

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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IN THE MATTER OF NEIGHBORS UNITED  
BELOW CANAL, JAN LEE, DCTV, EDWARD J.  
CUCCIA, BETTY LEE, and AMERICAN INDIAN  
COMMUNITY HOUSE,

Index No.

Petitioners,

**AFFIDAVIT OF  
GEORGE M. JANES, AICP  
IN SUPPORT OF THE  
VERIFIED PETITION**

For a Judgment pursuant to Article 78 of the CPLR

-against-

MAYOR BILL DE BLASIO, et al.,

Respondents.  
-----X

STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF NEW YORK )

GEORGE M. JANES, AICP, duly sworn, deposes and says:

1. I am an urban planner with 25 years of experience and I am President of George M. Janes & Associates, a planning firm with expertise in zoning, simulation and visualization, and quantitative modeling. The firm serves public, private and non-profit clients, mostly in and around New York City. Before founding the firm in 2008, I spent six years as Executive Director of New York City's Environmental Simulation Center, a pioneer in visualization and simulation for planning and development. I have been a member of the American Institute of Certified Planners for the past 22 years.

2. While working at the Environmental Simulation Center, I helped to prepare or evaluate some of the more significant DEISs conducted in New York City, including the rezoning of western Manhattan and the extension of the Number 7 Subway, and the Atlantic Yards project in Brooklyn. In the early 2010s, I participated in the New York City sponsored working group that recommended changes to the CEQR Technical Manual. My firm is a frequent consumer of environmental reviews and currently completes environmental assessments as an ancillary part of our larger planning work.

3. In the matter of the Borough-Based Jails, I have been an active participant since October 2018, when I submitted comments for the Bronx facility on the Draft Scope of Work for the DEIS. Later, I testified at the hearing held by the Bronx Borough President, and then at the hearing held by the City Planning Commission in July 2019. My firm also submitted comments on the DEIS, with a focus on the Bronx and Manhattan facilities.

4. We have reviewed all of the Lead Agency responses to comments on the Draft Scope of Work and Draft Environmental Impact Statement, as well as relevant portions of the FEIS and Technical Memo with a focus on Land Use and Public Policy, Open Space, Urban Design and Visual Resources, Shadows, Neighborhood Character, and Construction. Notably, we have found that the Lead Agency inappropriately denied public comment requesting further study, provided non-responsive answers to commenters' inquiries, and in at least one case inappropriately interpreted evidence of significant impacts. The Lead Agency is required by SEQR and CEQR to take a "hard look" at the environmental impacts of

the action. Here, rather than take a “hard look,” the interests of the City dictated whether the Lead Agency followed, or did not follow, parts of the CEQR Technical Manual.

5. The following is a non-exhaustive examination of how the City responded to several comments and how their lack of responsiveness to reasonable comments leaves legitimate questions and concerns unexamined. The references are to the response to comments chapter of the FEIS (Chapter 10), which I understand is annexed to the Verified Petition as an exhibit.

#### **Project description**

6. DEIS Comment 29 found on page 10-30 of the FEIS directly addresses the arbitrary nature of designing facilities for equal capacity while serving areas that are not at all equal. It stated: "Brooklyn has over 1,000,000 more residents than the Bronx and nearly 1,000,000 more residents than Manhattan. So why does each site have the same number of beds? If the rationale to exclude Staten Island was used consistently, the number of beds in each borough should be roughly proportional to the population of each of the boroughs. Brooklyn is much bigger than the Bronx and Manhattan, so it should have a bigger jail when using a population-based approach. Further, those who would have been held in Staten Island, if it had a jail, are going to be held in Brooklyn, increasing the size of the facility even more."

7. The City's response was as follows: “As discussed in DEIS Chapter 1, "Project Description," the proposed project seeks to create four detention facilities of sufficient size to efficiently achieve the goals and objectives; smaller detention facilities would not allow for the criminal justice reform measures that are inherent in the current

facility programming. Therefore, the proposed project seeks to spread the population of people in detention evenly across the four boroughs. The criteria guiding site selection for the borough-based jails were primarily based on a number of factors, including sufficient size to fit an equitable distribution of the City's jail population across four boroughs with space to provide a humane, safe, and supportive environment." FEIS at 10-30.

