

1 [Project Partnership Agreement - Army Corps of Engineers - Dredging of Central Basin by
2 Pier 70 - Not to Exceed \$4,500,650]

3 **Ordinance amending Ordinance No. 244-16, regarding a Project Partnership between**
4 **the U.S. Army Corps of Engineers and the Port to allow federal dredging of the Central**
5 **Basin adjacent to Pier 70, to: 1) change the project dredging depth from 32 feet to 35**
6 **feet; 2) increase the estimated initial project cost from \$8,971,000 to \$11,690,000; 3)**
7 **increase the Port's 25% project contribution from \$2,242,740 to \$2,922,500; 4) change**
8 **the frequency of maintenance dredging from every four years to every two years, and**
9 **at an estimated cost of \$2,080,000 instead of \$1,026,000 for each maintenance dredge**
10 **episode; 5) increase the Port's additional 10% matching contribution from \$897,100 to**
11 **\$1,169,000; 6) increase the estimated total cost of dredging during the first 30 years**
12 **from \$12,195,000, to \$31,300,00; and 7) authorize the Port Executive Director to reserve**
13 **a contingency fund of \$409,150 (equivalent to 10% of the Port's total estimated cost**
14 **contributions of \$4,091,500), to expend in case of future unanticipated increases in**
15 **project costs, for a total expenditure authorization not to exceed \$4,500,650.**

16
17 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.
18 **Additions to Codes** are in *single-underline italics Times New Roman font*.
19 **Deletions to Codes** are in ~~*italics Times New Roman font*~~.
20 **Board amendment additions** are in Arial font.
21 **Board amendment deletions** are in ~~Arial font~~.
22 **Asterisks (* * * *)** indicate the omission of unchanged Code
23 subsections or parts of tables.

24 Be it ordained by the People of the City and County of San Francisco:

25 Section 1. Background and Findings.

(a) On December 15, 2016, the City enacted Ordinance No. 244-16, which authorized the Port Executive Director to execute a Project Partnership Agreement ("PPA") with the

1 United States Army Corps of Engineers (USACE) to allow the federal government to dredge
2 the Central Basin adjacent to Pier 70, as generally described in Section 2 of Ordinance No.
3 244-16 (the "Project"). The PPA resulted from the Port's request to USACE for funding
4 assistance for Central Basin dredging under USACE's Continuing Authorities Program,
5 Section 107 ("CAP107"), for navigation projects in the federal interest, pursuant to the River
6 and Harbor Act of 1960, Public Law 86-645, Section 107, as amended (33 U.S.C. § 577).

7 (b) The Central Basin is located within the Port's jurisdictional boundaries, and
8 provides navigational access to maritime vessels entering the Port's ship repair facility at Pier
9 70. The current depth of Central Basin is 26 feet, which has restricted larger vessels from
10 entering the Pier 70 ship repair facility, substantially hindering the economic success of the
11 ship repair facility.

12 (c) At the time of enactment of Ordinance No. 244-16, the PPA called for USACE to
13 dredge the Central Basin to a depth of 32 feet, with the Port contributing a 25% matching
14 share, not to exceed \$2,242,750, towards the initial Project costs, and an additional matching
15 share not to exceed \$897,100 (equivalent to 10% of the initial Project costs), payable over 30
16 years for federal maintenance dredging of Central Basin.

17 (d) After enactment of Ordinance No. 244-16, USACE's supplemental analysis
18 determined that the most cost-effective dredge depth for the Central Basin would be 35 feet,
19 rather than the 32 feet that is specified in the original PPA and in Ordinance No. 244-16. This
20 increase in dredge depth will substantially improve the federal cost-benefit ratio of the Project
21 and the economic competitiveness of the Pier 70 ship repair facility by allowing larger vessels
22 to transit the Central Basin.

23 (e) However, this deeper dredge depth will increase the estimated Project costs,
24 resulting in a higher cost contribution from the Port under the PPA cost-sharing formula. With
25 the PPA's revised Project dredge depth of 35 feet and corresponding increased costs to the

1 Port, the expenditure authority provided by Ordinance No. 244-16 no longer satisfies the
2 Project funding requirements.

3 (f) Accordingly, the Board of Supervisors desires to amend Ordinance No. 244-16, to
4 increase the Port's expenditure authority needed to fund the Port's financial contribution under
5 the PPA's revised Project scope and resulting increased costs to the Port, and to authorize an
6 additional 10% contingency for Port expenditures, should Project costs further escalate for
7 unanticipated reasons. This ordinance will authorize the Port to contribute a 25% cost match
8 (equivalent to \$2,922,500), towards the initial Project costs to dredge the Central Basin to a
9 depth of 35 feet, and will authorize a secondary Port payment of 10% of the cost of the initial
10 Project costs (equivalent to \$1,169,000), towards future federal costs for maintenance
11 dredging of Central Basin, payable over 30 years. Under this ordinance, the "not to exceed"
12 limits are removed from amounts of the Port's individual cost contributions stated in Ordinance
13 No. 244-16, but the amended total expenditure authorization, which includes the 10%
14 contingency, is now stated as not to exceed \$4,500,650.

15 Section 2. Ordinance No. 244-16 is hereby amended at Section 2(j) and Section 2(k)
16 on page 3, lines 10 through 24, by replacing Sections 2(j) and 2(k) with the following
17 language:

18 "(j) In April 2016, USACE chose its preferred alternative from among nine
19 alternatives considered for execution of the Central Basin CAP107 project, and
20 the Port concurred with that selected alternative. The alternative, has been
21 revised by USACE, and, as shown in the ordinance in Board File No. 170861
22 amending Ordinance No. 244-16, would dredge the Central Basin to a depth of
23 35 feet at an initial project cost of \$11,690,000, and require the "local sponsor,"
24 the Port, to contribute a 25% project match (equivalent to \$2,922,500)."
25

1 “(k) Under this project, upon completion of the initial deepening of the
2 Central Basin to 35 feet, USACE would assume responsibility for maintenance
3 dredging of the Central Basin every two years to maintain the depth of 35 feet,
4 at an estimated cost of \$2,080,000, conditioned upon the Port supplying an
5 additional match of \$1,169,000 (equivalent to 10% of the cost of the initial
6 deepening dredge), payable during the first 30 years of maintenance dredging.
7 The total cost of maintenance dredging during the first 30 years is estimated at
8 \$31,300,000. Under the Project Partnership Agreement, the Port, as property
9 owner, will also retain responsibility for investigating and mitigating any
10 hazardous substances regulated under the federal Comprehensive
11 Environmental Response, Compensation and Liability Act. (42 U.S.C. §§ 9601-
12 9675.)”

13 Section 3. Ordinance No. 244-16 is hereby amended at Section 3 on Page 4, lines 3
14 through 14, by replacing Section 3 with the following language:

15 “Section 3. Approval of Agreement.

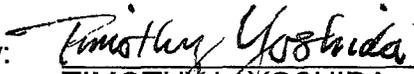
16 “Subject to the Port Executive Director’s determination that the USACE CAP107
17 federal contract terms are highly standardized and that deviation from those terms would
18 result in USACE rejection of revisions to the Project Partnership Agreement, the Board of
19 Supervisors hereby approves and authorizes the Port Executive Director to execute a Project
20 Partnership Agreement with USACE substantially in the form on file with the Clerk of the
21 Board of Supervisors under File No. 161286 for Ordinance No. 244-16, subject to the
22 amendments to Ordinance No. 244-16 in Sections 2 and 3 of the ordinance on file with the
23 Clerk of the Board under File No. 170861, to allow federal dredging of the Central Basin as
24 generally described in Section 2 above, conditioned upon (a) the Port providing a 25%
25 matching share, \$2,922,500, towards the initial project costs, and (b) the Port providing an

1 additional matching share, \$1,169,000 (equivalent to 10% of the cost of the initial deepening
2 dredge), payable over 30 years, for federal maintenance dredging of the Central Basin. The
3 sum of these two matching shares, required by the PPA, totals \$4,091,500. The Board of
4 Supervisors further authorizes the Port Executive Director to reserve a contingency fund of
5 \$409,150 (equivalent to 10% of the Port's total estimated cost contributions of \$4,091,500), to
6 expend in the event of future unanticipated increases in project costs, for a total expenditure
7 authorization not to exceed \$4,500,650."Section 4. Except as stated in Sections 2 and 3,
8 above, this ordinance does not change the terms of Ordinance No. 244-16.

