

OFFICE OF THE COMPTROLLER CITY OF NEW YORK

NOTICE OF CLAIM

CLAIMANT INFORMATION

CLAIMANT'S NAME: Brooklyn Historic Railway Assn. TEL. #: (718) 941-3160

STREET ADDRESS: 599 East 7 Street Suite 5A

CITY: Brooklyn STATE: New York ZIP: 11218

SOC. SEC. # or TAX I.D. #: 11-2611688

CLAIM INFORMATION

CITY AGENCY INVOLVED: NYC Department of Transportation

NATURE OF CLAIM: (ATTACH ADDITIONAL SHEET(S) OF PAPER, IF NECESSARY)

See attached "Nature of Claim", two pages

Also See Attached Exhibits A - K

TOTAL AMOUNT CLAIMED: \$ 2,500,000.00

IF MORE THAN ONE ITEM IS INCLUDED IN THE TOTAL AMOUNT CLAIMED, SUPPLY BREAKDOWN OF AMOUNTS AND SPECIFY ITEMS: (ATTACH ADDITIONAL SHEET(S), IF NEEDED)

ITEM	AMOUNT
1. _____	\$ _____
2. _____	\$ _____
3. _____	\$ _____
4. _____	\$ _____
5. _____	\$ _____

RECEIVED  
CITY OF NEW YORK  
2011 JAN 28 PM 4:14  
COMMUNICATIONS FACILITY  
CENTRAL RECORDS SYSTEM  
FOR INFORMATION SYSTEM

PLEASE ATTACH COPIES OF SUPPORTING DOCUMENTATION, PREVIOUS CORRESPONDENCE, INVOICES, ETC.

**NOTE: We reserve the right to provide additional documentation, etc, at later times, as it becomes available. See Attached Exhibits A - K**

CLAIMANT'S SIGNATURE: Robert Diamond, Pres.

SS: STATE OF N.Y. CITY OF N.Y. SUBSCRIBED AND SWORN TO BEFORE ME THIS 27 DAY OF

JAN, 2011

Shmuel Levine  
NOTARY

TO: OFFICE OF THE COMPTROLLER  
DIVISION OF LAW - RM.1225 South  
1 CENTRE STREET  
NEW YORK, N.Y. 10007  
TELEPHONE # (212) 669-4736

LEVINE SHMUEL  
Notary Public, State of New York  
Qualified in Kings County  
Reg. No. 01LE4869693  
My Commission Expires Sept. 2, 2014

Claimants Name--Brooklyn Historic Railway Association

Address 599 E 7th Street, Suite 5A Brooklyn NY 11218

City Agency Involved-New York City Department of Transportation

Nature of Claim:

This matter constitutes an illegal taking under both state and federal law; misappropriation of trade secret and proprietary information, goodwill and reputation, as well as a breach of the revocable license granted the Claimant, Brooklyn Historic Railway Association ("**BHRA**").

Specifically, most recently, on September 8, 2008 the New York City Department of Transportation ("**NYCDOT**") granted approval to BHRA to provide tunnel tours using an existing manhole at Atlantic Avenue and Court Street as referred in the letter dated September 8, 2008. (annexed as Exhibit A and incorporated by reference.) The tunnel tours originally commenced on October 10, 1982, after Robert Diamond ("**Diamond**") rediscovered the 19th-century Atlantic Avenue subway tunnel in Downtown Brooklyn. In 1986, the tunnel tours were officially sanctioned by the City, as per action of the former Board of Estimate (Consent Agreement), later continued under the auspices of the NYCDOT. For 28 years, the BHRA has invited tourists, public officials (including much of Mayor Bloomberg's staff) to visit and enjoy the tour.

In late 1979 or early 1980, Diamond discovered a long lost story detailed in the in "The Cosgrove Report," a 1979 book about President Lincoln's assassination, which claimed that Brooklyn was home to a lost railroad in which pages from John Wilkes Booth's diary might be hidden. Diamond pored over old city maps and did copious research and located the long forgotten tunnel.

Since that time, uninterrupted and with NYCDOT approval, BHRA has provided ongoing tours of the tunnel and developed a business with the NYCDOT's and the City's permission. By way of example on March 27, 2009 the DOT approved and accepted a Tunnel Safety Report by email and approved the tunnel for tours by letters dated July 22, 2009, August 14, 2009, September 8, 2009 and February 11, 2010.

Recently, Mr. Diamond's voluminous research on the tunnel, painstakingly compiled over a 30 year period, has directly led to the discovery of an historic, one of a kind, 19<sup>th</sup> century steam locomotive within the confines of the tunnel structure.

Notwithstanding the fact that the NYCDOT has specifically found the Tunnel to be in "good and safe' condition" the NYCDOT and the New York City Fire Department closed the tours claiming they were suddenly unsafe even though for the past 28 years the same has been inspected by both Departments and found to be in "good and safe condition".

