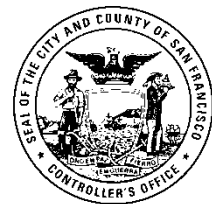


AIRPORT COMMISSION:

**Gotham Enterprises, LLC,
Overstated Its Gross Revenues by
\$26,047 and Did Not Submit on
Time Its Certified Statement of
Revenue and Lease Payments for
December 1, 2008, Through
December 31, 2011**



August 28, 2012

**OFFICE OF THE CONTROLLER
CITY SERVICES AUDITOR**

The City Services Auditor (CSA) was created in the Office of the Controller through an amendment to the Charter of the City and County of San Francisco (City) that was approved by voters in November 2003. Under charter Appendix F, CSA has broad authority to:

- Report on the level and effectiveness of San Francisco's public services and benchmark the City to other public agencies and jurisdictions.
- Conduct financial and performance audits of city departments, contractors, and functions to assess efficiency and effectiveness of processes and services.
- Operate a whistleblower hotline and website and investigate reports of waste, fraud, and abuse of city resources.
- Ensure the financial integrity and improve the overall performance and efficiency of city government.

CSA may conduct financial audits, attestation engagements, and performance audits. Financial audits address the financial integrity of both city departments and contractors and provide reasonable assurance about whether financial statements are presented fairly in all material aspects in conformity with generally accepted accounting principles. Attestation engagements examine, review, or perform procedures on a broad range of subjects such as internal controls; compliance with requirements of specified laws, regulations, rules, contracts, or grants; and the reliability of performance measures. Performance audits focus primarily on assessment of city services and processes, providing recommendations to improve department operations.

CSA conducts its audits in accordance with the Government Auditing Standards published by the U.S. Government Accountability Office (GAO). These standards require:

- Independence of audit staff and the audit organization.
- Objectivity of the auditors performing the work.
- Competent staff, including continuing professional education.
- Quality control procedures to provide reasonable assurance of compliance with the auditing standards.

For questions about the report, please contact Director of City Audits Tonia Lediju at Tonia.Lediju@sfgov.org or 415-554-5393, or CSA at 415-554-7469.

CSA Audit Team: Winnie Woo, Associate Auditor

Audit Consultants: Macias Gini & O'Connell LLP (MGO)



CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF THE CONTROLLER

Ben Rosenfield
Controller

Monique Zmuda
Deputy Controller

August 28, 2012

San Francisco Airport Commission
San Francisco International Airport
P.O. Box 8097
San Francisco, CA 94128-8097

John L. Martin, Airport Director
San Francisco International Airport
P.O. Box 8097
San Francisco, CA 94128-8097

Dear Commission President, Commissioners, and Mr. Martin

The City and County of San Francisco's Airport Commission (Airport) coordinates with the Office of the Controller's City Services Auditor Division (CSA), to conduct periodic concession audits of Airport tenants. CSA engaged Macias Gini & O'Connell LLP (MGO) to audit the Airport's tenants to determine whether they complied with the reporting, payment, and other selected provisions of their leases with the Airport.

CSA presents the attached report for the concession audit of Gotham Enterprises, LLC, (Gotham) prepared by MGO.

Reporting Period: December 1, 2008, through December 31, 2011

Rent Paid: \$3,549,224

Results:

Gotham overstated reported gross revenues of \$38,992,859 by including employee discounts of \$26,047, resulting in an overpayment of \$2,223 in rent to the Airport. In addition, Gotham did not always submit on time its certified statement of revenue and lease payments.

The responses from the Airport and Gotham are attached to this report.

CSA appreciates the assistance and cooperation of Airport staff during the audit. For questions about the report, please contact me at Tonia.Lediju@sfgov.org or 415-554-5393, or CSA at 415-554-7469.

Respectfully,

Tonia Lediju
Director of City Audits

Attachment

cc: Mayor
Board of Supervisors
Budget Analyst
Civil Grand Jury
Public Library

**CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF THE CONTROLLER**

**PERFORMANCE AUDIT REPORT
GOTHAM ENTERPRISES, LLC**

December 1, 2008 through December 31, 2011



Certified Public Accountants.



Performance Audit Report

Macias Gini & O'Connell LLP (MGO) presents its report concerning the performance audit of Gotham Enterprises, LLC (Gotham) as follows:

Background

Gotham doing business as Peet's Coffee & Tea and Firewood Grill has four lease agreements with the Airport Commission of the City and County of San Francisco (Commission) to operate six Peet's Coffee & Tea shops and two Firewood Grill restaurants at the San Francisco International Airport (SFO). These agreements require Gotham to submit to the Airport Department (Airport) a monthly report showing its sales revenue and rent due.

