



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

MARJORIE LANDA
DEPUTY COMPTROLLER FOR
AUDIT

BUREAU OF AUDIT

June 7, 2021

By Electronic Mail

Mr. Jules Flynn
Head of Operations
Lyft Bikes and Scooters
441 9th Avenue
New York, NY 10001

Re: Letter Report on the Compliance of New York City Bike Share, LLC with Its Agreement with the Department of Transportation for the Bike Share Program (FN20-081AL)

Dear Mr. Flynn:

This Letter Report concerns the New York City (City) Comptroller's audit of New York City Bike Share, LLC's (NYCBS') compliance during Calendar Year 2018 with its agreement with the New York City Department of Transportation (DOT) for the Bike Share Program (the Program).¹ The objectives of the audit were to determine whether NYCBS properly reported all revenues derived from the Program; made accurate and timely payments to the City; and complied with other major financial requirements of its agreement, including maintaining specified insurance coverage and a Service License Agreement (SLA) escrow account in accordance with the terms of the agreement.² In addition, we determined whether DOT had proper oversight over its agreement with NYCBS.

Background

On April 13, 2012, the City, via DOT, entered into an agreement (Agreement) with NYCBS to launch a self-service bicycle sharing program within the City. Under the Agreement, NYCBS is responsible for designing, building, operating, maintaining, and publicizing a network of publicly available bicycles for City residents and tourists. The original Agreement was set to expire on May 26, 2019; however, DOT amended that Agreement and extended the term to May 26, 2029.³ As of

¹ NYCBS was acquired by Lyft, Inc. in November 2018. We conducted limited testing for the revenue collected in November 2019 due to the change in NYCBS management after the November 2018 acquisition and expanded our review of NYCBS' insurance coverage to 2019.

² The SLA escrow account is used to maintain liquidated damages for not meeting the service level requirement and the lost parking meter revenue.

³ The original Agreement was amended and restated on October 24, 2014 and eight subsequent amendments were signed on January 1, 2016, June 15, 2016, November 2, 2016, December 21, 2017, December 31, 2017, November 29, 2018, April 15, 2020, and December 11, 2020.

September 2020, NYCBS maintained an inventory of 17,000 bicycles that were available for rent. At that time, bicycles rented through the Program could be obtained from and returned to any of the 1,081 docking stations located throughout the City and Jersey City.⁴

In accordance with Section 10.2 of the Amended and Restated Agreement dated October 24, 2014, NYCBS is required to share 5 percent of its revenue with the City for bicycle ridership revenue that exceeds \$30 million and 5 percent of all other revenue that exceeds \$10 million, including from sponsorship fees, merchandise sales, and station-move fees charged to property owners and businesses for temporary removal or relocation of docking stations.⁵ In addition, NYCBS is required to place \$1 million into an SLA escrow account each year for parking meter revenue that the City has not collected due to the placement of docking stations in parking spaces and to maintain insurance coverage as stipulated in the Agreement.

According to the certified schedule that NYCBS submitted to the City, NYCBS collected \$36,087,781 in bicycle ridership revenue and \$16,741,652 in other revenue for Calendar Year 2018 from its operations in the City. (NYCBS excludes revenue generated from the Jersey City operation from the revenue reported to the City.) On March 1, 2019, NYCBS remitted \$501,336 to DOT in shared revenue from the Program.

Audit Findings

Our audit found that NYCBS generally reported its bicycle ridership and other revenue from its operations in the City accurately and, for the most part, paid the required revenue sharing percentage to the City, as stipulated in the Agreement. However, our audit also found a number of deficiencies in NYCBS' contract compliance. Specifically, we found that NYCBS may have failed to maintain sufficient insurance coverage; underreported \$1,447 in other revenue generated from a station move; was unable to provide supporting documentation to substantiate its allocation of revenue and sales tax for its Jersey City operation and so could have underreported revenue from its City operations; and did not comply with the terms of the Agreement in relation to maintaining the "SLA escrow account" in a financial institution during the audit scope period. Under the Agreement, NYCBS is supposed to set aside funds in a specified amount to: (1) compensate the City for lost revenue from the removal of metered parking spaces to accommodate NYCBS' docking stations; and (2) provide the City with funds as "liquidated damages" if NYCBS does not perform in conformity with SLA.

We also found that, while DOT generally properly oversaw NYCBS' compliance with the Agreement, there were two notable exceptions. Specifically, DOT did not enforce NYCBS' obligation to maintain sufficient insurance coverage. In addition, DOT did not enforce NYCBS' obligation to maintain an SLA escrow account in a financial institution. Moreover, to the extent the parties may have agreed to amend the terms of the Agreement to reflect NYCBS' current practice, DOT failed to do so in writing as required by Section 26.31 of the Agreement, which states, "no provision of this Agreement nor any Appendix or Exhibit shall be amended or otherwise modified,

⁴ NYCBS has signed a separate agreement with Jersey City for its operation in Jersey City.