9 Section 5. Effective Date.

10 This ordinance shall become effective 30 days after enactment. Enactment occurs
11 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
12 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
13 Mayor's veto of the ordinance.

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16 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

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18 By: 
19 TIMOTHY L. YOSHIDA
Deputy City Attorney

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LEGISLATIVE DIGEST

[Project Partnership Agreement - Army Corps of Engineers - Dredging of Central Basin by Pier 70 - Not to Exceed \$4,500,650]

Ordinance amending Ordinance No. 244-16, regarding a Project Partnership between the U.S. Army Corps of Engineers and the Port to allow federal dredging of the Central Basin adjacent to Pier 70, to: 1) change the project dredging depth from 32 feet to 35 feet; 2) increase the estimated initial project cost from \$8,971,000 to \$11,690,000; 3) increase the Port's 25% project contribution from \$2,242,740 to \$2,922,500; 4) change the frequency of maintenance dredging from every four years to every two years, and at an estimated cost of \$2,080,000 instead of \$1,026,000 for each maintenance dredge episode; 5) increase the Port's additional 10% matching contribution from \$897,100 to \$1,169,000; 6) increase the estimated total cost of dredging during the first 30 years from \$12,195,000, to \$31,300,00; and 7) authorize the Port Executive Director to reserve a contingency fund of \$409,150 (equivalent to 10% of the Port's total estimated cost contributions of \$4,091,500), to expend in case of future unanticipated increases in project costs, for a total expenditure authorization not to exceed \$4,500,650.

Existing Law

Various City ordinances mandate that City contracts with third parties, including agreements with government agencies, which are funded entirely or partially with funds from the City treasury, must comply with specific procurement and contract requirements adopted by the City. These City contracting requirements often present obstacles in negotiations with federal agencies such as the U. S. Army Corps of Engineers ("USACE") that must follow federal procurement and contracting requirements. Federal agencies such as USACE often lack flexibility or authority to incorporate City contract requirements into their federally-funded agreements.

On December 15, 2016, the City enacted Ordinance No. 244-16, approving a Project Partnership Agreement ("PPA") between the Port and USACE, to allow federal dredging and future maintenance dredging of the Central Basin. At that time, the PPA called for USACE to dredge the Central Basin to a depth of 32 feet, with the Port contributing a sum not to exceed \$2,242,750 (25% of the initial Project costs) towards the initial project costs, and an additional matching share not to exceed \$897,100 (10% of the initial project costs) for future federal maintenance dredging of Central Basin. The sum of these two Port monetary contributions totaled an amount not to exceed \$3,139,850.

To facilitate negotiations with USACE, the ordinance exempted the PPA from Environment Code Chapters 5, 7, 8, 16, and 25, and contracting requirements of the Administrative Code except as to Chapters 12G, 12M and 67, to the extent the Board has the power to waive such provisions of the Administrative and Environment Codes. The ordinance did not preclude inclusion of provisions in the PPA obligating USACE to satisfy any such requirements.

Amendments to Current Law

After the City's enactment of Ordinance No. 244-16, USACE determined that the most cost-effective dredge depth for the Central Basin would be 35 feet rather than the 32 feet that was specified in the original PPA and in Ordinance No. 244-16. USACE also revised the frequency of future federal maintenance dredging from every four years to every two years. Accordingly, USACE requested the Port to revise the project scope and PPA. This proposed increase in dredge depth and frequency in periodic maintenance dredging will substantially improve the federal cost-benefit ratio of the Project and the economic competitiveness of the Pier 70 ship repair facility by allowing larger vessels to transit the Central Basin. However, this revised project scope (deeper dredge depth and increased frequency in maintenance dredging) increases the estimated project costs, requiring a greater cost contribution from the Port, beyond the expenditure authority provided by Ordinance No. 244-16.

This ordinance will amend and increase the Port's existing expenditure authority under Ordinance No. 244-16, which is needed to fund the Port's financial obligations under the revised PPA project scope, and this ordinance will authorize an additional 10% contingency for Port expenditures, should project costs further escalate for unanticipated reasons. Specifically, this ordinance will amend and increase the Port's 25% initial cost contribution (from \$2,242,750 to \$2,922,500) towards the initial project costs, and will amend and increase the Port's secondary cost contribution of 10% (from \$897,100 to \$1,169,000) towards future federal costs for maintenance dredging of Central Basin. Under this ordinance, the amended total expenditure authorization, which includes the 10% contingency, is now stated as not to exceed \$4,500,650.

Background Information

The Port of San Francisco's ship repair facility at Pier 70 ("Pier 70 shipyard") is home to the longest continuously operating shipyard on the West Coast. The shipyard includes two large floating drydocks and provides skilled employment opportunities in San Francisco. The Pier 70 shipyard was leased to BAE Systems San Francisco Ship Repair, Inc. ("BAE Systems"), a California corporation, and the Port is currently seeking a new tenant and operator under a pending Request for Proposals.

The Central Basin lies within San Francisco's jurisdiction but outside existing federal navigational channels, and serves as the navigational approach for vessels that enter the Pier 70 Shipyard. The Central Basin lies outside the premises of the Port's former lease for the Pier 70 shipyard operations and, therefore, the tenant had no contractual obligation to dredge the Central Basin.

Accumulating sediment reduces the functional navigational depth of the Central Basin, restricting the size of vessels capable of entering the shipyard and threatening its economic viability. The ideal operating depth for shipyard operations was considered to be 32 feet; the current depth is 26 feet, which forced the Port's Pier 70 shipyard tenant to turn away business it would otherwise could have accepted. The expense of required periodic dredging of the Central Basin is substantial, and not viable in the long term for the Port to include in its annual dredge budget.

With many federally-owned ships receiving service at the Pier 70 shipyard, in October 2009, the Port requested funding assistance from USACE for the Central Basin under its Continuing Authorities Program, Section 107 ("CAP107") program for navigation projects in the federal interest. In September 2010, USACE determined there was an apparent federal interest in the Port's Central Basin project, and recommended a formal feasibility study of a federal project to dredge the Central Basin that would result in a provisional Detailed Project Report recommending a federal deepening and maintenance dredging project for the Central Basin.

In July of 2011, the Port entered into a cost sharing agreement for a formal feasibility study of the Central Basin as a federal CAP107 project. Federal appropriations to the national CAP107 account, from which individual CAP107 projects are funded, were put on hold by Congress in intervening years, and with other competing projects, USACE effectively placed the Central Basin project in suspension until 2015.

In FY 2015-16, the San Francisco Board of Supervisors appropriated funding for the Port of San Francisco to fund a local match to federal funding for the USACE to dredge the Central Basin. In April 2016, the San Francisco District Office of USACE chose its preferred alternative from among 15 alternatives considered for execution of the Central Basin CAP107 project, and the Port of San Francisco concurred with that selected alternative. USACE selected a project alternative to dredge the Central Basin to a depth of 32 feet at a total project cost of \$8,971,000, with a \$6,728,260 federal contribution, and which would require the local sponsor, the Port of San Francisco, to contribute an initial 25% project match, \$2,242,740, and a secondary 10% match, \$897,100, towards the cost of future federal maintenance dredging of Central Basin.

