

1 [Comparative Fault Indemnification Provision - General Electric Renewable US LLC - Design-  
2 Build Construction Contract]

3 **Resolution approving the negotiated comparative fault indemnification provision in the**  
4 **San Francisco Public Utilities Commission design-build construction contract with**  
5 **General Electric Renewable US LLC for the Moccasin Powerhouse Generator**  
6 **Rehabilitation Project, pursuant to Administrative Code, Section 6.22(c), to commence**  
7 **following Board approval.**

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9 WHEREAS, On May 11, 2021, the San Francisco Public Utilities Commission  
10 (“SFPUC”), by Commission Resolution No. 21-0078, conditionally awarded Contract No. DB-  
11 121R2, a design-build construction contract for the Moccasin Powerhouse Generator  
12 Rehabilitation Project (“Project”) to General Electric Renewable US LLC (“GE”), subject to  
13 approval by the Board of Supervisors of a negotiated comparative fault indemnification  
14 provision in the contract, and a copy of the Commission’s Resolution conditionally awarding  
15 the contract is on file with the Clerk of the Board of Supervisors in File No. 210483; and

16 WHEREAS, The Project will rehabilitate the two vertical shaft synchronous hydro  
17 generators at the SFPUC’s Moccasin Powerhouse (Moccasin Powerhouse Generators No. 1  
18 and No. 2) (the “Generators”); and

19 WHEREAS, The Generators were completed in 1969, have exceeded their life  
20 expectancy by approximately 20 years, and are in critical need of repair to continue operating;  
21 and

22 WHEREAS, All of the Hetch Hetchy water supply flows through the Moccasin  
23 Powerhouse with the Generators acting as a flow regulating facility; and

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1           WHEREAS, If one of the two Generators fails, the SFPUC could deliver water to the  
2 Bay Area from the Hetch Hetchy Reservoir through the remaining generator; however,  
3 redundancy would be significantly compromised, and the additional stress placed on the  
4 second generator could cause it to fail; and

5           WHEREAS, Water delivery to the SFPUC's 2.7 million residential, commercial, and  
6 industrial customers in the Bay Area depends on the Generators being in use and online; and

7           WHEREAS, If both Generators fail, the SFPUC would be unable to deliver water from  
8 Hetch Hetchy to its Bay Area customers until repairs could be completed, and such repairs  
9 would likely take more than one year for the first unit and an additional year or more for the  
10 second unit; and

11           WHEREAS, The Generators produce approximately 430 gigawatt hours of electricity  
12 per year or 25 percent of the total generation from the Hetch Hetchy Water and Power  
13 system; and

14           WHEREAS, Failure of the Generators would impact the City's ability to meet its  
15 municipal load obligations and result in a loss of revenues from excess generation; and

16           WHEREAS, Loss of one generator unit would impact the City by the loss of  
17 approximately \$4,000,000 in net power revenues per year, and the loss of both units would  
18 impact City net power revenues by approximately a \$24,000,000 loss per year; and

19           WHEREAS, The SFPUC advertised a request for bids for the Project, Contract No. DB-  
20 121R2, Moccasin Powerhouse Generator Rehabilitation, on October 30, 2020; and

21           WHEREAS, The SFPUC received only one bid, submitted by GE, which the SFPUC  
22 staff opened publicly on February 4, 2021, and rejected as non-responsive because it did not  
23 offer to accept the SFPUC's standard contract terms and conditions; and

24           WHEREAS, The SFPUC Commission, on February 23, 2021, through Commission  
25 Resolution No. 21-0029, authorized the SFPUC General Manager to negotiate with any

1 contractor qualified to perform the Project's work, and a copy of Commission Resolution No.  
2 21-0029 is on file with the Clerk of the Board of Supervisors in File No. 210483; and

3 WHEREAS, The SFPUC staff and the City Attorney's Office sought to negotiate with  
4 four qualified firms, but two of the firms declined to negotiate; and

5 WHEREAS, The SFPUC staff and the City Attorney's Office, with counsel from the City  
6 Risk Manager's Office, entered into negotiations with two firms, GE and Andritz, seeking to  
7 obtain from each firm the best proposal that could be obtained through the negotiations; and

8 WHEREAS, Administrative Code, Section 6.22(c) provides that City construction  
9 contracts must require the Contractor to fully indemnify the City to the maximum extent  
10 provided by law, and that the indemnification requirement may be changed only with the  
11 recommendation of the Risk Manager and the express permission and approval of the Board  
12 of Supervisors; and

