

File No. 161286

Committee Item No. 1

Board Item No. \_\_\_\_\_

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date December 5, 2016

Board of Supervisors Meeting

Date \_\_\_\_\_

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Completed by: Linda Wong Date December 2, 2016

Completed by: Linda Wong Date \_\_\_\_\_

1 [Project Partnership Agreement - United States Army Corps of Engineers - Dredging of  
2 Central Basin by Pier 70 - Waiving Certain Requirements of Environment and Administrative  
3 Codes - Not to Exceed \$3,139,850]

4 **Ordinance approving and authorizing the Executive Director of the Port of San**  
5 **Francisco ("Port") to execute a Project Partnership Agreement with the United States**  
6 **Army Corps of Engineers ("USACE") to allow federal dredging of the Central Basin**  
7 **adjacent to Pier 70 conditioned upon the Port providing a 25% matching share not to**  
8 **exceed \$2,242,750 for the initial project costs, and the Port providing a 10% matching**  
9 **share, not to exceed an additional \$897,100 for federal maintenance dredging of the**  
10 **Central Basin payable over the following 30 years, for a total matching share from the**  
11 **Port not to exceed \$3,139,850; exempting the Agreement from certain requirements of**  
12 **the Environment Code and Administrative Code except to the extent that the**  
13 **Agreement obligates USACE to satisfy any such requirements; and affirming the**  
14 **Planning Department's determination under the California Environmental Quality Act.**

15  
16 Be it ordained by the People of the City and County of San Francisco:

17 Section 1. Environmental Findings.

18 The Planning Department has determined that the actions contemplated in this  
19 ordinance comply with the California Environmental Quality Act (California Public Resources  
20 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
21 Supervisors in File No. \_\_\_\_ and is incorporated herein by reference. The Board affirms this  
22 determination.

23 Section 2. Background and Findings.

24  
25

1 (a) The United States Army Corps of Engineers ("USACE") is responsible for  
2 maintaining the authorized navigational depth of all federal channels in the United States  
3 through its maintenance dredging program.

4 (b) The Port of San Francisco's ("Port") shipyard at Pier 70 is home to the longest  
5 continuously operating shipyard on the West Coast. The shipyard includes two large floating  
6 drydocks and provides high-paying, skilled employment opportunities in San Francisco.

7 (c) The Central Basin lies within the jurisdictional boundaries of the City and County of  
8 San Francisco but outside existing federal navigational channels, and serves as the  
9 navigational point of entry for vessels that enter the Pier 70 shipyard.

10 (d) Accumulation of San Francisco Bay mud or "shoaling" in the Central Basin reduces  
11 the functional navigational depth of the area, increasingly restricting the size of vessels  
12 capable of entering the shipyard, thereby threatening the economic viability of ship repair  
13 activity at that location.

14 (e) The ideal operating depth of the Central Basin for shipyard operations is 32 feet.  
15 But the current operating depth of the Central Basin is approximately 26 feet, which is forcing  
16 the Port's tenant and shipyard operator to turn away business it would otherwise accept.

17 (f) The expense of required periodic dredging of the Central Basin is substantial, and  
18 not viable in the long term for either the Port's shipyard operator to absorb as an operating  
19 cost or for the Port to include in its annual dredge budget.

20 (g) With many federally-owned ships receiving service at the Pier 70 shipyard, in  
21 October 2009, the Port requested funding assistance from USACE for the Central Basin under  
22 USACE's Continuing Authorities Program, Section 107 ("CAP107"), for navigation projects in  
23 the federal interest, pursuant to Public Law Section 107, as amended (33 U.S.C. 577).

24 (h) In September 2010, USACE determined there was an apparent federal interest in  
25 the Port's Central Basin project, and recommended a formal feasibility study of a federal

1 project to dredge the Central Basin that resulted in a provisional Detailed Project Report  
2 recommending a specific federal deepening and maintenance dredging project.

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

8 (j) In April 2016, USACE chose its preferred alternative from among nine alternatives  
9 considered for execution of the Central Basin CAP107 project, and the Port concurred with  
10 that selected alternative. The alternative would dredge the Central Basin to a depth of 32 feet  
11 at an initial project cost of \$8,971,000, and required the "local sponsor," the Port, to contribute  
12 a 25% project match, or \$2,242,740.