8. The response provides no coherent method on how the City came to this decision, a decision that will undermine one of the main purposes of the project: to house people closer to their homes and closer to courts hearing their cases. If arraignments are roughly equal to population, and the City fills the new jails, simple math tells us that people who should have been detained in Brooklyn to be closer to their homes and local courts will be held elsewhere in the Borough-Based Jails system because the Brooklyn facility is undersized. The only other place those detainees can be held will be in the facilities that are oversized, in Manhattan and/or the Bronx, which each serve about 1,000,000 fewer people than Brooklyn, but which will have the same sized jail. These transplanted detainees will be just as far or farther from their homes and courthouses as they would have been on Rikers Island. There is no rational basis for this decision; it is clearly arbitrary.

### **Land Use, Zoning and Public Policy**

9. Comment 1-11 goes into detail on the exceptional size of the proposed Manhattan jail and how the DEIS analysis of land use chooses to focus on the land use of the areas to the south and west of the Manhattan jail site, which are larger and more consistent with the form of the new development, at the expense of areas to the east and north, which are much lower scale than the proposed development. In response, the FEIS notes the lower scale of the areas to the north and east and implies that the scale is appropriate because the building will be located in the Civic Center. FEIS at 10-50.

10. This response does not reflect the guidance of the CEQR Technical Manual, which indicates that land use analysis should focus on the “size, use and special characteristics of the development expected with the proposed project.” (CEQR Tech Manual, 311). Here, while the size of the facility is noted, its potential impacts on the larger community are ignored. Higher density development often leads to zoning policy changes that lead to higher density development in the larger neighborhood. One of the first analyses conducted in a proposed rezoning is to examine the nearby community to see how development allowed by a proposed rezoning would fit with existing buildings. A huge Manhattan jail right next to low-scale Chinatown will likely become the new baseline against which all subsequent development will be measured, and will lead to subsequent land use policy changes and approvals that continue to allow increased density in Chinatown and threaten its built form. This has already happened with the current jail buildings, in that these

current buildings are the baseline against which the new massive jail building is being compared.

11. The out-of-context size of the new Manhattan jail facility warranted a hard look to determine how the size would have a land use impact on the surrounding community and disclose those impacts for public review, but the Lead Agency failed to do so.

### **Open Space**

12. While the applicant chose to ignore the guidance in the Technical Manual for Land Use, Zoning & Public Policy, guidance in the Manual is used as an excuse to not alter the open space study area. Comment 3-1 focuses generally on open space and specifically the importance of and the project's impact on Columbus Park, which will be catty-corner to the jail. One of the comments under 3-1 states that the study area used is actually too large because the Census tracts' shape in the ¼ mile study area includes large open spaces, including City Hall Park and the Dinkins Municipal Building Plaza that are ½ mile away. FEIS 10-61. The comment implies the reasonable assumption that workers are more likely to use Columbus Park, across the street, rather than walk the ½ mile to City Hall Park, and that the impact on Columbus Park (and other closer open space resources) should be studied and disclosed. The City responded to this comment simply by saying that the Manual had been followed and the analysis showed no impacts. But the Manual just gives guidance for defining a study area, which "may be used" to define the actual study area. The Manual also states "the boundaries of the study area should reflect existing conditions and may be irregularly shaped." (CEQR Technical Manual Open Space, 310). Considering the location and the size of the open spaces and their likely use

by workers, the City should have used the flexibility provided by the Manual to create a smaller study area, which would have more accurately assessed and disclosed impacts on Columbus Park.

