

1 [Modifies public contracting procedures to allow the Recreation and Park Commission to
2 procure construction and design/build services in connection with the California Academy of
3 Sciences project.]

4 **Ordinance authorizing the Recreation and Park Commission to award contracts for**
5 **construction and/or design/build services in connection with the reconstruction of the**
6 **California Academy of Sciences.**

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8 Note: The entire section is new.

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

11 Section 1. General Findings

12 A. The buildings and improvements in Golden Gate Park known as the California Academy
13 of Sciences, including but not limited to the Steinhart Aquarium, Morrison Planetarium and the Natural
14 History Museum (collectively the "Academy Facility") are the property of the City and County, under
15 the jurisdiction of the Recreation and Park Commission (the "Commission"). Pursuant to Charter
16 Section 16.105, the Academy Facility is managed and controlled exclusively by the California Academy
17 of Sciences, a nonprofit corporation ("CAS").

18 B. In 2002, CAS filed an application for environmental review of a project to rebuild the
19 Academy Facility (the "Project"). The Project is subject to review by various City agencies and
20 commissions and by the City and County of San Francisco Board of Supervisors (the "Board of
21 Supervisors").

22 C. In Resolution No. _____, this Board of Supervisors affirmed the Planning
23 Commission's certification of the Final Environmental Impact Report for the California Academy of
24 Sciences project as adequate, accurate and complete. A copy of said resolution is on file with the Clerk
25 of the Board of Supervisors in File No. _____ and is incorporated by reference herein.

1 D. In this same Resolution No. _____, this Board of Supervisors adopted findings in
2 connection with its consideration of this modification of public contracting procedures under the
3 California Environmental Quality Act ("CEQA") (California Public Resources Code sections 21000 et
4 seq.), the State CEQA Guidelines (California Code of Regulations Title 14, sections 15000 et seq.), and
5 Chapter 31 of the San Francisco Administrative Code, including a statement of overriding
6 considerations, and adopted a mitigation monitoring program, which findings and program are
7 incorporated by reference herein.

8 E. Funding sources for the Project include \$116,690,000 in General Obligation bonds
9 (including bond fund interest earnings) approved by San Francisco voters under Proposition C in 1995
10 and Proposition B in 2000, and may also include other funds that the City makes available for the
11 Project (collectively, the "City Funds").

12 F. CAS is expected to raise the balance of the cost of designing and completing the Project
13 through private donations and/or private debt obligations of the CAS, referred to herein as "Other
14 Funds". The term "Other Funds" may also include, for purposes of this Ordinance, any state or federal
15 grants obtained directly by CAS; provided, however, nothing herein shall be construed to authorize the
16 use of such funds other than in compliance with all applicable state and/or federal requirements.

17 G. The Recreation and Park Department (RPD) and the Department of Public Works (DPW),
18 in conjunction with CAS, devised an approach to procurement of construction services, which they
19 determined to be in the best interest of the City, described below.

20 Section 2. Contracting Procedures:

21 A. Modification of Article 6.

22 The Board of Supervisors hereby modifies the otherwise applicable bidding and contracting
23 requirements of Administrative Code Sec. 6.20, et seq. as provided herein, and authorizes the
24 Commission to take all necessary steps to procure design and/or construction services for the Project
25 in accordance with the provisions of this Ordinance.

1 B. General Contract

2 CAS is authorized to solicit proposals and award to a qualified general contractor (the "GC") a
3 contract for all necessary design and construction services in connection with the Project (the "GC
4 Contract"). The fee and general conditions under the GC Contract shall be paid solely from Other
5 Funds, and not out of City Funds. The City Trade Contracts and Subcontracts, and Design/Build Trade
6 Contracts as described in subsections C and D, below shall be added to the GC Contract by written
7 modification, and may be funded with a combination of City Funds and Other Funds.

8 C. Trade Contracts and Subcontracts

9 1. For all work to be funded solely with Other Funds, CAS and its GC may solicit and
10 award any subcontracts ("Private Trade Contracts") for labor, equipment, material and supplies, on
11 whatever basis they determine to be in the best interest of the Project, so long as no City Funds will be
12 used to make payments for costs incurred under such Private Trade Contracts. For all work to be paid
13 out of City Funds, trade contracts ("City Trade Contracts") shall be awarded by the Commission
14 pursuant to the process described below. The City's financial liability for City Trade Contracts shall
15 not exceed the amount of available City Funds.

16 2. CAS, in consultation with RPD and DPW staff, shall prepare all trade bid packages for
17 City Trade Contracts. CAS may delegate its responsibility for preparing and soliciting trade bid
18 packages to the GC.

19 3. Bidding for City Trade Contracts may be limited to pre-qualified contractors, as
20 determined by CAS, subject to the approval of RPD and DPW staff. The provisions of Administrative
21 Code Section 6.21.A.1 shall not apply, but CAS shall use best efforts to obtain bids for each City Trade
22 Contract from at least three qualified bidders. If the Commission or its designee determines that there
23 are not three qualified bidders for a particular trade bid package, CAS shall use best efforts to obtain
24 competitive bids from all bidders determined to be qualified. Administrative Code Section 6.21.A.9,
25 which requires designation of subcontractors, shall not apply. The RPD and DPW staff shall review

1 and approve the bidding of all City Trade Contracts. The City, acting through the Commission,
2 reserves the right to reject any contractor/supplier proposed by CAS to perform a City Trade Contract,
3 and require CAS to rebid the work. Bid protests may be required to be received within five (5)
4 calendar days after the date bids are due.

