2010, July 2010, and February 2011.

advertising campaigns reflected in Quattro for the same period. In addition, we judgmentally selected five bus shelters and five newsstands from Quattro, visited their physical location on September 19 and 20, 2012, and compared the posted advertisements observed at the time of our visits to the advertising campaign information recorded in Quattro.

To understand the Axapta accounting application, we obtained read-only access and reviewed Cemusa's general ledger, trial balance, chart of accounts, financial statements, cash receipts journals, year-end journal entries, and client account details for Calendar Year 2011. Sales data from Quattro is uploaded daily to the Axapta accounting software to account for and report on financial operations. Therefore, to ensure that the information in both systems matched, we traced sales totals and details of sales invoices generated in Quattro to customer accounts and related accounting records in Axapta. Additional data reliability tests of Quattro and Axapta data were integrated into test procedures involving our sample of Cemusa contracts, as discussed below.

Based on the tests discussed above and additional tests integrated into audit fieldwork, we determined that both Quattro and Axapta were reliable for audit test purposes.

To gain assurance about the accuracy and completeness of revenue that Cemusa reported to DOT for Calendar Year 2011, we compared the revenue reports Cemusa submitted to DOT to sales revenue reflected in Quattro and Axapta for the same period. We also reviewed the 2011 Federal, New York State, and New York City corporate tax returns for Cemusa, Inc. (Cemusa NY LLC's parent company) and compared the sales revenue reported therein for the Cemusa NY LLC subsidiary to sales data reported to DOT and reflected in its books and records.

Further, to assess whether revenue collected reasonably matched reported revenue for Calendar Year 2011, we obtained Cemusa's bank statements for December 2010 – March 2012. We reconciled the cash deposits, including intercompany loans, transfers, advances, and advertising revenues, to Cemusa's books and records.

We determined whether Cemusa reported to DOT total gross revenues from advertising sales for Calendar Year 2011 in accordance with the franchise agreement. We determined whether the value of contracts with NYC & Co. was excluded from the gross revenues reported to DOT. We also ascertained whether Cemusa paid the accurate amount of the cash component of the franchise fee to the City and whether payments were made on time. Further, we determined whether Cemusa submitted annual income statements to DOT in a timely manner.

Using Quattro, we generated a list of 941 campaign codes with advertising campaign dates in Calendar Year 2011, consisting of 604 contracts, 218 active (open) proposals, 56 canceled proposals, and 63 contracts with NYC & Co. We randomly selected 60 (10 percent) contracts from the population of 604 enforceable contracts, which had performance dates in Calendar Year 2011 for audit testing. These 60 sampled contracts had revenue totaling \$4,178,262 (8 percent) out of the total revenue of \$52.3 million for the population of the 604 enforceable contracts for Calendar Year 2011. We obtained and reviewed copies of the 60 sampled contracts and determined whether the contracts had been duly signed by both Cemusa and its clients. We compared elements from the hard-copy contracts (i.e., client's name and address, the dollar value, number of advertising panels, and campaign start and end dates) to the information recorded in Quattro to ensure that all the contracts were accounted for.

To ensure that Cemusa billed its clients and recognized revenue in accordance with its accounting policies, we computed the revenue for each of the 60 sampled contracts based on their terms and compared it to the amounts that Cemusa invoiced its customers in Calendar Year 2011. We also traced all related transactions from the sales invoices for Calendar Year

2011 as detailed in the contracts to sales reports and the subsidiary accounts receivable ledger for each of the 60 sampled contracts for Calendar Year 2011.

To ensure that sales transactions were complete and the payments posted to the cash journals and customer accounts for the 60 sampled contracts were actually received and deposited into the bank, we selected a sample of 35 (31 percent) of the 113 customer payments received by Cemusa for advertising sales invoiced for Calendar Year 2011. The 35 sampled payments totaled \$2,716,404 (65 percent) out of the total \$4,178,262 for all 113 payments for the 60 sampled contracts. We traced the payments from the customer accounts in Axapta to the bank statements, certified deposit tickets, and customer remittance advices.

Further, to ensure that Cemusa appropriately recorded all sales revenue for the judgmentally selected months of April and May 2011, using the bank deposits slips, remittance advices, copies of remittance checks, and wire transfer notices, we traced the customer payments to the customer accounts in Axapta.

To obtain assurance that Cemusa provided up to 22.5 percent of its inventory of advertising panels, from the listing of advertising panels assigned to NYC & Co. for Year 6 of the franchise agreement, we selected a sample of 65 panels (5 percent) – representing 13 panels for each of the five boroughs – of the approximately 1,244 panels affixed to 622 bus shelters and 18 panels affixed to all nine newsstands allocated to NYC & Co. Using Quattro, we accessed the panel/shelter history to confirm that the sampled shelters/panels were appropriately scheduled solely for NYC & Co. campaigns and that such contracts were recorded for each of the associated campaigns.