13. Comment 3-8 states that the City should have included an analysis of the recreational rooftop space at Chung Pak, which is used by senior residents next door to the jail facility. The response was that the CEQR Technical Manual does not instruct the inclusion of “privately-owned open spaces that are not open to the public on a consistent basis” in the quantitative analysis, which is true. But the response doesn’t say that the Manual instructs (CEQR Technical Manual Open Space, 100) that private open space may be considered qualitatively, if a project is likely to have impacts on public open space. Had the Lead Agency required a proper analysis of open space with a smaller study area that better reflected the actual use of the open spaces by workers, impacts would have been disclosed and a qualitative discussion of private open space would have been warranted. The fact that this private open space was promised to the community in connection with the existing jail also warrants review and disclosure of impacts to it from the new much larger jail, regardless of the CEQR Technical Manual.

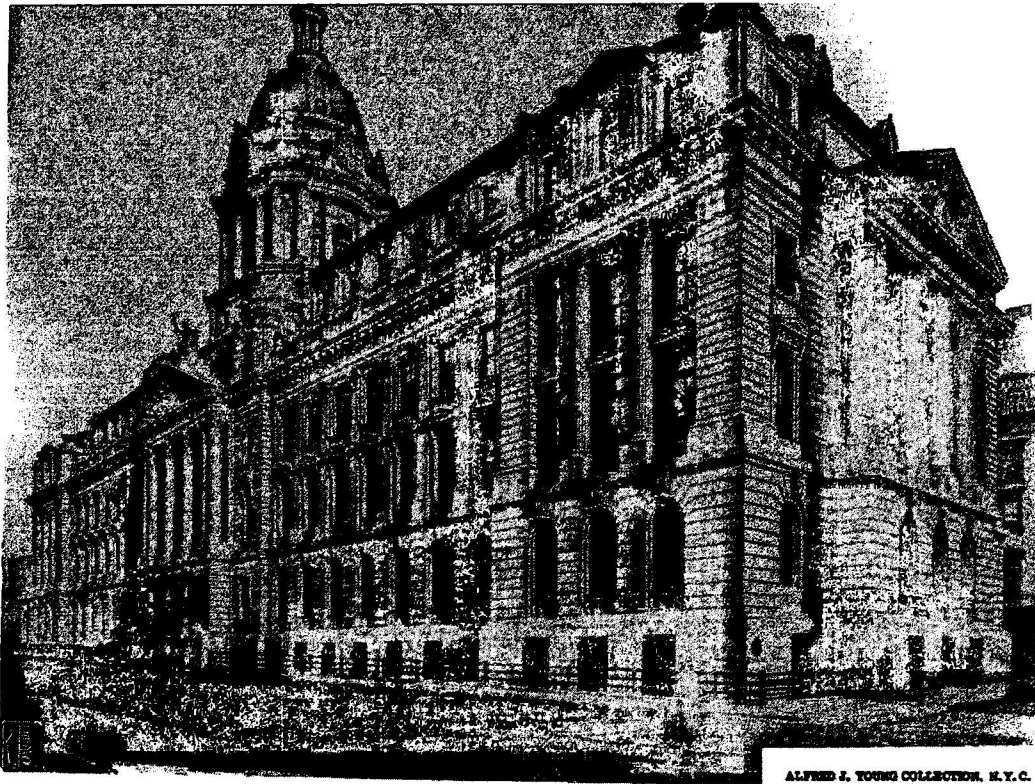
14. The City also fails to consider the loss of the White Street public plaza space because “it doesn’t function as an open space,” even though this space was designed to be pedestrian-only plaza space and was promised to the community when the jail at 124 White Street was built. (Response to Comment 3-8, FEIS 10-66).

### **Shadows**

15. Comments 4-8 and 4-10 note that the analysis excludes several historic resources that are sunlight-sensitive. The response to those comments is that all historic

resources with sunlight-sensitive features have been identified and analyzed, which does not reflect the instruction of the Manual. FEIS 10-71, 10-72.