Brooklyn Historic Railway Assn. Vs. NYC Department of Transportation

Nature of Claim

Page 2 of 2

The conduct of the NYCDOT is arbitrary, capricious and constitutes an unlawful taking of property, proprietary and trade secret information and interference with prospective economic advantage.

Total Amount of Damages-damages are preliminary estimated to exceed \$2,500,000.

Please see attached supporting documentation, Exhibits A – F.

*Exhibit A*



**New York City  
Department of Transportation**

**Division of  
Franchises, Concessions and Consents**  
40 Worth Street, 9<sup>th</sup> Floor South  
New York, New York 10013  
Tel: 212/442-8040  
Fax: 212/442-8070

**Janette Sadik-Khan, Commissioner**

Web: [www.nyc.gov/dot](http://www.nyc.gov/dot)

September 8, 2008

Mr. Robert Diamond  
599 East 7<sup>th</sup> Street, #5A  
Brooklyn, NY 11218

Dear Mr. Diamond:

Transmitted herewith is a duly executed revocable consent agreement granting Brooklyn Historic Railway Association permission to maintain and use a railroad tunnel, together with two public entrances, a manhole and ventilators, in Atlantic Avenue from east of Columbia Street to west of Boerum Place, in the Borough of Brooklyn.

Under the terms of the new agreement, the grantee is required to provide insurance. A general liability policy in the amount specified in Section 6 of the agreement, should be filed immediately with this office. The insurance policy should contain the following:

1. The City of New York as additional insured.
2. A description of the structures permitted.

Please disregard if you have already sent in the certificate of Insurance.

If you have any questions, please call me at (212) 442-8060.

Sincerely,

A handwritten signature in black ink, appearing to read "Emma Berenblit".

Emma Berenblit  
Director of Revocable Consents

Encl.  
EB:rs

# Exhibit B

RE: Completed Atlantic Avenue Tunnel Report - Yahoo! Mail

Page 1 of 1

**YAHOO!** SMALL BUSINESS

**RE: Completed Atlantic Avenue Tunnel Report**

Friday, March 27, 2009 10:58 AM

From: "Berenblit, Emma" <eberenblit@dot.nyc.gov>

To: "Robert Diamond" <rdiamond@brooklynrail.net>

CC: "Koenig, Anne" <akoenig@dot.nyc.gov>, "Jehn, David" <djehn@dot.nyc.gov>

Dear Robert

Thank you for sending us completed inspection report for Atlantic Avenue tunnel. Inspection report shows that the tunnel is in good condition and safe. You may continue usage of the tunnel. However you need to comply with all applicable laws, rules and regulations when conducting operations including obtaining any and all permits required by the City of New York. If you close streets in order to access the tunnel, you need to obtain the requisite street closing permits from DOT.

**From:** Robert Diamond [mailto:rdiamond@brooklynrail.net]

**Sent:** Thursday, March 26, 2009 7:39 PM

**To:** Berenblit, Emma

**Subject:** Completed Atlantic Avenue Tunnel Report

Dear Emma, please find attached the completed preliminary structural report on the Atlantic Avenue tunnel. According to the report, this is a safe and sound structure, please give special attention to items 5 and 6 in the report. Also attached are the photos.

I assume we can now proceed with our usual access to the tunnel.

Thanks again for your assistance and understanding in this matter.

Bob Diamond

.....  
This message and any attachments are solely for the individual(s) named above and others who have been specifically authorized to receive such and may contain information which is confidential, privileged or exempt from disclosure under applicable law. If you are not the intended recipient, any disclosure, copying, use or distribution of the information included in this message and any attachments is strictly prohibited. If you have received this communication in error, please notify us by reply e-mail and immediately and permanently delete this message and any attachments.  
Thank you.

NYC - Department of Transportation  
.....



March 25, 2009

BROOKLYN HISTORIC RAILWAY ASSOCIATION  
599 E 7<sup>th</sup> Street, Suite 5A  
Brooklyn, NY 11218

ATTN.: Robert Diamond, President

RE: Atlantic Avenue Tunnel,  
between Boerum Place and Columbia Street

SUBJECT: Structural Integrity Evaluation

Dear Mr. Diamond;

Pursuant to your request, we have performed an evaluation of the structural integrity of the referenced tunnel structure, based on visual inspection tour of the tunnel site, and review of reports of previous evaluations performed by others. This letter-report presents the results of our evaluation.

The inspection tour of the tunnel was performed by our senior engineer, Mr. Tony Onyeagoro, P.E., in the afternoon hours of Wednesday, March 25, 2009, assisted by one of your associates. Access and egress to the site were through a manhole located at the middle of the roadway, intersection of Atlantic Avenue and Court Street, Borough of Brooklyn. Visibility in the tunnel was generally subdued, but details of the structural elements were clearly observable using a flash light. Select, typical portions of the structure details were captured using flash-enabled Canon PowerShot A540 camera.