The USACE drafted a project partnership agreement ("PPA") to be executed by USACE and the City and County of San Francisco, acting by and through the Port, subject to approval of the Board of Supervisors and the Mayor, under which USACE would dredge the Central Basin at a cost of \$8,971,000. Under the PPA, USACE would also maintain the dredge depth in the future, provided the Port contributes the matching funds outlined above.

On December 13, 2016, the Board of Supervisors finally passed and, on December 15, 2016, the City enacted Ordinance No. 244-16, approving the terms of the PPA and authorizing the Port Executive Director to execute the PPA based upon the original project scope outlined above and recited in the Ordinance. Thereafter, USACE continued to analyze the Central Basin project and revised the project scope to increase the dredge depth from 32 feet to 35 feet, and increasing the frequency of future maintenance dredging from every four years to every two years. USACE's revisions to the project scope would substantially benefit the Port and City by allowing larger vessels to access the Pier 70 shipyard for services. Therefore, the Port highly recommends approval of this ordinance that would amend Ordinance No. 244-16, and approve and authorize the Port Executive Director to enter into and execute the PPA with USACE on the revised terms outlined above and recited in the proposed ordinance.

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Item 12 File 17-0861	Department: Port of San Francisco
EXECUTIVE SUMMARY	
Legislative Objectives	
<ul style="list-style-type: none"> • The proposed ordinance amends a prior ordinance, regarding a Project Partnership between the United States Army Corps of Engineers (USACE) and the Port of San Francisco (the Port) to allow federal dredging of the Central Basin adjacent to Pier 70, to: (1) change the project dredging depth from 32 feet to 35 feet; (2) increase the estimated initial project cost from \$8,971,000 to \$11,690,000; (3) increase the Port's 25 percent project contribution from \$2,242,740 to \$2,922,500; (4) change the frequency of maintenance dredging from every four years to every two years; (5) increase the Port's additional 10 percent matching contribution from \$897,100 to \$1,169,000; (6) increase the estimated total cost of dredging during the first 30 years from \$12,195,000 to \$31,300,000; and (7) authorize the Port Executive Director to reserve a contingency fund of \$409,150 (equivalent to 10 percent of the Port's total estimated cost contributions of \$4,091,500) for a total Port expenditure authorization not to exceed \$4,500,650. 	
Key Points	
<ul style="list-style-type: none"> • On December 15, 2016, the City enacted Ordinance No. 244-16, approving a Project Partnership Agreement ("PPA") between the Port and USACE, to allow federal dredging and future maintenance dredging of the Central Basin. At that time, the PPA called for USACE to dredge the Central Basin to a depth of 32 feet. USACE later determined that the most cost-effective dredge depth for the Central Basin would be 35 feet. USACE also increased the frequency of future federal maintenance dredging to every two years. • This proposed increase in dredge depth and frequency in periodic maintenance dredging will substantially improve the federal cost-benefit ratio of the Project and the economic competitiveness of the Pier 70 ship repair facility by allowing larger vessels to transit the Central Basin. However, this revised project scope increases the estimated project costs, requiring a greater cost contribution from the Port beyond its expenditure authority. 	
Fiscal Impact	
<ul style="list-style-type: none"> • The Port's 25 percent match contribution of \$2,922,500 will come from the Port's Harbor Fund balance • Over the next 30 years, the Port will include sufficient funding in the Port's biennial budget to provide the necessary 10 percent matching contribution to enable the USACE to maintain the required dredging. The \$1,169,000 of Port matching funds over 30 years would require an estimated \$38,967 per year of Port Harbor Funds. 	
Recommendations	
<ul style="list-style-type: none"> • Amend the proposed ordinance to correctly state the average estimated cost per maintenance dredge is \$1,626,000 rather than \$1,026,000 as stated in the proposed ordinance. • Approve the proposed resolution as amended. 	

MANDATE STATEMENT

City Charter Section 9.118(b) provides that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

BACKGROUND**Central Basin Project**

Pier 70 at the Port of San Francisco (Port) contains an operating shipyard leased by the Port to a private shipyard operator. The prior lease between the Port and BAE Systems, Inc. terminated in May 2017 after a legal dispute between BAE and Puglia Engineering, the firm to which it had sold its shipyard operations. The Port issued a Request for Proposals to select a new shipyard operator in July 2017.

The Central Basin in San Francisco Bay, which is within the City's jurisdiction, is outside both federal navigational channels and the premises of the Port's Pier 70 shipyard operations. However, the Central Basin provides the navigational approach for ships entering the Pier 70 shipyard. The continuing accumulation of sediment in the Central Basin restricts the size of ships that can currently enter the Pier 70 shipyard as well as the long term viability of the shipyard.

In October 2009, the Port requested funding assistance from the United States Army Corps of Engineers (USACE) to dredge the Central Basin given that many federal vessels receive maintenance and repair services at the Pier 70 shipyard. In April 2016, USACE determined (and the Port concurred) that the ideal depth for the shipyard operations was 32 feet. The current depth of the Central Basin is 26 feet.

In December 2016, the Board of Supervisors approved the project partnership agreement (PPA) between USACE and the Port for the USACE to dredge the Central Basin to a depth of 32 feet. The total cost of the initial dredging project was of \$8,971,000, of which \$2,242,740 or 25 percent were Port matching funds previously appropriated by the Board of Supervisors (File No. 16-1286; Ordinance No. 244-16).

Under the PPA, USACE would perform maintenance dredging of the Central Basin every four years at an estimated average cost per dredging episode of \$1,626,000 or \$13,092,100 for eight dredging episodes over approximately 30 years. The Port was to provide matching funds of \$897,100 toward the costs of the maintenance dredging, as shown in Table 1 below, payable over 30 years.¹

¹ The Port's contribution of \$897,100 equaled 10 percent of the initial dredging project costs of \$8,971,000.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would amend Ordinance No. 244-16 to approve revised terms of the PPA between the Port and USACE to:

- (1) Increase the project dredging depth from 32 feet to 35 feet;
- (2) Increase the estimated initial dredging project cost from \$8,971,000 to \$11,690,000;
- (3) Increase the Port's 25 percent contribution to the initial dredging project from \$2,242,740 to \$2,922,500;
- (4) Increase the frequency of maintenance dredging from every four years to every two years, and increase the estimated cost of maintenance from \$1,626,000 to \$2,080,000 for each maintenance dredge episode;
- (5) Increase the Port's contribution to maintenance dredging from \$897,100 to \$1,169,000, payable over 30 years;
- (6) Increase the estimated total cost of dredging over 30 years from \$12,195,000 to \$31,300,000; and
- (7) Authorize the Port Executive Director to reserve a contingency fund of \$409,150 (equivalent to 10 percent of the Port's total estimated contributions of \$4,091,500), for future unanticipated increases in project costs, for total Port expenditure authorization not to exceed \$4,500,650.

After the approval of Ordinance No. 244-16 by the Board of Supervisors in December 2016, USACE continued to analyze the Central Basin project and revised the project scope to increase the dredge depth from 32 feet to 35 feet, and increase the frequency of future maintenance from every four years to every two years. The USACE is seeking the increased dredge depth to allow use of the facility by larger federal ships. The 35 foot depth could also potentially benefit the Port and City by allowing larger ships to access the Pier 70 shipyard, making it more economically competitive.

The initial construction project to dredge the Central Basin to a depth of 35 feet would occur in 2018. Under this agreement, the USACE would be responsible for managing and completing the project, including all equipment, labor and disposal of dredged materials, in accordance with federal contracting procedures. The dredging will be subject to federal regulatory permits and require local permits from the Bay Conservation and Development Commission (BCDC) and the Regional Water Quality Control Board (RWQCB). USACE is moving forward based on the Port's expectation of the new shipyard operator being in place in early 2018.

The initial dredging is estimated to cost \$11,690,000, including a 25 percent matching contribution of \$2,922,500 from the Port. In addition, in accordance with the proposed Agreement, the USACE would continue to maintain the dredge depth of 35 feet and the Port would pay an additional contribution of \$1,169,000 toward maintenance dredging, equal to 10 percent of the initial dredging cost of \$11,690,000, payable over 30 years. The maintenance

dredging is estimated by USACE to occur approximately every two years to maintain the depth of the Central Basin.

