

FILE NO.

ORDINANCE NO.

1 Agreement to Purchase a new Mission Bay Branch Library to Be Constructed and Located on
2 Land Fronting on 4th Street Between Berry Street and the Mission Creek Channel within Mission
Bay North Redevelopment Plan Area.

3 **Ordinance approving and authorizing the Director of Property to execute an Agreement**
4 **of Purchase and Sale of Real Property with the Redevelopment Agency of the City and**
5 **County of San Francisco for the purchase of a new Mission Bay Branch Library of the**
6 **San Francisco Public Library to be constructed and located on land that is referred to**
7 **herein as Parcel N3a-1 fronting on 4th Street between Berry Street and the Mission**
8 **Creek Channel within the Mission Bay North Redevelopment Plan Area; and**
9 **authorizing the Director of Property to execute documents, make certain modifications**
10 **and take certain actions in furtherance of this Ordinance.**

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

12 Section 1. Findings. The Board of Supervisors of the City and County of San
13 Francisco hereby finds, determines, and declares as follows:

14 A. The voters of the City and County of San Francisco passed Proposition A, "Branch
15 Library Facilities Improvement Bonds, 2000" for general obligation bonds in the amount of
16 \$105,865,000 that included funds for the construction of a new branch for the Mission Bay
17 neighborhood.

18 B. On October 26, 1998, the Board of Supervisors approved the Mission Bay North
19 Redevelopment Plan (hereafter, the "Redevelopment Plan"), recorded on November 18,
20 1998, as Document No. G470335 in the Official Records of the City by adopting Ordinance
21 No. 327-98. The Redevelopment Plan provides for the redevelopment, rehabilitation and
22 revitalization of the area generally bounded by the Mission Creek Channel and Townsend,
23 Third and Seventh Streets and containing approximately 65 acres of land, as shown on the
24 Land Use Plan to the Redevelopment Plan. In cooperation with the City pursuant to an
25 Interagency Cooperation Agreement, dated November 16, 1998, between the City and

MAYOR WILLIE L. BROWN, JR.
BOARD OF SUPERVISORS

1 Redevelopment Agency of the City and County of San Francisco (the "Agency"), the Agency
2 is in the process of implementing the Redevelopment Plan.

3 C. In order to further effectuate the program of development contemplated by the
4 Redevelopment Plan, the Agency entered into the Mission Bay North Owner Participation
5 Agreement (the "OPA") with Catellus Development Corporation, a Delaware corporation
6 ("Catellus"), on November 16, 1998. The OPA was recorded on December 3, 1998, as
7 Document No. G477257 in the Official Records of the City.

8 D. Under the OPA, Catellus is required to contribute to the Agency, at no cost,
9 between approximately 2.5 and 3.8 acres of land suitable for development of Affordable
10 Housing Units by Qualified Housing Developers, as such terms are defined in the OPA.
11 Under the OPA, one of the parcels of land that Catellus is required to contribute for Affordable
12 Housing Units is a parcel that is referred to herein as Parcel N3a-1 (the "Property"), which is
13 more particularly described and depicted in the attached Exhibit A.

14 E. In anticipation of receiving fee title to the Property, pursuant to the OPA, the Agency
15 has selected Mercy Housing California ("Mercy") through a competitive public process to be
16 the developer ("Developer") of a mixed-use development on the Property consisting of
17 approximately 139-units of senior housing (the "Housing Parcel"), 23,400 square feet of office
18 space for nonprofit organizations and public agencies providing community services (the
19 "Office Parcel"), and an approximately 7,700 square foot public branch library (the "Library
20 Parcel"). The Agency and the Developer have entered into an Exclusive Negotiations
21 Agreement (the "ENA") which will lead to three ground lease agreements between the Agency
22 and the Developer, one for each parcel.

23 F. Prior to entering into any of the ground lease agreements, the Agency will cause the
24 Property to be vertically and horizontally subdivided into the three parcels referred to in
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1 Recital D above. The development of each of the Library Parcel, the Office Parcel, and the
2 Housing Parcel will be carried out as a single integrated development project.