For the period of our performance audit, December 1, 2008 through December 31, 2011, the leases required payment of the greater of monthly minimum rent or percentage rent thresholds outlined below.

Lease: **03-0069 (Peet's 123)**
Reporting periods: December 1, 2008 through November 30, 2011
Lease Term: September 1, 2004 through November 8, 2015
Percentage Rent (per space): 8% of Gross Revenues achieved up to and including \$750,000, plus,
10% of Gross Revenues achieved from \$750,000.01 up to and including \$1,400,000; plus
12% of Gross Revenues achieved over \$1,400,000.

Lease: **03-0069A (Grill 1)**
Reporting periods: December 1, 2008 through November 30, 2011
Lease Term: December 1, 2003 through November 8, 2015
Percentage Rent: 4% of Gross Revenues achieved up to and including \$1,000,000; plus
6% of Gross Revenues achieved over \$1,000,000.

Lease: **99-0292J (Grill 2)**
Reporting periods: January 1, 2009 through December 31, 2011
Lease Term: December 10, 2000 through November 9, 2015
Percentage Rent: 6% of Gross Revenues achieved up to and including \$1,000,000; plus
8% of Gross Revenues achieved from \$1,000,000.01 up to and including \$1,500,000; plus
10% of Gross Revenues achieved over \$1,500,000.

Lease: **03-0193 (Peet's 456)**
Reporting periods: January 1, 2009 through December 31, 2011
Lease Term: June 2, 2004 through February 23, 2015
Percentage Rent: 8% of Gross Revenue achieved up to and including \$750,000, plus,
10% of Gross Revenues achieved from \$750,000.01 up to and including \$1,400,000; plus
12% of Gross Revenues achieved over \$1,400,000.

For the period of our performance audit, the minimum monthly rent for Lease 03-0069A (Grill 1) has been suspended until yearly revenues reach \$2,500,000. The minimum annual guarantee for the three remaining leases under audit is outlined in the table below.

Period	03-0069	99-0292J	03-0193	Total
Lease Year ended 2009	\$ 106,965	\$ 123,843	\$ 48,075	\$ 278,883
Lease Year ended 2010	111,912	127,684	50,139	289,735
Lease Year ended 2011	112,906	134,586	50,367	297,859
	<u>\$ 331,783</u>	<u>\$ 386,113</u>	<u>\$ 148,581</u>	<u>\$ 866,477</u>

The percentage rent owed each month in excess of the monthly minimum is due as additional rent to the Airport.

Objective and scope

The purpose of this performance audit was to obtain reasonable assurance that Gotham complied with the reporting, payment, and other rent related provisions of its leases with the Commission. Based upon the provisions of the City and County of San Francisco contract number PSC# 4042-11/12 dated April 1, 2012, between MGO and the City and County of San Francisco, and per Appendix A therein, the objectives of our performance audit were: verify that revenues for the audit period were reported to the Airport in accordance with the lease provisions, and that such amounts agree with the underlying accounting records; identify and report the amount and cause of any significant error (over or under) in reporting together with the impact on rent payable to the Airport; and identify and report any recommendations to improve record keeping and reporting processes of Gotham relative to its ability to comply with lease provisions; and identify and report any recommendations to improve the Airport's compliance with significant lease terms and lease management activities.

Methodology

To meet the objectives of our performance audit, we performed the following procedures: reviewed the applicable terms of the leases and the adequacy of Gotham's procedures for collecting, recording, summarizing and reporting its sales revenue to the Airport; selected and tested samples of daily and monthly sales revenue; recalculated monthly rent due; and verified the timeliness of reporting revenues and rent and submitting rent payments to the Airport.

Audit Results

Based on the results of our performance audit for the period from December 1, 2008 through December 31, 2011, Gotham overstated its reported gross revenues of \$38,992,859 and paid percentage rent of \$3,549,224 to the Airport in accordance with its lease provisions. Those amounts agreed to the underlying records.

Gross revenues and percentage rent are defined in the leases between Gotham and the City and County of San Francisco. The tables below show Gotham reported total gross revenue and percentage rent paid to the Airport for each of the four leases under audit.