FISCAL IMPACT

The total estimated Central Basin dredging costs under the revised PPA are \$43,578,150 over 30 years, an increase of \$22,412,150 or 106 percent compared to the original estimated costs of \$21,166,000. The Port's share of Central Basin dredging costs under the revised PPA are not to exceed \$4,500,650 over 30 years, an increase of \$1,360,810 or 43 percent compared to the original estimated share of \$3,139,840. Table 1 below shows the estimated funding to be shared between the USACE and the Port under the original and revised PPAs.

Table 1: Project Partnership Agreement Funding Sources

Project	Original PPA	Revised PPA
Initial Dredging		
Federal CAP107 Appropriation (75%)	\$6,728,260	\$8,767,500
Port Harbor Funds (25%)	2,242,740	<u>2,922,500</u>
Subtotal	\$8,971,000	\$11,690,000
Ongoing Maintenance Dredging (over 30 years)		
Federal Harbor Maintenance Trust Fund	\$11,297,900	\$30,310,000
Port Harbor Funds (10% of initial dredging cost)	<u>897,100</u>	<u>1,169,000</u>
Subtotal	\$12,195,000	\$31,479,000
Port Contingency Fund	Not Included	\$409,150
TOTAL	\$21,166,000	\$43,578,150
Total Port Contribution	\$3,139,840	\$4,500,650

The proposed ordinance authorizes a reserve contingency fund of \$409,150 to cover unanticipated cost increases without requiring further Board of Supervisors approval. Under the proposed ordinance, the Port's amended total expenditure authorization, including the contingency fund, is not to exceed \$4,500,650, or approximately 10.4 percent of the total estimated project cost of \$43,399,150.

The Port's contribution for the initial Central Basin dredging project is \$2,922,500. The Board of Supervisors previously appropriated \$2,500,000 to the Central Basin dredging project, of which \$255,274 was previously spent for engineering and other preliminary work, and \$2,244,726. The remaining balance of \$747,774, will come from the dredging account in the Port's 2017-18 capital budget.

According to Mr. Dunham, the Port anticipates that its annual capital budget would include sufficient funding to provide the necessary 10 percent matching contribution of \$1,169,000 to enable the USACE to maintain the required dredging of the Central Basin over the next 30 years, which is estimated to occur every two years. These funds will be subject to future Board of Supervisors appropriation approval.

RECOMMENDATIONS

1. Amend the proposed ordinance to correctly state the average estimated cost per maintenance dredge is \$1,626,000 rather than \$1,026,000 as stated in the proposed ordinance.
2. Approve the proposed ordinance as amended.

PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE PORT OF SAN FRANCISCO
FOR DESIGN AND CONSTRUCTION
OF THE
PIER 70 CENTRAL BASIN CONTINUING AUTHORITIES PROGRAM SECTION 107
NAVIGATION IMPROVEMENT PROJECT

THIS AGREEMENT is entered into this _____ day of _____, 2017, by and between the Department of the Army (hereinafter the "Government"), represented by the Acting Assistant Secretary of the Army (Civil Works), and the Port of San Francisco (hereinafter the "Non-Federal Sponsor"), represented by the Executive Director.

WITNESSETH, THAT:

WHEREAS, the Pier 70 Central Basin Continuing Authorities Program Section 107 Navigation Improvement Project (hereinafter the "*Project*," as defined in Article I.A. of this Agreement) at San Francisco, California was approved for design and construction by the Commander, South Pacific Division on June 26, 2017, pursuant to the authority contained in Section 107 of Public Law 86-645, as amended (33 U.S.C. 577);

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Partnership Agreement (hereinafter the "Agreement") for design and construction of the *Project*;

WHEREAS, Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2211), specifies the cost-sharing requirements applicable to the *Project*;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2211), provide, *inter alia*, that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, the Secretary of the Army is authorized by Section 107 of the River and Harbor Act of 1960, Public Law 86-645, as amended (33 U.S.C. 577; hereinafter "Section 107") to allot from certain appropriations an amount not to exceed \$50,000,000 per *fiscal year* for the construction of small river and harbor improvements projects and not more than \$10,000,000 in Federal funds shall be allotted for a project at any single locality;

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful implementation of the *Project*.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS

A. The term "*Project*" shall mean the *general navigation features*; and all lands, easements, rights-of-way, and *relocations* that the Government, in accordance with Article III of this Agreement, determines to be necessary for construction or operation and maintenance of the *general navigation features*, but shall not include aids to navigation or the *local service facilities*.

B. The term "*general navigation features*" shall mean the dredging of the Central Basin approach area to a depth of 35 feet MLLW plus 2 feet of overdepth and placing all of the dredged material at San Francisco Deep Ocean Disposal Site, as generally described in the Detailed Project Report and Integrated Environmental Assessment, Pier 70: Central Basin CAP 107 Navigation Improvement Project dated June, 2017 and approved by the Commander, South Pacific Division on June 26, 2017. The term does not include any lands, easements, rights-of-way, *relocations*; *betterments*; aids to navigation; or *local service facilities*.

C. The term "*period of design and construction*" shall mean the time from the effective date for this Agreement to the date that construction of the *general navigation features* is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article XII or Article XIII.D. of this Agreement, whichever is earlier.

D. The term "*total costs of construction of the general navigation features*" shall mean all costs incurred by the Non-Federal Sponsor or the Government in accordance with the terms of this Agreement directly related to design and construction of the *general navigation features*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government's design costs; the Government's costs of preparation of environmental compliance documentation in accordance with Article II.A.1. of this Agreement; the Government's engineering and design costs during construction; the Non-Federal Sponsor's and the Government's costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIII.A. of this Agreement; the Government's costs of historic preservation activities in accordance with Article XVI.A.1. of this Agreement; the Government's actual construction costs (including the costs of alteration, lowering, raising, or replacement and attendant demolition of any *bridge over navigable waters of the United States*); the Government's supervision and administration costs; and the Government's costs of contract dispute settlements or awards. The term does not include the value of any lands, easements, rights-of-way, or *relocations*; any financial obligations for operation and maintenance of the *general navigation features*; any costs allocated by the

Government to a preexisting Federal or non-Federal navigation project in accordance with Article II.C. of this Agreement; any costs of additional work under Article II.M. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; any costs of aids to navigation; any costs of construction or operation and maintenance of the *local service facilities*; or the Non-Federal Sponsor's costs of negotiating this Agreement.

E. The term "*financial obligations for design and construction*" shall mean the financial obligations of the Government that result or would result in costs that are or would be included in *total costs of construction of the general navigation features*.

F. The term "*non-Federal proportionate share*" shall mean the ratio of the Non-Federal Sponsor's total contribution of funds required by Article II.D. of this Agreement to total *financial obligations for design and construction*, as projected by the Government.

G. The term "*highway*" shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

H. The term "*bridge over navigable waters of the United States*" shall mean a lawful bridge over the navigable waters of the United States, including approaches, fenders, and appurtenances thereto, which is used and operated for the purpose of carrying railroad traffic, or both railroad and *highway* traffic, or if a state, county, municipality, or other political subdivision is the owner or joint owner thereof, which is used and operated for the purpose of carrying *highway* traffic.

I. The term "*relocation*" shall mean providing a functionally equivalent facility to the owner of a *utility*, cemetery, *highway*, railroad (including any bridge thereof), or public facility, excluding any *bridge over navigable waters of the United States*, when such action is authorized in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

J. The term "*betterment*" shall mean a difference in the engineering and design or construction of an element of the *general navigation features* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the engineering and design or construction of that element. The term does not include features in addition to the *general navigation features*.