16. Sunlight-sensitive features in historic buildings include not only stained-glass windows and historic gardens, but the Manual also clearly states that sunlight-sensitive resources include historic “buildings distinguished by elaborate, highly carved ornamentation.” (CEQR Technical Manual Open Space, 100.) There are at least two in the shadow study area that fit this definition. The most obvious is the former Police Headquarters building:



17. This landmark is covered with elaborate, highly carved ornamentation, yet is not identified as a sunlight-sensitive resource and is not studied. If the former Police Headquarters building does not qualify as “highly carved ornamentation,” then what does?



It was a legitimate comment identifying an error of omission and the Lead Agency did not substantively respond to it.

18. The other notable landmark with highly carved ornamentation is the former Fire Engine Company No. 31 at 87 Lafayette Street, and shown below:



19. Fire Engine Company 31 is located to the west of the site of the proposed jail. The FEIS should have disclosed shadow impacts on this sunlight-sensitive resource.

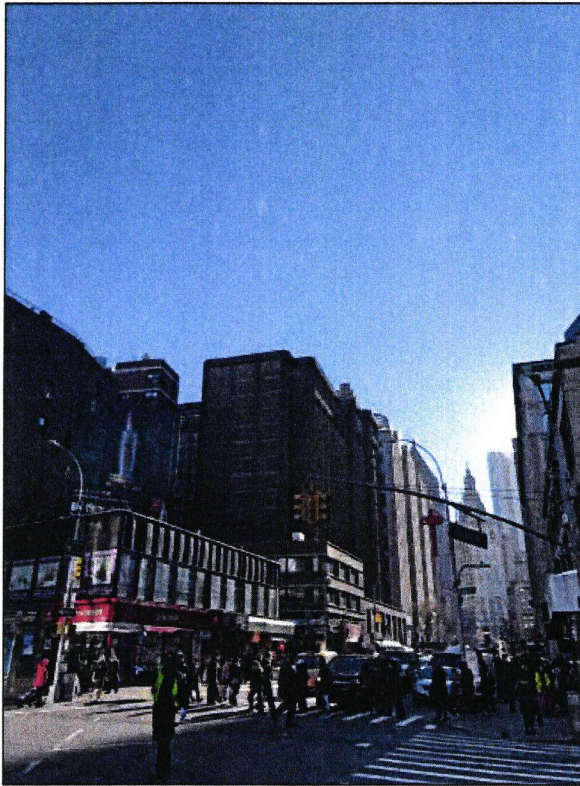
20. The comment also asks that the open space for PS 130, which is not identified as open space, nor as a sunlight-sensitive resource, be added to the analysis, along with several others. The Manual states that this space should be added as both open space and as a sunlight-sensitive resource if it is open to the public outside of the school

day. The response did not address the reason PS 130's open space was excluded from the analysis. This is a New York City public school located just 600 feet to the north of the proposed building and this open space is used by New York City public school children during the day. It is not unreasonable for the public to want to know the shadow impact of the project on a public asset used by their children, regardless if the whole family is able to use it after school hours. This is a legitimate concern expressed as a legitimate comment. I believe that SEQR and CEQR provide the Lead Agency flexibility to respond to such legitimate concerns, even if the Manual does not explicitly grant permission. The Manual provides guidance; it is not a rulebook.

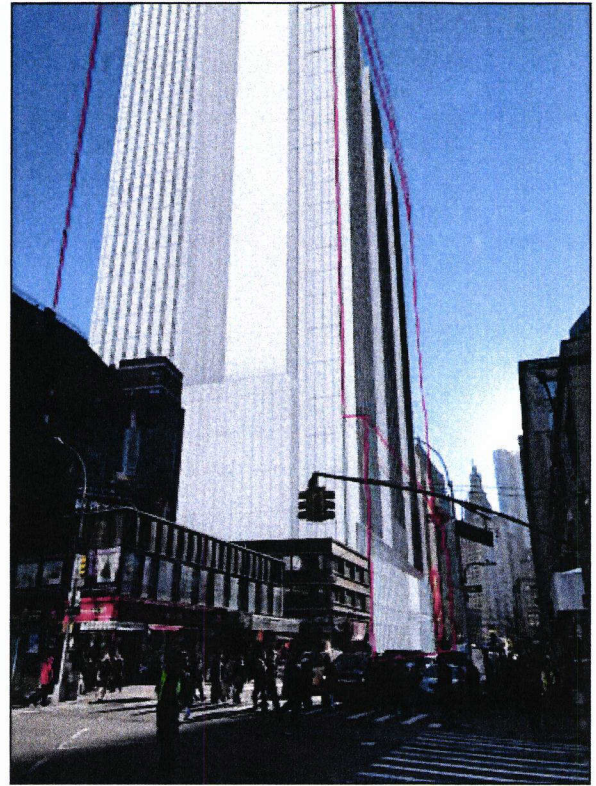
#### **Urban Design and Visual Resources**