**Sales Revenues and Percentage Rent Paid
December 1, 2008 through November 31, 2011**

GOTHAM Lease: 03-0069 (Peet's 123)

Lease Period	Total Revenue Reported by Tenant	Calculated percentage Rent Stipulated by Lease	Minimum rent Stipulated by Lease	Additional Rent Due	Rent Paid Per Airport Payment Records	(Over) Payment
	A	B	C	D (B-C)	E	F (B-E)
December 1, 2008 through November 30, 2009	\$ 5,820,636	\$ 569,476	\$ 106,965	\$ 462,511	\$ 569,476	\$ -
December 1, 2009 through November 30, 2010	6,157,672	609,921	111,912	498,009	609,921	-
December 1, 2010 through November 30, 2011	6,366,475	634,977	112,906	522,071	634,977	-
Total	<u>\$ 18,344,783</u>	<u>\$ 1,814,374</u>	<u>\$ 331,783</u>	<u>\$ 1,482,591</u>	<u>\$ 1,814,374</u>	<u>\$ -</u>

GOTHAM Lease: 03-0069A (Grill 1)

Lease Period	Total Revenue Reported by Tenant	Calculated percentage Rent Stipulated by Lease	Minimum rent Stipulated by Lease	Additional Rent Due	Rent Paid Per Airport Payment Records	(Over) Payment
	A	B	C	D (B-C)	E	F (B-E)
December 1, 2008 through November 30, 2009	\$ 1,059,611	\$ 43,577	\$ -	\$ 43,577	\$ 43,577	\$ -
December 1, 2009 through November 30, 2010	1,115,981	46,959	-	46,959	46,959	-
December 1, 2010 through November 30, 2011	1,112,331	46,740	-	46,740	46,740	-
Total	<u>\$ 3,287,923</u>	<u>\$ 137,276</u>	<u>\$ -</u>	<u>\$ 137,276</u>	<u>\$ 137,276</u>	<u>\$ -</u>

**Sales Revenues and Percentage Rent Paid
January 1, 2009 through December 31, 2011**

GOTHAMLease: 99-0292J (Grill 2)

Lease Period	Total Revenue Reported by Tenant	Calculated percentage Rent Stipulated by Lease	Minimum rent Stipulated by Lease	Additional Rent Due	Rent Paid Per Airport Payment Records	(Over) Payment
	A	B	C	D (B-C)	E	F (B-E)
January 1, 2009 through December 31, 2009	\$ 3,383,880	\$ 287,837	\$ 123,843	\$ 163,994	\$ 288,388	\$ (551)
January 1, 2010 through December 31, 2010	3,831,327	332,359	127,684	204,675	333,133	(774)
January 1, 2011 through December 31, 2011	3,116,976	260,800	134,586	126,214	261,698	(898)
Total	<u>\$ 10,332,183</u>	<u>\$ 880,996</u>	<u>\$ 386,113</u>	<u>\$ 494,883</u>	<u>\$ 883,219</u>	<u>\$ (2,223)</u>

GOTHAMLease: 03-0193 (Peet's 456)

Lease Period	Total Revenue Reported by Tenant	Calculated percentage Rent Stipulated by Lease	Minimum rent Stipulated by Lease	Additional Rent Due	Rent Paid Per Airport Payment Records	(Over) Payment
	A	B	C	D (B-C)	E	F (B-E)
January 1, 2009 through December 31, 2009	\$ 2,412,149	\$ 246,458	\$ 48,075	\$ 198,383	\$ 246,458	\$ -
January 1, 2010 through December 31, 2010	2,376,153	242,138	50,139	191,999	242,138	-
January 1, 2011 through December 31, 2011	2,239,667	225,760	50,367	175,393	225,760	-
Total	<u>\$ 7,027,969</u>	<u>\$ 714,356</u>	<u>\$ 148,581</u>	<u>\$ 565,775</u>	<u>\$ 714,356</u>	<u>\$ -</u>

Finding 2011-1 – Certified Statement of Revenues

During our performance audit for the period from December 1, 2008 through December 31, 2011, we noted that Gotham did not submit its 2009 certified statement of revenues until June 24, 2010 which was past the 90 day due date of March 31, 2010. As a result, Gotham was not in compliance for lease year 2009 per the terms of the lease agreement. Additionally, we noted that the certified statement of revenues included discounts to employees and as a result annual certified amounts did not agree to the monthly sales reports for all years under audit under leases L03-0069, L03-0069A and L03-0193, which properly excluded amounts pursuant to the lease terms.

Recommendation

We recommend the Airport establish procedures to ensure Gotham submits a certified statement of annual revenues within 90 days after the end of each lease year. These procedures would ensure the tenant is in compliance with the terms of the lease. Additionally, we recommend that the Airport reconcile the certified statement of revenues to the monthly sales reports and understand/document the reason for the difference.