13 WHEREAS, The SFPUC's standard construction contract indemnification clause, in  
14 compliance with the requirements set forth in Administrative Code, Section 6.22(c), requires  
15 the contractor to indemnify and defend the City against all third party claims and damages  
16 arising from the Contractor's work under the contract, which includes claims and damages  
17 arising in whole or in part from the City's negligence; and

18 WHEREAS, Both GE and Andritz refused to enter into a contract containing the  
19 SFPUC's standard indemnification requirements, under which they would have liability for the  
20 City's negligence, offering instead to enter into a contract that includes a comparative fault  
21 indemnification provision that obligates the contractor to indemnify and defend the City for  
22 third party claims and damages arising from the contractor's negligence or willful misconduct,  
23 with the Contractor obligated to pay for the portion of any damages attributable to its  
24 negligence or willful misconduct, and the City responsible to pay the portion of any damages  
25 attributable to the City's negligence; and

1           WHEREAS, The SFPUC General Manager, in consultation with the Offices of the City  
2 Attorney and the Risk Manager, concluded that GE submitted the bid most favorable to the  
3 City’s interests and recommended that the Commission award the contract for the Project to  
4 GE, conditioned on Board of Supervisors’ approval of the comparative fault indemnification  
5 provision; and

6           WHEREAS, On May 11, 2021, by Commission Resolution No. 21-0078, the SFPUC  
7 authorized its General Manager to seek this Board’s approval under Administrative Code,  
8 Section 6.22(c) to replace the standard indemnification clause with a comparative fault  
9 indemnification provision in Contract No. DB-121R2 to be executed between the City and GE,  
10 and a copy of pertinent excerpts of the contract is on file with the Clerk of the Board in File No.  
11 210483; and

12           WHEREAS, On August 4, 2014, under Case Number 2014.1184E, the Planning  
13 Department determined that the Moccasin Powerhouse Generators Rewind Project is  
14 categorically exempt from the California Environmental Quality Act (CEQA) under CEQA  
15 Guidelines, Section 15301, also known as a Class 1 exemption; Subsection (b) of Section  
16 15301 provides an exemption for, among other things, certain repair, maintenance, and minor  
17 alteration of “Existing facilities of both investor and publicly-owned utilities used to provide  
18 electric power, natural gas, sewerage, or other public utility services;” and

19           WHEREAS, Staff proposed modifications to the Project as described in the Minor  
20 Project Modification memorandum dated May 28, 2020, and the Project now includes three  
21 construction components as follows: (1) install two new transformers under Contract No. HH-  
22 1003R, Moccasin Powerhouse Generator Step Up Transformer Installation, (2) replace two  
23 hydroelectric generators under this proposed Contract No. DB-121R2, Moccasin Powerhouse  
24 Generator Refurbishment, and (3) rehabilitate other powerhouse systems within the Moccasin  
25 Powerhouse; and

1 WHEREAS, On June 4, 2020, under Case Number 2014.1184E and pursuant to San  
2 Francisco Administrative Code, Subsection 31.08(i), the Planning Department determined that  
3 modifications to the Project proposed under this action are not substantial, and the modified  
4 project remains categorically exempt under CEQA and does not require further environmental  
5 review; and

6 WHEREAS, The Planning Department's August 4, 2014, and June 4, 2020, exemption  
7 determinations are on file with the Clerk of the Board of Supervisors in File No. 210483 and  
8 are incorporated herein by reference; the Board affirms these determinations. now, therefore,  
9 be it

10 RESOLVED, That this Board of Supervisors hereby approves, under Administrative  
11 Code, Section 6.22(c), the inclusion of the comparative fault indemnification provision in  
12 Contract No. DB-121R2 between the SFPUC and GE for the Moccasin Powerhouse  
13 Generator Rehabilitation Project; and, be it

14 FURTHER RESOLVED, That within thirty (30) days of the provision being fully  
15 executed by all parties, the San Francisco Public Utilities Commission shall provide the final  
16 contract to the Clerk of the Board for inclusion into the official file.

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19 Recommended:

20 \_\_\_\_\_ /s/  
21 Matt Hansen  
22 Director  
23 Risk Management Division

\_\_\_\_\_ /s/  
Michael Carlin  
Acting General Manager  
San Francisco Public Utilities Commission

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