5 4. The Commission shall award the corresponding City Trade Contracts, except for
6 design-build contracts which shall be governed by subsection 2.D, to the responsible bidder submitting
7 the lowest responsive bid.

8 D. Design/Build Trade Contracts

9 1. CAS and City staff determined that the design and construction of portions of the
10 Project, including much of the new Steinhart Aquarium, may require specialized expertise and skill
11 which should be procured on a design-build basis in order to reduce costs and minimize change orders
12 through improved coordination and early collaboration between design and construction disciplines,
13 and to obtain access to unique expertise and proprietary technologies. The Board of Supervisors
14 waives Administrative Code Section 6.61 and authorizes the award of City Trade Contracts for the
15 Project on a design/build basis as set forth in this Section 2.D.

16 2. CAS or its GC, in consultation with RPD and DPW staff, may issue competitive requests
17 for proposals for City Trade Contracts for design-build services for portions of the Project. CAS and
18 DPW shall establish a panel to evaluate design-builders' proposals and rank the proposals, taking into
19 account the following criteria: (1) cost of the design-build services which shall be weighted at least
20 sixty percent (60%); (2) qualifications of the developers to design and construct the relevant portions of
21 the proposed Project; (3) evidence of financial capacity, (4) experience on similar projects, (5) quality
22 of any preliminary design proposals, past designs, and/or proprietary designs; (6) compliance with the
23 goals and requirements of Administrative Code Chapters 12B, 12C and 12D.A; (7) lifecycle cost of the
24 relevant portions of the Project; and (8) compliance with all the requirements and criteria established
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1 in the request for proposals. The Commission may award design-build City Trade Contracts to the
2 design-builders submitting the highest ranked proposals.

3 E. Novation of City Trade Contracts.

4 1. Following award of any City Trade Contract (including any design-build City Trade
5 Contract), the Commission is authorized to novate the City Trade Contract to CAS and/or the GC, as
6 appropriate. CAS shall have the right, in turn, to novate the City Trade Contract to the GC. The intent
7 is for these novated City Trade Contracts to be subcontracts under the GC.

8 2. Following such novation, and following the issuance of a notice to proceed by the City,
9 the City shall bear the cumulative cost of the novated contracts as they are incurred up to the amount of
10 available City Funds. If and to the extent CAS pays the GC or any contractor under a City Trade
11 Contract amounts due under a City Trade Contract, the City shall reimburse CAS for such amounts
12 paid under a City Trade Contract; provided, however, the total payable by the City on account of the
13 City Trade Contracts shall not exceed the available City Funds.

14 3. All changes in scope or cost which affect the novated City Trade Contracts to be paid
15 with City Funds, in whole or in part, shall be reviewed and approved by the RPD in consultation with
16 CAS, and shall comply with the requirements of Administrative Code Section 6.22(H), including the
17 requirement that any cumulative increase or decrease in price in excess of ten percent of the original
18 contract price shall require the approval of the Commission. In no event shall the City have any
19 liability for amounts payable under such contracts in excess of available City Funds. CAS may take
20 any necessary measures to procure any modifications which are to be paid solely with Other Funds.

21 F. MBE/WBE Participation.

22 The Executive Director of the Human Rights Commission shall set MBE and WBE subcontracting
23 participation goals for the Project, taking into account the mix of City Funds and Private Funds
24 involved in the Project. The goals may be met by any combination of City Trade Contracts and Private
25 Trade Contracts. As City Trade Contracts are intended to become subcontracts under the GC, the

1 provisions of Administrative Code Section 12D.A.9, governing City award of prime contracts, shall not
2 apply.

3 Section 3. Insurance Requirements:

4 A. Insurance and bond requirements for the GC, the City Trade Contracts, and Private Trade
5 Contracts, as well as for design professionals working on the Project, shall be subject to review and
6 approval by the City's Risk Manager. Board of Supervisors approval of insurance requirements per
7 Administrative Code Section 2A.160 shall not be required. The requirements of Administrative Code
8 Section 6.22(A) regarding payment and performance bonds shall not apply if the City's Risk Manager
9 and the City Attorney, in their discretion, approve alternative arrangements, including insurance
10 against costs of completing unfulfilled subcontractor obligations.

11 B. Additional Requirements.

12 1. For general liability and automobile liability insurance, the City, its Board members
13 and commissions, and all authorized agents and representatives, and members, directors, officers,
14 trustees, agents and employees of any of them shall be named as additional insureds.

15 2. Before commencement of work on the Project, certificates of insurance, in form and with
16 insurers acceptable to the City, evidencing all required insurance and with proper endorsements from
17 the GC's insurance carrier identifying as additional insureds the parties indicated above, shall be
18 furnished to the City, with complete copies of policies to be furnished to the City promptly upon
19 request.

20 3. Liability insurance shall be on an occurrence basis, and shall provide that the coverage
21 afforded thereby shall be primary coverage (and non-contributory to any other existing valid and
22 collectable insurance).

23 4. Insurance companies shall be legally authorized to engage in the business of furnishing
24 insurance in the State of California.

1 5. Any such insurance coverage may be provided through an "Owner Controlled Insurance
2 Program."

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

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By: _____
Virginia Dario Elizondo
Deputy City Attorney

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