K. The term "*over-depth*" shall mean additional dimensions associated with a given depth that are required to accomplish advance maintenance, if any, and to compensate for dredging inaccuracies at that depth.

L. The term "*utility*" shall mean that which is defined as a public utility pursuant to generally applicable law of the State of California.

M. The term "*Federal program funds*" shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

N. The term “*fiscal year*” shall mean one year beginning on October 1 and ending on September 30.

O. The term “*local service facilities*” shall mean those facilities that the Non-Federal Sponsor must construct or operate and maintain to realize the benefits of the *general navigation features*. The *local service facilities* are the Port of San Francisco Eureka Dry Dock, Dry Dock #2, and associated berths as generally described in the Detailed Project Report and Integrated Environmental Assessment, Pier 70: Central Basin CAP 107 Navigation Improvement Project, dated June, 2017 and approved by the Commander, South Pacific Division on June 26, 2017.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the “Congress”) and using those funds and funds provided by the Non-Federal Sponsor, shall expeditiously design and construct the *general navigation features* (including alteration, lowering, raising, or replacement and attendant demolition of any *bridge over navigable waters of the United States*), applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

1. The Government shall develop and coordinate as required, an Environmental Assessment and Finding of No Significant Impact or an Environmental Impact Statement and Record of Decision, as necessary, to inform the public regarding the environmental impacts of the *Project* in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347; hereinafter “NEPA”). However, the Government shall not issue the solicitation for the first construction contract for the *general navigation features* or commence construction of the *general navigation features* using the Government’s own forces until all applicable environmental laws and regulations have been complied with, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

2. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government’s issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts or commencement of design or construction using the Government’s own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *general navigation features* shall be exclusively within the control of the Government.

3. At the time the U.S. Army Engineer for the San Francisco District (hereinafter the "District Engineer") furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract for the *general navigation features*, the District Engineer shall furnish the Non-Federal Sponsor with a copy thereof.

B. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those necessary for the borrowing of material or the disposal of dredged or excavated material, that the Government determines the Non-Federal Sponsor must provide for construction or operation and maintenance of the *general navigation features*, and shall perform or ensure performance of all *relocations* that the Government determines to be necessary for construction or operation and maintenance of the *general navigation features*.

C. The Government shall allocate *total costs of construction of the general navigation features* to the final dredged depth, excluding associated *over-depth* and entrance channel wave allowances. Further, the Government shall allocate to any preexisting Federal or non-Federal navigation project all costs associated with the dredging, excavation, and disposal of material from the dimensions, including associated *over-depth* and entrance channel wave allowances, of such project.

D. The Non-Federal Sponsor shall contribute twenty-five percent (25%) of *total costs of construction of the general navigation features*. If the Government projects that the Non-Federal Sponsor's contributions under Article XIII.A. of this Agreement that are allocated by the Government to *total costs of construction of the general navigation features* will be less than the Non-Federal Sponsor's share required by this paragraph, the Non-Federal Sponsor, in accordance with Article V.B. of this Agreement, shall provide additional funds in the amount necessary to meet the Non-Federal Sponsor's share required by this paragraph.

E. In accordance with Article V.B. of this Agreement, the Non-Federal Sponsor shall pay 100 percent of the costs allocated by the Government pursuant to paragraph C. of this Article to a preexisting non-Federal navigation project. The Non-Federal Sponsor shall have no obligation under this Agreement to pay any costs allocated by the Government pursuant to paragraph C. of this Article to a preexisting Federal navigation project.

F. In accordance with Article V.D. of this Agreement, the Non-Federal Sponsor shall pay an additional amount equal to ten percent (10%) of *total costs of construction of the general navigation features* less the amount of credit afforded by the Government for the value of the lands, easements, rights-of-way, and *relocations*. The Non-Federal Sponsor shall not be entitled to reimbursement for any value of lands, easements, rights-of-way, and *relocations* provided or performed pursuant to Article III of this Agreement that exceeds ten percent (10%) of *total costs of construction of the general navigation features*.

G. In accordance with Section 107 of Public Law 86-645, as amended (33 U.S.C. 577), the Government's total financial obligations for planning, design, and construction of the *Project* (except for costs incurred on behalf of the Non-Federal Sponsor in accordance with II.K. of this Agreement) shall not exceed \$10,000,000. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall be responsible for all costs in excess of this amount and shall pay any such costs in accordance with Article V.B. of this Agreement.

H. The District Engineer shall promptly notify the Non-Federal Sponsor in writing of the conclusion of the *period of design and construction*. Upon providing such notification, the Government shall conduct an accounting, in accordance with Article V of this Agreement, and furnish the results to the Non-Federal Sponsor.

I. The Government, as it determines necessary, shall operate and maintain the *general navigation features* in accordance with Article VII of this Agreement subject to the availability of funds.

J. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing funds verifies in writing that such funds are authorized to be used to carry out the *Project*.

K. The Non-Federal Sponsor may request the Government to perform or provide, on behalf of the Non-Federal Sponsor, one or more of the services (hereinafter the "additional work") described in this paragraph. Such requests shall be in writing and shall describe the additional work requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested additional work or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the additional work performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article V.E. of this Agreement.

1. Acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *general navigation features*. Notwithstanding the acquisition of lands, easements, or rights-of-way or performance of *relocations* by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIII.D. of this Agreement.

2. Inclusion of *betterments* in the engineering and design or construction of the *general navigation features*. In the event the Government elects to include any such *betterments*, the Government shall allocate the costs of the *general navigation features* that include *betterments* between *total costs of construction of the general navigation features* and the costs of the *betterments*.

3. Engineering and design, construction, or operation and maintenance of the *local service facilities* in conjunction with the engineering and design, construction, or operation and maintenance of the associated *general navigation features*. Notwithstanding the performance of this additional work by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIII.C. of this Agreement.

L. Subject to applicable Federal laws and regulations, the Non-Federal Sponsor, at no cost to the Government and in a timely manner, shall construct the *local service facilities*, including dredging, excavation, and disposal of material therefrom, and shall be responsible for taking all actions to enable such construction. The Government shall have no obligation

under this Agreement for construction of the *local service facilities* or construction of any other facilities to be provided by the Non-Federal Sponsor or a third party.

M. In accordance with Article VII.C. of this Agreement, the Non-Federal Sponsor, at no cost to the Government, shall operate and maintain the *local service facilities*, including dredging, excavation, and disposal of material therefrom. The Government shall have no obligation under this Agreement for operation and maintenance of the *local service facilities* or operation and maintenance of any other facilities to be provided by the Non-Federal Sponsor or a third party.

N. In addition to the ongoing, regular discussions of the parties in the delivery of the Project, the Government and the Non-federal Sponsor may establish a Project Coordination Team to discuss significant issues or actions. The Government's costs for participation on the Project Coordination Team shall not be included in the design and construction costs that are cost shared but shall be included in calculating the Federal Participation Limit. The Non-Federal Sponsor's costs for participation on the Project Coordination Team shall not be included in the design and construction costs that are cost shared and shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

ARTICLE III - LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way necessary for construction or operation and maintenance of the *general navigation features*, including those necessary for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, and including those that the Government determines to be subject to the navigation servitude. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the issuance of the solicitation for each Government contract for construction or operation and maintenance of the *general navigation features*, or prior to the Government initiating construction or operation and maintenance of a portion of the *general navigation features* using the Government's own forces, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that work and shall provide the Government with authorization for entry thereto. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way necessary for construction or operation and maintenance of the applicable *general navigation features*, as set forth in such descriptions, and shall provide the Government with authorization for entry thereto. For so long as the *Project* remains authorized, the Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the operation and maintenance of the *general navigation features* and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the *relocations* necessary for construction or operation and maintenance of the *general navigation features*, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such *relocations* in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such *relocations*. Prior to the issuance of the solicitation for each Government contract for construction or operation and maintenance of the *general navigation features*, or prior to the Government initiating construction or operation and maintenance of a portion of the *general navigation features* using the Government's own forces, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all *relocations* the Government determines to be necessary for that work. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall perform or ensure performance of all *relocations* as set forth in such descriptions.

C. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way necessary for construction or operation and maintenance of the *general navigation features* and the *local service facilities*, including those necessary for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - CREDIT FOR VALUE OF LANDS AND RELOCATIONS

A. To determine the additional amount owed by the Non-Federal Sponsor pursuant to Article II.F. of this Agreement, the Government shall afford credit toward an amount equal to 10 percent of *total costs of construction of the general navigation features* for the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor must provide pursuant to Article III of this Agreement, and for the value of the *relocations* that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III of this Agreement. However, no credit shall be afforded for the value of any lands, easements, rights-of-way, or *relocations* that have been provided previously as an item of cooperation for another Federal project. In addition, no credit shall be afforded for the value of lands, easements, rights-of-way, or *relocations* that were acquired or performed using *Federal program funds* unless the Federal agency providing funds verifies in writing that such funds are authorized to be used to carry out the *Project*.

B. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents that are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article III.A. or III.B. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contributions for the purpose of determining the amount of credit to be afforded in accordance with the provisions of this Article.

C. For the sole purpose of determining the amount of credit to be afforded in accordance with this Agreement and except as otherwise provided in paragraph D. of this Article, the value of lands, easements, and rights-of-way, including those necessary for the *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph C.3. or C.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with the provisions of this paragraph.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The Non-Federal Sponsor shall provide the Government with the appraisal no later than 6 months after the Non-Federal Sponsor provides the Government with an authorization for entry for such real property interest. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the

Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor, prior to instituting such proceedings, shall submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 calendar days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph C.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are necessary for construction or operation and maintenance of the *general navigation features*, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article IX.B. of this Agreement to determine reasonableness, allocability, and allowability of costs. In the event the Government modifies its determination made pursuant to Article III.A. of this Agreement, the Government shall afford credit for the documented incidental costs associated with preparing to acquire the lands, easements, or rights-of-way identified in the original determination, subject to an audit in accordance with Article IX.B. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but are not necessarily limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in

accordance with Article III.C. of this Agreement, and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsor in accordance with Article III.A. of this Agreement shall also include the documented costs of obtaining appraisals prepared for crediting purposes pursuant to paragraph C.2.a. of this Article, as determined by the Government, and subject to an audit in accordance with Article IX.B. of this Agreement to determine reasonableness, allocability, and allowability of costs.

5. Waiver of Appraisal. Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal for the purpose of determining the value of a real property interest for crediting purposes if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsor must agree in writing to the value of such real property interest in an amount not in excess of \$10,000.

D. For the sole purpose of determining the amount of credit to be afforded in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those necessary for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, that the Government acquires on behalf of the Non-Federal Sponsor pursuant to Article II.K.1. of this Agreement shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. The fair market value of such real property interests shall be the amount paid by the Government.

2. The value of the interest shall include the documented incidental costs of acquiring the interest. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, and actual amounts expended for payment of any relocation assistance benefits in accordance with Public Law 91-646, as amended.

E. After consultation with the Non-Federal Sponsor, the Government shall determine the value of *relocations* in accordance with the provisions of this paragraph.

1. For a *relocation* other than a *highway* or a *utility*, the value shall be only that portion of *relocation* costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a *relocation* of a *highway*, the value shall be only that portion of *relocation* costs that would be necessary to accomplish the *relocation* in accordance with the design standard that the State of California would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. For a *relocation* of a *utility*, the value shall be only that portion of *relocation* costs borne by the Non-Federal Sponsor that the Government determines is

necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

4. *Relocation* costs shall include, but not necessarily be limited to, actual costs of performing the *relocation*; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the *relocation*, as determined by the Government. *Relocation* costs shall not include any costs due to *betterments*, as determined by the Government, nor any additional cost of using new material when suitable used material is available. *Relocation* costs shall be subject to an audit in accordance with Article IX.B. of this Agreement to determine reasonableness, allocability, and allowability of costs.

F. Any credit afforded for the value of *relocations* performed within the *Project* boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act). Crediting may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

ARTICLE V - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, contributions provided by the parties, and credit afforded for the value of lands, easements, rights-of-way, and *relocations*.

1. As of the effective date of this Agreement, *total costs of construction of the general navigation features* are projected to be \$11,690,000 the costs of the Non-Federal Sponsor's contributions under Article XIII.A. of this Agreement is projected to be \$0; the Non-Federal Sponsor's contribution of funds required by Articles II.D. and II.G. of this Agreement is projected to be \$2,922,500; the *non-Federal proportionate share* is projected to be 25 percent; the costs allocated by the Government to a preexisting non-Federal navigation project and the Non-Federal Sponsor's contribution of funds required by Article II.E. of this Agreement are projected to be \$0; the Government's total financial obligations for additional work and the Non-Federal Sponsor's contribution of funds for such obligations required by Article II.K. of this Agreement are projected to be \$0; 10 percent of *total costs of construction of the general navigation features* is projected to be \$1,169,000; the credit to be afforded for the value of lands, easements, rights-of-way, and *relocations* is projected to be \$0; and the additional amount required by Article II.F. of this Agreement is projected to be \$1,169,000. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By October 1, 2017 and by each quarterly anniversary thereof until the conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current

projections of the following: *total costs of construction of the general navigation features*; the costs of the Non-Federal Sponsor's contributions under Article XIII.A. of this Agreement; the Non-Federal Sponsor's total contribution of funds required by Article II.D. of this Agreement; the *non-Federal proportionate share*; the Non-Federal Sponsor's total contribution of funds required by Article II.G. of this Agreement; the costs allocated by the Government to a preexisting non-Federal navigation project and the Non-Federal Sponsor's contribution of funds required by Article II.E. of this Agreement; the Government's total financial obligations for additional work and the Non-Federal Sponsor's contribution of funds for such obligations required by Article II.K. of this Agreement; 10 percent of *total costs of construction of the general navigation features*; the credit to be afforded for the value of lands, easements, rights-of-way, and *relocations*; the additional amount required by Article II.F. of this Agreement; and the annual installments calculated in accordance with paragraph D. of this Article.

B. The Non-Federal Sponsor shall provide the contributions of funds required by Articles II.D., II.E., and II.G. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 7 calendar days after the effective date of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor to meet its projected share under Articles II.D., II.E., and II.G. of this Agreement. Within 30 calendar days of receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, San Francisco District" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the *non-Federal proportionate share of financial obligations for design and construction* incurred prior to the commencement of the *period of design and construction*; (b) the *non-Federal proportionate share of financial obligations for design and construction* as *financial obligations for design and construction* are incurred; and (c) the full amount of financial obligations for costs allocated by the Government to a preexisting non-Federal navigation project as those financial obligations are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of such financial obligations, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain

proceedings prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The final or interim accounting, as applicable, shall determine *total costs of construction of the general navigation features*, the costs allocated by the Government for operation and maintenance of any preexisting non-Federal navigation project, and the costs in excess of \$10,000,000 pursuant to Article II.G. of this Agreement as of the date of such accounting. In addition, for each set of costs, the final or interim accounting, as applicable, shall determine each party's required share thereof and each party's total contributions thereto as of the date of such accounting.

1. Should the final or interim accounting, as applicable, show that the Non-Federal Sponsor's total required shares of *total costs of construction of the general navigation features*, the costs allocated by the Government to a preexisting non-Federal navigation project, and the costs in excess of \$10,000,000 pursuant to Article II.G. of this Agreement exceed the Non-Federal Sponsor's total contributions provided thereto, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, San Francisco District" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the final accounting show that the total contributions provided by the Non-Federal Sponsor for *total costs of construction of the general navigation features*, for the costs allocated by the Government to a preexisting non-Federal navigation project, and for the costs in excess of \$10,000,000 pursuant to Article II.G. of this Agreement exceed the Non-Federal Sponsor's total required shares thereof, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event funds are not available to refund the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund. To the extent that such appropriations are not received, the Government shall apply the unrefunded excess amount toward the Non-Federal Sponsor's upcoming installment payment, if any, in accordance with paragraph D. of this Article.