⁵ Revenue is reported on cash basis, net of sales taxes and credit card fees. The Agreement's eighth amendment, executed on December 11, 2020, decreased the percentage of ridership revenue to be shared with the City from the original 5 percent to 4 percent for ridership revenue from \$40 million to \$50 million and to 2 percent for ridership revenue exceeding \$50 million. Revenue sharing percentage remains 5 percent for ridership revenue from \$30 million to \$40 million.

in whole or in part, except by a written instrument, duly executed by the City and NYCBS and approved as required by applicable law.”

These findings are detailed below.

NYCBS May Not Have Maintained the Required Insurance Coverage

According to Section 19 of the Agreement, NYCBS is required to maintain commercial general liability, automobile, and workers compensation insurance, and to name the City as an additional insured. However, we found that NYCBS may not have maintained sufficient coverage for commercial general liability and business automobile liability during Calendar Year 2018. Although NYCBS provided insurance documents that appear to show that it obtained sufficient insurance coverage, the insurance documents were incomplete in that pages were missing and the documents did not contain all required signatures. In addition, we are unable to determine the authenticity of the signatures on the copy of the insurance policy NYCBS provided. Furthermore, we requested a signed Certificate of Insurance that correlates to the incomplete insurance documents NYCBS provided, but neither DOT nor NYCBS provided the certificate for our review. As a result, we are unable to determine whether NYCBS maintained sufficient insurance coverage for the period listed in Table I.

Table I

Summary of Insufficient Proof of Insurance Coverage

Per Section 19 of the Restated Agreement		Per NYCBS Insurance Certificates Provided				Insufficient Proof of Coverage Found	
Types of Insurance	Amount Required	Amount Covered	Policy Effective Date	Policy Expiration Date	Total Coverage	Amount	Period
Commercial General Liability	\$10,000,000 per Occurrence	\$1,000,000	01/01/2018	11/30/2018	\$1,000,000	\$9,000,000	01/01/2018 to 04/08/2018
		\$5,000,000 Umbrella Policy	04/09/2018	11/30/2018	\$6,000,000*	\$4,000,000	04/09/2018 to 11/30/2018
Business Automobile Liability	\$2,000,000 Aggregate	Additional \$1,000,000 coverage from 01/01/2018 to 04/08/2018 Not Provided			\$1,000,000	\$1,000,000	01/01/2018 to 04/08/2018

* \$1 million from the general policy and \$5 million from the umbrella policy.

Insofar as the documentary evidence of insurance coverage provided to us is insufficient, NYCBS may have failed to fully insure and protect itself and the City against any claims or potential claims that may arise in connection with the operation of the Program, and DOT may have failed to ensure that NYCBS maintained the required insurance coverage.

NYCBS Response: “As noted by the Draft Letter Report, NYCBS ‘provided insurance documents that appear to show that it obtained sufficient insurance coverage . . .’ Having provided such documentation, we strongly disagree with this finding of the Draft Letter Report.

The reason that ‘pages were missing’ from the documents we provided is that we selected, from lengthy policy documents, the relevant pages that proved we had maintained the required coverage. While the Comptroller’s office noted by email shortly before preparing the Draft Letter Report that our documentation was ‘incomplete,’ they did not specifically indicate that providing the remaining pages of our policy documents would have been helpful to their review.

The Draft Letter Report further concludes, without any support for drawing such a conclusion, that the signatures on the policy documents we provided were not authentic. We confirmed to the Comptroller’s office during the exit conference, and continue to maintain, that all signatures on the documents we provided were authentic and unaltered from their original states.”

Auditor Comment: NYCBS appears to have misunderstood the draft audit report. The report does not state that the signatures on the insurance documents were not authentic, but rather that we were unable to determine their authenticity. Our conclusions are based on the circumstances of the documents’ production and their contents, to which we appropriately applied professional skepticism. During the audit, on several occasions, we informed NYCBS officials that the insurance coverage appeared to be insufficient during Calendar Years 2018 and 2019. However, it was not until March 16, 2021, 14 months after we first informed NYCBS of the apparent insufficiency of its insurance coverage, that it finally provided two incomplete umbrella insurance policies to the auditors that included the required amount of insurance coverage. However, the incomplete umbrella insurance policies provided did not bear any signatures to show that the policies had been executed. After we informed NYCBS that we could not accept the unsigned insurance policies as proof of insurance, NYCBS re-resent the same insurance documents to us with some—but not all—of the required signatures. Although NYCBS officials “confirmed” that the signatures on the insurance policies were authentic, this could not be verified, and we could not accept self-certification as proof of insurance. Finally, neither NYCBS nor DOT could provide the certificates of insurance, signed by the insurance broker, to show the umbrella policies were revised.

NYCBS Did Not Report the Full Amount Charged and Received for One of Its Station Moves

NYCBS under-reported \$1,447 in revenue it received from one of its charges for the temporary removal of a docking station.⁶ NYCBS charges pre-determined fees to entities or property owners who request temporary closure, removal, and/or relocation of bicycle docking stations. Our review of invoices and payment records for 26 station moves that were billed in 2018 found that, for one of these station moves, NYCBS charged and collected \$17,750 but only reported \$16,303 to the City, a difference of \$1,447. According to Section 10.2 of the amended and restated Agreement, NYCBS is required to certify all revenue collected from the Program annually. Although this under-reported amount and the underpayment of \$72 (\$1,447 x 5 percent) are immaterial, careful review of all revenue received and reconciliation with the revenue reported to the City is necessary to ensure accurate reporting.

