

MEMORANDUM

December 9, 2016

TO: MEMBERS, PORT COMMISSION
Hon. Willie Adams, President
Hon. Kimberly Brandon, Vice President
Hon. Leslie Katz
Hon. Eleni Kounalakis
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Executive Director

SUBJECT: Authorization for the Executive Director to enter into a Project Partnership Agreement with the United States Army Corps of Engineers (USACE) for dredging of the Central Basin, conditioned upon a Port matching share of 25%, not to exceed \$2,242,750, towards the initial dredging costs, and an additional matching share not to exceed \$897,100 or 10% of the initial costs payable over 30 years for future federal dredging of the Central Basin, subject to approval of the Board of Supervisors

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution.

EXECUTIVE SUMMARY

The Central Basin serves as the navigational point of entry for the Port's shipyard at Pier 70 ("Pier 70 Shipyard"). Shoaling of the Central Basin increasingly restricts the size of vessel that the Pier 70 Shipyard can service and threatens the economic viability of shipyard operations. In 2009, the Port requested assistance from the United States Army Corps of Engineers ("USACE"), and after a lengthy process, USACE has recommended an estimated \$8.97 million federal project to dredge the Central Basin to a depth of 32 feet, and thereafter, to assume maintenance dredging responsibility indefinitely, subject to available federal funds. This project would require a match of Port funds estimated at \$2,242,740 or 25% of the initial deepening dredge costs, and an additional match estimated at \$897,100 or 10% of the initial deepening dredge costs in order for USACE to assume maintenance dredging responsibility for the indefinite future. Because USACE uses standard federal contracting forms that do not have provisions for local jurisdictions imposing local contracting requirements on the federal government, the Port sought, and the Board of Supervisors approved on first reading,

THIS PRINT COVERS CALENDAR ITEM NO. 12A

an Ordinance exempting the project agreement, known as the Project Partnership Agreement (“PPA”), from certain requirements of the Administrative and Environment Codes.

The PPA sets forth the terms and conditions under which USACE would conduct initial deepening of the Central Basin and ongoing maintenance dredging for the future. The essential terms and conditions include 1) the Port’s contribution of matching funds, as described above, 2) a requirement that shipyard berths continue to be maintained at serviceable depths, 3) retention by the Port of responsibility for handling and disposal of any hazardous materials discovered in the Central Basin or adjacent shipyard berth dredge areas, and 4) the Port’s agreement to provide USACE all necessary access for the dredging of the Central Basin; and 5) the Port’s indemnification of the federal government from any damages arising out of the agreement.

BACKGROUND

The 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 Streets, 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 on its own dredging of the Central Basin, which provides navigational access to a broader area, including a proposed ferry terminal that will serve 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.

As a result of both changes in market conditions and high overhead, BAE Systems sought and reached an agreement to sell its operation to Puglia Marine, a ship repair company well regarded in the maritime industry with facilities in Bellingham and Tacoma, Washington. The terms of BAE's 2015, 20-year lease extension, including collective bargaining agreements, will be retained by the new operator.

ENGAGEMENT WITH USACE

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") 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 resulted 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.

USACE selected a project alternative to dredge the Central Basin to a depth of 32 feet at a total project cost estimated at \$8,971,000, with an estimated \$6,728,260 federal contribution, and which would require the local sponsor, the Port of San Francisco, to contribute a 25% project match, estimated at \$2,242,740. For an additional match from the Port estimated at \$891,000, or 10% of the cost of the initial deepening dredge, USACE would assume responsibility for all maintenance dredging of the Central Basin indefinitely, subject to the future availability of federal funds, at an estimated benefit of more than \$1.6 million every four years.

To finalize this arrangement with USACE, the Port and USACE must enter into a Project Partnership Agreement, authorized by the Assistant Secretary of the Army for Civil Works.

On November 19th, 2016, the San Francisco Planning Department determined that this project is categorically exempt from CEQA pursuant to Section 15304(g). USACE conducted all other environmental review of the project including NEPA, working through the standard processes of DMMO agency oversight for dredging projects.