The tunnel structure consists of a masonry block arched dome upper section, supported on either side by a wall made of varying-size stone or rock quarry, embedded in a matrix of very strong grout mix. The composition of the structural elements is relatively consistent for the entire length of the tunnel. Evidence of removed rail lines and ballasts are observable throughout the general grade of the tunnel, which is firm with no sign of moisture or subsidence. The general condition of the tunnel structural elements, relative to previous reports, is impressively devoid of any sign of deterioration. All masonry block units appear to be intact, with no visible loosening of joints. Similarly, there was no observable loss of filler materials within the walls' stone matrices.

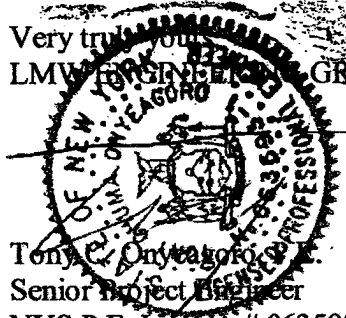
Accordingly, in concurrence with the findings of previous evaluations, please be advised that:

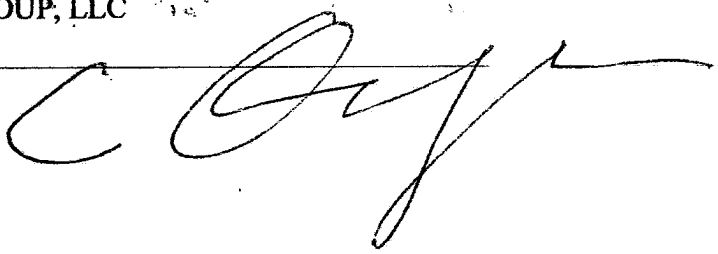
1. The tunnel structural members were inspected by our engineer.
2. The load carrying capacity of the tunnel is sufficient to support the anticipated loading (overburden and live load).
3. The non-load carrying members are secure.
4. The structural integrity of the tunnel is sound and has not been compromised by aging.

5. The tunnel can be considered safe under its current use for visitors and tourist attraction.
6. There is no evidence that any form of maintenance or repair work is necessary at this stage.
7. The tunnel can be safely, with relatively minimum rehabilitation effort, mostly esthetic, be utilized as a museum or similar facility.
8. In summary, the tunnel, as inspected by us, is a safe and sound structure.

We appreciate the opportunity to provide this service for you, and look forward to continuing involvement in this extraordinarily noble venture. If you have any questions regarding this letter-report, please feel free to call us.

