File No. 130797 Committee Item No. 5
Board Item No. 2

COMMITTEE/BOARD OF SUPERVISORS

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Completed by: Victor Young **Date** November 8, 2013
Completed by: Victor Young **Date** 11/14/13

SUBSTITUTED
10/8/13

FILE NO. 130797 ORDINANCE NO.

[Contract Amendment - Voting System - Not to Exceed $19,690,933.25]

Ordinance authorizing the Department of Elections to enter into the third amendment of an agreement with Dominion Voting Systems, Inc., to commence following Board approval, to extend the term of the agreement through December 10, 2016, increasing the total not-to-exceed amount of the agreement by $3,645,900 from $16,045,033.25 to $19,690,933.25.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. Findings. The Board of Supervisors of the City and County of San Francisco hereby finds that:

(a) In March 31, 2005, the Department of Elections issued a Request for Proposal (RFP) for new voting equipment and voting equipment services. The RFP, pursuant to San Francisco Administrative Code 21.9(a)(2), stated the contract would be for an initial term of four years, with two options to renew for one year each. Sequoia Voting Systems, Inc. (Sequoia) was the highest ranked proposer.

(b) In December 2007 the City entered into a contract with Sequoia for the purchase of new voting equipment and voting services (Agreement), as approved by the Board of Supervisors under Resolution No. 654-07. As set out in the RFP, the initial term of the Agreement was four years, from December 11, 2007, to December 11, 2011, with two options

for the City to renew for one year each. Dominion Voting Systems, Inc. (Dominion) acquired substantially all of the assets of Sequoia on June 4, 2010, and assumed Sequoia's Agreement with the City.

(c) In November 2011, the City exercised its two one-year options and extended the Contract through December 11, 2013, at a cost not-to-exceed $3,645,900, as approved by the Board of Supervisors under Resolution No. 494-11. Under these extensions, Dominion continued to provide voting services at the rates in effect for 2007-2011 and City was not required to purchase new voting machines.

(d) The Department of Elections now desires to extend the Agreement through December 10, 2016, at a cost not-to-exceed of $3,645,900 for the Third Amendment. Under this extension, Dominion would continue to provide voting services at the rates in effect for 2007-2011, and City would not be required to purchase new voting machines.

(e) This extension is necessary for five reasons. First, the last time the Department of Elections issued an RFP for a new voting system, the RFP process took over two and a half years to complete given the complicated nature of the purchase. Second, the Department of Elections does not anticipate having additional funds to secure new voting equipment in the current fiscal year, and thus will continue to use the current system. Third, there are no new voting systems currently available that have been certified by the Secretary of State and can accommodate elections using Ranked Choice Voting. Fourth, only one contractor offers Ranked Choice Voting options, which is the City's current contractor, Dominion. Finally, the existing six-year Agreement is unusually short and unique to San Francisco for a voting system.

Section 2. Approval of Third Amendment

(a) The Third Amendment to the Agreement is on file with the Clerk of the Board in File No. 130797, substantially in final form, with all material terms and conditions included, and only remains to be executed by the parties upon approval of this Ordinance. The Board of Supervisors hereby approves the Third Amendment to the Agreement in substantially the form contained in File No. 130797.

(b) The Board of Supervisors authorizes the Department of Elections to enter into any modifications that, prior to final execution of the amendment by all parties, the Department of Elections determines, in consultation with the City Attorney, are in the best interest of the City, do not otherwise materially increase the obligations or liabilities of the City, are necessary or advisable to effectuate the purposes of the Agreement, and are in compliance with all applicable laws, including City's Charter.

(c) In approving this Third Amendment, the Board of Supervisors finds that it is reasonable and in the public interest to waive, and does hereby waive, the requirement of Administrative Code Section 21.9 that all City contracts for commodities and/or services be limited to the initial terms and period of extensions included in the solicitation.

(d) Within 30 days of the parties executing the Third Amendment to the Agreement, the Department of Elections shall submit to the Clerk of the Board of Supervisors a completely executed copy for inclusion in File No. 130797. This requirement and obligation resides with the Department of Elections, and is for purposes of having a complete file only, and in no manner affects the validity of the approved Third Amendment to the Agreement.

Section 3. Effective Date. This ordinance shall become effective immediately upon enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

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

By: _____
JOSHUA S. WHITE
Deputy City Attorney

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FILE NO. 130797

LEGISLATIVE DIGEST

[Contract Amendment - Voting System - Not to Exceed $19,690,933.25]

Ordinance authorizing the Department of Elections to enter into the third amendment of an agreement with Dominion Voting Systems, Inc., to commence following Board approval, to extend the term of the agreement through December 10, 2016, increasing the total not-to-exceed amount of the agreement by $3,645,900 from $16,045,033.25 to $19,690,933.25.

Existing Law

In December 2007, following a Request for Proposal, the City entered into a contract with Sequoia Voting Systems, Inc. (Sequoia) for the purchase of new voting equipment and voting services. The initial term of the agreement was four years, with two options for the City to renew for one year each. The City has now exercised those options. Dominion Voting Systems, Inc. (Dominion) has assumed Sequoia's agreement with the City.

Amendments to Current Law

This Ordinance would authorize the Department of Elections to extend the contract with Dominion through December 10, 2016, increasing the total not-to-exceed amount of the Agreement by $3,645,900. These are the same rates that have been in effect since the Agreement began in 2007. The ordinance would allow the Department of Elections to enter this amendment without a competitive process.

Item 5 File 13-0797	Department: Department of Elections

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance would authorize the Department of Elections to enter into a third amendment to the existing agreement with Dominion Voting Systems to (a) extend the term of the agreement for three years through December 10, 2016, (b) increase the agreement by $3,645,900, for a total not-to-exceed $19,690,933, and (c) waive the requirement of Administrative Code Section 21.9 that all City contracts for commodities or services be limited to the initial terms and period of extensions included in the solicitation.

Key Points

- In 2005, the Department of Elections issued a Request of Proposal (RFP) for new voting equipment and services for a total term of up to six years. In 2007, based on a competitive RFP process, the Board of Supervisors approved a not-to-exceed $12,650,233 agreement between the Department of Elections and Sequoia Voting Systems, Inc. (now Dominion Voting Systems, Inc.) for a new voting system and related voting services from December 11, 2007 to December 10, 2011, with two one-year options to extend the agreement.
- On January 18, 2008, the Board of Supervisors approved a first amendment for an additional $1,130,000. On December 1, 2011, the Board of Supervisors approved a second amendment to exercise the two one-year options to extend the term through December 10, 2013 for an additional $2,264,800, or a total not to exceed $16,045,033.

Fiscal Impacts

- The proposed costs would remain at the same rate of (a) $497,400 per election for Election Services and (b) $386,300 per year for Maintenance and License Agreements, as currently charged by Dominion Voting Systems, Inc. under the existing 2007 through 2013 agreement.
- All of the additional Department of Elections costs would be paid with General Fund revenues, subject to future appropriation approval by the Board of Supervisors.

