

1 [Application - Sheriff's Department - Construction of Adult Local Criminal Justice Facilities]

2 **Resolution authorizing the Sheriff's Department to submit an application to the Board**
3 **of State and Community Corrections pursuant to California State Senate Bill 1022**
4 **(2012) for a proposed project to replace County Jail No. 3 and County Jail No. 4 and to**
5 **seek funding preference for such application; outlining the cash contribution funds for**
6 **the proposed project; and conditionally approving the form and execution of**
7 **associated financing and construction documents.**
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9 WHEREAS, Under Senate Bill 1022, Chapter 42, Statutes of 2012 ("SB 1022"), the
10 State of California authorized the Board of State and Community Corrections ("BSCC"), the
11 California State Public Works Board ("SPWB"), and participating counties to acquire, design
12 and construct adult local criminal justice facilities approved by the BSCC; and

13 WHEREAS, SB 1022 authorized the SPWB to issue up to \$500,000,000 in revenue
14 bonds to finance the acquisition, design, renovate, and construction of approved adult local
15 criminal justice facilities; and

16 WHEREAS, On July 23, 2013, the BSCC issued a Request for Proposals for
17 Construction of Adult Local Criminal Justice Facilities ("SB 1022 RFP"), a copy of which is on
18 file with the Clerk of the Board of Supervisors in File No. 130973, and is incorporated herein
19 by reference; and

20 WHEREAS, In 1992, the City and County of San Francisco ("County") developed
21 Seismic Hazard Ratings for over 200 of its public buildings on a scale from one to four, with
22 four representing the most seismically deficient, and County's Hall of Justice building at 850
23 Bryant Street ("HOJ") is a seismically deficient building that received a rating of three; and
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1 WHEREAS, The HOJ contains County Jail #3 and County Jail #4, which have a
2 combined total of 905 (826 rated) bed facilities; and

3 WHEREAS, If the HOJ sustains significant damage due to a major seismic event, the
4 estimated cost to relocate and transport inmates housed in County Jail #3 and County Jail #4
5 is estimated to be tens of millions of dollars, and replacing County Jail #3 and County Jail #4
6 has been a high priority of the County's Ten-Year Capital Plan since its inception in 2006; and

7 WHEREAS, The replacement of County Jail #3 and County Jail #4 with a new jail
8 facility adjacent to HOJ (the "Proposed Facility") is estimated to cost \$290,000,000, and if the
9 County receives financing of SB 1022 funds for the Proposed Facility, the total cost to the
10 County to construct the Proposed Facility would be substantially offset by such awarded
11 funds; and

12 WHEREAS, Applying for the SB 1022 funds requires the County to submit an
13 Applicant's Agreement in substantially the form on file with the Clerk of the Board of
14 Supervisors in File No. 130973 ("Applicant's Agreement"), which is incorporated herein by
15 reference; and

16 WHEREAS, The County is qualified to receive up to \$80,000,000 of SB 1022 funds
17 through the SB 1022 RFP, which amount would require a matching County contribution
18 ("County's Cash Contribution"); and

19 WHEREAS, Under budgets adopted by this Board of Supervisors for Fiscal Years 2012
20 through 2015, \$11,190,000 ("Appropriated Amount") was appropriated to the County's
21 Sheriff's Department through the capital budget for replacement of County Jail #3 and County
22 Jail #4, which amount could be used towards County's Cash Contribution; and

23 WHEREAS, The County could use the County's Cash Contribution to pay for its
24 construction, preliminary designs, studies, environmental review and analysis, and preliminary
25 project management for the Proposed Facility; and

1 WHEREAS, The County can seek a funding preference for SB 1022 financing if its
2 submitted application includes a resolution that is adopted by this Board of Supervisors and
3 certifies County’s Cash Contribution has been duly authorized and is lawfully available, and a
4 September 27, 2013, letter from the County’s Controller confirms \$11,190,000 has been
5 appropriated for the Proposed Facility and is duly authorized and lawfully available
6 (“Controller’s Findings”), which letter is on file with the Clerk of the Board of Supervisors in
7 File No. 130973 and is incorporated herein by reference; and

8 WHEREAS, This Board of Supervisors adopted a FY 2014-23 Ten-Year Capital Plan
9 on April 16, 2013, showing that the County could fully fund the Proposed Facility in an amount
10 equal to \$290,000,000 with General Fund supported certificates of participation; and