13 (k) Under this project, upon completion of the initial deepening of the Central Basin to  
14 32 feet, USACE would assume responsibility for maintenance dredging of the Central Basin  
15 every four years to maintain the depth of 32 feet, at an estimated cost of \$1,626,000,  
16 conditioned upon the Port supplying an additional match of \$897,100, or 10% of the cost of  
17 the initial deepening dredge, payable during the first 30 years of maintenance dredging. The  
18 total cost of maintenance dredging during the first 30 years is estimated at \$12,195,000.  
19 Under the Project Partnership Agreement, the Port, as property owner, will also retain  
20 responsibility for investigating and mitigating any hazardous substances regulated under the  
21 federal Comprehensive Environmental Response, Compensation and Liability Act. (42  
22 U.S.C.9601-9675.)

23 (l) For this proposed federal project to move forward, the Port as local sponsor must  
24 execute the USACE Project Partnership Agreement, which is a federal contract with contract  
25 terms and conditions required by USACE procedures and protocols.

1 (m) The Port Commission will consider the USACE Project Partnership Agreement at  
2 its December 13, 2016 meeting.

3 Section 3. Approval of Agreement.

4 Subject to the Port Executive Director's determination that the USACE CAP107 federal  
5 contract terms are highly standardized and that deviation from those terms would result in  
6 USACE rejection of revisions to the Project Partnership Agreement, the Board of Supervisors  
7 hereby approves and authorizes the Port Executive Director to execute a Project Partnership  
8 Agreement with USACE substantially in the form on file with the Clerk of the Board of  
9 Supervisors under File No. 161286, to allow federal dredging of the Central Basin as  
10 generally described in Section 2 above, conditioned upon (a) the Port providing a 25%  
11 matching share, not to exceed \$2,242,750, towards the initial project costs, and (b) the Port  
12 providing an additional matching share not to exceed \$897,100, or 10% of the cost of the  
13 initial deepening dredge, payable over 30 years, for federal maintenance dredging of the  
14 Central Basin.

15 Section 4. Waiver of Provisions in Administrative Code and Environment Code.

16 The Board of Supervisors hereby exempts the Project Partnership Agreement from  
17 Chapters 5, 7, 8, 16, and 25 of the Environment Code, and from the contracting provisions of  
18 the Administrative Code, without limitation, except as to Chapters 12G, 12M and 67, to the  
19 extent the Board has the power to waive such provisions of the Administrative and  
20 Environment Codes. This Section 4 does not preclude inclusion of provisions in the Project  
21 Partnership Agreement obligating USACE to satisfy any such requirements.

22 Section 5. Additions, Amendments, and Modifications.



23 The Board of Supervisors hereby authorizes the Port Executive Director to enter into  
24 any additions, amendments, or other modifications to the Project Partnership Agreement, and  
25 any other documents or instruments in connection with same, that the Port Executive Director

1 determines, following consultation with the City Attorney, are in the Port's and City's best  
2 interests, do not materially decrease the Port's and City's benefits or materially increase the  
3 Port's and City's obligations or liabilities, and are appropriate and advisable to complete the  
4 proposed transaction, such determination to be conclusively evidenced by the execution and  
5 delivery by the Port Executive Director of any such additions, amendments, or other  
6 modifications.

7 Section 6. Effective Date.

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

12  
13 APPROVED AS TO FORM:  
14 DENNIS J. HERRERA, City Attorney

15 By:   
16  TIMOTHY L. YOSHIDA  
Deputy City Attorney

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## LEGISLATIVE DIGEST

Authorization to Execute Agreement With Army Corps of Engineers for Dredging of Central Basin by Pier 70 And Waiving Certain Requirements of Environment And Administrative Codes

**Ordinance approving and authorizing the Executive Director of the Port of San Francisco (“Port”) to execute a Project Partnership Agreement with the United States Army Corps of Engineers (“USACE”) to allow federal dredging of the Central Basin adjacent to Pier 70 conditioned upon the Port providing a 25% matching share not to exceed \$2,242,750 for the initial project costs, and the Port providing a 10% matching share, not to exceed an additional \$897,100 for federal maintenance dredging of the Central Basin payable over the following 30 years, for a total matching share from the Port not to exceed \$3,139,850; exempting the Agreement from certain requirements of the Environment Code and Administrative Code except to the extent that the Agreement obligates USACE to satisfy any such requirements; and affirming the Planning Department’s determination under the California Environmental Quality Act.**

### Existing Law

Various City ordinances require that agreements between the City and third parties, including government agencies, for services 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 severe obstacles for the City when negotiating an agreement with a federal agency such as USACE that must follow federal procurement and contracting requirements. These federal agencies often lack flexibility or authority to incorporate City contract requirements into their federally-funded agreements.