Policy Considerations

- The proposed ordinance to approve the extension of the existing agreement for an additional three years or through December 10, 2016 would be beyond the terms of the original RFP, such that the proposed ordinance requires the Board of Supervisors to waive the Administrative Code Section 21.9 requirement that all City contracts for commodities or services be limited to the initial terms and period of extensions included in the solicitation.

Recommendation

- Approve the proposed ordinance.

MANDATE STATEMENT/ BACKGROUND

Mandate Statement

In accordance with Charter Section 9.118(b), City agreements with anticipated expenditures of $10,000,000, or more or amendments to such City agreements with anticipated expenditures of more than $500,000 are subject to approval by the Board of Supervisors.

Background

On March 31, 2005, the Department of Elections issued a Request for Proposal (RFP) for new voting equipment and related services for an initial term of four years with two one-year options to extend or a total term of six years. On December 11, 2007, based on the results of the competitive RFP process, the Board of Supervisors approved a not-to-exceed $12,650,233 agreement between the Department of Elections and Sequoia Voting Systems, Inc. for the purchase of a new voting system and the provision of associated voting services for the four-year period from December 11, 2007 through December 10, 2011, with two one-year options to extend the agreement, through December 10, 2013 (File 07-0040;Resolution 654-07).

Table 1 below summarizes the sources and uses of the funds totaling $12,650,233 to purchase the City's new voting equipment, including related services, under the original four-year agreement between the Department of Elections and Sequoia Voting Systems, Inc.

Table 1: Sources and Uses of Funds for the Original Four-Year Agreement

Source of Funds	
Help America Vote Act (HAVA) (Federal Funds)	$ 1,950,235
Proposition 41 (State Funds)	3,544,110
General Fund	7,155,888
Total Funding Sources	**$12,650,233**
Use of Funds	
Voting Equipment, Software, Training and Outreach	$ 9,094,933
Trade-in of City's Existing Voting Equipment	(1,130,000)
Warehouse Capital Improvements	542,000
Election Services ($497,400 x 6 elections[1])	2,984,400
Maintenance and License Fees ($386,300 x 3 years)[2]	1,158,900
Total Funding Uses	**$ 12,650,233**

[1] Elections services are provided for six elections including two elections in 2008, one election in 2009, two elections in 2010 and one election in 2011.

[2] Only three years of Maintenance and License Fees were charged, under the subject four-year agreement, because there were no Maintenance and License Fees charged for the first year of the agreement.

As shown in Table 1 above, as part of the $12,650,233 agreement approved in December of 2007 with Sequoia Voting Systems, Inc. the City was to receive a $1,130,000 credit by trading in the City's previous voting equipment. However, on February 12, 2008, the Board of Supervisors approved a settlement of a lawsuit (File 08-0123; Ordinance No. 18-08) between the City and Election Systems and Software, Inc. (ES&S), the City's previous voting equipment contractor prior to Sequoia Voting Systems, Inc., for ES&S to pay the City a net amount of $3,457,865, in exchange for the City returning all of the previous voting equipment back to ES&S.

As a result of that settlement, on January 18, 2008, the Board of Supervisors approved a first amendment to the agreement with Sequoia Voting Systems, Inc. to pay Sequoia an additional $1,130,000 from the lawsuit settlement proceeds received from ES&S, instead of transferring the City's old voting machines to Sequoia (Resolution No. 65-08). This additional $1,130,000 together with the original not to exceed $12,650,233 resulted in a total four-year agreement with Sequoia for a not to exceed $13,780,233.

On June 4, 2010, Sequoia Voting Systems, Inc. was acquired by Dominion Voting Systems, Inc., such that Dominion Voting Systems, Inc. has assumed the existing agreement with the Department of Elections and has continued to provide voting services for the City.

On December 1, 2011, the Board of Supervisors approved a second amendment to the agreement with Dominion Voting Systems, Inc. (File 11-1153; Resolution No.494-11) to exercise the two one-year options in order to extend the term of the agreement through December 10, 2013 for an additional $2,264,800, or a total not to exceed $16,045,033 ($13,780,233 plus $2,264,800). Table 2 below identifies the additional $2,264,800 agreement costs to be incurred by the Department of Elections under the two-year extension period.

Table 2: Expenditures Under the Two-Year Extension Agreement

	2012 (two elections)	2013 (one election)	Total
Election Services	$994,800	$497,400	$1,492,200
Maintenance and License Agreements	386,300	386,300	772,600
Total	$1,381,100	$883,700	$2,264,800

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would approve a third amendment to the existing agreement between the City and County of San Francisco, through the Department of Elections, for Dominion Voting Systems to continue to provide elections services for the Department of Elections. This third amendment would (a) extend the term of the existing agreement for three years, from December 11, 2013 through December 10, 2016, for a total term of nine years, (b) increase the agreement by $3,645,900, from $16,045,033 to a total not-to-exceed $19,690,033, and (c) waive the requirement of Administrative Code Section 21.9 that all City contracts for

commodities or services be limited to the initial terms and period of extensions included in the solicitation (see Policy Considerations section below).

FISCAL IMPACTS

Mr. John Arntz, the Director of the Department of Elections advises that under the proposed third amendment term from December 11, 2013 through December 10, 2016, the following elections are currently scheduled to occur:

- Consolidated Statewide Primary Election on June 3, 2014;
- Consolidated General Election on November 4, 2014;
- General Municipal Election on November 3, 2015;
- Consolidated Statewide Primary Election on June 7, 2016; and
- Consolidated General Election on November 8, 2016.

Based on the above-noted two elections in 2014, one election in 2015 and two elections in 2016, or a total of five scheduled elections over the next three years, the following costs are anticipated to be incurred by the Department of Elections.

Table 3: Expenditures to be Incurred by the Department of Elections Under the Proposed Third Amendment to the Dominion Voting Systems Agreement

	2014 (two elections)	2015 (one election)	2016 (two elections)	Total
Election Services	$994,800	$497,400	$994,800	$2,487,000
Maintenance and License Agreements	386,300	386,300	386,300	1,158,900
Total	$1,381,100	$883,700	$1,381,100	$3,645,900

As shown in Tables 2 and 3 above, the proposed costs would remain at the same rate of (a) $497,400 per election for Election Services and (b) $386,300 per year for Maintenance and License Agreements, as currently charged to the Department of Elections by Dominion Voting Systems, Inc. under the existing 2007 through 2013 agreement. Election Services include equipment testing, ballot layouts, system configuration with election-specific information, logistical support such as delivery and retrieval of the voting equipment to and from polling places, project management fees and election-day technical support. Maintenance and License Agreements include annual comprehensive reviews, repairs and replacement of equipment and parts and annual licensing fees for the Ranked Choice Voting and other system software. Over the three-year extended period, as shown in Table 3 above, the total costs would be $3,645,900.

