



Kathy C. Hochul
Governor, State of New York

November 10, 2021

VIA EMAIL

Re: Consistent With Transparency Best Practices and the Presumption of Openness in New York Law, Please Publish Online All Documents Related to Empire Station Complex

Dear Governor Hochul,

We deeply appreciate your public commitment to transparency and urge you to publish online all documents related to the Penn Station/Empire Station Complex project, including:

- **Any reports and analyses produced by consultant Ernst & Young Infrastructure Advisors, LLC (“Ernst & Young”)**, per the contract approved by the Empire State Development Corporation (ESD) Board of Directors at its March 26, 2020 meeting.
- **Agendas, materials and any other documents provided to members of Empire Station Complex project’s Community Advisory Committee and its Working Group (“CAC” and “CAC WG”)**. While the CAC and CAC WG are advisory and have not met publicly, public documents related to the groups are still subject to New York’s Freedom of Information Law (FOIL). A FOIL request was filed by Reinvent Albany for these records on June 1, 2021, and they have not been provided to date. Reinvent Albany has appealed this FOIL request on the grounds of it being a constructive denial. The original FOIL request is attached to this letter.
- **Additionally, all diagrams and data related to the project** should be published in machine readable data format on the state’s open data portal.

You publicly announced changes to the project on November 3, 2021. However, the project still relies on above-ground development managed by Vornado to generate funding for \$6-7 billion in Penn Station improvements. This means that the Ernst & Young analysis of the project’s potential financing structure is still highly relevant to understanding who will pay for it and how, and what the potential risks are to taxpayers. Furthermore, the public should have all information available to them to provide informed commentary during the 30-day comment period and at the public hearing on December 8, 2021.

We note that the Legislative Declaration of the New York State Freedom of Information Law clearly anticipates projects like the Empire Station Complex and says:

The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality. (Public Officers Law Art 6, Sec 84)

We are particularly troubled that documents and financial analyses provided by Ernst & Young have not yet been published, despite being half paid for by tax dollars and already in the possession of the project developer, Vornado.¹ It is completely contrary to the intent of the Freedom of Information Law that a company negotiating with the state on a massive deal, and the state government itself have a partially tax-payer funded report that is being kept secret from the public. This is not consistent with a government agency in a democratic society or the law of the State of New York which states “government is the public's business.”

In an August 27, 2021 letter, BetaNYC, Common Cause/NY, Reinvent Albany, Tri-State Transportation Campaign, as well as Senator Brad Hoylman, Councilmember Ben Kallos and Community Boards Four and Five asked the NYC Independent Budget Office to analyze the Empire Station Complex project's financing framework, including the use of Payments In Lieu of Taxes (“PILOTs”) and other similar mechanisms.² IBO's assessment of ESD's proposal will be more accurate and useful to the public and elected officials if it includes the Ernst & Young financial analyses.

We also note that data and/or statistical information provided in consultant reports is not exempt from disclosure under the state's Freedom of Information Law (FOIL).³ Financial analyses or projections are inherently statistical information and should be fully disclosed. According to ESD's approval document for the contract with Ernst & Young, the scope of work includes to:

- Develop a financial tool to be used by ESD to calculate projected financing revenues
- Assist ESD in identifying feasible options for potential revenue sources to fund improvements within the Empire Station Complex
- Assist ESD in evaluating various strategies for financing improvement
- Survey best practices in different financing, procurement and project delivery paths
- Provide strategic financial advice to assist in stakeholder conversations
- Provide other financial advisory services for the project as requested by ESD

¹ See materials from ESD's March 26, 2020 meeting, page 356, which contains the proposal submitted to the Board of Directors to enter into a contract with Ernst & Young. It is noted that this is to be financed by “A New York State budget appropriation and cost sharing agreements to be entered into with participating developers whose properties are within the Project area.” Vornado is the participating developer.

<https://esd.ny.gov/sites/default/files/news-articles/032620%20ESD%20Board%20Materials%20v2.pdf>

² Letter to the NYC Independent Budget Office, August 27, 2021. Available at:

https://reinventalbany.org/wp-content/uploads/2021/09/Joint-Letter-to-IBO-re_-Empire-Station-Complex-Project-and-NYC-Budget-August-27-2021.pdf

³ Note that the NYS State Committee on Open Government discusses this in advisory opinions FOIL-AO-17794 and FOI-AO-18994, available at <https://docs.dos.ny.gov/coog/ftext/f17794.html> and <https://docs.dos.ny.gov/coog/ftext/f18994.html>.

Again, we urge your administration to publish documents related to the Penn Station/Empire Station Complex project, including materials for the Community Advisory Committee and analyses conducted by Ernst & Young. All diagrams and data related to the project should also be published in machine readable format on the state's open data portal.

We thank you for your attention to this matter. Should you have any questions please reach out to Rachael Fauss, Senior Research Analyst for Reinvent Albany at rachael@reinventalbany.org or 518-859-5307.

Sincerely,

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Cc. Empire State Development Board of Directors