

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
Codes - Not to Exceed \$3,139,850]

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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

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

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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.

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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.

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

15 By: _____
16 TIMOTHY L. YOSHIDA
17 Deputy City Attorney

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