

1 [Approval to Implement Alternative Bid Process for Construction Trade Packages for the
2 Renovation and Construction of the George S. Moscone Convention Center.]

3 **Ordinance authorizing the San Francisco Department of Public Works to implement an**
4 **alternative bid process for construction trade packages and to award contracts for**
5 **construction services, for the renovation of and capital improvements to the Moscone**
6 **Convention Center.**

7 NOTE: Additions are single-underline italics Times New Roman;
8 deletions are ~~strike-through italics Times New Roman~~.
9 Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough-normal~~.

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

11 Section 1. General Findings.

12 A. In December 2008, the Board of Supervisors established, by Resolution 504-08
13 (File No. 081517) (the "Resolution"), the Tourism Improvement District ("TID") pursuant to the
14 Property and Business Improvement Law of 1994 (California Streets and Highways Code
15 sections 36600 et seq., the "Act"), as augmented by Article 15 of the San Francisco Business
16 and Tax Regulations Code ("Article 15"), which included authorization of a system of
17 assessments levied and payable by hotels within the TID. The Resolution further provided
18 that a portion of the revenues generated by the assessment would be used for upgrade and
19 renovation, and planning for a possible expansion, of San Francisco's Moscone Convention
20 Center, including capital improvements, installation of state of the art technology and
21 structural work to the North, South and West facilities of the Moscone Convention Center (the
22 "Moscone Convention Center Improvement Project"). (The buildings and improvements in
23 San Francisco known as the George S. Moscone Convention Center, including the Moscone
24
25

1 North, South and West facilities, are the property of the City and County of San Francisco.
2 Funds raised by the TID assessment referred to herein as “Other Funds.”)

3 B. In the Resolution, the Board of Supervisors also approved the San Francisco
4 Tourism Improvement District Management Plan, dated December 9, 2008, on file with the
5 Clerk of the Board of Supervisors in File No. 081338 (the “Plan”). In recognition of the
6 significance of the tourism, leisure and convention industry to the overall economic health of
7 the City, and of the critical role that the Moscone Convention Center plays with respect to
8 sustaining growth in this area, the Plan provides that the City would consider authorizing the
9 execution and delivery of Certificates of Participation, the proceeds of which would be used to
10 pay for capital improvements to the Moscone Convention Center that would not be funded by
11 the TID assessment funds.

12 C. Consistent with the Plan, and also in December 2008, in Resolution No. 530-08
13 (File No. 081515), the Board of Supervisors authorized the execution, delivery and sale of
14 Certificates of Participation (“Certificates”) for the purpose of financing the Moscone Center
15 Improvement Project in an aggregate amount not to exceed \$45 million. Further, in January
16 2009, the Board of Supervisors, by ordinance 6-09 (File No. 081514), appropriated \$45 million
17 of Certificates to fund the Moscone Center Improvement Project.

18 D. Because of the unique public-private nature of the funding for this renovation
19 and construction project, and because of certain challenges created by the project, including
20 the fact that work on the Convention Center will be performed within certain windows of time
21 when the Convention Center facilities are not otherwise in use by customers, thereby
22 minimizing (a) disruption of those customers events, and (b) the cost to the City in lost
23 revenue if conventions were rescheduled, DPW, in conjunction with the TID, has devised an
24 approach to procurement of construction services, which DPW has determined to be in the
25 best interest of the City, as described below.

1 Section 2. Contracting Procedures.

2 A. Modifications of Article 6.

3 The Board of Supervisors hereby modifies the otherwise applicable bidding and contracting
4 requirements of Administrative Code Section 6.20, et seq. as provided herein, and authorizes DPW to
5 take all necessary steps to procure design and/or construction services for the Moscone Convention
6 Center Improvement Project in accordance with the provisions of this Ordinance.

7 B. General Contract.

8 TID is authorized to solicit proposals and award to a qualified general contractor (the "GC") a
9 contract for all necessary construction services in connection with the Project (the "GC Contract"). The
10 fee and general conditions under the GC Contract shall be paid solely from Other Funds, and not out
11 of City Funds. The requirements of Administrative Code Section 6.68. A-G, which provide an
12 alternative procedure for selecting a GC to be paid out of public funds, shall not apply. The City Trade
13 Contracts as described in sections C and D below shall be added to the GC Contract by written
14 modification and may be funded with a combination of City Funds and Other Funds.

15 C. Trade Contracts and Subcontracts.

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

23 2. TID, in cooperation with DPW staff, shall prepare all trade bid packages for City
24 Trade Contracts. TID may delegate its responsibility for preparing and soliciting trade bid
25 packages to the GC.