21. I submitted several comments on the DEIS on the photo-renderings of the project in both Manhattan and the Bronx and a part of those comments showed new photosimulations demonstrating how the project should appear. The photo-renderings included in the DEIS often showed the project in the wrong location, at the wrong size, and in at least one case, did not remove a portion of the existing Manhattan Detention Complex that is to be demolished. The FEIS contains revised photo-renderings in Manhattan and the Bronx and, for the most part, I believe that the new photo-renderings are accurate. Photo-renderings or photosimulations are important because they speak to virtually everyone interested in this process. Many environmental impacts are esoteric or technical, but a "before" and "after" image speaks to everyone, even people who are unable or unwilling to read any of the other materials that are disclosed. The inclusion of incorrect photo-renderings in the DEIS impeded public review and understanding of the impacts of the project.

22. Below is an existing conditions photograph and a photo-rendering of the proposed project that appear in the FEIS.



Existing Conditions View 15 - View south from Centre Street and Canal Street



View south from Centre Street and Canal Street

23. The photo-rendering shows that the proposed project will introduce a very large-scale building into this view, which will close and darken the surrounding streets because of the sky it blocks. Not only is the building quite large, it is built to full height at or nearly at the streetline, not significantly setback from the street and/or covering a small portion of the zoning lot, as most tall towers are. Towers like the Empire State Building (ESB) are quite tall, but zoning requires that they cover a small portion of their zoning lot (25% for the ESB) so that even though a building is tall, plenty of sky is still open to the street. Here, the tower jail covers most of the zoning lot; it is designed to be

very close to the surrounding streets and will, as the photo-rendering shows, blot out the sky.

24. From an urban design perspective, Centre Street, south of Canal, will become all about this new building; it will be the first thing people see as they turn the corner and it will dominate the viewpoint, completely altering the human perception of this street. One does not need to be a planner, architect or designer to understand what this project will do to this viewpoint. One just needs to look at the photo-rendering to understand that it will have a significant impact. Baxter south of Canal will certainly experience a similar, if not greater, impact. The tower is setback an additional 5 feet on Baxter, but Baxter is a very narrow street, just 50 feet wide, nearly 25 feet less than Centre. But no view from Baxter is included in the DEIS or FEIS and so the impact on Baxter Street is not shown.

25. Inexplicably, the text of the FEIS describes the impact as: “[t]he proposed project would not have a significant adverse impact on the urban design of the study area.” Clearly the project has different impacts depending on the viewpoint, but Centre Street is an important part of the study area, and it is impossible to look at that photo-rendering and say that the project will have no impact on the design of the street. It is also impossible to conclude that the project will have no impact on the design of Baxter Street, given how much narrower and low scale that street is.

26. The conclusion reached by the FEIS and the evidence contained in the FEIS do not align and this is a fundamental error. While CEQR does not require a finding of no impacts, it does require that impacts be disclosed and mitigated to the extent practicable. Instead of disclosing urban design impacts, this impact, the City

mischaracterized, and with respect to Baxter Street, just omitted the action's impact on urban design in the text. CEQR is nothing without disclosing the truth about the impacts of the action. Yet the Lead Agency was unwilling to fairly describe the evidence and disclose the project's impacts.