All of the costs under the proposed three-year extension period would be paid with General Fund revenues, subject to appropriation approval by the Board of Supervisors in the FY 2014-15, FY 2015-16 and FY 2016-17 budgets.

POLICY CONSIDERATIONS

As discussed above, in 2005 the Department of Elections issued a RFP for new voting equipment and related services for up to six years. In 2007, based on the results of this competitive RFP process, the Board of Supervisors approved the existing agreement between the Department of Elections and Dominion Voting Systems (previously Sequoia Voting Systems) to purchase a new voting system and provide related services for the initial four-year period from December 11, 2007 through December 10, 2011, with two one-year options to extend the agreement, through December 10, 2013. As noted above, based on the first and second amendments to the subject agreement, the current agreement between the Department of Elections and Dominion Voting Systems currently extends through December 10, 2013 for a total not to exceed $16,045,033. Therefore, the up to six-year term contemplated in the original solicitation will be completed by December 10, 2013.

However, the proposed ordinance would extend the existing agreement by an additional three years, or through December 10, 2016, for an additional cost of $3,645,000, or a total not to exceed $19,690,033. This additional three-year term would be beyond the terms of the original RFP, without undergoing a new competitive RFP process. Therefore, approval of the proposed third amendment is being requested with an ordinance, rather than a resolution, because the proposed ordinance also requires that the Board of Supervisors find that it is reasonable and in the public interest to waive, and therefore do waive, the requirement in the City's Administrative Code Section 21.9 that all City contracts for commodities and/or services be limited to the initial terms and period of extensions included in the previous solicitation.

Mr. Arntz advises that he is requesting approval of the proposed amendment to extend this agreement with Dominion Voting Systems for three years, without undergoing a new competitive RFP process, because: (a) the last time the Department of Elections issued a RFP for a new voting system, the RFP process took over two and a half years to complete, (b) the Department of Elections does not anticipate having additional funds to secure new voting equipment and only wants to extend existing election services, maintenance and licenses using the current voting equipment, (c) there are no new voting systems currently available that have been certified by the California Secretary of State that can accommodate elections using Ranked-Choice Voting, (d) only one contractor offers Ranked Choice Voting options, which is the City's current contactor, Dominion Voting Systems, and (e) the existing six-year agreement is unusually short and unique to San Francisco for a voting system. Furthermore, Mr. Arntz states that Dominion Voting Systems has provided satisfactory services to the Department of Elections.

RECOMMENDATION

Approve the proposed ordinance.

DEPARTMENT OF ELECTIONS
City and County of San Francisco
www.sfelections.org

John Arntz
Director

Memorandum

To: **Angela Calvillo, Clerk of the Board of Supervisors**

From: **John Arntz, Director**

Date: **October 7, 2013**

RE: **Substitute Legislation for File Number 130797 to Extend Contract with Voting System Vendor for Three Years**

I am submitting the attached proposed ordinance and digest authorizing a third amendment of the contract between the City and Dominion Voting Systems for the Board of Supervisors' consideration. This amendment allows for the extension of the contract for three additional years through December 10, 2016 and for an amount not to exceed $3,645,900.

This proposed ordinance is substitute legislation for the proposed resolution submitted on August 2, 2013 and which was assigned File Number 130797.

I will forward to your office the electronic files containing this memorandum, the proposed ordinance, and its digest. Please contact me if you need any additional information regarding these materials.

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2013 OCT -8 AM 9:09

Cc: Victor Young, Clerk of the Budget and Finance Committee

Voice (415) 554-4375
Fax (415) 554-7344

1 Dr. Carlton B. Goodlett Place, Room 48
San Francisco, CA 94102-4634

TTY (415) 554-4386
www.sfelections.org

City and County of San Francisco
Office of Contract Administration
Purchasing Division

Third Amendment

THIS AMENDMENT (this "Amendment") is made as of May 17, 2013, in San Francisco, California, by and between **Dominion Voting Systems Corporation** ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the performance period and payment schedule, increase the contract amount, and update standard contractual clauses;

NOW, THEREFORE, Contractor and the City agree as follows:

1. **Definitions.** The following definitions shall apply to this Amendment:

a. Agreement. The term "Agreement" shall mean the Agreement dated December 11, 2007 between Sequoia Voting Systems, Inc., and City, as amended by the:

First amendment,	dated January 18, 2008, and
Second amendment,	dated December 11, 2011.

b. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. **Modifications to the Agreement.** The Agreement is hereby modified as follows:

a. Section 3. Section 3, entitled "Term of the Agreement," currently reads as follows:

> The term of this Agreement shall be six (6) years, from December 11, 2007 to December 11, 2013.

Such section is hereby amended in its entirety to read as follows:

> The term of this Agreement shall be nine (9) years, from December 11, 2007 to December 10, 2016.

b. **Section 10(A).** Section 10(A), entitled "Fixed Price," of the Agreement currently reads as follows:

> In consideration for the services rendered under this Agreement and for the rights in the Hardware and System Software granted hereunder, the City shall pay to Contractor the amount set forth in Appendix C (Deliverables) in accordance with the Payment Schedule attached hereto and fully incorporated herein as Appendix F (Payment Schedule). In no event shall the amount of this Agreement exceed Sixteen Million Forty Five Thousand and Thirty Three and 25/100 Dollars ($16,045,033.25). Compensation shall be due and payable within thirty days of the date of Contractor's invoice. All payments from City to Contractor shall be made via wire transfer in accordance with written wire instructions provided by the Contractor.

Such section is hereby amended in its entirety to read as follows:

> In consideration for the services rendered under this Agreement and for the rights in the Hardware and System Software granted hereunder, the City shall pay to Contractor the amount set forth in Appendix C (Deliverables) in accordance with the Payment Schedule attached hereto and fully incorporated herein as Appendix F (Payment Schedule). In no event shall the amount of this Agreement exceed Eighteen Million Three Hundred Nine Thousand Eight Hundred Thirty Three and 25/100 Dollars ($18,309,833.25). Compensation shall be due and payable within thirty days of the date of Contractor's invoice. All payments from City to Contractor shall be made via wire transfer in accordance with written wire instructions provided by the Contractor.

c. **Section 24-1(a)(iv).** Section 24-1(a)(iv) of the Agreement, under "Surety Bonds," currently reads as follows:

> During the period of January 1, 2011 to January 1, 2014, the sum of Five Hundred Thousand and 00/100 ($500,000.00) dollars, which Bond shall be surrendered to Contractor by City upon the expiration date of January 1, 2014.

Such section is hereby amended in its entirety to read as follows:

> During the period of January 1, 2014 to January 1, 2017, the sum of Five Hundred Thousand and 00/100 ($500,000.00) dollars, which Bond shall be surrendered to Contractor by City upon the expiration date of January 1, 2017.

d. **Appendix F.** Appendix F of the Agreement, "Payment Schedule (Second Amendment)," is hereby amended to add a section entitled "Summary Payment Schedule 2014-2016," attached hereto and fully incorporated herein, to reflect the extended performance agreement and associated payment schedule. This amended payment schedule shall be known as "Payment Schedule (Third Amendment)."