1 3. Bidding for City Trade Contracts may be limited to no less than three qualified
2 contractors, as determined by TID subject to the approval of DPW staff. The provisions of
3 Administrative Code Section 6.21.A.1 shall not apply, but TID shall advertise requests for
4 qualifications in at least one local newspaper of general circulation not fewer than ten (10)
5 days prior to Issuance of bid documents. Bid protest may be required to be received within
6 five (5) calendar days after the date bids are due. DPW shall have the authority to determine
7 and resolve any protest. If DPW or its designee determines that there are not three qualified
8 bidders for a particular trade bid package, TID shall use best efforts to obtain competitive bids
9 from all bidders determined to be qualified. Administrative Code Section 6.21.A.9, which
10 requires designation of subcontractors, shall not apply because the City Trade Contractors will
11 become subcontractors to the TID's GC. The DPW staff shall review and approve the bidding
12 of all City Trade Contracts. The City, acting through DPW. reserves the right to reject any
13 contract/supplier proposed by TID to perform a City Trade Contract and require TID to rebid
14 the work.

15 4. DPW shall award the corresponding City Trade Contracts to the responsible
16 bidder submitting the lowest responsive bid.

17 5. DPW is authorized to negotiate and award Trade Contracts as appropriate for
18 the project, up to an amount not to exceed seven and one-half percent of the money in the
19 City Funds. The Director of DPW shall establish a maximum dollar value for each negotiated
20 trade subcontract as appropriate for the project. For clarity, nothing in this Ordinance is
21 intended to modify Administrative Code Section 6.66, which authorizes certain procedures
22 and contracting authority for the Moscone Convention Center delegated to the
23 operator/manager of the convention center facilities; the provisions of this Ordinance shall be
24 construed to be supplemental to the provisions of section 6.66.

25 D. Novation of City Trade Contracts.

1 1. Following award of any City Trade Contracts, DPW is authorized to novate the
2 City Trade Contract to TID and/or the GC, as appropriate. TID shall have the right, in turn, to
3 novate the City Trade Contract to the GC. The intent is for these novated City Trade
4 Contracts to be subcontracts under the GC.

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

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

20 E. Assignment of Contract at Conclusion of Moscone Center Improvement Project.

21 Because the Moscone Convention Center is a City-owned facility, upon conclusion of
22 the construction phase of the Moscone Center Improvement Project, the contractual
23 relationships among the parties should provide the City with the legal right to pursue any
24 claims arising from breach of warranties, negligence, latent defects, and the like, with respect
25 to work performed by parties on the Project. Further, the City is better-positioned than the

1 TID to assert any such claims because the TID has no ownership interest in the facility, has a
2 legal existence of limited duration as required by law, and because its funds have already
3 been designated for the purposes set forth in the Plan, including for marketing of the City and
4 for planning of a possible expansion of the Moscone Convention Center facilities, which
5 purposes further the economic interests of the City. Therefore, the TID may assign to the City
6 its legal rights in and to the GC Contract, City Trade Contracts, Private Trade Contracts, and
7 its contracts with the architects, designers and the project manager with regard to design
8 defects, latent construction defects and warranties, provided that in exchange for such
9 assignments the City shall release the TID of liability with respect to design and construction
10 contract claims arising from or related to any acts or omissions of the TID under such
11 contracts.

12 F. LBE Participation.

13 The Executive Director of the Human Rights Commission shall set LBE subcontracting
14 participation goals for the overall CM Contract, taking into account, as applicable, the mix of
15 City Funds and Other Funds used for the Trade Contracts. The goals may be met by any
16 combination of City Trade Contracts and Private Trade Contracts. As City Trade Contracts
17 are intended to become subcontracts under the GC, the provisions of Administrative Code
18 Section 14B.19, governing LBE participation in Integrated Project Delivery contracts shall
19 apply.

20 Section 3. Insurance Requirements.

21 A. Insurance and bond requirements for the GC, the City Trade Contracts, and
22 Private Trade Contracts, as well as for design professionals working on the Project shall be
23 subject to review and approval by the City's Risk Manager.

24 B. Additional Requirements.

25

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

5 2. Certificates of insurance, in form and with insurers acceptable to the City
6 evidencing all required insurance and with proper endorsements from the GC's insurance
7 carrier identifying as additional insured's the parties indicated above, shall be furnished to the
8 City, with complete copies of policies to be furnished to the City promptly upon request.

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

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

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

17 By: _____
18 George K. Wong
19 Deputy City Attorney