Very truly yours,  
LMV ENGINEERS GROUP, LLC

  
Tony C. Onyiahoro, P.E.  
Senior Project Engineer  
NYS P.E. License # 063593



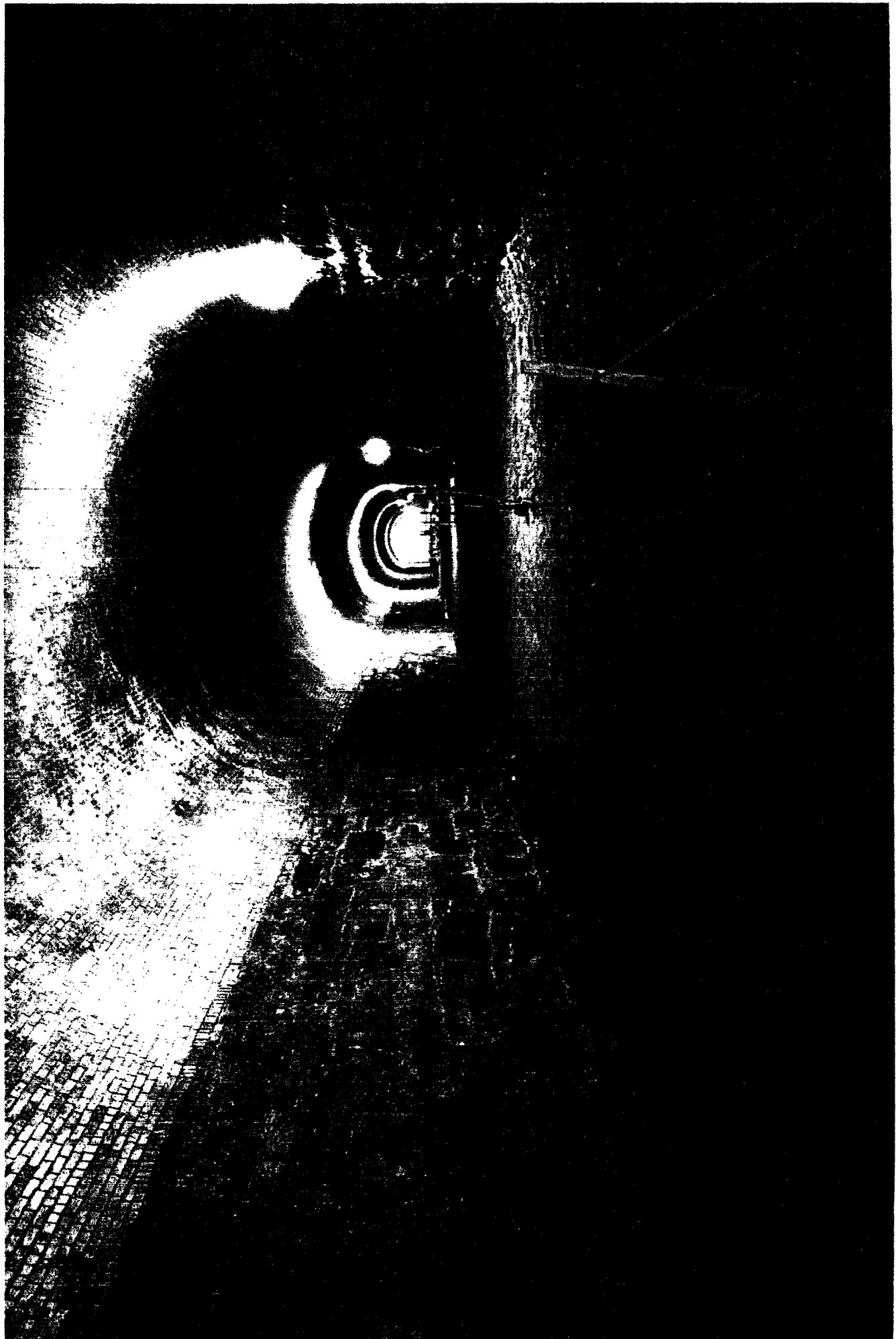


Exhibit C



Department of Transportation

JANETTE SADIK-KHAN, Commissioner

July 22, 2009

Mr. Robert Diamond  
Brooklyn Historic Railway Association  
599 East 7<sup>th</sup> Street, apt. 5A  
Brooklyn, NY 11218

Re: Operations at site of revocable consent structure

Dear Mr. Diamond:

We have been made aware of the measures you take when conducting tours of the railroad tunnel that is the subject of the revocable consent entered into between the City of New York and the Brooklyn Historic Railway Association on July 1, 2009. In order to conduct any such further tours it will be necessary for a licensed engineer to draw up and submit to us for approval a certified maintenance and protection of traffic plan that will be implemented during any such scheduled tour. In order to assist you, we have put together a preliminary plan to be used as a guide for creating your plan. Please be advised that the plan that you submit to us will have to comply with the Manual of Uniform Traffic Control Devices.

Once approved by us, the plan will be incorporated into your revocable consent agreement and therefore all provisions of your revocable consent agreement shall apply to the plan, including but not limited to, the indemnity and hold harmless provisions, and insurance. No further tours may be conducted until this plan has been approved.

Please be further advised that you are not permitted to charge those who take your tours but you may accept voluntary donations.

Sincerely,

A handwritten signature in black ink, appearing to read "Emma Berenblit".

Emma Berenblit  
Director of Revocable Consents

Encl.  
EB:rs

Exhibit A

RE: Revised Dwgs.- Atlantic Ave Tunnel - Yahoo! Mail

Page 1 of 2

**YAHOO!** SMALL BUSINESS

RE: Revised Dwgs.- Atlantic Ave Tunnel  
From: "Berenblit, Emma" <eberenblit@dot.nyc.gov>  
To: "Robert Diamond" <rdiamond@brooklynrail.net>

Friday, August 14, 2009 9:34 AM

Bob

OCMC has no further comments

**From:** Robert Diamond [mailto:rdiamond@brooklynrail.net]  
**Sent:** Thursday, August 13, 2009 1:59 PM  
**To:** Berenblit, Emma  
**Subject:** Revised Dwgs.- Atlantic Ave Tunnel

Hi Emma, attached are the revised drawings MPT-4 and MPT-5. The Consultant advises that once there are no further comments, he will sign and stamp the 4 originals.

Thanks,  
Bob

**From:** "Berenblit, Emma" <eberenblit@dot.nyc.gov>  
**To:** Robert Diamond <rdiamond@brooklynrail.net>  
**Sent:** Thursday, August 13, 2009 12:36:19 PM  
**Subject:** RE: Metal Barricades No Good- Atlantic Ave Tunnel

Thanks

**From:** Robert Diamond [mailto:rdiamond@brooklynrail.net]  
**Sent:** Thursday, August 13, 2009 12:36 PM  
**To:** Berenblit, Emma  
**Subject:** Re: Metal Barricades No Good- Atlantic Ave Tunnel

OK thanks, not a problem. I expect the drawings will be modified today.

Thanks  
Bob

**From:** "Berenblit, Emma" <eberenblit@dot.nyc.gov>  
**To:** Robert Diamond <rdiamond@brooklynrail.net>  
**Sent:** Thursday, August 13, 2009 11:26:46 AM  
**Subject:** RE: Metal Barricades No Good- Atlantic Ave Tunnel

As per OCMC:

You do need to extend the barricades you show on the drawing to go from the crosswalk area up to the protection vehicle.