11 WHEREAS, The County can seek funding preference for SB 1022 financing if its
12 submitted application includes a complete initial real estate due diligence package, and the
13 Sheriff’s Department intends to submit such a package; and

14 WHEREAS, The County can seek a funding preference for SB 1022 financing if its
15 submitted application includes a resolution that is adopted by this Board of Supervisors that
16 authorizes the execution of a Project Delivery and Construction Agreement, a BSCC Jail
17 Construction Agreement, a Ground Lease, a Right of Entry for Construction and Operation,
18 and a Facility Sublease in substantially the forms on file with the Clerk of the Board of
19 Supervisors in File No. 130973 (the “Financing Documents”), and the Financing Documents
20 are hereby declared to be a part of this resolution as if set forth fully herein; and,

21 WHEREAS, The SB 1022 RFP specifies that any county applying for SB 1022
22 financing must designate the construction administrator for the Proposed Facility, and
23 County’s construction administrator for the Proposed Facility will be Jim Buker, Senior
24 Architect for County’s Department of Public Works (DPW), Building Design & Construction
25 (BDC) - Project Management, or any other person designated by the Director of DPW; and

1 WHEREAS, The SB 1022 RFP specifies that any county applying for SB 1022
2 financing must designate the project contact person for the Proposed Facility, and County's
3 project contact persons for the Proposed Facility will be Jim Buker, Senior Architect for
4 County's Department of Public Works (DPW), Building Design & Construction (BDC) - Project
5 Management, or any other person designated by the Director of DPW, and Undersheriff Ellen
6 Brin, Sheriff's Department, or any other person designated by the County's Sheriff; and

7 WHEREAS, The SB 1022 RFP specifies that any county applying for SB 1022
8 financing must designate the financial officer for the Proposed Facility, and County's financial
9 officers for the Proposed Facility will be Bree Mawhorter, Chief Financial Officer of County's
10 Sheriff's Department, or any other person designated by the County's Sheriff, and Jim Buker,
11 Senior Architect for County's Department of Public Works (DPW), Building Design &
12 Construction (BDC) - Project Management, or any other person designated by the Director of
13 DPW; and

14 WHEREAS, The County is required to, and will, undertake environmental review under
15 the California Environmental Quality Act of the Proposed Facility as its project components
16 are better defined, and will work with all interested parties, County staff, experts and the public
17 to develop a thorough environmental analysis that will inform the design, development and
18 operation of the Proposed Facility; and

19 WHEREAS, The County retains discretion to: (1) modify the Proposed Facility to
20 mitigate significant adverse environmental impacts, (2) select feasible alternatives that avoid
21 significant adverse impacts of the Proposed Facility, (3) implement specific measures to
22 mitigate the significant adverse environmental impacts of the Proposed Facility, (4) reject the
23 Proposed Facility as proposed if its economic and social benefits do not outweigh otherwise
24 unavoidable significant adverse impacts of the Proposed Facility, or (5) approve the Proposed
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1 Facility upon a finding that the economic and social benefits of the Proposed Facility outweigh
2 otherwise unavoidable significant adverse impacts; now, therefore, be it

3 RESOLVED, The County is authorized to submit an application for \$80,000,000 of SB
4 1022 funds in response to the SB 1022 RFP and to seek funding preference for the Proposed
5 Facility within the SB 1022 financing program; and, be it

6 FURTHER RESOLVED, The Director of DPW is authorized to execute and submit the
7 Applicant's Agreement to the BSCC; and, be it

8 FURTHER RESOLVED, If County is conditionally awarded SB 1022 financing, the
9 Appropriated Amount will be used to pay for preliminary designs, studies, environmental
10 review and analysis, and preliminary project management for the Proposed Facility; and, be it

11 FURTHER RESOLVED, That this Board of Supervisors hereby adopts the Controller's
12 Findings to represent, warrant and covenant as follows:

13 (1) The County's Cash Contribution shall be derived exclusively from County's lawfully
14 available funds;