### Amendments to Current Law

By adopting this ordinance, the Board of Supervisors would authorize the Port Director to execute a project partnership agreement with USACE, allowing USACE to conduct initial federal dredging and future periodic maintenance dredging of the Central Basin, based upon a cost-sharing sharing formula specified in the ordinance, with the City’s monetary obligation not to exceed \$3,139,840. The ordinance would exempt the agreement 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 would not preclude inclusion of provisions in the agreement obligating USACE to satisfy any such requirements.

### Background Information

The Port of San Francisco's shipyard 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 is leased to BAE Systems San Francisco Ship Repair, Inc. ("BAE Systems"), a California corporation.

On March 24, 2015, the San Francisco Port Commission approved Lease No. L-15875 with BAE Systems for approximately 14.7 acres of land improved with 19 buildings, 17.4 acres of submerged land and Port-owned Equipment, including Drydock #2, the Drydock Eureka and the Shoreside Power System (the "Shipyard") located at Piers 68 and 70 and Seawall Lot 349 near 20th and Illinois Street, for a term of 20 years with two five-year extension options. Under the Lease, BAE Systems provides maintenance, alteration, and repair services for cruise ships, tankers, foreign and domestic bulk carriers and container ships, military vessels and local bay traffic. BAE Systems employs over 250 skilled crafts persons.

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 is outside of the premises of Lease L-15875; under its lease, BAE Systems has the obligation to dredge the area within its lease, including the areas under Drydock #2 and the Drydock Eureka, but is not obligated to undertake dredging of the Central Basin, which provides navigational access to a broader area, including a proposed ferry terminal serving Mission Bay.

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 is 32 feet; the current depth is 26 feet, which is forcing BAE Systems to turn away business it would otherwise accept. The expense of required periodic dredging of the Central Basin is substantial, and not viable in the long term for either the Port's tenant to absorb as an operating cost or 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 the 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 a 25% project match, or \$2,242,740.

The USACE has 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 proposed PPA, USACE would also maintain the dredge depth in the future, provided the Port supplies an additional match equal to 10% of the initial deepening project, or a total of \$897,100. If approved by the Board of Supervisors and the Mayor, the Port would fund its 25% initial project match and 10% maintenance dredging match from Port Harbor Funds. As stated above, the 25% project match has already been budgeted and appropriated as part of the Port of San Francisco's annual budget. The additional \$897,000 in required matching funds for USACE to maintain the 32 foot depth is payable over a 30 year period, or \$29,900 annually, which the Port would fund from its annual maintenance dredge budget. The estimated cost of maintenance dredging to be conducted by USACE over the first 30 years is \$12.2 million.

USACE uses a standard form federal contract which does not include provisions allowing local jurisdictions to impose local contracting requirements on the federal government.

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**CITY AND COUNTY OF SAN FRANCISCO  
BOARD OF SUPERVISORS  
BUDGET AND LEGISLATIVE ANALYST**

1390 Market Street, Suite 1150, San Francisco, CA 94102 (415) 552-9292  
FAX (415) 252-0461

December 1, 2016

**TO:** Budget and Finance Committee

**FROM:** Budget and Legislative Analyst



**SUBJECT:** December 5, 2016 Special Budget and Finance Committee Meeting

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<b>Item 1</b> <b>Files: 16-1286</b>	<b>Department:</b> Port of San Francisco
<b>EXECUTIVE SUMMARY</b>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• Ordinance (1) approving and authorizing the Executive Director of the Port of San Francisco to execute a Project Partnership Agreement with the United States Army Corps of Engineers (USACE) to allow federal dredging of the Central Basin adjacent to Pier 70 conditioned on the Port (a) providing a 25% match not to exceed \$2,242,750 for initial project costs and (b) providing a 10% match not to exceed an additional \$897,100 for federal maintenance dredging of the Central Basin payable over the following 30 years, (2) exempting the Agreement from certain requirements of the Environment Code and Administrative Code except to the extent that the Agreement obligates USACE to satisfy such requirements, and (3) affirming the Planning Department's determination under the California Environmental Quality Act (CEQA).</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• The Central Basin provides the navigational approach for ships entering the large vessel shipyard at Pier 70. However, the accumulation of sediment in the Central Basin restricts the size of ships that can enter the Pier 70 shipyard. The ideal depth for the Pier 70 large shipyard operations is 32 feet. The current depth of the Central Basin is 26 feet.</li> <li>• USACE uses federal contracting standard forms, which do not allow local jurisdictions to impose specific additional local contracting requirements on the federal government.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• The Port's Harbor Fund includes balances from the FY 2014-15 and FY 2015-16 budgets that will provide the \$2,242,740 capital project funds to provide the Port's 25% match contribution to dredge the Central Basin.</li> <li>• The Port's budget includes significant funding for various dredging projects each year. Over the next 30 years, the Port's budgets would include sufficient funding to provide the necessary 10% matching contribution to enable the USACE to maintain the required dredging of the Central Basin, which is estimated to occur approximately every four years. The not to exceed \$897,100 of Port matching funds over 30 years, would require an estimated \$29,903 per year of Port Harbor Funds.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>• Approve the proposed resolution.</li> </ul>	

**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 and/or (2) requires expenditures of \$10 million or more is subject to Board of Supervisors approval.