**From:** Robert Diamond [mailto:rdiamond@brooklynrail.net]  
**Sent:** Wednesday, August 12, 2009 7:27 PM  
**To:** Berenblit, Emma  
**Subject:** Metal Barricades No Good- Atlantic Ave Tunnel

Hi Emma, the following is the Consultant's response regarding OCMC's comments on metal parade barricades, please pass it on to the appropriate people:

Bob,  
Metal Barricades are not in compliance with the MUTCD and is considered as a hazard to be placed in the work protection zone. We cannot comply with the City's comments in this regard due to the liability standpoint.  
Regards,  
Akhlaiq

**From:** "Berenblit, Emma" <eberenblit@dot.nyc.gov>  
**To:** Robert Diamond <rdiamond@brooklynrail.net>  
**Sent:** Wednesday, August 12, 2009 4:51:00 PM  
**Subject:** FW: MTP Plan- Atlantic Ave Tunnel

FYI. Please respond. Thanks

**From:** Noto, Joe  
**Sent:** Wednesday, August 12, 2009 2:03 PM  
**To:** Berenblit, Emma  
**Cc:** Esposito, Franco; Jaber, Jay ; Puccio, Frank  
**Subject:** FW: MTP Plan- Atlantic Ave Tunnel

Emma, see ocmc's comments as it relates to the drawings.

<http://us.mc7.mail.yahoo.com/mc/showMessage?sMid=13&fid=%2540S%2540Search&f...> 12/28/2010

Exhibit E

R.P. No: 1289

THE CITY OF NEW YORK  
DEPARTMENT OF TRANSPORTATION  
55 Water Street  
New York, New York 10041

REVOCABLE CONSENT AGREEMENT (Owner)  
(Modification)

WHEREAS The New York City Department of Transportation (the "Grantor"), by a revocable consent agreement dated July 1, 2008 (the "Consent") granted the Brooklyn Historic Railway Association, having its principal place of business at 599 East 7th Street, Brooklyn, NY 11218 (the "Grantee") consent to use and maintain a railroad tunnel, together with two public entrances, a manhole and ventilators, (the "Structure") in Atlantic Avenue from east of Columbia Street to west of Boerum Place, in the Borough of Brooklyn. The Consent will expire by limitation on June 30, 2018; and

IT IS HEREBY AGREED:

1. The Consent is hereby modified as follows:

(a) The Consent is amended to include the attached Maintenance and Protection of Traffic Plan submitted by Grantee (the "MPT Plan"). The Grantee shall comply with all provisions of the MPT Plan every time that Grantee accesses the Structure through the entrance on the roadway. Should Grantee fail to do so, Grantor may exercise all rights available to it, including its right to terminate the Consent. Grantee shall be solely responsible for all costs and expenses related to its operations, including implementation of the MPT Plan.

(2) The terms of this amendment shall be effective on the date of execution of this amendment and shall continue in full force and effect for the life of the Consent.

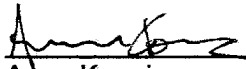
(3) Except as modified herein, the terms and conditions of the Consent shall remain in full force and effect throughout the term of the Consent.

(4) All provisions of the Consent shall apply to the MPT Plan, including but not limited to, the indemnity and hold harmless provision, and the insurance provisions.

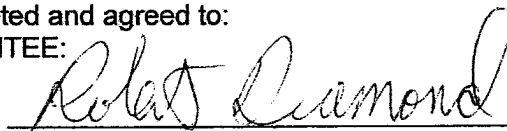
2009-031222

In Witness Whereof, the parties hereunder have caused this amendment to a revocable consent to be executed.

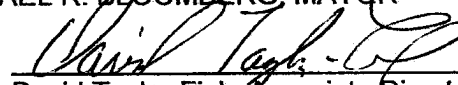
GRANTOR:  
NYC DEPARTMENT OF TRANSPORTATION  
DIVISION OF FRANCHISES, CONCESSIONS & CONSENTS

By:   
Anne Koenig  
Executive Director

Accepted and agreed to:  
GRANTEE:

By:   
(Signature)  
Robert Diamond  
(Print Name of Signatory)  
President  
(Title)  
August 25, 2009  
(Date)

The foregoing amendment is hereby approved.  
MICHAEL R. BLOOMBERG, MAYOR

By:   
David Taylor-Fink, Associate Director for Program Administration  
Mayor's Office of Contract Services

Dated, New York 9/8/, 2009

Approved as to form  
Certified as to legal authority.