⁶ The Agreement refers to such revenue as “other” revenue.

NYCBS Response: “NYCBS completed 371 station moves and installations over the course of 2018, including a number for private organizations who were billed for that work based on our contract with NYCDOT. The \$1,447 difference for this one move identified by the Draft Letter Report represents a minor discrepancy in an otherwise seamless operation and billing structure.”

Auditor Comment: We agree that the discrepancy is minor. Nevertheless, it is NYCBS’ responsibility to ensure all Program revenues are accurately reported to the City.

NYCBS Maintained Insufficient Documentation for Jersey City Revenue Allocation

As stated in Section 22.7 of the amended and restated Agreement, “NYCBS shall maintain complete and accurate books of account and records of the business, ownership, and operations of NYCBS with respect to the Program in a manner that allows the City to determine whether NYCBS is in compliance with the Agreement.” The section further states that NYCBS “shall also maintain and provide such additional books and records as the Comptroller or the Commissioner deem reasonably necessary to ensure proper accounting of all payments due the City.”

However, our audit found that NYCBS’ sales records maintained in its point-of-sale system did not support ridership revenue and sales tax it allocated to its Jersey City operation in its annual certified schedule to the City. Specifically, our review of the November 2018 ridership sales data identified \$21,622 in ridership revenue and \$1,320 in sales tax generated from the Jersey City operation, yet NYCBS had allocated higher amounts—\$49,590 in ridership revenue and \$2,280 in sales tax—to its Jersey City operation in its annual certified schedule to the City. Although the Jersey City revenue and sales tax represented only 1.8 percent, approximately, of total ridership revenue (\$645,592 out of \$36,087,781), the Agreement requires NYCBS to maintain complete and accurate accounting records and to provide additional documentation, when requested, to support the payments due the City.

On August 12, 2020, we informed NYCBS of the abovementioned discrepancy in its records and requested that NYCBS officials explain the Jersey City allocations and provide supporting documentation. According to NYCBS officials, the discrepancy between its two different sales tax figures was caused by NYCBS’ use of different reporting methods (i.e., accrual basis vs. cash basis). However, NYCBS officials were unable to provide any documentation to support that explanation. Moreover, different reporting methods usually do not result in large discrepancies. In this case, NYCBS’ unsupported explanation does not adequately account for the entire 42 percent difference between NYCBS’ point-of-sale records and the certified schedule NYCBS submitted to the City with respect to the amounts of sales tax NYCBS attributed to its Jersey City operation. Furthermore, NYCBS did not explain or provide documentation to account for the discrepancy between NYCBS’ point-of-sale records and its certified schedule with respect to the ridership revenue NYCBS attributed to Jersey City.

Therefore, in the absence of supported explanations for the above-described discrepancies we could not determine whether the revenue and sales tax amounts NYCBS allocated to its Jersey City operation were accurate and appropriate. Because revenue NYCBS allocates to its Jersey City operation is excluded from the Program revenue it reports to and shares with the City, a misallocation would affect the accuracy of those reports and potentially affect NYCBS’ payments to the City. We

were unable to determine from the records we were provided whether NYCBS underreported any revenue to the City based on a possible misallocation of Program revenue to NYCBS' Jersey City operation and the amount, if any, NYCBS owes to the City.

NYCBS Response: "NYCBS understands that there are minor discrepancies in the November 2018 records provided with respect to the Jersey City allocations for ridership revenue and sales tax for that single month selected for analysis; based on the records NYCBS management was able to locate from the relevant time period under the company's previous ownership, we believe this small discrepancy in the context of overall Program size is due to differences between cash and accrual accounting methods. However, we agree with the Draft Letter Report's recommendation related to this finding and have processes in place to ensure adequate support of allocations to the Jersey City operation."

Auditor Comment: We are glad that NYCBS agrees with our recommendation and acknowledges that it has processes in place to ensure adequate support for the Jersey City allocation. DOT should follow up with NYCBS to determine whether the processes established accurately account for the revenue generated from Jersey City operation.

NYCBS Did Not Comply with the Agreement with Respect to the SLA Escrow Account

NYCBS did not comply with the Agreement's terms specifying how it is supposed to maintain the SLA escrow account. Section 5.2.1 of the Agreement's first amendment, executed on January 1, 2016, requires NYCBS to place liquidated damages into an escrow account established with a financial institution (i.e., a bank). However, NYCBS did not place the funds into an escrow account with a financial institution during Calendar Year 2018 and two years thereafter, (i.e., Calendar Years 2019 and 2020). Instead, NYCBS identified the funds in an account set up in its general ledger. In other words, NYCBS made bookkeeping entries in its internal records, but never actually placed funds in an external escrow account to be administered by a trusted third party as required by the Agreement.