To gain assurance about the provision of alternative compensation, we interviewed officials from DOT, Cemusa, and NYC & Co. and obtained an understanding of Cemusa and its affiliates' valuation and reporting on the placement of alternative compensation advertising in foreign markets. We examined a workbook for Year 6 of the franchise agreement that detailed the Cemusa affiliates' Year 6 commitments and the actual placement and valuation of alternative compensation advertising for Year 6 in the different foreign cities where advertisements promoting the City were placed. Based on observations with Year 6 alternative compensation analysis, we expanded the analysis to include Years 1–6 of the agreement (covering Fiscal Years 2007–2012). We tested the accuracy of the currency exchange rates used along with all calculations and footings contained in the workbooks for each year. Further, we examined documentation supporting proof of placement abroad promoting New York City. Last, we ascertained NYC & Co. and DOT controls to ensure that the City is being provided the alternative compensation required under the franchise agreement. However, as noted in our findings, no source documentation was available to independently assess the reliability of the information recorded in the workbooks, such as to verify the total number of panels for each market and number of weeks run. Therefore, we only have limited assurance that the data reflected in the alternative compensation workbooks for Years 1–6 of the franchise agreement provide an accurate accounting of advertisements placed in markets outside of the City as part of Cemusa's alternative compensation to be provided to the City under the agreement.

The results of audit tests, while not projected to the population of enforceable advertising contracts for the audit scope period, provided sufficient, competent evidence to support our findings and conclusions.

APPENDIX A

50% of Gross Revenue vs. Minimum Guarantee Payment

Reporting Period for CY2011	a Gross Revenue	b 50% of Gross Revenue <i>(Col a x 50%)</i>	c Minimum Cash Guarantee	d Cemusa Payments to DOT <i>(Greater of Col b. or Col c.)</i>	e Payment Date
1 st quarter <i>(Jan 1 – Mar 31)</i>	\$6,899,148	\$3,449,574	\$9,901,500	\$9,901,500	4/26/2011
2 nd quarter <i>(Apr 1 – Jun 30)</i>	12,773,423	6,386,712	9,901,500	9,901,500	6/15/2011
3 rd quarter <i>(Jul 1 – Sep 30)</i>	14,964,752	7,482,376	11,415,750	11,415,750	9/30/2011
4 th quarter <i>(Oct 1 – Dec 31)</i>	17,691,040	8,845,520	11,415,750	11,415,750	12/30/2011
Total	\$52,328,363	\$26,164,182	\$42,634,500	\$42,634,500	

Revenue Reported to DOT Compared to Revenue Recorded in Cemusa's Books and Records for Calendar Year 2011

Month	Gross Advertising Revenue Per Books <i>(a)</i>	Gross Advertising Revenue Reported to DOT <i>(b)</i>	Difference* <i>Col (a)- Col (b)</i>
January	\$2,306,119	\$2,295,119	\$11,000*
February	\$1,839,409	\$1,839,409	\$0
March	\$2,764,620	\$2,764,620	\$0
April	\$3,184,557	\$3,184,557	\$0
May	\$5,009,327	\$5,009,327	\$0
June	\$4,579,539	\$4,579,539	\$0
July	\$4,886,793	\$4,886,793	\$0
August	\$4,356,268	\$4,356,668	(\$400)*
September	\$5,721,291	\$5,721,291	\$0
October	\$6,655,569	\$6,655,569	\$0
November	\$5,620,557	\$5,620,726	(\$169)*
December	\$5,414,745	\$5,414,745	\$0
Total	\$52,338,794	\$52,328,363	\$10,431*

*The difference of \$10,431 included a timing difference of \$11,000 and two transposition errors totaling \$(569). These discrepancies were immaterial and had no effect on the value of franchise fees Cemusa owed and paid the City for Calendar Year 2011.

APPENDIX B

Calculation of Estimated Gross Revenues for Calendar Year 2011 if Valuation of Bonus Panels Were Included

1. <u>Estimated Valuation of 39 Sampled Contracts with Bonus Panels</u>		
<u>Total (Actual) Sales:</u>		
	<u># of Panels</u>	<u>Sales</u>
Paid Panels	1,802	\$3,227,710
Bonus Panels	717	\$ -
Calendar Year 2011 Total Sales	<u>2,519</u>	<u>\$3,227,710</u>
Average Price per Paid Panel:		
$\$3,227,710 \div 1,802 =$	<u>\$1,791.18</u>	
Estimated Value of Bonus Panels (based on average price per paid panel):		
$\$1,791.18 \times 717 =$	<u>\$1,284,276</u>	
<u>Estimated Value (incl. value of bonus panels):</u>		
	<u># of Panels</u>	<u>Estimated Value</u>
Paid Panels	1,802	\$3,227,710
Bonus Panels	717	\$1,284,276
Calendar Year 2011 Estimated Value	<u>2,519</u>	<u>\$4,511,986</u>