Finding 2011-2 – Late Payment

During our testing of lease payments, we noted that Gotham was late in making its lease payments; however, the recalculated late fees and penalties were below the materiality threshold of \$300. The Airport did not assess or impose the appropriate late fees and penalties during the audit period.

Recommendation

We recommend that the Airport establish procedures to ensure proper assessment and collection of late fees.

Finding 2011-3 – Employee Discounts

Per lease agreement No. L99-0292J (Grill 2) dated September 1999; Section 4.1 Rent defines gross revenues to be the following:

- a. “The **retail price** of all food and beverage products sold and services rendered in, on, or from the Premises or from such other locations on Airport operated by Tenant, whether operated by a subtenant or a concessionaire, or by any other person or entity, as may herein be provided, whether such sales be for such or on credit, and in case of sales on credit, whether or not payment is actually made; provided, however, that in the event food and beverage is returned by a customer and the sale is canceled, the selling price shall be excluded.”

The Airport interprets “retail price” as the ultimate price paid by the end consumer. As such, we noted that Gotham had incorrectly added back employee discounts in its determination of gross revenues at the Grill 2 location, which resulted in an overstatement of \$26,047 in reported gross revenues and an overpayment of \$2,223 in rent for the audit period.

Recommendation

We recommend that the Airport issue a credit memo in the amount of \$2,223 to Gotham for the overpayment of rent. Additionally, we recommend that the Airport establish procedures to monitor and ensure that tenants are properly reporting gross revenues per the terms of the lease agreement.

We conducted this performance audit in accordance with the provisions of our contract, as outlined in the objective and scope section above, and 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 reasonableness basis for our findings and conclusions based on our audit objectives. Our performance audit report is limited to those areas specified in the scope and objectives section of this report.

This report is intended solely for the information and use of Gotham, the Commission and the City and County of San Francisco, and is not intended to be and should not be used by anyone other than these specified parties.

Macias Gini & Connell LLP

Walnut Creek, California
August 16, 2012



San Francisco International Airport

August 2, 2012

Ms. Tonia Lediju
Director of Audits
Office of the Controller
City Services Auditor Division
City and County of San Francisco
1 Dr. Carlton B. Goodlett Place, Room 477
San Francisco, CA 94102


Subject: Performance Audits – Gotham Enterprises and Harbor Airport

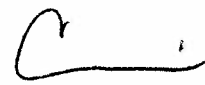
Dear Ms. Lediju:

We have received and reviewed the final draft audit reports of Gotham Enterprises and Harbor Airport prepared and sent by Macias Gini & O'Connell LLP via e-mail on July 25, 2012. This letter is to confirm that, based upon the details provided, we agree with the audit results.

Please feel free to call us at (650) 821-2850 (Wallace) or (650) 821-4501 (Cheryl) if you have any questions.

Very truly yours,


Wallace Tang, CPA
Airport Controller


Cheryl Nashir
Associate Deputy Airport Director
Revenue Development and Management

cc: Tryg McCoy
Leo Fermin
Winnie Woo – CSA
Eugene Ma – Macias Gini & O'Connell LLP
Elizabeth Rourick – Macias Gini & O'Connell LLP

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

LARRY MAZZOLA
PRESIDENT

LINDA S. CRAYTON
VICE PRESIDENT

ELEANOR JOHNS

RICHARD J. GUGGENHIME

PETER A. STERN

JOHN L. MARTIN
AIRPORT DIRECTOR

HIGH FLYING FOODS

Restaurant Group

133 Stillman Street • San Francisco, CA 94107

Office: 415.243.8908 • Fax: 415.243.8695 • Email: firewoodcafe@yahoo.com

July 30, 2012

Tonia Lediju

Director of City Audits

Office of the Controller - City Services Auditor Division

City Hall, Room 476

1 Dr. Carlton B. Goodlett Place

San Francisco, CA 94102

Ms. Lediju,

Responses to Gotham Enterprises, LLC audit from December 1, 2008 through December 31, 2011.

Recommendation One

Gotham will submit a certified statement of annual revenues within the required 90 day period at the end of each lease year.

Recommendation Two

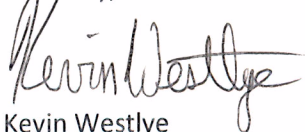
Gotham will pay all lease payments as required to avoid any future late fees.

Recommendation Three

We will accept the rent credit of \$2,223 when it is complete and have adjusted our accounting procedures to eliminate the rent overpayment moving forward.

Please let me know if there is any additional information we can provide.

Sincerely,



Kevin Westlye

COO

Gotham Enterprises, LLC