

1 [Indemnification Agreement - Renovation of the Powerhouse Building]

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3 **Resolution authorizing an Indemnification Agreement in favor of the parties financing**
4 **the renovation of the Powerhouse building of the Geneva Car Barn and Powerhouse.**

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6 WHEREAS, The City and County of San Francisco (“City”) owns certain real property
7 located at 2301 San Jose Avenue on a portion of Assessor’s Parcel Block No. 6972, Lot No.
8 036, commonly known as the Geneva Car Barn and Powerhouse (“GCB”); the GCB is under
9 the jurisdiction of the Recreation and Park Commission, managed by the Recreation and Park
10 Department (“RPD”), and adjacent to Cameron Beach Yard, which is a rail yard under the
11 jurisdiction of the San Francisco Municipal Transportation Agency (“SFMTA”); and

12 WHEREAS, The GCB is the last physical reminder of the City’s first electric railway
13 system and has been vacant since approximately 1989; RPD, in partnership with the
14 community, has developed a vision to renovate the GCB’s Powerhouse building (the
15 “Powerhouse”) into a community arts center (the “Project”); and

16 WHEREAS, Because the Project will require significant investment, RPD desires to use
17 New Market Tax Credits (“NMTCs”) and Historic Rehabilitation Tax Credits (“HRTCs”) to help
18 finance the Project; and

19 WHEREAS, The NMTC program (U.S. Internal Revenue Code, Section 45D et seq.)
20 was designed to attract investors into underserved communities and to provide private capital
21 investment into qualified projects that may not otherwise be completed by allowing investors
22 to receive federal tax credits for seven years following the date of their initial investment (the
23 “Tax Credit Period”); and

24 WHEREAS, The San Francisco Community Investment Fund (“SFCIF”), a California
25 nonprofit public benefit corporation, serves as a community development entity (“CDE”) to

1 apply for NMTC allocations from the U.S. Treasury; SFCIF has received an allocation of
2 NMTC from the Community Development Financial Institution Fund of the U.S. Treasury and
3 has allocated \$13,000,000 in NMTCs to the Project; and

4 WHEREAS, The HRTC program (U.S. Internal Revenue Code, Section 47 et seq.) was
5 designed to encourage private sector investment in the rehabilitation and re-use of historic
6 buildings by allowing investors to receive a 20% tax credit for the certified rehabilitation of
7 certified historic structures; the National Park Service administers the HRTC program with the
8 Internal Revenue Service in partnership with State Historic Preservation Offices; and

9 WHEREAS, The Powerhouse is on the National Register of Historic Places and as
10 such is eligible for HRTCs; based on current projections, the Project is expected to generate
11 approximately \$2,464,353 in HRTCs; and

12 WHEREAS, NMTCs and HRTCs are used to offset amounts that would otherwise be
13 due and owing to the federal government, and do not affect or limit any taxes payable to the
14 State of California or to the City; and

15 WHEREAS, U.S. Bancorp Community Development Corporation (“USB”), a Minnesota
16 corporation, has expressed a desire to invest a total of up to \$6,454,900 in the Project, in
17 return for the NMTCs and HRTCs generated by the Project; and

18 WHEREAS, RPD has performed a search for additional funding partners for the Project
19 and has determined that it is essential to work with the Community Arts Stabilization Trust
20 (“CAST”); CAST is a nonprofit public benefit corporation with a mission of creating stable
21 physical spaces for arts and cultural organizations, has previously secured NMTC tax credit
22 financing, and has committed to providing \$1,000,000 to the Project and monitoring the
23 Project’s compliance with NMTC requirements during the Tax Credit Period; and

1 WHEREAS, On June 15, 2017, the Recreation and Park Commission approved of RPD
2 entering into negotiations with CAST for Project financing and the lease and recreational use
3 of the Powerhouse; and

4 WHEREAS, To secure the NMTCs, CAST will create an affiliate entity known as CAST
5 Powerhouse LLC, which will be a qualified active low income community business (“QALICB”)
6 that can receive NMTC funding; and

7 WHEREAS, The City desires to enter into one or more agreements (collectively, the
8 “Indemnification Agreement”) with USB, SFCIF, and CAST to indemnify those parties against
9 certain risks and up-front costs that those parties will incur on the Project; the City would
10 indemnify all of those parties against unknown environmental conditions at the Premises and
11 against claims of construction delays, construction defects, and cost over-runs; all of those
12 parties against specified up-front costs (such as legal fees, accounting fees, tax credit
13 consulting fees, and other fees and expenses) in the event the tax credit financing does not
14 close through no fault of the indemnified party; and USB against any losses USB may
15 experience if the U.S. Treasury recaptures or disallows the NMTCs or HRTCs in the event the
16 QALICB fails to stay in good standing, file annual reports, use any investments it receives
17 solely for the Project, not make distributions except for authorized Project expenses, not
18 engage in willful misconduct, not timely complete the Project, or because of any other acts
19 that may cause the U.S. Treasury to recapture the NMTCs or HRTCs; in addition, the Internal
20 Revenue Service will generally provide notice and a 12-month cure period before it declares a
21 recapture event; and

22 WHEREAS, A copy of the draft Indemnification Agreement is on file with the Clerk of
23 the Board of Supervisors under File No. 171209 and the Recreation and Park Commission
24 authorized RPD to enter into the Indemnification Agreement on November 16, 2017; and
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1 WHEREAS, It is a normal business practice to provide these indemnities, which are
2 consistent with NMTC and HRTC transactions generally; the Project could not proceed
3 without the proposed NMTCs and HRTCs, and the NMTC and HRTC transactions cannot
4 proceed without the Indemnification Agreement; now, therefore, be it

5 RESOLVED, That the Board of Supervisors authorizes the RPD General Manager to
6 enter into the Indemnification Agreement substantially in the form that is on file with the Clerk
7 of the Board of Supervisors, and to perform all acts required of the City thereunder; and, be it

8 FURTHER RESOLVED, That the Board of Supervisors authorizes the RPD General
9 Manager to enter into any modifications and amendments to the Indemnification Agreement,
10 including to any of its exhibits, and authorizes the RPD General Manager to execute further
11 agreements related to the Project financing, that the RPD General Manager determines, in
12 consultation with the City Attorney and the Risk Manager, are in the best interests of the City
13 and do not materially increase the obligations or liabilities of the City, are necessary or
14 advisable to effectuate the purposes of the Project or this Resolution, and are in compliance
15 with all applicable laws, including the City's Charter; and, be it

16 FURTHER RESOLVED, That within thirty (30) days of the full execution of the
17 Indemnification Agreement, RPD shall provide such final document to the Clerk of the Board
18 of Supervisors for inclusion into the Board's file.

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