D. The Non-Federal Sponsor shall pay, with interest, any additional amount required by Article II.F. of this Agreement in accordance with the provisions of this paragraph.

1. When the Government conducts the final accounting or any interim accounting for the *period of design and construction*, the Government shall determine:

a. an amount equal to 10 percent of *total costs of construction of the general navigation features* as of the date of such accounting;

b. the value, in accordance with Article IV of this Agreement, of the lands, easements, rights-of-way, and *relocations* provided or performed pursuant to Article III of this Agreement as of the date of such accounting; and

c. the additional amount to be paid by the Non-Federal Sponsor as of the date of such accounting. The additional amount is equal to the amount determined pursuant to paragraph D.1.a. of this Article reduced by the credit afforded for the value of the lands, easements, rights-of-way, and *relocations* determined pursuant to paragraph D.1.b. of this Article. In the event the result of the aforesaid calculation is a negative number, the additional amount shall be zero.

2. At the time of the final accounting or the first interim accounting in which the Government determines that the additional amount is greater than zero, the Government shall calculate annual installments for payment of the additional amount, and such annual installments shall be substantially equal. To calculate the annual installments, the Government shall amortize the additional amount over a period of 30 years (hereinafter the "payment period"), beginning on the date the Government notifies the Non-Federal Sponsor of the additional amount, using an interest rate determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the payment period during the month preceding the *fiscal year* in which the *period of design and construction* commences, plus a premium of one-eighth of one percentage point for transaction costs. The Government shall notify the Non-Federal Sponsor in writing of the additional amount and the annual installments.

3. Thereafter, at the time of the final accounting or any additional interim accounting conducted prior to the end of the payment period, the Government shall recalculate the annual installments by amortizing the outstanding portion of the additional amount over the remaining portion of the payment period using an interest rate determined by the Secretary of the Treasury, taking into consideration such average market yields on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the remaining portion of the payment period during the month preceding the *fiscal year* in which the recalculation is made, plus a premium of one-eighth of one percentage point for transaction costs. The Government shall notify the Non-Federal Sponsor in writing of the recalculated additional amount and the recalculated annual installments and the Non-Federal Sponsor shall pay the recalculated annual installments in lieu of the previous annual installments.

4. Thereafter, at the time of the final accounting or any additional interim accounting conducted after the payment period has elapsed, the Government shall notify the Non-Federal Sponsor in writing of the recalculated additional amount. If the Government determines that the Non-Federal Sponsor's payments towards the additional amount are less than the recalculated additional amount, the Non-Federal Sponsor, not later than 90 days from receipt of such notice, shall pay to the Government the outstanding portion of the additional amount by delivering a check payable to "FAO, USAED, San Francisco District" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

5. In addition to any recalculation of the annual installments in accordance with paragraph D.3. of this Article, the Government, until the end of the payment period, shall recalculate the annual installments at five year intervals by amortizing the outstanding portion of the additional amount over the remaining portion of the payment period using an interest rate determined by the Secretary of the Treasury, taking into consideration such average

market yields on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the payment period during the month preceding the *fiscal year* in which the recalculation is made, plus a premium of one-eighth of one percentage point for transaction costs. The Government shall notify the Non-Federal Sponsor in writing of the recalculated annual installments and the Non-Federal Sponsor shall pay the recalculated annual installments in lieu of the previous annual installments.

6. Subject to paragraphs C.2. and D.2. of this Article, the Non-Federal Sponsor shall pay the installments calculated or recalculated pursuant to paragraphs D.2., D.3., or D.5. of this Article each year on the anniversary of the date the Government notifies the Non-Federal Sponsor of the additional amount, over a period not to exceed the payment period, by delivering a check payable to "FAO, USAED, San Francisco District" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

7. Notwithstanding paragraph D.6. of this Article, the Non-Federal Sponsor, in its sole discretion, may prepay the additional amount, in whole or in part, at any time. Notwithstanding paragraphs D.2., D.3., or D.5. of this Article, there shall be no charges for interest on any portion of the additional amount that is paid within 90 days after the Government notifies the Non-Federal Sponsor of the additional amount, nor shall there be interest charges on any portion of an increase to the additional amount that is caused by recalculation of the additional amount and that is paid within 90 days after the Government notifies the Non-Federal Sponsor of such recalculated additional amount.

8. If the Government determines that the Non-Federal Sponsor has made payments towards the additional amount that exceed the additional amount, the Government, subject to the availability of funds, shall refund the amount of the excess, without interest. In the event funds are not available to make such refund, the Government shall seek such appropriations as are necessary to make such refund.

E. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.K. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 60 calendar days prior to the scheduled date for the first financial obligation for additional work, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to cover the costs of the additional work. No later than 30 calendar days prior to the Government incurring any financial obligation for additional work, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to cover the costs of such additional work through any of the payment mechanisms specified in paragraph B.1. of this Article.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such additional work, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide

the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. At the time the Government conducts the final or interim accounting, as applicable, or at the end of each *fiscal year* in which the Government incurs costs for additional work provided or performed prior to the *period of design and construction*, the Government shall conduct an accounting of the Government's financial obligations for additional work incurred during the applicable period and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals and eminent domain proceedings prevent a final accounting of additional work incurred during such applicable period from being conducted in a timely manner, the Government shall conduct an interim accounting of additional work incurred during such applicable period and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting of additional work incurred during such applicable period to complete the final accounting of additional work incurred during such applicable period and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such final or interim accounting, as applicable, shall determine the Government's total financial obligations for additional work incurred during the applicable period and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the final or interim accounting, as applicable, show that the total obligations for additional work incurred during the applicable period exceed the total contribution of funds provided by the Non-Federal Sponsor for such additional work, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, San Francisco District" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the final accounting show that the total contribution of funds provided by the Non-Federal Sponsor for additional work during the applicable period exceeds the total obligations for such additional work, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event funds are not available to refund the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund. To the extent that such appropriations are not received, the Government shall apply the unrefunded excess amount toward the Non-Federal Sponsor's upcoming installment payment, if any, in accordance with paragraph D. of this Article.

ARTICLE VI - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding

alternative dispute resolution with a qualified third party acceptable to both parties. The parties each shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VII - OPERATION AND MAINTENANCE

A. The Government, subject to the availability of funds and as it determines necessary, shall operate and maintain the *general navigation features*.

B. The Non-Federal Sponsor hereby authorizes the Government to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of operating and maintaining the *general navigation features*. However, nothing contained herein shall convey to the Government any interest in real property owned or controlled by the Non-Federal Sponsor.

C. Subject to applicable Federal laws and regulations and for so long as the *Project* remains authorized, and commensurate with the Government's operation and maintenance of the *general navigation features*, the Non-Federal Sponsor, at no cost to the Government, shall operate and maintain the *local service facilities* in a manner compatible with the authorized purposes of the *Project* including dredging, excavation, and disposal of material therefrom. The Non-Federal Sponsor shall be responsible for taking all actions to enable such operation and maintenance.

ARTICLE VIII - HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, or operation and maintenance of the *Project* and any *betterments* and the *local service facilities*, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE IX - MAINTENANCE OF RECORDS AND AUDIT

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of the *Project*. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in design and construction costs, but shall be included in calculating the Federal Participation Limit.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or

other evidence pertaining to costs and expenses maintained by the Government, or at the request of the Non-Federal Sponsor, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

ARTICLE X – FEDERAL LAWS

In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all the requirements of applicable Federal laws and implementing regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto; and 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act).

ARTICLE XI - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE XII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless the Assistant Secretary of the Army (Civil Works) determines that continuation of work on the *general navigation features* is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the *Project*.