Various City Administrative and Environment Codes mandate that City departments, boards and commissions comply with specific procurement, contract and environmental requirements.

**BACKGROUND****Port's Pier 70**

Pier 70 at the Port of San Francisco (Port) contains an operating shipyard with approximately 14.7 acres including 19 buildings and two floating drydocks, under an existing lease between the Port and BAE Systems San Francisco Ship Repair, Inc. (BAE Systems). This lease approved in 2015, extends for 20 years with two five-year extension options, or up to 30 years. Under this lease, BAE Systems provides maintenance and repair services for local, domestic and foreign ships, tankers and military vessels.

**Central Basin Project**

The Central Basin in San Francisco Bay, which is within San Francisco's jurisdiction, is outside both the BAE Systems lease area and federal navigational channels. 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. The ideal depth for the Pier 70 large shipyard operations is 32 feet. The current depth of the Central Basin is 26 feet.

Given that many federal vessels receive maintenance and repair services at the Pier 70 shipyard, in October 2009, the Port requested funding assistance from the United States Army Corps of Engineers (USACE) to dredge the Central Basin. In September 2010, USACE recommended a formal feasibility study of the Central Basin dredging project. However, due to holds on Federal appropriations, the Central Basin project was suspended until 2015.

In July 2014, the Board of Supervisors appropriated \$500,000 as an initial contribution to the project. Subsequently, in July 2015, the Board of Supervisors appropriated \$2,000,000 of local matching funds as a supplemental to the Port's FY 2015-16 budget to dredge the Central Basin. In April 2016, the USACE and the Port agreed on a preferred alternative to dredge the Central Basin to a depth of 32 feet. The total Central Basin Project estimated cost is \$8,971,000.

**DETAILS OF PROPOSED LEGISLATION**

The proposed ordinance would

(1) Approve and authorize the Executive Director of the Port of San Francisco to execute a Project Partnership Agreement with the United States Army Corps of Engineers (USACE) to allow federal dredging of the Central Basin adjacent to Pier 70 conditioned on the Port

(a) Provide a 25% match not to exceed \$2,242,750 for initial project costs, and

(b) Provide a 10% match not to exceed an additional \$897,100 for federal maintenance dredging of the Central Basin payable over the following 30 years.

(2) Exempt the Agreement from certain requirements of the City's Environment Code and Administrative Code except to the extent that the Agreement obligates USACE to satisfy such requirements and

(3) Affirm the Planning Department's determination under the California Environmental Quality Act (CEQA).

The requested Project Partnership Agreement between the Port and USACE would commence in January 2017 and extend for at least 30 years or through 2047. The initial construction project to dredge the Central Basin to a depth of 32 feet would occur in 2017. 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).

The initial dredging is estimated to cost \$8,971,000, including a 25 percent matching contribution or a not to exceed \$2,242,740, from the Port. In addition, in accordance with the proposed Agreement, the USACE would continue to maintain the dredge depth of 32 feet and the Port would pay an additional 10 percent matching contribution not to exceed \$897,100 payable over 30 years. The maintenance dredging is estimated by USACE to occur approximately every four years to maintain the depth of the Central Basin.

According to Mr. Daley Dunham, Special Projects Manager at the Port, the USACE uses federal contracting standard forms for the subject Project Partnership Agreement, which does not include provisions allowing local jurisdictions to impose specific additional local contracting requirements on the federal government. Therefore, the Port is requesting waivers of specific City contracting rules contained in the City's Administrative and Environment Codes. Mr. Dunham notes that the proposed ordinance would not waive the contract requirements that the (a) agreement must have a maximum obligation amount for the Port's local match, and (b) agreement must be conditional upon future appropriation of funds.

The Planning Department has determined that this project is categorically exempt from CEQA pursuant to Section 15304(g).

**FISCAL IMPACT**

Table 1 below shows the estimated funding to be shared between the USACE and the Port, including matching funds of not to exceed 25% or \$2,242,740 for the initial dredging and \$897,100 for the ongoing maintenance dredging over the next 30 years.