PROJECT PARTNERSHIP AGREEMENT, BOARD OF SUPERVISORS AUTHORIZATION

USACE has drafted a 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). The proposed PPA reflects the selected alternative described above and includes the following key terms:

- So long as USACE is performing the maintenance dredging of the Central Basin, the Port shall ensure maintenance dredging of the Pier 70 berths is being performed, which allows the federal benefit (service to federally owned vessels) to continue to accrue;
- USACE will have no responsibility for handling hazardous materials discovered in the Central Basin or at the shipyard berths servicing the federal dredge footprint; and
- The PPA contains a provision standard to USACE agreements requiring the Port to indemnify the federal government from damages arising from activities under the agreement.
- The Port shall indemnify USACE for any claims or damages arising from the PPA or dredging project, except where caused by the negligence of USACE or its contractors.
- The Port's financial obligations shall be subject to future appropriations of funds, subject to the Port's reasonable and good faith efforts to secure appropriations to fulfill future obligations under the PPA.

USACE uses a standard form federal contract which does not include provisions allowing local jurisdictions to impose local contracting requirements on the federal government. On November 29th, at the request of Port staff, the Mayor's Office introduced an ordinance waiving certain chapters of the Administrative and Environment Code, and approving and authorizing the Port Executive Director to enter into the PPA in a form acceptable to USACE. The ordinance specifically exempts the PPA from Chapters 5, 7, 8, 16, and 25 of the Environment Code, and from the contracting provisions 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 proposed Ordinance was heard at a special Budget and Finance Committee meeting on December 5th and received its first reading at the full Board of Supervisors on December 6th. The second Board of Supervisors reading will take place the same day as Port Commission approval, December 13th. Pending approval of both bodies and expedited approval by the Mayor, and the mandatory 30-day waiting period before the Ordinance becomes effective, the Port's Executive Director would be authorized to execute the PPA prior to January 20th, 2017.

REQUESTED AUTHORIZATION

Port staff seeks authorization from the Port Commission for the Executive Director to enter into the Project Partnership Agreement with the United States Army Corps of Engineers for initial deepening and future maintenance dredging of the Central Basin

upon the terms and conditions described above, subject to Board of Supervisors' approval of the Project Partnership Agreement and adoption of the Ordinance.

Prepared by: Daley Dunham, Special Projects Manager

Brad Benson, Director of Special Projects

Attachment 1: Draft Project Partnership Agreement

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 16-48

WHEREAS, The United States Army Corps of Engineers (“USACE”) is responsible for maintaining the authorized navigational depth of all federal channels in the United States through its maintenance dredging program; and

WHEREAS, The Port of San Francisco’s (“Port”) shipyard at Pier 70 is home to the longest continuously operating shipyard on the West Coast, includes two large floating drydocks and provides high-paying, skilled employment opportunities in San Francisco; and

WHEREAS, The Central Basin serves as the navigational point of entry for vessels entering the Pier 70 shipyard and lies within the jurisdictional boundaries of the City and County of San Francisco but outside existing federal navigational channels; and

WHEREAS, Accumulation of San Francisco Bay mud or “shoaling” in the Central Basin reduces the functional navigational depth of the area, increasingly restricting the size of vessels capable of entering the shipyard, thereby threatening the economic viability of ship repair activity at that location; and

WHEREAS, The ideal operating depth of the Central Basin for Pier 70 shipyard operations is 32 feet, but the current operating depth of the Central Basin is approximately 26 feet, which is forcing the Port’s tenant and shipyard operator to turn away business it would otherwise accept; and

WHEREAS, The expense of required periodic dredging of the Central Basin is substantial, and not viable in the long term for either the Port’s shipyard operator to absorb as an operating cost or for the Port to include in its annual dredge budget; and