### **Neighborhood Character**

27. The Technical Manual instructs that "Neighborhood Character is an amalgam of various elements that give neighborhoods their distinct 'personality.' These elements may include a neighborhood's land use, urban design, visual resources, historic resources, socioeconomics, traffic, and/or noise."

28. Comment 13-4 states that since there are inaccuracies and omissions in the DEIS analysis of land use, open space, urban design, visual resources and other topic areas, that the finding of no significant impact on Neighborhood Character cannot be right. The response defends the findings of the other sections, and then states that the finding of no impact on neighborhood character must be correct. FEIS 10-140.

29. The comment is legitimate; there are serious problems with the finding of significance in several of the sections that feed into Neighborhood Character. If we believe our eyes when we examine the photo-renderings (and ignore the text), we can see that this project must impact neighborhood character.

30. That said, neighborhood character must be seen as more than just an amalgam of chapters in an environmental review. The Manual, as it does in many places, gives qualified guidance, saying that neighborhood character "may" include these other elements, but not that they must. Nor does the Manual prohibit consideration of elements

that may contribute to neighborhood character, but are not studied in the environmental review.

31. Answers to two other neighborhood character comments are non-responsive. Comment 13-8 noted that one of the jails is described as having “wire mesh would enclose the recreation yards” that will be visible from the street. The commenter noted that there is no rendering showing the “wire mesh,” and thought it could impact the character of the community. Indeed, it is reasonable to think that a substantially visible razor-wire topped wire mesh fence could significantly alter the character of nearly any neighborhood or street, and the comment expresses a legitimate concern about the project’s impact. The response, however, was to simply dismiss the comment: “The proposed actions do not govern the specific materials of the buildings and therefore having certainty regarding these characteristics is not integral for the EIS analysis.” FEIS 10-142. This is a circular conclusion - because there is no information, the information is not integral to the analysis. While the materials of the building may not be required to obtain the land use approvals, it defies belief that the materials are not relevant to whether the project will affect neighborhood character for purposes of consideration of the environmental impacts of the project.

32. This is a site-specific City facility. Every other site-specific City facility before this one would have had information on materials and could have answered this reasonable comment.<sup>1</sup> But, regardless, the response is absurd: it is basically saying that materials don’t matter to neighborhood character. Do white picket fences have the same

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<sup>1</sup> This is the first City facility ULURP to go through Design/Build, which means that this project went through ULURP without a design or a designer, who will be hired later, and many questions about the details of these buildings, how they will be constructed, and how long construction will take are simply unknown.

impact on neighborhood character as a fence topped with razor-wire made of a tight wire mesh? The Lead Agency's response is neither responsive nor credible.

33. Further, comment 13-6 includes an astute observation of how the neighborhood functions. It says that the neighborhood "has achieved a balance between the Civic Center and the residential neighborhoods of Chinatown and Little Italy. The scope and size of the proposed jail ... disturbs that balance, affecting the neighborhood character." The Lead Agency's response is, in essence, that the commenter is mistaken. FEIS 10-141.

34. But the commenter is not at all mistaken. Anyone familiar with the neighborhood understand that there is a balance, even a tension, between Chinatown/Little Italy and the civic center uses. This balance has been achieved over decades and is a fundamental backdrop to the character of the neighborhood. The jail really does threaten to upset that balance, but that balance is not a part of the Lead Agency's description of Neighborhood Character. This was omitted in the DEIS and further disregarded in the response to the comment without any substantive response while deferring to the Technical Manual. The Lead Agency has a responsibility to be responsive to legitimate comments.

### **Construction**

35. The FEIS included many pages of comments on the impact of both demolition and construction. The most serious comments reflect the admission that there are no plans for these buildings, and, because there are no plans, there is not a firm construction plan, only estimates. Comment 14-11 puts it plainly: "Given that the DEIS forthrightly asserts that 'detailed plans for the detention facility and detailed construction

logistics...are not known at this time', the DEIS' entire Construction chapter has no factual or empirical basis." FEIS 10-151.