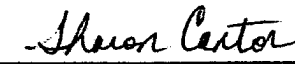
By:   
Acting Corporation Counsel  
AUG 21 2009  
(Date)

Exhibit F



Department of Transportation

JANETTE SADIK-KHAN, Commissioner

February 11, 2010

Mr. Robert Diamond  
Brooklyn Historic Railway Association  
599 East 7<sup>th</sup> Street, Apt. 5A  
Brooklyn, NY 11218

Re: Schedule of Visits to Atlantic Avenue Railroad Tunnel

Dear Mr. Diamond:

This letter is in regard to the revocable consent authorizing the Brooklyn Historic Railway Association to maintain and use a railroad tunnel, together with two public entrances, a manhole and ventilators, in Atlantic Avenue from east of Columbia Street to west of Boerum Place, in the Borough of Brooklyn.

Please provide our office with a schedule of the dates and times of planned visits to the railroad tunnel over the next two months. The schedule should include all planned group and individual visits, whether for tours, maintenance and operation, or any other purpose.

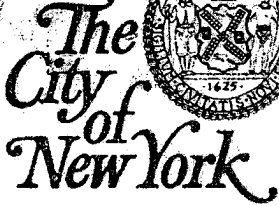
Please submit the schedule within one week of the date of this letter. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Emma Berenblit".

Emma Berenblit  
Director, Revocable Consents

cc: Anne Koenig  
Franco Esposito



BOARD OF ESTIMATE  
BUREAU OF THE SECRETARY  
MUNICIPAL BUILDING, NEW YORK, N. Y. 10007  
THEODORE H. MEEKINS, Secretary

November 25, 1986

Mr. Robert Diamond, President  
Brooklyn Historic Railway Association  
599 E. 7th Street  
Brooklyn, N. Y. 11218

Sir:

I transmit herewith a certified copy of a resolution adopted by the Board of Estimate on October 9, 1986 (Cal. No. 47), approved by the Mayor on October 21, 1986, granting Brooklyn Historic Railway Association permission to maintain and use an abandoned railroad tunnel in Atlantic Avenue from east of Columbia Street to west of Boerum Place, together with an existing manhole, and to construct, maintain and use entrances and ventilators, Borough of Brooklyn.

The agreement, executed by Brooklyn Historic Railway Association pursuant to Section 16 of the resolution, was approved by the Acting Corporation Counsel on November 17, 1986 and is on file in the office of the Bureau of Franchises.

Very truly yours,

  
Secretary

HD  
HD:mb  
Enc.



NEW YORK CITY  
DEPARTMENT OF TRANSPORTATION  
BUREAU OF TRAFFIC

28-11 QUEENS PLAZA NORTH L.I.C., N.Y. 11101

Ross Sandler  
*Commissioner*

September 28, 1988

Dr. Michael F. Horodniceanu  
*Deputy Commissioner*

Samuel I. Schwartz, P.E.  
*Chief Engineer First Deputy Commissioner*

Mr. Robert Diamond  
President  
Brooklyn Historic Railway Assn.  
509 E. 7 Street  
Brooklyn, NY 11218

Re: DOT 053881  
BT 88156  
881517

Dear Mr. Diamond:


This is in response to your letter to Commissioner Ross Sandler concerning the historic railway tunnel entrance at Atlantic Avenue and Court Street, Brooklyn.

Your request has been reviewed by the Highway Design Division of the Traffic Bureau. It has been determined that a channelization could be designed which would safely divert vehicles around the tunnel entrance while not adversely affecting traffic flow.

As Mr. Holuka of the Highway Design division previously informed you, the installation of this painted island will necessitate the removal of a number of parking meters. Since your discussion with Mr. Holuka indicates that the historic railway tunnel will receive limited usage during the winter months, the work required for installation has been scheduled for the spring of 1989.

Please contact Mr. Holuka at least one month before the active use of the tunnel entrance begins, so that the various phases of the work may be properly coordinated.

