

FOR CONSIDERATION

October 22, 2009

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: New York Harbor – Funding Caddell Dry Dock and Repair Co., Inc.’s (“Caddell”) Disposal of Dredged Materials via an Agreement with the Port Authority of New York & New Jersey (“PANY&NJ”)

REQUEST FOR: Authorization to Approve Funding by PANY&NJ for the Disposal of Caddell’s Dredged Material at the Newark Bay Confined Disposal Facility; Authorization to Amend ESDC’s Agreement with PANY&NJ to Authorize this Funding; and Authorization to Take Related Actions

Background

In 1996, PANY&NJ allocated \$130 million to fund the Governors’ Joint Dredging Plan (the “Plan”), with \$65 million allocated for dredging and harbor related projects to each of the States of New York and New Jersey. The Plan was developed with two major objectives, namely the promotion of an increased level of certainty and predictability in the dredging project review process and dredged material management and the facilitation of effective long-term environmentally sound management strategies for addressing dredging and disposal needs for the Port of New York and New Jersey. This collaborative and harbor-wide approach was aimed at ensuring the stability of the harbor’s navigability.

The Empire State Development Corporation (“ESDC”), which was designated as the New York entity to develop and approve the specific actions to be taken under the Plan, entered into an agreement with PANY&NJ (including all amendments thereto, the “Agreement”). Under the Agreement, PANY&NJ agreed to provide up to \$65 million for program eligible items to be agreed upon by ESDC and PANY&NJ related to the dredging and disposal of dredged material and related projects, including sediment testing, development of contaminant identification technology, material management initiatives and pollution prevention and navigation studies in the New York harbor. To date, approximately \$48.5 million of the New York funds have been committed pursuant to the Agreement.

Increase in Costs in Dredged Material Management

Fine grained sediment is transported by rivers, accumulating in navigable waterways and berthing areas, causing shoaling and the need for dredging of the sediment. These navigable waterways are also dredged to deepen channels, permitting deepwater navigation throughout a harbor with a natural depth of less than twenty feet. Much of the sediment dredged from the industrialized Port of New York and New Jersey, the largest port on the East Coast, is contaminated with various levels of pollutants.

The cost of maintenance dredging has increased significantly since open water disposal of dredged material was significantly restricted, following studies that found contaminants in the dredged material caused sediment toxicity and bioaccumulation effects in estuarine organisms. Specifically, in 1997, the United States Environmental Protection Agency ("EPA") re-designated the former Mud Dump Site, a site used for the placement of a significant amount of materials dredged from the New York/New Jersey Harbor since 1914, as the Historic Area Remediation Site ("HARS"). Pursuant to the EPA rule, only uncontaminated dredged material could be used to remediate HARS. Accordingly, disposal and placement of dredged material that does not meet the minimum disposal levels at HARS is now considerably more expensive. The Plan was not devised to simply fund the cost of maintenance dredging in the Port of New York and New Jersey, but was devised to develop long term strategies for material management and contamination remediation in the region.

The Current Project

Caddell Dry Dock & Repair Co., Inc. has requested \$3,895,500 of Bi-State Dredging funds to finance the disposal costs of approximately 106,000 cubic yards of materials dredged from the Kill Van Kull at the PANY&NJ operated Newark Bay Confined Disposal Facility ("NBCDF") located in Newark, New Jersey, for its maintenance dredging. ESDC's assistance would pay for the \$36.75 per cubic yard tipping fee at the NBCDF, and assist in the retention of 200 jobs in this Staten Island shipyard.

Caddell has been in continuous operation along the New York waterfront since 1903, and it one of the largest full service shipyards in the New York metropolitan area. The company operates six floating dry docks at its Staten Island facility, providing dry docking and repair and maintenance services for over 300 vessels annually. This maintenance dredging project involves dredging Caddell's dry docks to a mean low water depth ("MLW") of -35 feet, and its general facility areas to a MLW of -25 feet.

The company will be paying for its own dredging and barging costs for its maintenance dredging of approximately 106,000 cubic yards of material. It is seeking payment for the tipping fee charged by the PANY&NJ at the NBCDF, which is \$36.75 per cubic yard. Therefore, Caddell is seeking a grant of \$3,895,500 for this fee from the Bi-State Dredging fund. The PANY&NJ will handle the payment internally.

Environmental Review

ESD staff has determined that the authorization to approve funding by the Port Authority of New York & New Jersey for the disposal of Caddell's dredged materials at the Newark Bay Confined Disposal Facility does not require review under the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation (DEC). DEC has completed a SEQRA review for the proposed maintenance dredging at the time of the review of the dredging permit application. This review found the project would not have a significant effect on the environment. No further environmental review is required in connection with this authorization.

Request

It is requested that the Directors authorize the funding, in the amount of \$3,895,500, for the payment of the tipping fee due to PANY&NJ for material dredged at Caddell's operations, which are to be disposed of at the NBCDF; an amendment of ESDC's Agreement with PANY&NJ to authorize the foregoing action, and the taking of related actions.

Recommendation

Staff recommends that the Directors authorize and approve the requested actions.

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NEW YORK HARBOR – Authorization to Approve Funding by PANY&NJ for the Disposal of Caddell’s Dredged Material at the Newark Bay Confined Disposal Facility; Authorization to Amend ESDC’s Agreement with PANY&NJ to Authorize this Funding; and Authorization to Take Related Actions.

RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation (the “Materials”), relating to the Agreement Between the Empire State Development Corporation and the Port Authority of New York and New Jersey (“PANY&NJ”) for Funding with Regard to the Joint Dredging Plan (including amendments, the “Agreement”), the Corporation be, and it hereby is, authorized to enter into amendments to the Agreement and take other actions to fund, pursuant to the Agreement and in an amount not to exceed \$3,895,500, the tipping fee for the disposal of approximately 106,000 cubic yards of dredged material from Caddell Dry Dock and Repair Co., Inc. at the Newark Bay Confined Disposal Facility; and be it further

RESOLVED, that the President or his designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to execute and deliver any and all documents and take all such actions as may be necessary or proper to effectuate the foregoing.

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