36. Considering that the commenter is correct, and that there are no plans for these buildings, the response that the Lead Agency provided is: "The construction schedule presented in the DEIS was developed by a construction manager with considerable experience on construction projects in New York City." What this doesn't say is that the construction manager consulted, developed a construction schedule, assumption and timelines without the benefit of a plan for the project. Not only are there no demolition plans or construction documents, there are no plans for any of these buildings. While sometimes rules-of-thumb are used in the planning process, this is a disclosure document that is supposed to disclose to decision-makers and the public what the impacts of this proposed project will be, not what a construction manager has assumed without basic project information.

37. The problem, of course, is that this is the first City facility to go through the City's ULURP process and complete an environmental review without design documents.

38. Up until this project, City facilities followed a traditional Design-Bid-Build program, where projects are designed by one firm that produces design documents. The designs are then sent out to bid for construction, and then the project is built. ULURP and CEQR would happen after the "Design" and before the "Bid" portion of project constructed under Design-Bid-Build. While the Design-Build process can be cost effective, in this case, it meant that no design documents were available during CEQR and ULURP because the project designer hadn't even been hired yet.



39. Construction impacts and schedule are highly conditional on a building's design. It does not seem possible to assess and disclose those impacts without critical information necessary to make an informed decision about those impacts. Nor is it reasonable, or even possible, to develop a mitigation program for the demolition and construction impacts of a project where there are no plans.

40. Fundamental to CEQR is the assessment and disclosure of impacts. The lack of plans for a project impairs the ability of a Lead Agency to assess and disclose a project's impacts. The nature of a project matters. For relatively routine public facilities with which a Lead Agency has prior experience, design documents *may* not be necessary prior to accurately assess construction impacts. For instance, the City has decades of continuous experience with sewer infrastructure, roads, bridges, and water tunnels, and while these projects may be big, the Lead Agency's experience may allow the accurate estimate construction timelines and impacts without design documents.

41. High rise jails, especially like the ones planned in Manhattan and Brooklyn, are a new building form. The closest similar building that comes to mind is the Manhattan Detention Complex, which is much smaller and was built about 35 years ago. The programming features of the BBJ, while laudatory, are not routine. Even the most experienced construction manager does not have experience with this building form and use, because it is new and bespoke for this purpose. Consequently, I believe the comments questioning the basis of the disclosures in the Construction chapter are legitimate. The Construction impacts of this project cannot be accurately assessed or disclosed without the benefit of design documents. Since impacts are plan dependent, the

Lead Agency should require those plans and complete a supplemental DEIS to fully disclose the project's impact.

### **Alternatives**

42. Comment 19-10 makes an important point that the FEIS completely ignores. Quoting the DEIS, it notes that “adjacency to court facilities is an important factor in site consideration (DEIS, Exh. J at J-9),” but the “Lippman Report does not, however, mandate direct adjacency to courthouses. Indeed, the preferred location in the Bronx facility is not even near the courthouse.” So why was siting close to the courthouse so important in Manhattan that it precluded the examination of other alternatives, but not in the Bronx? This comment was ignored. Since the City deemed it reasonable to explore and chose alternatives not adjacent to the courthouse in the Bronx, it should be reasonable to explore those alternatives in Manhattan. But the DEIS did not do this and the FEIS was not updated to reflect this comment.


43. Indeed, Comments 19-1 and 19-2 summarize dozens of comments that are asking some combination of why is the facility so large and/or why is the facility here? As discussed earlier, having four jails of equal sizes makes no sense if the goal is to keep detainees close to their homes. Brooklyn is 1 million people larger than Manhattan, and much more than 1 million people larger than the Bronx. Alternatives that made the jails proportional to the population they served or made them all smaller by 20% and placed a facility in Staten Island were never explored. The comments demonstrate real dissatisfaction with the siting process for this very large, very expensive public expenditure. The comments are legitimate and need to be addressed in a consistent and

forthright manner, pursuant to CEQR. Simply repeating siting criteria, which the City applied selectively, is not a response.



GEORGE M. JANES, AICP

Sworn to before me this February 11<sup>th</sup>, 2020



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