2. <u>Estimated Gross Revenues for the 60 Sampled Contracts Including Valuation of Bonus Panels</u>						
			A	B	C	D
	# of contracts	# of panels	Total (Actual) Sales	Estimated Value of Bonus panels	Estimated Value of Bonus panels as % of Actual Total Sales (Cols B ÷ A)	Total Estimated Value (incl. estimated value of bonus panels) (Cols. A + B)
Contracts with Bonus Panels	39	2,519	\$3,227,710	\$1,284,276	40%	\$4,511,986
Contracts without Bonus Panels	21	411	\$1,529,497	n/a	n/a	\$1,529,497
Total	60	2,930	<u>\$4,757,207</u>	<u>\$1,284,276</u>	27%	<u>\$6,041,483</u>

3. <u>Calculation of Estimated Total Gross Revenues Including Valuation of Bonus Panels for Calendar Year 2011</u>	
Total Sales Revenue Reported to DOT:	\$52,328,363
Add: Estimated Value of Bonus Panels (27% of Total Sales Revenue) [\$52,328,363 x 27%]	\$14,128,658
Total Estimated Value:	<u>\$66,457,021</u>
FRANCHISE FEE OWED FOR CALENDAR YEAR 2011:	
Greater of guaranteed minimum cash component per agreement or 50% of total estimated value (gross revenue)	
Guaranteed minimum cash component for Calendar Year 2011:	\$42,634,500
50% of total estimated value (\$66,457,021 x 50%):"	\$33,228,511
Actual amount Cemusa paid to DOT for Calendar Year 2011:	<u>\$42,634,500</u>

August 23, 2013

Hon. Tina Kim
Office of the Comptroller
Bureau of Audit
One Centre Street, Room 1100
New York, New York 10007-2341

Re: Audit Report on Cemusa NY LLC's Payment of Franchise Fees
in Compliance with Its Coordinated Street Furniture Franchise Agreement
with the Department of Transportation
MJ12-128A

Dear Ms. Kim,

Cemusa appreciates the opportunity to work with the Bureau of Audit to review the benefits flowing to the City from the 2006 Franchise Agreement. Under that Agreement, Cemusa has designed, installed and maintained the City's coordinated street furniture. Working with the City's DOT, and with NYC & Co., Cemusa has installed street furniture that has beautified the streetscape, and won accolades from around the world. Cemusa also is very appreciative of the cooperative and constructive relationship that it has developed with the Bureau of Audit, including as regards the current audit report, MJ12-127A.

We are pleased that the audit report concludes that Cemusa has performed the Franchise Agreement in an exemplary manner as reflected in the report's findings that, among other things, Cemusa has:

- accurately recorded and reported advertising revenue;
- paid the city the appropriate amount of the cash component owed under the Franchise Agreement, including \$42.6 million for Calendar Year 2011 alone;
- properly matched the amounts reflected in revenue reports it submitted to DOT to its own sales and accounting records;
- maintained proper internal controls regarding the recording and reporting of revenues; and
- followed the accrual basis of accounting to record transactions in accordance with Generally Accepted Accounting Principles and appropriately booked all sales revenue for the New York market.

Cemusa believes that these substantial achievements are, in part, attributable to its smooth working relationship with the City, and its efforts to respond to the City's requirements and to support the goals of the DOT's street furniture program.

We also want to take this opportunity to confirm the informal advice we have shared with the Bureau of Audit during the audit process regarding our difference of opinion concerning the valuation of bonus panels made available to Cemusa's customers, and the amount of alternative (non-cash) compensation available to the city.

First, we disagree with the proposed finding of the audit report that “Cemusa did not track the value of bonus panels nor did it report the fair market value of the bonus panels to DOT.” In fact, Cemusa reported all panels associated with each of its advertising campaigns; where panels in these agreements are characterized as bonus panels they are also reported as such to DOT. Indeed, bonus panels are part of the intrinsic value of an advertising contract, as is recognized throughout our industry. Assessing a dollar value to bonus panels beyond the value of an underlying advertising contract would result in the posting of revenues that would exceed the contract amount, and hence would overstate gross revenues. Furthermore, section 9.1 specifically stipulates that gross revenues shall be deemed to include any kind of compensation to Cemusa, whether in the form of monetary receipts or any non-monetary consideration the company may receive. Cemusa receives no compensation whatsoever in any form in exchange for the bonus panels, beyond the contract amounts which are duly reported to the City. The Franchise Agreement requires gross revenues to be determined in accordance with GAAP, and Cemusa’s current reporting protocol as to bonus panels is consistent with GAAP.