WHEREAS, 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 USACE’s Continuing Authorities Program, Section 107 (“CAP107”), for navigation projects in the federal interest, pursuant to the River and Harbor Act of 1960, Public Law 86-645, Section 107, as amended (33 U.S.C. 577); and

WHEREAS, 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 resulted in a provisional Detailed Project Report recommending a specific federal deepening and maintenance dredging project; and

WHEREAS, In July 2011, the Port entered into a cost sharing agreement for the formal feasibility study of the Central Basin as a federal CAP107 project, but 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; and

WHEREAS, In April 2016, USACE chose its preferred alternative (“USACE Preferred Alternative”) from among nine alternatives considered for execution of the Central Basin CAP107 project, and the Port concurred with that selected alternative, which would authorize USACE to dredge the Central Basin to a depth of 32 feet at an initial project cost of \$8,971,000, and requires the “local sponsor,” the Port, to contribute a 25% project match, or \$2,242,740; and

WHEREAS, Under the USACE Preferred Alternative, after the initial deepening of the Central Basin to 32 feet, USACE will assume responsibility for future dredging of the Central Basin to maintain the depth of 32 feet, at an estimated cost of \$1,626,000 every four years, conditioned upon available federal funding and the Port supplying an additional match of \$897,100, or 10% of the cost of the initial deepening dredge, payable during the first 30 years of maintenance dredging, with a total cost of maintenance dredging during the first 30 years estimated at \$12,195,000; and

WHEREAS, Under the Project Partnership Agreement, the Port, as property owner, will also retain responsibility for investigating and mitigating any hazardous substances regulated under the federal Comprehensive Environmental Response, Compensation and Liability Act. (42 U.S.C.9601-9675.); and

WHEREAS, For this proposed federal project to move forward, the Port as local sponsor must execute the USACE Project Partnership Agreement, which is a federal contract with contract terms and conditions required by USACE procedures and protocols; and

WHEREAS, On November 29, 2016, the Planning Department determined that the actions contemplated in this resolution and a companion ordinance before the San Francisco Board of Supervisors (“Board of Supervisors”) authorizing the execution of the USACE Project Partnership Agreement comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.), which determination is on file with the Clerk of the Board of Supervisors in File No. 161286 and is incorporated herein by reference; and

WHEREAS, On December 6, 2016, the Board of Supervisors approved an ordinance (the “Central Basin Ordinance”) on first reading (File No. 161286) approving and authorizing the Executive Director of the Port to execute a

Project Partnership Agreement with the USACE to allow federal dredging of the Central Basin conditioned upon the Port providing a 25% matching share not to exceed \$2,242,750 for the initial project costs, and the Port providing an additional 10% matching share, not to exceed \$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; and

RESOLVED, Subject to Board of Supervisors approval of the Central Basin Ordinance and the Port Executive Director's determination that the USACE Project Partnership Agreement contract terms are highly standardized and that deviation from those terms would result in USACE's rejection of revisions to the Project Partnership Agreement, the San Francisco Port Commission ("Port Commission") hereby approves and authorizes the Port Executive Director to execute a Project Partnership Agreement with USACE with terms as generally described in the staff report accompanying this resolution and substantially in the form on file with the Port Commission Secretary, to allow federal dredging of the Central Basin, conditioned upon (a) the Port providing a 25% matching share, not to exceed \$2,242,750, towards the initial project costs, and (b) the Port providing an additional matching share not to exceed \$897,100, or 10% of the cost of the initial deepening dredge, payable over 30 years, for future federal maintenance dredging of the Central Basin; and, be it further

RESOLVED, That, the Port Commission hereby authorizes the Port Executive Director to enter into any additions, amendments, or other modifications to the Project Partnership Agreement, and any other documents or instruments in connection with same, that the Port Executive Director determines, following consultation with the City Attorney, are in the Port's and City's best interests, do not materially decrease the Port's and City's benefits or materially increase the Port's and City's obligations or liabilities, and are appropriate and advisable to complete the proposed transaction.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of December 13, 2016.

Secretary