

FOR CONSIDERATION

September 14, 2010

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: New York Harbor – Agreement with the Port Authority of New York and New Jersey (“PANY&NJ”) for Funding with Regard to the Joint Dredging Plan

REQUEST FOR: Authorization to Approve the Funding by PANY&NJ to the New York City Economic Development Corporation (“EDC”) for the Placement of Processed Dredged Material at Fresh Kills Landfill and Amend the Bi-State Dredging Agreement; Authorization to Take Related Actions

Background

In 1996, the Port Authority of New York and New Jersey (“PANY&NJ”) allocated \$130 million to fund the Governors Pataki and Whitman’s 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 region.

The Empire State Development Corporation (“ESDC”) was designated as the New York entity to approve funding allocated to New York pursuant to the Plan. In November 1997, ESDC entered into an agreement with the PANY&NJ (including all amendments thereto, the “Agreement”), wherein the PANY&NJ agreed to provide up to \$65 million for program eligible work (“Dredging Funds”) to be agreed upon by ESDC and the 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.

The Current Project

The New York City Economic Development Corporation (“EDC”) has requested Dredging Funds for costs incurred in the placement of processed dredged material (“PDM”) at the Fresh Kills Landfill (“FKL”) on Staten Island. The development of upland demonstration projects and placement sites for dredged material not suitable for ocean placement is a core tenet of the Plan. FKL, once the world’s largest landfill, is being closed pursuant to a New York State

Department of Environmental (“DEC”) Order of Consent by the New York City Department of Sanitation (“DOS”). Over the next few decades, FKL will be transformed into 2,200 acre Freshkills Park, the largest park developed in New York City in over 100 years. In an effort to reduce the amount of conventional fill necessary to adequately contour a section of FKL for its end use, resulting in decreased costs, and reduce the amount of trucks that would be required to transport conventional fill to the project site, DOS applied to DEC for a Beneficial Use Determination (“BUD”) for the dredged material. DEC determined that the dredge material, after it was dewatered and stabilized via amendment with cement, qualified as alternate grading material. The processed dredged material (“PDM”) was then used as a contour layer below a geotextile liner to create a topography that would be conducive for future park and recreational use. The dredged material for this pilot project was also delivered to FKL via barge, which provided certain environmental benefits by reducing truck traffic through the area by approximately 82,000 truck trips throughout the life of the project.

FKL began receiving PDM in 2005, and this local upland placement site accepted approximately one million cubic yards of PDM dredged from New York Harbor. The last barge of PDM was placed at FKL in December 2009.

Since this was a pilot project, certain unanticipated expenditures were realized as the project developed. EDC is seeking Dredging Funds to cover costs which include 1) additional cement to amend the dredged material, which was necessary due to the high moisture content of the material, 2) adequate stabilization and the construction of proper drainage features to address the chronic presence of water at the material placement site and 3) additional costs incurred from a consultant to interpret laboratory results to ensure conformity with the BUD and for future utilization of PDM for placement in New York. Total payment to EDC for this allocation of Dredging Funds shall not exceed \$778,397. The Board, in November 2006, approved a second allocation of \$1,438,000 in Dredging Funds to reimburse EDC for similar expenditures, bringing the total of Dredging Funds allocated for the project at that time to \$1,778,000. The PANY&NJ will provide payment directly to EDC.

Environmental Review

ESD staff has determined that the approval of funding by the PANY&NJ to EDC for the placement of processed dredged material at Fresh Kills landfill constitutes a Type II action as defined by the New York State Environmental Quality Review Act (“SEQRA”) and the implementing regulations of the New York State Department of Environmental Conservation. The Fresh Kills Park project itself has been subject to environmental review by the New York City Department of Parks & Recreation, as lead agency, pursuant to the requirements of SEQRA and the implementing regulations of the New York State Department of Environmental Conservation (6 NYCRR Part 617). A Final Generic Environmental Impact Statement (FGEIS) and Findings Statement have been issued by the lead agency. The lead agency determined that the action avoids or minimizes adverse environmental impacts to the maximum extent practicable. ESD however, was not an involved agency and therefore did not participate in the environmental review process for the project. The present request for ESD funding does not constitute an action beyond those actions already considered by the lead agency in the FGEIS. Therefore, no further environmental review is required in connection with this authorization.

Request

It is requested that the Directors authorize approval of the funding by the PANY&NJ to EDC for the placement of processed dredged material at Fresh Kills landfill, including amending the Agreement authorizing the allocation of funds to EDC, and authorize the taking of related actions.

Recommendation

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

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NEW YORK HARBOR – Agreement with the Port Authority of New York and New Jersey (“PANY&NJ”) for Funding with Regard to the Joint Dredging Plan – Authorization to Approve Funding by the PANY&NJ to the New York City Economic Development Corporation (“EDC”) for the Placement of Processed Dredged Material at Fresh Kills Landfill; 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 approve the funding, in an amount not exceed \$778,397, by PANY&NJ to the New York City Economic Development Corporation for certain costs incurred in the placement of processed dredged material at Fresh Kills landfill; 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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