B. If the Government determines that Federal funds for the *Project* are not sufficient to meet the Federal share of the costs of work on the *Project* in the then-current or upcoming *fiscal year*, the Government shall so notify the Non-Federal Sponsor in writing, and within 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient Federal funds for

the *Project* or until either the Government or the Non-Federal Sponsor elects to terminate this Agreement, whichever is earlier.

C. In the event that either party elects to terminate this Agreement pursuant to this Article or Article XIII.D. of this Agreement, both parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article V.C. of this Agreement.

D. If after completion of the design portion of the *general navigation features* the parties mutually agree in writing not to proceed with construction of the *Project*, the parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article V.C. of this Agreement.

E. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XIII.D. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE XIII - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be necessary for construction or operation and maintenance of the *general navigation features*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances that are determined by the Government to be attributable to the *general navigation features* shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article IX.B. of this Agreement to determine reasonableness, allocability, and allowability of costs.

2. All actual costs incurred by the Government for such investigations for hazardous substances that are determined by the Government to be attributable to the *general*

navigation features shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement.

B. The Non-Federal Sponsor shall perform, or ensure performance of, any investigations it determines to be necessary to identify the existence and extent of any hazardous substances regulated under CERCLA that may exist in, on, or under lands, easements, and rights-of-way necessary solely for construction or operation and maintenance of the *local service facilities*. However, for any of those lands that the Government determines to be subject to the navigation servitude, the Non-Federal Sponsor must obtain prior written instructions from the District Engineer regarding the method of testing and must perform such investigations only in accordance with those instructions. The costs of any investigations performed under this paragraph shall be borne entirely by the Non-Federal Sponsor. The Government shall have no obligation under this Agreement for the costs of any investigations performed under this paragraph.

C. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be necessary for construction or operation and maintenance of the *general navigation features*, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until the parties agree that the Non-Federal Sponsor should proceed. In the event it is discovered through any means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way necessary for construction or operation and maintenance of the *local service facilities*, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other.

D. The Government and the Non-Federal Sponsor shall determine whether to initiate construction or operation and maintenance of the *general navigation features*, or, if already in construction or operation and maintenance of the *general navigation features*, whether to continue with construction or operation and maintenance of the *general navigation features*, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be necessary for construction or operation and maintenance of the *general navigation features*. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction or operation and maintenance of the *general navigation features* after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of *total costs of construction of the general navigation features*. In the event the Non-Federal Sponsor fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on

the *general navigation features*. The Government shall have no obligation under this Agreement for the costs of any cleanup and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination, on lands, easements, or rights-of-way necessary solely for the *local service facilities*.

E. The Non-Federal Sponsor and the Government shall consult with each other in accordance with this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant paragraph D. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

F. To the maximum extent practicable, the Government and the Non-Federal Sponsor shall perform their responsibilities under this Agreement in a manner that will not cause liability to arise under CERCLA.

ARTICLE XIV - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:	If to the Government:
Executive Director	District Engineer
Pier 1, The Embarcadero	Corps of Engineers, San Francisco District
San Francisco, CA 94111	1455 Market St.
	San Francisco, CA 94103-1398

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XV - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XVI - HISTORIC PRESERVATION

A. The Government, as it determines necessary for the *Project*, shall perform any identification, survey, or evaluation of historic properties.

1. Any costs of identification, survey, and evaluation of historic properties determined by the Government to be attributable to construction of the *general navigation features* shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement.

2. Any costs of identification, survey, and evaluation of historic properties determined by the Government to be attributable to operation and maintenance of the *general navigation features* shall be considered financial obligations for operation and maintenance of the *general navigation features* and shared in accordance with Article II.I. of this Agreement.

B. The Government, as it determines necessary for the *Project*, shall perform any archeological data recovery activities associated with historic preservation. In accordance with 54 U.S.C. 312507, the costs of archeological data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in *total costs of construction of the general navigation features*, up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the *general navigation features*.

C. In the event that costs associated with data recovery of historic properties exceed one percent of the total amount authorized to be appropriated for the Project, the Government and Non-Federal Sponsor shall consult with each other and reach an agreement on how to fund such data recovery costs. Upon agreement in accordance with 54 U.S.C. 312508, the Government may seek a waiver from the one percent limitation under 54 U.S.C. 312507.

ARTICLE XVII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

ARTICLE XVIII - NON-LIABILITY OF OFFICERS AND EMPLOYEES

No officer, agent, consultant, or employee of the Non-Federal Sponsor, nor any officer, agent, consultant, or employee of the Government, may be charged personally, or held liable, under the terms or provisions of this Agreement because of any breach, attempted breach, or alleged breach thereof, except as provided in Section 912(b) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (42 U.S.C. 1962d-5b note), or other applicable law.

ARTICLE XIX - OBLIGATIONS OF FUTURE APPROPRIATIONS

The Non-Federal Sponsor intends to fulfill fully its obligations under this Agreement. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the San Francisco Port Commission or the Board of Supervisors of the City and County of San Francisco, where creating such an obligation would be inconsistent with the Charter of the City and County of San Francisco, including but not limited to, Charter

Section 3.105 and the budgetary and fiscal provisions of the Charter. If the Non-Federal Sponsor does not fulfill its obligations, the Government may exercise any legal rights it has to protect the Government's interests.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).

DEPARTMENT OF THE ARMY

PORT OF SAN FRANCISCO

BY: _____
Douglas W. Lamont
Acting Assistant Secretary of the
Army (Civil Works)

BY: _____
Elaine Forbes
Executive Director

DATE: _____

DATE: _____

APPROVED AS TO FORM:

Eileen Malley
Deputy City Attorney and
Port General Counsel

BY: _____
Timothy L. Yoshida
Deputy City Attorney

CERTIFICATE OF AUTHORITY

I, Eileen Malley, do hereby certify that I am the principal legal officer of the Port of San Francisco, that the Port of San Francisco is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Port of San Francisco in connection with the Pier 70 Central Basin Continuing Authorities Program Section 107 Navigation Improvement Project, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the Port of San Francisco have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____, 2017.

Eileen Malley
Deputy City Attorney and Port General Counsel

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

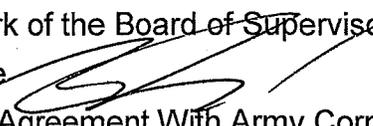
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Elaine Forbes
Executive Director
Port of San Francisco

OFFICE OF THE MAYOR
SAN FRANCISCO



EDWIN M. LEE

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: *for* Mayor Edwin M. Lee 
RE: Project Partnership Agreement With Army Corps of Engineers - Dredging
of Central Basin by Pier 70
DATE: July 25, 2017

Attached for introduction to the Board of Supervisors is an ordinance amending Ordinance No. 244-16, regarding a Project Partnership between the U.S. Army Corps of Engineers and the Port to allow federal dredging of the Central Basin adjacent to Pier 70, to: 1) change the project dredging depth from 32 feet to 35 feet; 2) increase the estimated initial project cost from \$8,971,000 to \$11,690,000; 3) increase the Port's 25% project contribution from \$2,242,740 to \$2,922,500; 4) change the frequency of maintenance dredging from every four years to every two years, and at an estimated cost of \$2,080,000 instead of \$1,026,000 for each maintenance dredge episode; 5) increase the Port's additional 10% matching contribution from \$897,100 to \$1,169,000; 6) increase the estimated total cost of dredging during the first 30 years from \$12,195,000, to \$31,300,00; and 7) authorize the Port Executive Director to reserve a contingency fund of \$409,150 (equivalent to 10% of the Port's total estimated cost contributions of \$4,091,500), to expend in case of future unanticipated increases in project costs, for a total expenditure authorization not to exceed \$4,500,650.

Should you have any questions, please contact Mawuli Tugbenyoh (415) 554-5168.

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