Second, Cemusa disagrees with the finding that it owes the city additional alternative (non-cash) compensation because it “mistakenly included value added taxes in its calculation of advertising placed in Spain, Italy and Portugal...” In fact, Cemusa properly calculates the value of alternative compensation according to market comparables. We do not believe that section 9.11 is applicable – among other reasons, because it applies to domestic taxes, whether federal, state or local. As such, Cemusa respectfully notes that it provides the City with a similar level of service and value with respect to the alternative compensation as it does to any other customer, in line with the commitment made in the Franchise Agreement. The service provided includes the submission of a detailed list of postings by location and date and pictures of some locations showing each of the NYC campaigns effectively posted in Cemusa’s inventory. This comprehensive posting information is consistent with well-recognized industry standards.

Once again, we appreciate the efforts and energies of the Audit Bureau, as well as the important opportunity to help beautify the City’s streetscapes. We would be happy to address any other questions or comments.

Sincerely,

A handwritten signature in blue ink, appearing to read 'CP' or similar initials.

Carlos Pujol
CEO

cc: Ivan Zamarbide, CFO



Department of Transportation

JANETTE SADIK-KHAN, Commissioner

August 23, 2013

H. Tina Kim
Deputy Comptroller
Municipal Building
One Centre Street, Room 1100
New York, NY 10007-2341

Re: Audit Report on Cemusa NY LLC's Payment of Franchise Fees in Compliance with Its Coordinated Street Furniture Franchise Agreement with the Department of Transportation, MJ12-127A

Dear Ms. Kim:

On behalf of Janette Sadik-Khan, Commissioner of the New York City Department of Transportation ("DOT"), I would like to thank you for the opportunity to respond to the Draft Audit Report of the Cemusa NY LLC ("Cemusa") financial audit, dated August 9, 2013 ("Report"). DOT is very pleased that the Comptroller's Office found that with one potential exception, Cemusa met its financial obligations under the Coordinated Street Furniture Franchise Agreement ("Franchise Agreement"), including accurately recording and reporting advertising revenue, paying the appropriate amount of the cash component of the franchise fee in Calendar Year 2011, and providing 22.5 percent of its inventory within New York City to NYC & Co. for its purposes. The Report contained five recommendations. Recommendations 1-3 were issued to Cemusa, and recommendations 4-5 were addressed to DOT. DOT's response to recommendations 4 and 5 is below.

Recommendation #4 – Meet with Cemusa and NYC & Co. to work out an acceptable plan for Cemusa to compensate the City for the \$11.79 million due in alternative compensation for years 1-6 of the franchise agreement.

The issue of whether value added taxes should be included in any way in calculating the value of non-cash compensation is a contract interpretation matter which DOT will work with Cemusa to resolve.

H. Tina Kim
August 23, 2013
Page 2

Recommendation #5 – Improve its monitoring of the valuation of alternative compensation each year and require a greater level of assurance in the proof of performance, such as independent verification of proof of performance of advertising in out-of-home markets that Cemusa is obligated to provide each year of the franchise agreement.


DOT will work with Cemusa and NYC & Co. on ways that Cemusa could provide more detailed documentation regarding advertisements posted in foreign markets, which may include providing a larger sample size of photographs for those advertisements, and more clearly correlating the dates and locations of the advertisements depicted in the photographs.

Bonus Panels

Although the Report did not direct any recommendations regarding the so-called "bonus panels" to DOT, it is DOT's understanding of industry practice that in general "bonus panels" do not generate additional revenue (whether cash or in-kind) to the ad space providers, such as Cemusa, which provide them to their customers. Rather, the general effect of issuing "bonus panels" is similar to when a consumer retailer offers its customers a "buy-one-get-one-free" sale - the second product does not generate any additional revenue or value to the seller beyond the price paid for the first. We do note that in the event any additional value is received by Cemusa in connection with bonus panels, Cemusa is required to report this as revenue. DOT will work with Cemusa and NYC & Co. to make sure that Cemusa continues to clearly indicate the use and effect of its bonus panel practices.

We appreciate the auditors' time and effort in preparing the Report.

Sincerely,



Amy Hutner
Auditor General

- c: Lori Ardito, First Deputy Commissioner (DOT)
Lawrence Price, Director, Audit Coordination (DOT)
Michelle Craven, Executive Director, CSFF & Franchises (DOT)
Domenic Carpentieri, Director of Finance, Coordinated Street Furniture Franchise (DOT)
Philip Damashek, General Counsel (DOT)
Susan Pondish, Deputy General Counsel (DOT)
Bryan Grimaldi, Chief Operating Officer and General Counsel (NYC & Co.)
George Davis, Mayor's Office of Operations