**Table 1: Project Partnership Agreement Funding Sources**

<b><u>Initial Dredging</u></b>	
Federal CAP107 Appropriation (75%)	\$6,728,260
Port Harbor Funds (25%)	<u>2,242,740</u>
<b>Total</b>	<b>\$8,971,000</b>
<b><u>Ongoing Maintenance Dredging (over 30 years)</u></b>	
Federal Harbor Maintenance Trust Fund	\$12,195,000
Port Harbor Funds (10% of initial dredging cost)	<u>897,100</u>
<b>Total</b>	<b>\$13,092,100</b>

The USACE budget of \$8,971,000 includes a 16.7% contingency and estimates the project will take up to two months to complete in 2017. The dredging project is likely to occur between June and November of 2017. The Port’s Harbor Fund includes balances from the FY 2014-15 and FY 2015-16 budgets that will provide the \$2,242,740 capital project funds to provide the Port’s 25% match contribution to dredge the Central Basin.

The Port’s budget includes significant funding for various dredging projects each year. The Port advises that over the next 30 years, the Port’s budgets would include sufficient funding to provide the necessary 10% matching contribution to enable the USACE to maintain the required dredging of the Central Basin, which is estimated to occur every four years. The not to exceed \$897,100 of Port matching funds payable over the next 30 years, would require an estimated \$29,903 per year of Port Harbor Funds, if paid annually.

**RECOMMENDATION**

Approve the proposed resolution.

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 U.S. Army Engineer, San Francisco District, 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 \_\_\_\_\_, \_\_\_\_\_, 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 32 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 [FULL TITLE OF DECISION DOCUMENT], dated \_\_\_\_\_, \_\_\_\_\_ and approved by the Commander, South Pacific Division on \_\_\_\_\_, \_\_\_\_\_. 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*.

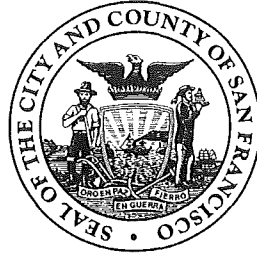
K. The term "*over-depth*" shall mean additional dimensions associated with a given depth that are required to accomplish advance maintenance, if any, and to compensate for dredging inaccuracies at that depth.

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.

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
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Fax No. 554-5163  
TDD/TTY No. 554-5227

December 1, 2016

File No. 161286

Lisa Gibson  
Environmental Review Officer  
Planning Department  
1650 Mission Street, 4<sup>th</sup> Floor  
San Francisco, CA 94103

Dear Ms. Gibson:

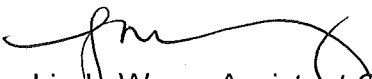
On November 29, 2016, Mayor Lee introduced the following legislation:

**File No. 161286**

**Ordinance approving and authorizing the Executive Director of the Port of San Francisco ("Port") to execute a Project Partnership Agreement with the United States Army Corps of Engineers ("USACE") to allow federal dredging of the Central Basin adjacent to Pier 70 conditioned upon the Port providing a 25% matching share not to exceed \$2,242,750 for the initial project costs, and the Port providing a 10% matching share, not to exceed an additional \$897,100 for federal maintenance dredging of the Central Basin payable over the following 30 years, for a total matching share from the Port not to exceed \$3,139,850; exempting the Agreement from certain requirements of the Environment Code and Administrative Code except to the extent that the Agreement obligates USACE to satisfy any such requirements; and affirming the Planning Department's determination under the California Environmental Quality Act.**

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

  
By: Linda Wong, Assistant Clerk


Attachment

c: Joy Navarrete, Environmental Planning  
Jeanie Poling, Environmental Planning

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: Authorization to Execute Agreement With Army Corps of Engineers for Dredging of Central Basin by Pier 70 And Waiving Certain Requirements of Environment And Administrative Codes  
DATE: November 29, 2016

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Attached for introduction to the Board of Supervisors is an ordinance approving and authorizing the Executive Director of the Port of San Francisco ("Port") to execute a Project Partnership Agreement with the United States Army Corps of Engineers ("USACE") to allow federal dredging of the Central Basin adjacent to Pier 70 conditioned upon the Port providing a 25% matching share not to exceed \$2,242,750 for the initial project costs, and the Port providing a 10% matching share, not to exceed an additional \$897,100, for federal maintenance dredging of the Central Basin payable over the following 30 years; exempting the Agreement from certain requirements of the Environment Code and Administrative Code except to the extent that the Agreement obligates USACE to satisfy any such requirements; and affirming the Planning Department's determination under the California Environmental Quality Act.

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