3 G. The Agency will cause the Developer to develop the Library Parcel in accordance
4 with the requirements of the Agreement of Purchase and Sale of Real Property (the
5 "Agreement") and a Construction Rider attached to the Agreement as an Exhibit. Upon the
6 Developer's completion of the development of the Library Parcel improvements in accordance
7 with construction plans approved by the City, the ground lease between the Agency and the
8 Developer as to the Library Parcel will terminate, and the Agency will own the improvements
9 and all appurtenant rights to the Library Parcel. The Agency will thereafter sell the Library
10 Parcel together with the improvements and all appurtenant rights to the City in accordance
11 with the provisions of the Agreement.

12 H. On July 2, 2002, by Resolution No. 2/02, the San Francisco Public Library
13 Commission (the "Library Commission") endorsed and recommended the purchase of the
14 Library Parcel and completed improvements thereon from the Agency. A copy of such
15 Resolution is on file with the Clerk of the Board of Supervisors as File No. _____.

16 I. A copy of the proposed Agreement with the Agency (along with all exhibits and
17 schedules) is on file with the Clerk of the Board of Supervisors in File No. _____.

18 J. Pursuant to the Agreement, the Purchase Price for the Library Parcel and its
19 completed improvements will be Three Million Two Hundred Sixty-Seven Thousand Dollars
20 (\$3,267,000.00), which will be paid as design and construction of the improvements proceeds,
21 all as set forth in the Agreement. Upon completion of the 100% Construction Plans for the
22 Library Parcel improvements, the Purchase Price may be adjusted up or down based upon a
23 guaranteed maximum price contract to be obtained by Mercy based upon the 100%
24 Construction Plans approved by the City. In the event the Purchase Price is adjusted over
25 \$3,430,350.00, the City may terminate the Agreement by paying the Agency's actual costs for

1 redesigning the Library Parcel for another use up to an amount not to exceed what the
2 Agency has incurred for the design of the library improvements to the Library Parcel up to the
3 date of termination.

4 K. The Construction of the Property shall be governed by the Construction Rider
5 attached to the Agreement as Exhibit G.

6 L. Pursuant to the Construction Rider, the Agency and Mercy will be responsible for
7 every aspect of the construction of the Library Parcel and all of the activities related thereto.

8 M. 100% Design Development Plans for the construction of the Library Parcel
9 improvements have been prepared and approved by City staff and will be incorporated by
10 reference into the Construction Rider as Schedule 1. During the term of the Agreement, the
11 Agency will cause Mercy to submit, and the City will have the right to review and approve, the
12 actual construction plans for the construction of the Library Parcel improvements for
13 consistency with the previously approved 100% Design Development Plans.

14 N. Pursuant to the Rider, the Agency must commence and substantially complete
15 construction of the Library Parcel in accordance with a Construction Schedule that must be
16 approved by the City prior to the signing of the Agreement, provided that substantial
17 completion of the Library Parcel may not exceed four (4) years from the Effective Date of the
18 Agreement.

19 O. Pursuant to the Construction Rider, the Agency is responsible for correcting all
20 defective work during the term of the Agreement and for one year after the final completion of
21 the Library Parcel improvements.

22 P. The Construction Rider contains a commercially standard mediation provision for
23 the resolution of disputes regarding the Agreement, excluding disputes related to the
24 termination of the Agreement.

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1 Q. The Declaration of Restrictions Regarding Use, which is attached to the
2 Agreement as Exhibit O, will limit the City's use of the Library Parcel to the "operation of
3 a public branch library", which is defined as any library uses approved by the Library
4 Commission that support cultural, educational and/or recreational uses available to the
5 general public. Such uses may be offered in partnership with other public agencies or non-
6 profit organizations. If the City changes the use of the Library Parcel without the Agency's
7 permission, the Agency will have a right of reverter to the Library Parcel, which the Agency
8 may exercise by paying the City the amount of the City's final purchase price together with
9 the cost of any depreciated additional capital improvements made to the Library Parcel by
10 the City.