15 (2) Payment of the County's Cash Contribution to pay for the design or construction of
16 the Proposed Facility shall be (i) within the power, legal right, and authority of County, and (ii)
17 legal and not conflict with or constitute on the part of the County a material violation of, a
18 material breach of, a material default under, or result in the creation or imposition of any lien,
19 charge, restriction, or encumbrance upon any property of the County under the provisions of
20 any charter instrument, bylaw, indenture, mortgage, deed of trust, pledge, note, lease, loan,
21 installment sale agreement, contract, or other material agreement or instrument to which the
22 County is party or by which the County or its properties or funds are otherwise subject or
23 bound, decree, or demand of any court or governmental agency or body having jurisdiction
24 over the County or any of its activities, properties or funds, and payment of the Appropriated
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1 Amount to pay for the design or construction of the Proposed Facility has been duly
2 authorized by this Board of Supervisors;

3 (3) Except as otherwise approved in advance by the BSCC, the County's Cash
4 Contribution and the Proposed Facility have not been and will not be (i) mortgaged, pledge, or
5 hypothecated by the County in any manner or for any purpose, (ii) the subject of a grant of a
6 security interest by the County, (iii) mortgaged, pledged or hypothecated for the benefit of the
7 County or its creditors in any manner or for any purpose, or (iv) the subject of a grant of a
8 security interest in favor of the County or its creditors;

9 (4) The County shall not in any manner impair, impede or challenge the security, rights
10 and benefits of the owners of any lease-revenue bonds sold by the SPWB to finance the SB
11 1022 financing for the Proposed Facility (State Bonds) or the trustee for the State Bonds; and,
12 be it

13 FURTHER RESOLVED, If, following all required environmental review, this Board of
14 Supervisors elects to proceed with the Proposed Facility, the County will be authorized to
15 proceed with the Proposed Facility if County is awarded with SB 1022 financing for the
16 Proposed Facility and the County accepts such financing, acquires the real property
17 necessary for the Proposed Facility, and obtains sufficient funding for the development and
18 construction of the Proposed Facility (the "Acceptance Conditions"); and, be it

19 FURTHER RESOLVED, The County is seeking funding preference for its SB 1022
20 financing application associated with review of and authorization to execute the Financing
21 Documents, and this Board of Supervisors does hereby approve the form of the Financing
22 Documents; and, be it

23 FURTHER RESOLVED, If this Board of Supervisors elects to proceed with the
24 Proposed Facility following all required environmental review and the Acceptance Conditions
25 are fully satisfied, the following persons (collectively, the "Authorized Officers"), will be

1 authorized to execute the Financing Documents as specified below for and in the name of the
2 County at such time and in such manner as is required for the awarded SB 1022 financing,
3 modified as may be necessary for a design-build project, with such additions thereto and
4 changes therein as are required by the BSCC or the SPWB to effectuate the financing
5 program for the SB 1022 financing and as condition to the issuance of the Bonds, if the
6 applicable Authorized Officers, determine, in consultation with the County's City Attorney,
7 such changes are in the best interest of the County, do not materially increase the obligations
8 or liabilities of the County, are necessary or advisable to effectuate the purposes of the
9 Financing Documents or this Resolution, and are in compliance with all applicable laws,
10 including the County's Charter, and approval of such changes shall be conclusively evidenced
11 by the execution and delivery thereof by the applicable Authorized Officers, with (i) County's
12 Director of Property or his or her designee, acting alone, authorized to sign the Ground Lease,
13 (ii) County's Director of Property or his or her designee, and County's Sheriff or his or her
14 designee, acting together, authorized to sign the Right of Entry for Construction and Operation
15 and the Facilities Sublease on behalf of the County, (iii) County's Controller or his or her
16 designee, County's Sheriff or his or her designee, and the Director of DPW or his or her
17 designee, acting together, authorized to sign the BSCC Jail Construction Agreement, and (iv)
18 County's Controller or his or her designee, and County's Sheriff or his or her designee, acting
19 together and with the recommendation of the Director of DPW or his or her designee,
20 authorized to sign the Project Delivery and Construction Agreement; and, be it

21 FURTHER RESOLVED, That if the County is awarded financing of SB 1022 funds, the
22 County elects to proceed with the Proposed Facility and the Acceptance Conditions are fully
23 satisfied, the County shall (i) adhere to state requirements and terms of agreement between
24 the County, the BSCC, and the SPWB in the expenditure of such financing and the County's
25 Cash Contribution, and (ii) safely staff and operate the Proposed Facility, should it be

1 constructed, within 90 days after substantial completion of construction of the Proposed
2 Facility, and (iii) not lease housing capacity in the Proposed Facility to any other public or
3 private entity for a period of ten years beyond the completion of construction of the Proposed
4 Facility.

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