Although officials from both NYCBS and DOT stated that they agreed orally that NYCBS could account for SLA escrow monies in its general ledger while not maintaining an escrow account at a bank, we question the validity of that oral agreement. Since January 1, 2016, the parties have executed seven amendments to the Agreement, none of which modify or dispense with NYCBS' contractual obligation to maintain the specified sums for lost parking meter revenue and liquidated damages in an escrow account in a financial institution. In fact, the latest amendment, executed on December 11, 2020, continues to state that "[l]iquidated damages . . . shall be placed in an escrow account, with a reputable financial institution." By electing to forgo enforcement of the Agreement's express requirement that NYCBS maintain these funds in a properly designated escrow account at a bank, DOT has diminished, if not negated, the City's ability to exercise a degree of control over the funds. Consequently, the City has no assurance that the funds will be readily available for the Program and incurs an increased risk that the funds can be misused for unauthorized purposes.

After the exit conference of April 9, 2021, we received a new SLA escrow agreement that NYCBS and DOT signed on April 12, 2021. We also verified that NYCBS opened an escrow account with a financial institution on or about the same date, with a balance at that time of \$3,059,044. Therefore, as a result of our audit, NYCBS came into compliance with the SLA escrow requirements.

NYCBS Response: “As noted by the Draft Letter Report, NYCBS provided adequate evidence to demonstrate our compliance with the agreement’s escrow account requirements. Properly setting up an escrow account and making an accurate initial deposit was the culmination of many months of work undertaken by NYCBS’s new management after a change in ownership, in partnership with NYCDOT.”

DOT Response: “We generally agree with the results of the Draft Letter Report’s findings and conclusions as they relate to DOT.”

Recommendations

1. NYCBS should maintain insurance coverage that meets the required amounts stated in the Agreement.

NYCBS Response: “NYCBS has maintained at all times during the term of the Agreement, and is committed to maintaining in the future, all insurance coverages as required by the Agreement.”

Auditor Comment: Despite NYCBS’ claim, and as discussed above, based on the documentation provided by NYCBS, we were unable to determine whether it maintained sufficient insurance coverage during the scope period. Accordingly, we continue to recommend NYCBS to maintain insurance coverage that meets the required amounts stated in the Agreement.

2. NYCBS should maintain all of the insurance coverage required by the Agreement and should maintain fully executed insurance policies and ensure the insurance documents that demonstrate its compliance with the Agreement are readily available for DOT’s review.

NYCBS Response: “NYCBS agrees with this recommendation.”

3. NYCBS should ensure that it reports all Program revenue to the City and remit \$72 to the City for the under-reported revenue it received for moving a bicycle docking station.

NYCBS Response: “NYCBS agrees with this recommendation and has remitted \$72 to the City.”

4. NYCBS should ensure that all allocations to the Jersey City operation are adequately supported by point-of-sale and other pertinent records.

NYCBS Response: “NYCBS agrees with this recommendation and has processes in place to ensure adequate support of allocations to the Jersey City operation.”

5. DOT should ensure that NYCBS always maintains the required insurance coverage.

DOT Response: “DOT agrees with the Comptroller’s request to ensure NYCBS maintains the required insurance coverage.”

6. DOT should review NYCBS' supporting documentation for the Jersey City operation and determine whether NYCBS accurately excluded its Jersey City revenue and sales tax from Program revenue.

DOT Response: "DOT agrees that we should continue to review NYCBS's supporting documentation for the Jersey City operation but DOT disagrees that this is not already happening. We provided a spreadsheet to the Comptroller which lists all Jersey City revenue and have verified that NYCBS codes Jersey City revenue differently than New York revenue in their books and records. As the Draft Letter Report notes, the auditors 'could not determine' whether the sales tax and revenue allocated to the Jersey City operation were accurate. In the event those figures were deemed inaccurate – and we do not believe they were – Jersey City revenue is diminutive in comparison to NYCBS revenue (as the Draft Letter Report notes, only 1.8% of the total revenue) and therefore should be listed as an immaterial finding."

Auditor Comment: While we agree that the amount of Jersey City revenue was immaterial, it does not relieve DOT's oversight responsibility to ensure the revenue deducted from the Program was properly supported especially after we identified there was a problem. The spreadsheet that DOT provided did not have any details on how the deductions were calculated. Supporting point-of-sale records should be maintained for all adjustments to the Program revenue reported to the City. Therefore, we reiterate that DOT should further review NYCBS' point-of-sale records for Jersey City allocations to ensure the deductions are fully documented.

7. DOT should ensure that NYCBS continues to maintain an SLA escrow account with a financial institution as required by the Agreement, which requires NYCBS to establish an SLA escrow account at a bank.

DOT Response: "DOT agrees that we should ensure that NYCBS maintain an escrow account with a financial institution as per the agreement. DOT and NYCBS committed to establishing and maintaining an escrow account in the 8th amendment to the Agreement, executed on December 11, 2020. The parties subsequently opened an escrow account with US Bank and NYCBS deposited the required funds into an escrow account. DOT has verified the amount to be deposited with NYCBS, and the money is currently in the escrow account. DOT has been and will continue to monitor the balance of funds in escrow deposited at a bank. As the Draft Letter Report acknowledges, DOT is in compliance with this recommendation."

Auditor Comment: DOT should ensure that NYCBS continues to maintain an SLA escrow account with a financial institution as required by the Agreement, which requires NYCBS to establish an SLA escrow account at a bank.