Very truly yours,

  
Dr. Michael F. Horodniceanu  
Second Deputy Commissioner

MFH:mpd/sw

REVISIONS	
DATE	DESCRIPTION



BUS STOP

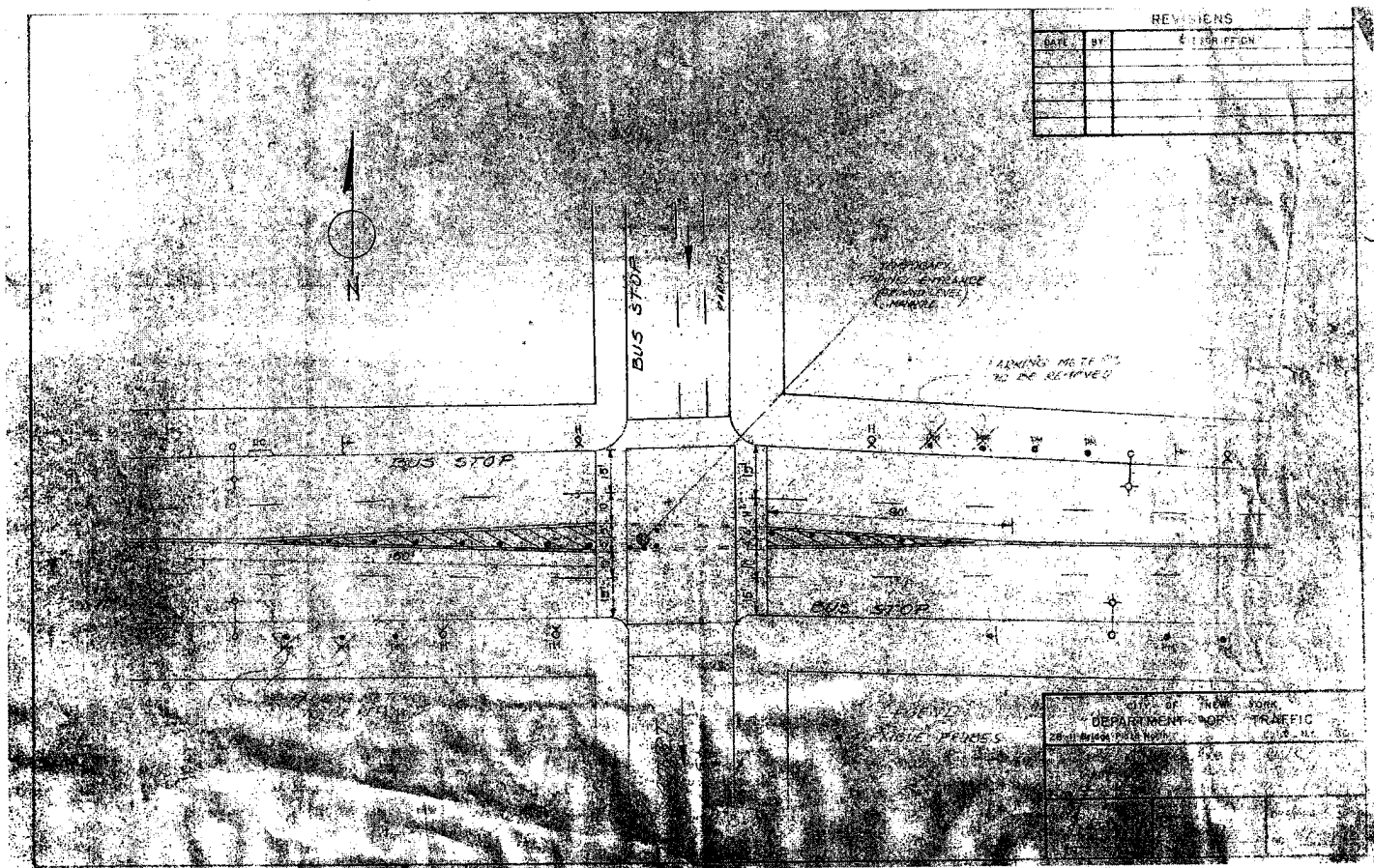
ENTRANCE  
(REAR VIEW)  
(SEE PAGE 2)

PARKING METERS  
TO BE REMOVED

BUS STOP

BUS STOP

CITY OF NEW YORK  
DEPARTMENT OF TRAFFIC  
2000 Broadway, New York, N.Y. 10023





NEW YORK CITY  
DEPARTMENT OF TRANSPORTATION

40 Worth Street  
New York, NY 10013

Lucius Riccio, Ph. D., P.E.  
Commissioner

MEMORANDUM

TO: Staff Personnel

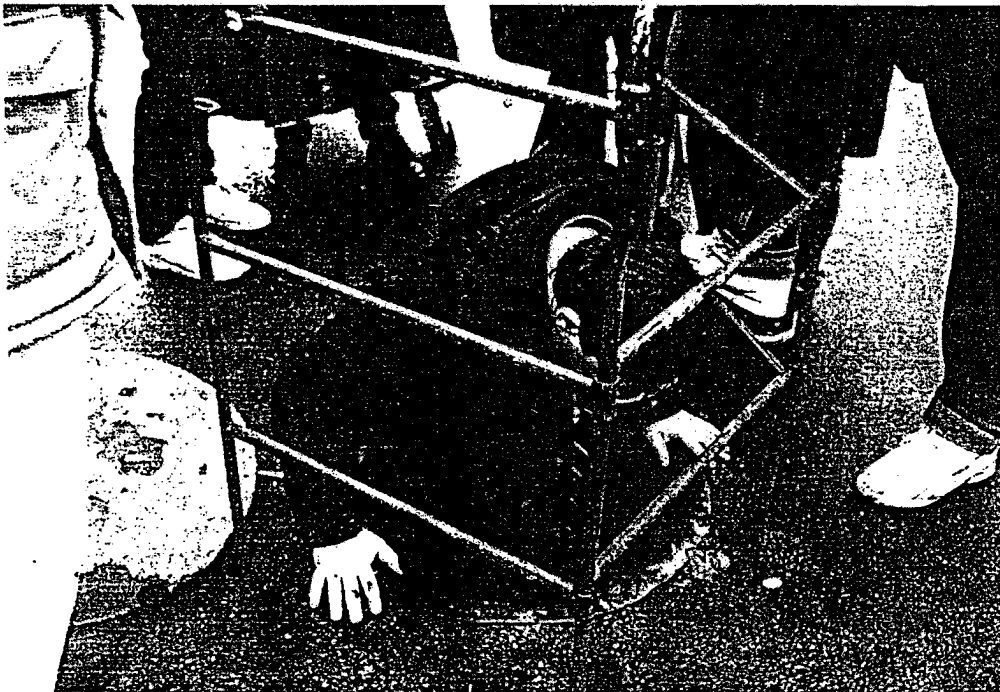
FROM: Drew Hollander, Director *ah*  
Office of Surface Transportation Planning