11 R. Entering into the Agreement directly with the Agency is appropriate and in the best
12 interests of the City under the circumstances described herein. Such circumstances include,
13 without limitation, all of the following: (1) The Library Parcel offers unique advantages to the
14 City regarding its use as a branch library; (2) Agency will be the owner of the Property and
15 will cause the development of the Property as a mixed use senior affordable housing project,
16 consistent with and in furtherance of the Redevelopment Plan; and, (3) Agency and Mercy
17 will be wholly responsible for the development and construction of the Library Parcel
18 improvements, and the Agency will agree to sell the completed Library Parcel and its
19 improvements to the City upon completion of such improvements in move-in condition.

20 S. In a letter dated June 27, 2002 to the Department of Real Estate, a copy of which
21 is on file with the Clerk of the Board of Supervisors in File No. _____, the Planning
22 Department found: (1) that the Mission Bay North Owner Participation Agreement with
23 Catellus Development Corporation and the proposed Mission Bay Branch Library project
24 "received environmental review - Mission Bay Subsequent Environmental Impact Report –
25 and Certification on September 7, 1998 (Case No. 771E) and that therefore, no further

1 environmental review is required; and (2) that the proposed branch library project is
2 consistent with the eight Priority Policies of Section 101.1 of the Planning Code. The Board
3 of Supervisors hereby adopts the findings of the Planning Department as set forth in the
4 June 27, 2002 letter.

5 Section 2. The Board of Supervisors hereby waives any otherwise applicable
6 requirements of sections of Chapters 6 and 12 of the San Francisco Administrative Code
7 related to public works and contracting issues, and in accordance with the recommendation
8 of the Library Commission and the Director of Property, hereby approves the Agreement
9 and the transaction contemplated thereby and authorizes and approves the execution by
10 the Director of Property of the Agreement, in substantially the form of such Agreement
11 presented to this Board in the name and on behalf of the City and any such other
12 documents that are necessary or advisable to complete the transaction contemplated by
13 the Agreement and effectuate the purpose and intent of this Ordinance.

14 Section 3. Subject to the provisions of Section 4 below, the Board of Supervisors
15 authorizes the Director of Property to enter into any additions, amendments or other
16 modifications to the Agreement and any other documents or instruments necessary in
17 connection therewith, that the Director of Property in consultation with the City Attorney
18 determines are in the best interests of the City, do not materially decrease the benefits to the
19 City with respect to the Property, do not materially increase the obligations or liabilities of the
20 City, and are necessary or advisable to complete the transaction contemplated in the
21 Agreement and effectuate the purpose and intent of this Ordinance, such determination to be
22 conclusively evidenced by the execution and delivery by the Director of Property of any such
23 additions, amendments, or other modifications.

24 Section 4. The foregoing notwithstanding, the Director of Property shall not sign the
25 Agreement unless and until the appropriate provisions of the Agreement and its exhibits are

1 modified to provide that in the event the City elects to terminate the Agreement because the
2 Purchase Price adjusted as described in Section 1.J above exceeds \$3,430,350, the City may
3 terminate the Agreement by paying the Agency's actual costs for redesigning the Library
4 Parcel for another use up to an amount not to exceed what the Agency has incurred for the
5 design of the library improvements to the Library Parcel up to the date of termination, which
6 City payment together with the amount incurred by the Agency shall not exceed \$600,000.00.

7 Section 5. In the event that the Purchase Price, adjusted as described in Section 1.J
8 above, exceeds \$3,430,350, the City shall not proceed to purchase the Library Parcel without
9 further approval from the Board of Supervisors.

10

11 **RECOMMENDED:**

APPROVED:

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13 _____
14 MARC S. MCDONALD
15 Director of Property

MAYOR

15

16 _____
17 SUSAN HILDRETH
18 City Librarian

Clerk of Board of Supervisors

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19 Library Commission Resolution No. _____

20 **DESCRIPTIONS**
21 **APPROVED/CHECKED:**

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22 _____
23 Deputy Director of Public Works
24 and City Engineer

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APPROVED AS TO FORM:
DENNIS J. HERRERA, CITY ATTORNEY

By: _____
DONNELL W. CHOY
Deputy City Attorney