8. DOT should ensure that all amendments or modifications to the Agreement are in writing as required by the Agreement.

DOT Response: "DOT agrees with the Comptroller that all amendments and modifications be in writing as required by the Agreement. This recommendation appears to be directed to DOT and NYCBS's oral agreement to account for the escrow monies in NYCBS's general

ledger, prior to the establishment of the escrow account. As previously stated, DOT and NYCBS have since established the escrow account, this recommendation has been resolved.”

Auditor Comment: While we agree that DOT has taken corrective actions to resolve the escrow account situation, this recommendation is to ensure that DOT does not amend or modify any terms without documenting the amendments and modifications in writing. Therefore, we urge DOT to continue adhering to this recommendation going forward.

Audit Scope and Methodology

The scope of this audit covers Calendar Year 2018. We also conducted limited testing for Calendar Year 2019.⁷

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.

To gain an understanding of the Program we reviewed the NYCBS Agreement, in all of its forms (i.e., the original Agreement, the amended and restated Agreement, and the eight subsequent Amendments) and summarized the requirements detailed in the agreements. We also reviewed NYCBS policies and procedures that were in effect during Calendar Years 2018 through 2019 and interviewed NYCBS officials to gain an understanding of the point-of-sale system, accounting system, and Program operations. In addition, we interviewed DOT officials to understand their oversight roles and what financial records DOT obtains to verify its revenue.

To determine whether NYCBS accurately reported its bicycle ridership revenue to the City, we analyzed NYCBS’ November 2018 point-of-sales data provided by NYCBS.⁸ We then traced the November 2018 sales data to the third-party merchant statements and bank statements. In addition to the bicycle ridership, we also traced the November 2018 merchandise sales data to the merchant statements. To determine whether NYCBS reported the bicycle ridership revenue collected by Lyft, Inc. to the City, we conducted a limited review of the point-of-sale data for November 2019 and the ridership sales data provided by Lyft, Inc.

To determine whether NYCBS reported all station move revenue to the City, we obtained the invoices and payment records for all 26 station moves in 2018. We also requested and reviewed all

⁷ As noted above, we conducted limited testing for the revenue collected in November 2019 due to the change in NYCBS management after the November 2018 acquisition and expanded our review of NYCBS’ insurance coverage to 2019.

⁸ We judgmentally selected November 2018, which had the largest bicycle ridership revenue discrepancies based on our comparison of the revenue information in the monthly operating report that NYCBS posted on their website and the amount reported to the City. November 2018 bicycle ridership revenue represented 5.75 percent of its total bicycle ridership revenue reported to the City.

email correspondences between NYCBS and DOT approving the moves. We then traced the payments to the 2018 bank statements and matched them to the amounts reported to the City.

To determine whether sponsorship revenue was accurately reported in Calendar Year 2018, we judgmentally selected the largest sponsor and stratified the remaining 22 sponsors' sponsorship payments and selected the largest two sponsors from each stratified category.⁹ We then reviewed the terms of each sampled sponsorship agreement and traced the payments received to the amount deposited to the bank statements and compared it to the amounts reported to the City. To determine whether NYCBS accurately reported its revenue to the City, we traced all the ridership and merchandise revenue collected to the settled credit card payments. We then traced the settled credit card payments from the 2018 merchant statements to the deposits within bank statements. We then traced the deposited revenue from the 2018 bank statements to the annual report submitted to the City.

To determine whether NYCBS has maintained an SLA escrow account as required by the Agreement, we requested NYCBS and DOT to provide the escrow account information and the DOT approved expenses that were disbursed from the escrow account. Based on our review of the activities in the SLA escrow account, we determined whether NYCBS properly accounted for the \$1 million lost parking meter revenue into the escrow account. We then judgmentally selected \$2,438,000 out of \$6,977,640 in expenses that were disbursed from the SLA escrow account to determine whether the expenditures were appropriate and supported by documentation.¹⁰

To determine whether DOT properly oversaw NYCBS' compliance with the Agreement, we reviewed all the ridership revenue, insurance policies, and escrow account records that DOT uses to check NYCBS' compliance. We also reviewed DOT's letters of approval to NYCBS and other correspondence for station moves and disbursements of the SLA escrow account.

Finally, we reviewed NYCBS certificates of insurance for Calendar Years 2018 and 2019 to ensure it maintained required coverage and named the City as additionally insured.

The results of the above tests, though not projectable to their respective populations, provide a reasonable basis to assess and to support our findings and conclusions about NYCBS' compliance with the Agreement.

The matters covered in this letter report were discussed with NYCBS and DOT officials during and at the conclusion of this audit. A preliminary letter report was sent to NYCBS and DOT and discussed with NYCBS and DOT officials at an exit teleconference held on April 9, 2021. On April 28, 2021, we submitted a draft letter report to NYCBS and DOT officials with a request for written comments. We received written responses from NYCBS and DOT on May 17, 2021. In NYCBS' response, NYCBS agreed with three recommendations and disagreed with Recommendation #1, insisting that it has maintained all required insurance coverages during the term of the Agreement. In DOT's response, the agency generally agreed with the findings and

⁹ The sponsors were chosen from each of the following strata of sponsorship payments: less than \$20,000, from \$20,000 and \$100,000, and above \$100,000. The sponsorship payments (\$14,754,828) from these sponsors represented 88 percent of the total sponsorship revenue reported to the City.

¹⁰ Sampled expenses were selected from the two of the three largest expense categories listed in the SLA escrow account.

Mr. Jules Flynn

June 7, 2021

Page 11 of 11

recommendations. The full text of NYCBS and DOT responses are included as addenda to this letter report.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marjorie Landa', with a long horizontal flourish extending to the right.

Marjorie Landa

- c: Henry Gutman, Commissioner, DOT
- Rogene Livermon, Director of Financial & Management Audit, DOT
- Teresa Miller, Vice President, Controller, Lyft Bikes and Scooters
- Jeff Thamkittikasem, Director, Mayor's Office of Operations
- Brady Hamed, Chief of Staff, Mayor's Office of Operations
- Florim Ardolli, Associate Director for Audits, Mayor's Office of Operations

NYC Bike Share, LLC
441 9th Avenue, Fl. 2
New York, NY 10001

By Electronic Mail

Ms. Marjorie Landa
Deputy Comptroller for Audit
City of New York Office of the Comptroller
1 Centre Street
New York, NY 10007

May 17, 2021

Re: Response to the Draft Letter Report (FN20-081AL) on the Compliance of NYC Bike Share, LLC with its Agreement with the Department of Transportation for the Bike Share Program

Dear Ms. Landa:

Thank you for the opportunity to review and respond to the Draft Letter Report on the Compliance of NYC Bike Share, LLC (“NYCBS”) with its Agreement with the Department of Transportation for the Bike Share Program (FN20-081AL) (“Draft Report”). NYCBS is proud to deliver the Citi Bike program to New Yorkers under its contract with the New York City Department of Transportation. In the last year, the Citi Bike program provided nearly 900K unique New Yorkers sustainable, healthy transportation access, had more than 20 million rides, and gave away more than 30,000 annual memberships to support critical workers leading the City’s COVID-19 relief efforts. And the Citi Bike program delivers these services to a diverse group of New Yorkers as well -- based on recent survey data, 54% of Citi Bike riders identify as members of racial and/or ethnic minority groups, and 34% of Citi Bike riders have household incomes of less than \$50K.

Below, we respond to each of the findings and recommendations in the Draft Letter Report.

Findings

The report shows four findings, to which we have responded below:

1. NYCBS May Not Have Maintained the Required Insurance Coverage

“According to Section 19 of the Agreement, NYCBS is required to maintain commercial general liability, automobile, and workers compensation insurance, and to name the City as an additional insured. However, we found that NYCBS may not have maintained sufficient coverage for commercial general liability and business automobile liability during Calendar Year 2018. Although NYCBS provided insurance documents that appear to show that it obtained sufficient insurance coverage, the insurance documents were incomplete in that pages were missing and

the documents did not contain all required signatures. In addition, we are unable to determine the authenticity of the signatures on the copy of the insurance policy NYCBS provided. Furthermore, we requested a signed Certificate of Insurance that correlates to the incomplete insurance documents NYCBS provided but neither DOT nor NYCBS provided the certificate for our review. As a result, we are unable to determine whether NYCBS maintained sufficient insurance coverage for the period . . . ”

Response: As noted by the Draft Letter Report, NYCBS “provided insurance documents that appear to show that it obtained sufficient insurance coverage . . .” Having provided such documentation, we strongly disagree with this finding of the Draft Letter Report.

The reason that “pages were missing” from the documents we provided is that we selected, from lengthy policy documents, the relevant pages that proved we had maintained the required coverage. While the Comptroller’s office noted by email shortly before preparing the Draft Letter Report that our documentation was “incomplete,” they did not specifically indicate that providing the remaining pages of our policy documents would have been helpful to their review.

The Draft Letter Report further concludes, without any support for drawing such a conclusion, that the signatures on the policy documents we provided were not authentic. We confirmed to the Comptroller’s office during the exit conference, and continue to maintain, that all signatures on the documents we provided were authentic and unaltered from their original states.

2. NYCBS Did Not Report the Full Amount Charged and Received for One of Its Station Moves

“NYCBS under-reported \$1,447 in revenue it received from one of its charges for the temporary removal of a docking station. NYCBS charges pre-determined fees to entities or property owners who request temporary closure, removal, and/or relocation of bicycle docking stations. Our review of invoices and payment records for 26 station moves that were billed in 2018 found that, for one of these station moves, NYCBS charged and collected \$17,750 but only reported \$16,303 to the City, a difference of \$1,447. According to Section 10.2 of the amended and restated Agreement, NYCBS is required to certify all revenue collected from the Program annually. Although this under-reported amount and the underpayment of \$72 (\$1,447 x 5 percent) are immaterial, careful review of all revenue received and reconciliation with the revenue reported to the City is necessary to ensure accurate reporting.”

Response: NYCBS completed 371 station moves and installations over the course of 2018, including a number for private organizations who were billed for that work based on our contract with NYCDOT. The \$1,447 difference for this one move identified by the Draft Letter Report represents a minor discrepancy in an otherwise seamless operation and billing structure.

3. NYCBS Maintained Insufficient Documentation for Jersey City Revenue Allocation

“As stated in Section 22.7 of the amended and restated Agreement, “NYCBS shall maintain complete and accurate books of account and records of the business, ownership, and

operations of NYCBS with respect to the Program in a manner that allows the City to determine whether NYCBS is in compliance with the Agreement.” The section further states that NYCBS “shall also maintain and provide such additional books and records as the Comptroller or the Commissioner deem reasonably necessary to ensure proper accounting of all payments due the City.”

However, our audit found that NYCBS’ sales records maintained in its point-of-sale system did not support ridership revenue and sales tax it allocated to its Jersey City operation in its annual certified schedule to the City. Specifically, our review of the November 2018 ridership sales data identified \$21,622 in ridership revenue and \$1,320 in sales tax generated from the Jersey City operation, yet NYCBS had allocated higher amounts—\$49,590 in ridership revenue and \$2,280 in sales tax—to its Jersey City operation in its annual certified schedule to the City. Although the Jersey City revenue and sales tax represented only 1.8 percent, approximately, of total ridership revenue (\$645,592 out of \$36,087,781), the Agreement requires NYCBS to maintain complete and accurate accounting records and to provide additional documentation, when requested, to support the payments due the City . . .”

Response: NYCBS understands that there are minor discrepancies in the November 2018 records provided with respect to the Jersey City allocations for ridership revenue and sales tax for that single month selected for analysis; based on the records NYCBS management was able to locate from the relevant time period under the company’s previous ownership, we believe this small discrepancy in the context of overall Program size is due to differences between cash and accrual accounting methods. However, we agree with the Draft Letter Report’s recommendation related to this finding and have processes in place to ensure adequate support of allocations to the Jersey City operation.

4. NYCBS Did Not Comply with the Agreement with Respect to the SLA Escrow Account

“NYCBS did not comply with the Agreement’s terms specifying how it is supposed to maintain the SLA escrow account. Section 5.2.1 of the Agreement’s first amendment, executed on January 1, 2016, requires NYCBS to place liquidated damages into an escrow account established with a financial institution (i.e., a bank). However, NYCBS did not place the funds into an escrow account with a financial institution during Calendar Year 2018 and two years thereafter, (i.e., Calendar Years 2019 and 2020). Instead, NYCBS identified the funds in an account set up in its general ledger. In other words, NYCBS made bookkeeping entries in its internal records, but never actually placed funds in an external escrow account to be administered by a trusted third party as required by the Agreement.

Although officials from both NYCBS and DOT stated that they agreed orally that NYCBS could account for SLA escrow monies in its general ledger while not maintaining an escrow account at a bank, we question the validity of that oral agreement. Since January 1, 2016, the parties have executed seven amendments to the Agreement, none of which modify or dispense with NYCBS’ contractual obligation to maintain the specified sums for lost parking meter revenue and liquidated damages in an escrow account in a financial institution. In fact, the latest amendment,

executed on December 11, 2020, continues to state that “[I]liquidated damages . . . shall be placed in an escrow account, with a reputable financial institution. . .” By electing to forgo enforcement of the Agreement’s express requirement that NYCBS maintain these funds in a properly designated escrow account at a bank, DOT has diminished, if not negated, the City’s ability to exercise a degree of control over the funds. Consequently, the City has no assurance that the funds will be readily available for the Program and incurs an increased risk that the funds can be misused for unauthorized purposes.

After the exit conference of April 9, 2021, we received a new SLA escrow agreement that NYCBS and DOT signed on April 12, 2021. We also verified that NYCBS opened an escrow account with a financial institution on or about the same date, with a balance at that time of \$3,059,044. Therefore, as a result of our audit, NYCBS came into compliance with the SLA escrow requirements.”

Response: As noted by the Draft Letter Report, NYCBS provided adequate evidence to demonstrate our compliance with the agreement’s escrow account requirements. Properly setting up an escrow account and making an accurate initial deposit was the culmination of many months of work undertaken by NYCBS’s new management after a change in ownership, in partnership with NYCDOT.

Recommendations

NYCBS has carefully reviewed and taken into consideration the recommendations to us put forth in the report, to which we have responded below:

1. *“NYCBS should maintain insurance coverage that meets the required amounts stated in the Agreement.”*

Response: NYCBS has maintained at all times during the term of the Agreement, and is committed to maintaining in the future, all insurance coverages as required by the Agreement.

2. *“NYCBS should maintain all of the insurance coverage required by the Agreement and should maintain fully executed insurance policies and ensure the insurance documents that demonstrate its compliance with the Agreement are readily available for DOT’s review.”*

Response: NYCBS agrees with this recommendation.

3. *“NYCBS should ensure that it reports all Program revenue to the City and remit \$72 to the City for the under-reported revenue it received for moving a bicycle docking station.”*


Response: NYCBS agrees with this recommendation and has remitted \$72 to the City.

4. *“NYCBS should ensure that all allocations to the Jersey City operation are adequately supported by point of sale and other pertinent records.”*

Response: NYCBS agrees with this recommendation and has processes in place to ensure adequate support of allocations to the Jersey City operation.

Thank you for your consideration and attention in support of New York City's bicycle commuters and tourists.

Sincerely,

DocuSigned by:

4E276D340274480...
Jules Flynn
Head of Operations



Department of Transportation

Henry B. Gutman, Commissioner

May 17, 2021

Marjorie Landa
Deputy Comptroller for Audit
Office of the Comptroller
1 Centre Street
New York, NY 10007

Re: Response to the Draft Letter Report (FN20-081AL) on the Compliance of New York City Bike Share, LLC ("NYCBS") with its Agreement with the Department of Transportation for the Bike Share Program ("Draft Letter Report")

Dear Ms. Landa,

On behalf of Henry B. Gutman, Commissioner of the New York City Department of Transportation ("DOT"), thank you for the opportunity to respond to the Draft Letter Report, dated April 28, 2021. DOT is very pleased that the Comptroller's Office found that in general, NYCBS met its financial obligations, including accurately reporting its revenue and paying the appropriate revenue share to DOT, under DOT's Agreement ("Agreement") with NYCBS for the Bike Share program ("Program"). In addition, we are pleased that the Comptroller's Office found that DOT properly oversaw the Agreement.

This letter is in response to the recommendations reflected in the referenced Draft Letter Report. The Draft Letter Report contained eight Recommendations. Recommendations 1-4 were issued to NYCBS, and Recommendations 5-8 were addressed to DOT. DOT's responses to Recommendations 5-8 are below. We generally agree with the results of the Draft Letter Report's findings and conclusions as they relate to DOT. We are happy to note, however, that the majority of the findings are either *de minimis* or have already been resolved, as described in more detail below.

Please accept the following as DOT's written response to the Draft Letter Report:

Audit Recommendation 5:

DOT should ensure that NYCBS always maintains the required insurance coverage.

DOT's Response

DOT agrees with the Comptroller's request to ensure NYCBS maintains the required insurance coverage. At a minimum, DOT reviews NYCBS's insurance documents each year to confirm that they meet the required coverage levels. As the Comptroller's Office noted in the Draft Letter Report, the auditors were "unable to determine" whether NYCBS



Department of Transportation

Henry B. Gutman, Commissioner

maintained appropriate levels of coverage between January and November 2018. As they also noted, Lyft acquired ownership of NYCBS in November 2018 and there is no uncertainty regarding the insurance coverage after Lyft took control of the company. Any uncertainty in the period prior to Lyft taking control is likely the result of the transfer of files from one company to the next. Additionally, DOT's periodic review of NYCBS's insurance did not reveal any inconsistencies with the requirements in the Agreement.

Audit Recommendation 6:

DOT should review NYCBS's supporting documentation for the Jersey City operation and determine whether NYCBS accurately excluded its Jersey City revenue and sales tax from Program revenue.

DOT's Response

DOT agrees that we should continue to review NYCBS's supporting documentation for the Jersey City operation but DOT disagrees that this is not already happening. We provided a spreadsheet to the Comptroller which lists all Jersey City revenue and have verified that NYCBS codes Jersey City revenue differently than New York revenue in their books and records. As the Draft Letter Report notes, the auditors "could not determine" whether the sales tax and revenue allocated to the Jersey City operation were accurate. In the event those figures were deemed inaccurate -- and we do not believe they were -- Jersey City revenue is diminutive in comparison to NYCBS revenue (as the Draft Letter Report notes, only 1.8% of the total revenue) and therefore should be listed as an immaterial finding.

Audit Recommendation 7:

DOT should ensure that NYCBS continues to maintain an SLA escrow account with a financial institution as required by the Agreement NYCBS establishes an SLA escrow account at a bank.

DOT's Response

DOT agrees that we should ensure that NYCBS maintain an escrow account with a financial institution as per the agreement. DOT and NYCBS committed to establishing and maintaining an escrow account in the 8th amendment to the Agreement, executed on December 11, 2020. The parties subsequently opened an escrow account with US Bank and NYCBS deposited the required funds into an escrow account. DOT has verified the amount to be deposited with NYCBS, and the money is currently in the escrow account. DOT has been and will continue to monitor the balance of funds in escrow deposited at a bank. As the Draft Letter Report acknowledges, DOT is in compliance with this recommendation.



Department of Transportation

Henry B. Gutman, Commissioner

Audit Recommendation 8:

DOT should ensure that all amendments or modifications to the Agreement are in writing as required by the agreement.

DOT's Response

DOT agrees with the Comptroller that all amendments and modifications be in writing as required by the Agreement. This recommendation appears to be directed to DOT and NYCBS's oral agreement to account for the escrow monies in NYCBS's general ledger, prior to the establishment of the escrow account. As previously stated, DOT and NYCBS have since established the escrow account, this recommendation has been resolved.

Sincerely,

**Michelle
Craven**

Digitally signed by Michelle Craven
DN: cn=Michelle Craven, o=NYC
Department of Transportation, ou,
email=mcraven@dot.nyc.gov, c=US
Date: 2021.05.17 18:03:34 -04'00'

Michelle Craven
Assistant Commissioner for Cityscape and Franchises
New York City Department of Transportation

Cc: Commissioner Gutman; J. Jarrin; M. Forgione; S. Pondish; M. McDonnell; R. Livermon; J. Economos; J. Thamkittikasem; F. Ardolli; B. Hamed