DATE: April 19, 1990

SUBJECT: FIELD TRIP TO ABANDONED ATLANTIC AVENUE RR TUNNEL

The Atlantic Avenue Railroad Tunnel is an abandoned 2-track tunnel running under the Avenue from Court Street to Hicks Street in downtown Brooklyn. It is entered by a small man-hole in the middle of Atlantic Avenue! For many years it was thought that this tunnel was just a fantasy, but it was rediscovered a number of years ago by Bob Diamond, who now has a franchise for its operation. Last February 16th, Mr. Diamond gave a guided tour for selected DOT employees of the tunnel and a trolley he proposes to operate in Fulton Landing, and he is offering a repeat performance on May 1st at 10:30 am. The tour takes about 2½ hours. Everyone who went last time found it fascinating. If you are interested in the field trip, please contact Andrew Hollander at (212) 566-2271 by April 26, 1990.

INTREPID DOT EMPLOYEE ENTERS TUNNEL






**New York City  
Department of Transportation**

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40 Worth Street, New York, New York, 10013 • 212/442-7000

**Christopher R. Lynn,  
Commissioner**

**MEMORANDUM**

**Date:** 9/17/97  
**To:** Harley Brooke-Hitching  
**From:** Jon Graham   
**Re:** Renewal of Consent to BHRA for Atlantic Avenue Tunnel

---

For your information, there is a petition pending from the Brooklyn Historic Railway Association (BHRA) requesting renewal of consent to continue to maintain and use a tunnel under Atlantic Avenue, in the Borough of Brooklyn, for a ten year period.

In 1986, the Board of Estimate (BOE) granted a revocable consent to the (BHRA) to maintain and use an abandoned railroad tunnel in Atlantic Avenue. The tunnel was constructed in 1844 by the Long Island Railroad and sealed two decades later. In 1979, the tunnel was 'discovered' by Robert Diamond, who subsequently founded the BHRA.

A BOE resolution (Cal. No. 47, Oct. 9, 1986) set compensation at an annual rate of \$2,000. This is a special rate which bears no relation to the regular revocable consent rate schedule used for such structures as pipes and tunnels between buildings. The BOE recognized that the public interest would be served by a non-profit group improving and making accessible an historic site. The \$2000 fee reflected a belief that the BHRA would raise sufficient revenues through the public admission charge.

Mr. Diamond and his associates have invested many thousands of dollars of their own money to maintain the tunnel and to improve access to it. There are periodic tours of the 1600 foot long tunnel, which straddles the Cobble Hill and Brooklyn Heights historic districts. These tours, for which a nominal admission fee is charged, is a principal means of fund raising for the Association. However, since the BHRA spends all of the money thus raised on the maintenance and improvement of the tunnel, the \$2000 revocable consent fee is considered an onerous and unreasonable burden.

Currently, the BHRA is developing an operating trolley museum, which is open to the public, located on private property at the Beard Street Pier in Red Hook. The museum is restoring four vintage trolley cars, which were donated to the BHRA. The Museum has constructed track on private property to operate these trolley cars. As additional information, we are in receipt of a petition to extend new trolley tracks onto streets adjacent to the Red Hook (BHRA) museum. This trolley line will connect the museum to the tunnel under Atlantic Avenue. When completed, the BHRA will have succeeded in restoring operating trolley cars to the streets of Brooklyn after a 40-plus year hiatus.

This agency has entered into a contract with BHRA to operate the trolley line, to be constructed with federal grant money (via the ISTEA program) in the amount of approximately \$225,000.

Thus, in the future, BHRA will operate a trolley from the waterfront to the Atlantic Avenue tunnel, built and maintained primarily with ISTEA funds. While a nominal charge is envisioned for passengers, it is not anticipated that this will be a profitable undertaking. We therefore propose that, since virtually all of the BHRA's meager resources and volunteer labor are committed to full realization of the Red Hook Trolley Museum plan and in light of the partnership between the City and BHRA, the renewal revocable consent for the Atlantic Avenue tunnel require only a nominal compensation of \$250 per year. This is permissible under section 7-14(2)(c) Revocable Consent Rules which allow the Commissioner of DOT the discretion to waive or modify the rules, including rates of compensation.

Please sign below and return to me if you agree that this level of compensation is appropriate. Thank you.

Approved:

