



June 13, 2022

Carmen Maldonado  
Office of the State Comptroller  
Division of State Government Accountability  
59 Maiden Lane - 21st Floor  
New York, NY 10038

**Re: Audit Report 2021-F-28, Issued May 13, 2022, New York City Department of Transportation - Controls Over Revocable Consents.**

Dear Ms. Maldonado:

The New York City Department of Transportation is in receipt of the Office of the State Comptroller's (OSC) audit report (2021-F-28) regarding its follow-up audit of the "New York City Department of Transportation - Controls Over Revocable Consents - 2018-N-1".

Please accept the following as the Agency's written response to the audit report:

On behalf of Ydanis Rodriguez, Commissioner of the New York City Department of Transportation ("NYC DOT"), NYC DOT generally does not agree with the results of the audit report's summary conclusions and status of recommendations. As NYC DOT previously stated in response to OSC's initial audit report, issued September 23, 2020, most of the findings were unfounded because they are based on inaccurate, partially correct, or incomplete information - including an utter lack of understanding of the revocable consent process - which affects the validity of the analysis and report findings.

**Background on Revocable Consents:**

Section 362 of the New York City Charter defines a "revocable consent" to "mean a grant by the city of a right, revocable at will, (1) to any person to construct and use for private use pipes, conduits, and tunnels under, railroad tracks upon, and connecting bridges over inalienable property, (2) to an owner of real property or, with the consent of the owner, to a tenant of real property to use adjacent inalienable property for such purposes as may be permitted by rules of the department of transportation or the department of information technology and telecommunications or (3) to a public service corporation for facilities ancillary to, but not within, a franchise granted prior to the effective date of this section."

NYC DOT inherited the responsibility for revocable consents after the New York City Board of Estimate was disbanded in 1989. Many of the existing revocable consent structures were initially approved by the Board of Estimate, under that body's governing procedures. Indeed, a number of these structures are approaching 100 years in age. NYC DOT conducts its review within the confines of the Title 34, Chapter 7 of the Rules of the City of New York (the "Rules"), which have been amended on numerous occasions since their original adoption in 1990.



Pursuant to Charter §364(b), each revocable consent agreement is set for a fixed term. Typically, that term is ten years. When the term expires, the grantee of the revocable consent agreement ("Grantee") submits a petition for renewal, which is reviewed and approved by the Office in accordance with the Charter and Rules, and the parties enter into an agreement for another fixed term. The agreement sets forth the annual fee for each year of the term. Prior to executing a new or renewal revocable consent agreement, the Office holds a public hearing regarding the structure and associated fees. After execution, the Office submits the agreement to the New York City Comptroller for registration. By that point, the annual fees are settled, and the Office issues the Grantee an invoice for the fee established in the agreement each year. Only a prospective Grantee can initiate a petition for a revocable consent. If the Office becomes aware of an existing structure on the City's right-of-way that should have a revocable consent, we can ask an inspector from NYC DOT's enforcement office to issue a notice of encroachment pursuant to §19-133 of the New York City Administrative Code. A property owner may choose to remove the structure or petition for a revocable consent to dispense with the encroachment notice, but/he may also choose to challenge the notice at the City's Office of Trials and Hearings (OATH) which can take months. If the property owner loses, the City will place a lien on the property, but/he may still circumvent the revocable consent process.

This background is essential because it highlights a number of flaws in the audit team's review of the program. First, the stated purpose of the audit was ostensibly to review the Office's collections of annual fees. To correctly collect annual fees, the Office submits invoices in the amounts reflected for that fiscal year in the revocable consent agreement, then follows up with the Grantees until they have all paid their invoices. The audit team, however, disregarded the fees in the agreements and attempted to recalculate the fees themselves.<sup>1</sup>

**Follow-up Observations:**

OSC's report indicated that recommendations #2 and #4 were implemented. As such, NYC DOT's response pertains to the recommendations OSC cited as open:

**Recommendation 1** - Status - Partially Implemented

Comply with the Revocable Consent Rules, the City Charter, and the Office's procedures and maintain documentation to support all calculations and amounts charged to property owners.

<sup>1</sup> Please note that the audit team did not include an architect, engineer, attorney, or planner.



**Response:** Partially Agree

NYC DOT will continue to comply with the Rules, as well as all other relevant laws and rules relating to revocable consents, and will continue to maintain documentation to support all calculations and amounts charged to property owners.

With respect to calculations of annual fees for renewal agreements, NYC DOT and the audit team disagree regarding the correct interpretation of the applicable rules. Although NYC DOT stands by its interpretation, in the interest of clarity, we are working towards amending the Rules to more clearly reflect our interpretation.

**Recommendation 3** - Status – Not Implemented

Bill revocable consent grantees for undercharges, as appropriate.

**Response:** Partially Agree

NYC DOT has reviewed internally and will continue to assess fees in accordance with executed revocable consent agreements.

**Recommendation 5** - Status - Not Implemented

Expand Office operations to include an examination of all structures to determine whether they require a consent, and notify the owner, where appropriate.

**Response:** Disagree

DOT does not have the vast amount of resources necessary to address this recommendation in its entirety. If the audit team can recommend a specific, feasible and cost effective approach, DOT would be willing to consider it.

Sincerely,

A handwritten signature in blue ink, appearing to read "mcraven", is written over a faint dotted line.

Michelle Craven  
Assistant Commissioner for Cityscape & Franchises



## Department of Transportation

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Ydanis Rodriguez, Commissioner

Cc: **DOT**  
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