2e. Insurance. Section 23 is hereby replaced in its entirety to read as follows:

23. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than $1,000,000 each accident, injury, or illness; and

(2) Commercial General Liability Insurance with limits not less than $1,000,000 each occurrence, $2,000,000 aggregate for bodily injury, property damage, contractual liability, personal injury, products and completed operations.

(3) Commercial Automobile Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

d. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

e. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

h. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

j If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

k. Any of the terms of conditions of this Section 15 may be waived by the City's Risk Manager in writing, and attached to this Agreement as Appendix C. Such waiver is fully incorporated herein. The waiver shall waive only the requirements that are expressly identified and waived, and under such terms and conditions as stated in the waiver.

2f. First Source Hiring Program. Section 45 is hereby replaced in its entirety to read as follows:

45. **First Source Hiring Program**

a. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. **First Source Hiring Agreement.** As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping

requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases,
subleases, and other occupancy contracts.

c. **Hiring Decisions.** Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. **Exceptions.** Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. **Liquidated Damages.** Contractor agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the

contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantity; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to $5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to $10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of $348 per month, totaling approximately $14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year; therefore, liquidated damages that total $5,000 for first violations and $10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law.

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of $5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated

damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

2g. Limitations on Contributions. Section 44 is hereby replaced in its entirety as follows:

44. **Limitations on Contributions.** Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

2e. Cooperative Drafting. Section 60 is hereby added to the Agreement, as follows:

60. **Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

2f. Requiring Minimum Compensation for Covered Employees. Section 42 is hereby replaced in its entirety to read as follows:

42. **Requiring Minimum Compensation for Covered Employees**

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The

procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than $25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed $25,000 in the fiscal year.

2g. Protection of Private Information. Section 54 is hereby replaced in its entirety, as follows:

54. **Protection of Private Information.** contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contactor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

2h. Food Service Waste Reduction Requirements. Section 61 is hereby added to the Agreement, as follows:

Food Service Waste Reduction Requirements. Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided,

and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars ($100) liquidated damages for the first breach, two hundred dollars ($200) liquidated damages for the second breach in the same year, and five hundred dollars ($500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

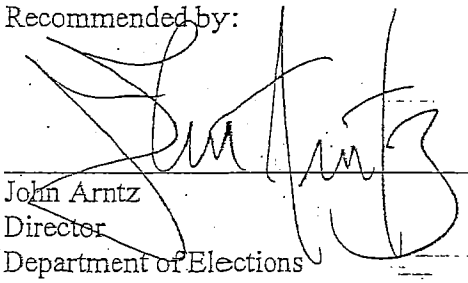
3. **Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

4. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

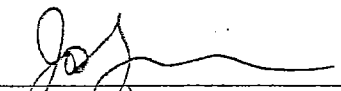
Recommended by:



John Arntz
Director
Department of Elections

Approved as to Form:

Dennis J. Herrera
City Attorney

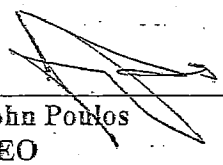
By: 
~~Mollie Lee~~ Joshua S. White
Deputy City Attorney

Approved:

Jaci Fong
Director of the Office of Contract Administration, and Purchaser

CONTRACTOR

Dominion Voting Systems, Inc.



John Poulos
CEO

City vendor number: 83370

Summary Payment Schedule 2014-2016

Summary Payment Schedule	2014	2015	2016	Total
Election Services	994,800.00	497,400.00	994,800.00	2,487,000.00
Maintenance and License Fees	386,300.00	386,300.00	386,300.00	1,158,900.00
Total	1,381,100	883,700	1,381,100	2,264,800.00

***Election Service, License Fees, and Maintenance Fees for 2014 through 2016 are based on per election service charges detailed in Appendix C-1 Election Services and C-2. If the City conducts additional elections during these years in addition to the number of elections included in that year's aggregate total, additional charges shall apply. The following elections are included the pricing shown above:

2014 – Consolidated Statewide Primary Election
2014 – Consolidated General Election
2015 – General Municipal Election
2016 – Consolidated Statewide Primary Election
2016 – Consolidated General Election

Election Services are payable based on completion of tasks defined in the "Election Services Payables" table in this Appendix F.

C0

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF CONTRACT ADMINISTRATION
PURCHASING DIVISION

SECOND AMENDMENT

THIS AMENDMENT (this "Amendment") is made as of 11TH day of DECEMBER 2011 (the "Effective Date"), in San Francisco, California, by and between Dominion Voting Systems, Inc.("Contractor" or "Dominion"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Sequoia Voting Systems, Inc. ("Sequoia") entered into an agreement dated December 11, 2007 between Sequoia and City (the "Agreement"); and

WHEREAS, City and Sequoia entered into the First Amendment to the Agreement on January 18, 2008; and

WHEREAS, Dominion acquired substantially all of the assets of Sequoia on June 4, 2010, and Sequoia assigned and Dominion assumed all of Sequoia's right, title and interest in and to the Agreement and all of Sequoia's duties and obligations thereunder, and the City consented to this assignment and assumption; and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein;

NOW, THEREFORE, Contractor and the City agree as follows:

1. **Modifications to the Agreement.** The Agreement is hereby modified as follows:

a. **Section 3.** Section 3, entitled "Term of the Agreement," is hereby amended in its entirety to read as follows: "The term of this Agreement shall be six (6) years, from December 11, 2007 to December 11, 2013."

b. **Section 10(A).** Section 10(A), entitled "Fixed Price," is hereby amended in its entirety to read as follows: "In consideration for the services rendered under this Agreement and for the rights in the Hardware and System Software granted hereunder, the City shall pay to Contractor the amount set forth in Appendix C (Deliverables) in accordance with the Payment Schedule attached hereto and fully incorporated herein as Appendix F (Payment Schedule). In no event shall the amount of this Agreement exceed Sixteen Million Forty Five Thousand and Thirty Three and 25/100 Dollars ($16,045,033.25). Compensation shall be due and payable within thirty days of the date of Contractor's invoice. All payments from City to Contractor shall be made via wire transfer in accordance with written wire instructions provided by the Contractor."

c. **Section 24-1(a)(iv).** Section 24-1(a)(iv), under "Surety Bonds," is hereby amended in its entirety to read as follows: "During the period of January 1, 2011 to January 1, 2014, the sum of Five Hundred Thousand and 00/100 ($500,000.00) dollars, which Bond shall be surrendered to Contractor by City upon the expiration date of January 1, 2014."

d. **Appendix F.** Appendix F, entitled "Payment Schedule (First Amendment)," is hereby amended to add a section entitled "Summary Payment Schedule 2012-2013," attached hereto and fully incorporated herein,to reflect the City's exercise of its options to extend the term of the Agreement through December 11, 2013. This amended payment schedule shall be known as "Payment Schedule (Second Amendment)."

2. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

Recommended By:

Signature

John Arntz
Director of Elections

CONTRACTOR

Dominion Voting Systems, Inc.
City Vendor Number:83370

By

Signature

John Poulos, President and CEO

Approved to Form:

DENNIS J. HERRERA
City Attorney

By

Mollie Lee, Deputy City Attorney

Approved:

Naomi Kelly
Director of Office of Contractor Administration
Purchase

for

Addition to Appendix F Payment Schedule
San Francisco Purchase Agreement Second Amendment
____ day of _____ 2011

Summary Payment Schedule 2012-2013

Summary Payment Schedule	2012	2013	Total
Election Services	994,800.00	497,400.00	1,492,200.00
Maintenance and License Fees	386,300.00	386,300.00	772,600.00
Total	1,381,100	883,700	2,264,800.00

*****Election Service, License Fees, and Maintenance Fees for 2012 and 2013 are based on per election service charges detailed in Appendix C-1 Election Services and C-2. If the City conducts additional elections during these years in addition to the number of elections included in that year's aggregate total, additional charges shall apply. The following elections are included the pricing shown above:**
2012 – Consolidated Statewide Primary Election
2012 – Consolidated General Election
2013 – General Municipal Election
Election Services are payable based on completion of tasks defined in the "Election Services Payables" table in this Appendix F.

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF CONTRACT ADMINISTRATION
PURCHASING DIVISION

FIRST AMENDMENT

THIS AMENDMENT (this "Amendment") is made as of January 18, 2008 (the "Effective Date"), in San Francisco, California, by and between Sequoia Voting Systems, Inc. ("Contractor" or "Sequoia"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into an agreement dated December 11, 2007 between Contractor and City (the "Agreement"); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein;

NOW, THEREFORE, Contractor and the City agree as follows:

1. **Modifications to the Agreement.** The Agreement is hereby modified as follows:

(a) **Section 10.A.** Section 10.A. entitled "Fixed Price," is hereby deleted in its entirety and is hereby amended to read as follows:

10. Payments

A. Fixed Price. In consideration for the services rendered under this Agreement and for the rights in the Hardware and System Software granted hereunder, the City shall pay to Contractor the amount set forth in Appendix C (Deliverables) in accordance with the Payment Schedule attached hereto and fully incorporated herein as Appendix F (Payment Schedule). In no event shall the amount of this Agreement exceed Thirteen Million Seven Hundred and Eighty Thousand Two Hundred and Thirty Three and 25/100 Dollars ($13,780,233.25). Compensation shall be due and payable within thirty days of the date of Contractor's invoice. All payments from City to Contractor shall be made via wire transfer in accordance with written wire instructions provided by the Contractor.

(b) **Appendices to the Agreement.** The Appendices to the Agreement are modified as follows:

(i) **Appendix C.** Appendix C, entitled "Deliverables," attached hereto and fully incorporated herein, is hereby amended in its entirety as Appendix C, entitled "Deliverables (First Amendment)," attached hereto and fully incorporated herein to reflect the City's payment to Contractor of $1,130,000.00 in lieu of a transfer of the City's AutoMarks to Contractor.

(ii) **Appendix F.** Appendix F, entitled "Payment Schedule," attached hereto and fully incorporated herein, is hereby amended in its entirety as Appendix F, entitled "Payment Schedule (First Amendment)," attached hereto and fully incorporated herein to reflect the City's payment

to Contractor of $1,130,000.00 in lieu of a transfer of the City's AutoMarks to Contractor.

3. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

Recommended By:

_____
Signature

_____
John Arntz
Director of Elections

CONTRACTOR

Sequoia Voting Systems, Inc.
City Vendor Number 59760

By _____
Signature

_____
Peter McManemy, VP/CFO

Tax Rate					
8.50%					
HAVA/ADA Compliance					
Edge 2 Includes VVPAT & Wheel and Handle	2,700.00	610	1,647,000.00	139,995.00	1,786,995.00
Audio Units	250.00	600	150,000.00	12,750.00	162,750.00
VVPAT: Additional Units	900.00	100	90,000.00	7,650.00	97,650.00
Transportation Carts	500.00	125	62,500.00	5,312.50	67,812.50
Card Activator (ACW)	1,200.00	610	732,000.00	62,220.00	794,220.00
Voter Cards	3.00	10,000	30,000.00	2,550.00	32,550.00
Vote Simulation Cartridge	150.00	200	30,000.00	2,550.00	32,550.00
Results Memory Cartridge	150.00	100	15,000.00	1,275.00	16,275.00
Cartridge Tray	60.00	20	1,200.00	102.00	1,302.00
3' Cords	2.00	650	1,300.00	110.50	1,410.50
10' Cord	3.00	650	1,950.00	165.75	2,115.75
Precinct Equipment					
Insight	4,800.00	610	2,928,000.00	248,880.00	3,176,880.00
Additional Memory Paks	250.00	150	37,500.00	3,187.50	40,687.50
MPR	4,500.00	8	36,000.00	3,060.00	39,060.00
High Speed Optical Scanners					
Sequoia 400-C	85,000.00	2	170,000.00	14,450.00	184,450.00
Computer Hardware					
WinEDS Server	15,000.00	1	15,000.00	1,275.00	16,275.00
Backup Server	10,000.00	1	10,000.00	850.00	10,850.00
BPS II Server	10,000.00	1	10,000.00	850.00	10,850.00
Laptops	2,500.00	20	50,000.00	4,250.00	54,250.00
Software Applications					
WinEDS Application*	750,000.00	1	750,000.00	0.00	750,000.00
RCV Application*	650,000.00	1	650,000.00	0.00	650,000.00
Other					
Installation and Training	999,000.00	1	999,000.00	0.00	999,000.00
Outreach Materials	60,000.00	1	60,000.00	0.00	60,000.00
Freight all inclusive	107,000.00	1	107,000.00	0.00	107,000.00
Subtotal			8,583,450.00	511,483.25	9,094,933.25
Payment in Lieu of Transfer of AutoMARKs					1,130,000.00
Total Equipment & Software					9,094,933.25
Warehouse					
Structural and Electrical Engineering / Permitting					50,000.00
Architectural Layout and Design					50,000.00
Facility Improvements					442,000.00
Total Warehouse Cost					542,000.00
Total First Year					9,636,933.25

Election Services	
	Price per Election
Service Oversight	
Services Management - Complete oversight of project per election	50,000.00
Pre-LAT - Plan, Test and Coordinate testing operations	65,000.00
Total Services oversight	115,000.00

Elections Preparation and Operation	
Ballot Layout and Production Management	30,000.00
DRE WinEDS Layout	30,000.00
Total Annual Election Preparation and Operations	60,000.00

Logistical Support	
Staffing - 10 Temps for 15 days per Election	65,000.00
Delivery to and collection from Polling Stations	94,000.00
Transportation	12,000.00
Total Annual Logistical Support	171,000.00

Election Day Support		
Election Day Field Response Team personnel	33 Temp Field	21,000.00
On-Site Technical Support Response Team	2 Technical Support	38,500.00
Central Processing Network Support	6 Personnel	63,000.00
Election Troubleshooting - On-Site Response Team	7 Personnel	24,500.00
Total Election Day Support		147,000.00

Consumables	4,400.00

Total cost of Services per Election	497,400.00

Appendix C - 2
Annual Maintenance & Licenses Fees

Annual Maintenance & Fees	Quantity	2008	2009	2010	2011
Edge 2 - Parts and Repairs	610	Included	61,000.00	61,000.00	61,000.00
VVPAT - Parts and Repairs	710	Included	21,300.00	21,300.00	21,300.00
HAAT- Parts and Repairs	610	Included	30,500.00	30,500.00	30,500.00
400-C - Parts and Repairs	5	Included	30,000.00	30,000.00	30,000.00
Insight - Parts and Repairs	610	Included	61,000.00	61,000.00	61,000.00
Licenses Fee WinEDS Application		Included	112,500.00	112,500.00	112,500.00
Licenses Fee RCV Application		Included	70,000.00	70,000.00	70,000.00
Total			386,300.00	386,300.00	386,300.00

APPENDIX F

Payment Schedule (First Amendment)

Summary Payment Schedule	2007	2008	2009	2010	2011	Total
Hardware & Software	4,000,000.00	2,905,933.25				6,905,933.25
Installation & Training		999,000.00				999,000.00
Outreach		60,000.00				60,000.00
Warehouse Improvements	542,000.00					542,000.00
Payment in Lieu of Transfer of AutoMARKs		1,130,000.00				
Sub-Total						8,636,933.25
Election Services		994,800.00	497,400.00	994,800.00	497,400.00	2,984,400.00
Maintenance and License Fees		Included	386,300.00	386,300.00	386,300.00	1,158,900.00
Total	4,542,000.00	6,089,733.25	883,700.00	1,381,100.00	883,700.00	13,780,233.25

***Election Service for years 2008, 2009, 2010, and 2011 are based on per election service charges detailed in Appendix C-1 Election Services. If the City conducts additional elections during these years in addition to the number of elections included in that year's aggregate total, additional charges shall apply. The following elections are included the pricing shown above.

2008 – Presidential Primary Election
2008 - California Primary Election
2008 – General Election
2009 – General Election
2010 – Primary Election, General Election
2011 - General Election

Election Services are payable based on completion of tasks defined in table below.

APPENDIX F

Contract Payables
Equipment, Software, Warehousing, Installation & Training, Outreach

	Amount	Description
First Payment	$4,000,000.00	Due net 30 days from signing of Contract
Second Payment	$542,000.00	Due net 30 days from completion of Warehouse Improvements
Third Payment	$650,000.00	Due net 30 days from completion of a full and Public Rank Choice Voting Demonstration on February 12, 2008
Fourth Payment	$3,000,000.00	Due net 30 days from Acceptance of Equipment
Final Payment	$314,933.25	Due net 30 days after the certification of the February 2008, Presidential Primary Election
Additional Payment	$1,130,000.00	Due February 29, 2008
Total	$9,636,933.25	

Election Services Payables

	Amount	Description
First Payment	$175,000.00	Due net 30 days from completion of Optech Ballot Layout (submission to printer)
Second Payment	$175,000.00	Due net 30 days from completion of Pre-Logic and Accuracy testing of voting equipment
Final Payment	$147,400.00	Due net 30 days after the certification of the election
Total	$497,400.00	

City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685

Agreement Between
The City and County of San Francisco
and
Sequoia Voting Systems, Inc.

This agreement (the "Agreement") is entered into this 11th day of December 2007, in the City and County of San Francisco, State of California, by and between: Sequoia Voting Systems, Inc.,.7677 Oakport Street, Ste 800, Oakland, California 94621, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of the Office of Contract Administration, hereinafter referred to as "Purchasing."

Recitals

WHEREAS, a Request for Proposal ("RFP") was issued on March 31, 2005, and City selected Contractor as the highest qualified scorer pursuant to the RFP. The RFP is hereby incorporated herein by reference, subject to the terms of this Agreement;

WHEREAS, the Department of Elections (the "Department") wishes Contractor to provide to City the System described in this Agreement; and,

WHEREAS, Contractor represents and warrants that it will provide the services required in accordance with this Agreement; and,

WHEREAS, approval for said Agreement was obtained from Civil Service Commission by Resolution No. 4063-05/06, dated December 19, 2005;

Now, THEREFORE, the parties agree as follows:

1. A. Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

Acceptance	Written notice from the Department to Contractor, stating the System Software, Hardware, and/or System have satisfactorily completed the Acceptance Tests or failure of the City to timely deliver a Defect Notice pursuant to Section 6 of this Agreement.
Acceptance Tests	The procedures and performance standards which each unit of Hardware and its associated System Software are required to perform as set forth in Section 6 below and Appendix A (Acceptance Test Plan and Acceptance Criteria) and Appendix B (Implementation Plan).

Agreement	This document and all of the accompanying appendices, schedules and exhibits, together with any future written and executed amendments.
Authorization	Either a Term Purchase Agreement, Contract Order, or Purchase Order of the City, properly executed by the Department and Purchasing, and certified by the Controller for the specific funding of this Agreement or any modification thereof.
Critical Milestone	Those milestones denominated as Critical Milestones in Appendix B-1
Defect Notice	The written notice from City to Contractor notifying Contractor that the Hardware or System Software has not passed the Acceptance Test.
Deliverables	Those items of Hardware and System Software described and itemized in Appendix C (Deliverables) which items Contractor commits to provide to City on the dates specified in Appendix B (Implementation Plan).
Documentation	Those materials to be provided by Contractor under the terms of Appendix G (Support and Maintenance Services), together with the following materials: AVC Edge Pollworker Booklets AVC Edge Maintenance Manual AVC Edge Operations Manual AVC Edge Acceptance Testing Guide AVC Edge Pre-LAT Guide AVC Edge Trainer Guides Note: AVC Edge here includes Voter Verification Printer Optech Insight Pollworker Guide Optech Insight Maintenance Manual Optech Insight Operations Manual Optech Insight Acceptance Testing Guide Optech Insight Pre-LAT Guide Optech Insight Trainer Guides 400-C Optical Scan Maintenance Manual 400-C Optical Scan Operations Manual 400-C Optical Scan Acceptance Testing Guide 400-C Optical Scan Pre-LAT Guide 400-C Optical Scan Trainer Guides Card Activator/HAAT Maintenance Manual Card Activator/HAAT Operations Manual
Error, Defect or Malfunction	Failure of the System Software or Hardware to operate in accordance with the Documentation furnished by Contractor for the System Software or Hardware, or a failure of the System Software or Hardware to comply, with respect to the RCV Design Specifications elements of the System, with RCV Design Specifications, excluding in both cases failures to comply which do not materially impair operation of the System.

Hardware	Each and all of the equipment and any other items designated as "Hardware" in Appendix C (Deliverables).
Implementation Plan	The schedule for Contractor's completion of all phases of Work, and the Critical Milestones associated with such completion, as specified in Appendix B (Implementation Plan)
Open Source Code	Software which is provided to the public in both source code and binary (executable) form under a license that permits one or more of the following: viewing, using, modifying, distributing, or displaying the software.
Performance Specifications	The written description of the City's requirements prepared by the City and attached hereto as Appendix D (Performance Specifications). Such description shall form the basis for the RCV Design Specifications as defined herein.
RCV Design Specifications	The written RCV Design Specifications to be prepared by Contractor to implement the Performance Specifications with respect to the Ranked Choice Voting elements of the Hardware and Software System.
Subsequent Release	A new release of the System Software for use in a particular operating environment, which supersedes the existing System Software.
Support and Maintenance Services	The System Software and Hardware support and maintenance services which Contractor is obligated to provide pursuant to this Agreement.
System Software	One or more items of the System Software identified in Appendix C (Deliverables) and any Upgrades to the System Software to the extent installed and used in the System, in object code form, and any related Documentation.
Source Code	The text of the System Software that is written in language that may be read and understood by humans and is compilable by software to be understood and used by a computer.
System	The integrated system consisting of all System Software and Hardware to be provided by Contractor under Appendix C (Deliverables) to this Agreement, the combination of which shall satisfy, with respect to the ranked choice voting elements of the System, the RCV Design Specifications.
Upgrade	A change to the System Software (excluding a Subsequent Release) or Firmware which is (i) for the purpose of enhancing the performance of, or correcting Errors, Defects or Malfunctions in, the System Software or Firmware, or (ii) generally provided by Contractor to Contractor's software maintenance customers.
Work	The providing by Contractor of the System and services required to be provided by Contractor under this Agreement.

Whenever the words "as directed", "as required", "as permitted", or words of like effect are used, it shall be understood as the direction, requirement, or permission of the Department. The word "include" shall be

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RCV Design Specifications	The written RCV Design Specifications to be prepared by Contractor to implement the Performance Specifications with respect to the Ranked Choice Voting elements of the Hardware and Software System.
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Source Code	The text of the System Software that is written in language that may be read and understood by humans and is compilable by software to be understood and used by a computer.
System	The integrated system consisting of all System Software and Hardware to be provided by Contractor under Appendix C (Deliverables) to this Agreement, the combination of which shall satisfy, with respect to the ranked choice voting elements of the System, the RCV Design Specifications.
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understood to mean "including, without limitation," or "including, but not limited to," and the like, unless otherwise stated.

B. Appendices

The following Appendices are attached to and made a part of this Agreement:

Appendix A:	Acceptance Test Plan and Acceptance Criteria
Appendix B:	Implementation Plan
Appendix B-1	Critical Milestones
Appendix C:	Deliverables
Appendix D:	Performance Specifications
Appendix E:	Software License
Appendix F:	Payment Schedule
Appendix G:	Support and Maintenance Services
Appendix H:	Form of Bond

2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration of this Agreement.

If at any time in the future City becomes aware that adequate funds have not or will not be appropriated to pay the next payment owing to Contractor under Appendix F (Payment Schedule), City will promptly notify Contractor in writing at least fifteen (15) days before the date on which such payment is due Contractor. In the event of receipt of such notice from the City, Contractor may suspend performance in accordance with Section 8 (H) below.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3. Term of the Agreement

The term of this Agreement shall be four (4) years, from December 11, 2007 to December 11, 2011. The City, in its sole discretion, shall have the option to extend the term twice, each time for a period of one (1) year by written notice to Contractor, ninety (90) days prior to the expiration of the current term, of its intention to extend the contract term for the period of one (1) year.

4. Effective Date of the Agreement

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing of such certification.

4-1. Services

Contractor shall deliver and install the System. The System as delivered and installed by Contractor shall perform all functions and services described in Appendix D (Performance Specifications), and Contractor shall perform the services described in Appendix G (Support and Maintenance Services), on the terms and prices stated in Appendix C. The System shall be able to collect, record, count, tabulate and report votes cast in accordance with applicable local, state and federal law, and decisions of a court of competent jurisdiction and official opinions of a governmental body or agency having jurisdiction over election matters interpreting such laws, as in effect on December 1, 2007, including without limitation, ranked-choice voting as required by San Francisco Charter § 13.102, the provision of a computer record indicating the number of ballots cast for each candidate and for and against each ballot measure at each precinct as required by San Francisco Charter § 13.107.5, and all requirements placed on the Contractor as a result of the California Secretary of State's Withdrawal of Approval and Conditional Re-approval of Sequoia Voting Systems, Inc., revised version dated October 25, 2007. Without limitation of the foregoing and in accordance with Section 53, Contractor is not obligated to cause the System, Hardware, Software or any component thereof to comply with any specifications, standards or requirements of the Federal Election Commission, Election Assistance Commission, California Secretary of State or any other governmental, quasi-governmental or regulatory body or agency to the extent such specifications, standards or requirements are not in effect and applicable to City on December 1, 2007 (including, without limitation, National Association of State Election Directors, FEC or EAC 2002 or 2005 standards). The City and the Contractor shall enter into good faith negotiations to amend the Agreement to cover any new hardware, software, firmware or services necessary to meet any new specifications, standards or requirements that come into effect after December 1, 2007 and shall, at that time, negotiate the price of such services.

Contractor shall provide to City all Hardware and System Software required by Appendix C (Deliverables) to this Agreement for the System, and perform all installation, programming, integration, testing, Maintenance Services, Support Services, and delivery of the System during elections, as specified in Appendix D (Performance Specifications), the RCV Design Specifications (as to ranked choice voting elements of the System), and Appendix G (Support and Maintenance Services). Contractor agrees to perform all Work and other obligations of Contractor required by this Agreement, including without limitation, the requirements of Appendices B (Implementation Plan) and D (Performance Specifications), and the RCV Design Specifications (as to ranked choice voting elements of the System).

4-2. Risk of Loss and Title Transfer

Notwithstanding the foregoing or anything to the contrary contained in this Agreement, risk of loss for each component of the System shall pass to City upon delivery to a location designated by the City. Provided, however, that, for Hardware, Contractor shall have liability for loss or damage only during such times Contractor has actual custody and control of the Hardware for purposes of performing Contractor's testing, maintenance, and polling place delivery obligations under this Agreement (including when testing, maintenance, and delivery of equipment is performed or occurs in the City's warehouse under the supervision of the City). Risk of loss shall automatically revert to City upon completion of maintenance and testing and the Hardware's return from polling places to the City's warehouse location.

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Notwithstanding the foregoing or anything to the contrary contained in this Agreement, title for each component of the Hardware or System Software shall pass to the City upon the initial delivery to the location designated by the City.

4-3. Security Interest

The City hereby grants Contractor a first and prior purchase money security interest in the Hardware and System Software and in any additions or accessions thereto and in any proceeds (including but not limited to accounts receivables) thereof as security for all of the City's obligations hereunder, which security interest shall commence upon the initial delivery of any item of Hardware or System Software and terminate upon full payment therefore in accordance with this Agreement. Upon request of Contractor, and to the extent the City is permitted to do so under applicable law, the City shall immediately execute any instrument or document reasonably deemed necessary by Contractor to perfect or enforce such security interest.

5. System Software and Hardware; License and Warranty

A. System Software

(1) Software License. Subject to the terms and conditions of this Agreement, and in consideration for full payment of the software license fee set forth in Appendix C-2, Contractor hereby grants to City upon the express license terms set forth in Appendix E, a nonexclusive and nontransferable limited license to use the System Software only in connection with use of the Hardware for preparing for, conducting, and voting in elections in the jurisdiction of the City pursuant to this Agreement. Contractor hereby represents and warrants that it has title to and/or the authority to grant the License for System Software to City. Contractor shall install the System Software in accordance with the Documentation, Appendix D (Performance Specifications), the RCV Design Specifications (as to ranked-choice voting elements of the System), and Appendix A (Acceptance Test Plan and Acceptance Criteria). The foregoing software license for the System Software is sometimes collectively referred to as the "License" hereinafter.

Contractor agrees that in the event it completely and generally ceases to provide maintenance and support for the System Software, and there is no successor in interest by merger, operation of law, assignment, purchase, or otherwise, it will provide City, without charge, one (1) copy of the then-current Source Code for all of the System Software (including Upgrades) and all supporting Documentation for the System Software then operating and installed. Pursuant to this section, City shall have a personal, nonexclusive, and nontransferable limited license to use the Source Code solely and exclusively for performing Contractor's maintenance obligations under this Agreement, for complying with the Open Code Review pursuant to Section 5(A)(9), and for no other purpose whatsoever.

In furtherance of its obligations as stated above, Contractor has placed a copy of the Source Code for the System Software which corresponds to the most current version of the System Software (including Upgrades) in escrow with an independent escrow agent for the benefit of the California Secretary of State pursuant to a separate escrow agreement. Contractor shall on or before full execution of this Agreement name the City as a beneficiary of such escrow agreement. Contractor will maintain and pay fees associated with the escrow agreement (or a substantially similar substitute agreement of which City is a beneficiary) in place for the entire term of this Agreement. Contractor agrees to update materials on deposit with the escrow agent promptly upon its release of any Upgrade such that the Source Code is maintained as corresponding to the version of the System Software (including Upgrades) in use by the City. Contractor shall provide City with an acknowledgment that City

has been named as a beneficiary of such escrow agreement which will include the name of the escrow agent and will have such acknowledgment renewed each year this Agreement is in effect.

(2) **Interpretation of the Specifications.** The City hereby acknowledges that the Performance Specifications will provide the basis for the RCV Design Specifications, and that the RCV Design Specifications will, upon acceptance by the City, supersede the Performance Specifications as to the ranked choice voting elements of the System and provide the basis for the programming, installation, integration and testing of the ranked choice voting elements of the System. The Performance Specifications shall continue to be applicable to the extent of elements of the System other than the ranked choice voting elements of the System.

(3) **Interpretive Differences.** In the event City and Contractor differ in their interpretations of the Performance Specifications, RCV Design Specifications, or Acceptance Tests, the City's reasonable interpretation (provided the same is consistent with this Agreement) shall prevail provided, however, that the City's determination shall not be binding upon or establish a presumption before, any court or governmental body adjudicating any dispute between the City and Contractor, and provided further that the Contractor's remedies shall not in any way be impaired by the City's determination. In the event of any conflict between any provisions of the Documentation and the RCV Design Specifications or Acceptance Criteria, the provisions of the RCV Design Specifications or Acceptance Criteria shall prevail.

(4) **Software and Firmware Warranty.** From January 1, 2008 through December 31, 2008, and for all subsequent years covered under this Agreement in which the City pays, in full each year from January 1, 2009, the applicable Software Maintenance Fee specified in Appendix C (Deliverables), Contractor warrants that the System Software will, for the term of this Agreement (the "Warranty Period"), perform in accordance with the then-current operating Documentation for the System Software and Firmware and Appendix A (Acceptance Test Plan and Acceptance Criteria) and (as to ranked choice voting elements of the System) the RCV Design Specifications during the term of the Warranty Period, provided that: (a) the City does not, and does not permit any party other than Contractor to, modify, change or alter any of the System Software, Firmware (as defined herein below), or Upgrades except as authorized by Contractor; (b) the City does not, and does not permit any party other than Contractor to modify, change or alter the Hardware on which the System Software, Firmware or Software Upgrades are installed, except as authorized in writing by Contractor in each instance; or (c) the error or defect is not caused by City, its agents, servants, employees or contractors.

(5) **Software Upgrades.** Upgrades shall be governed by the license terms set forth on Appendix E, whether or not installed by City. Upgrades will be provided to City at no additional cost provided City has paid Contractor in full each year during the term of this Agreement the Software Maintenance Fee stated in Appendix C.

(6) **Firmware License.** The Hardware incorporates software and logic which constitutes intellectual property rights owned by Contractor ("Firmware"). Contractor hereby grants to the City a non-exclusive and non-transferable limited license to use the Firmware, related Documentation, and any Firmware upgrade solely with and exclusively for the operation of the Hardware for the express purpose of allowing the citizens of San Francisco to vote as contemplated by this Agreement and by the license terms set forth on Appendix E. The City shall not, and shall not permit any third party to, reverse engineer, disassemble, decompile, decipher or analyze the Firmware in whole and/or in part, except as expressly, and only to the extent, authorized by this Agreement. Unless expressly required to do so by a written amendment to this Agreement signed by Contractor, Contractor has no obligation (express or implied) to modify or update the Firmware to meet any future requirements, legal or otherwise. From time to time, Contractor in its sole discretion, may release improvements to the Firmware which add,

Notwithstanding the foregoing or anything to the contrary contained in this Agreement, title for each component of the Hardware or System Software shall pass to the City upon the initial delivery to the location designated by the City.

4-3. Security Interest

The City hereby grants Contractor a first and prior purchase money security interest in the Hardware and System Software and in any additions or accessions thereto and in any proceeds (including but not limited to accounts receivables) thereof as security for all of the City's obligations hereunder, which security interest shall commence upon the initial delivery of any item of Hardware or System Software and terminate upon full payment therefore in accordance with this Agreement. Upon request of Contractor, and to the extent the City is permitted to do so under applicable law, the City shall immediately execute any instrument or document reasonably deemed necessary by Contractor to perfect or enforce such security interest.

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A. System Software

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Contractor agrees that in the event it completely and generally ceases to provide maintenance and support for the System Software, and there is no successor in interest by merger, operation of law, assignment, purchase, or otherwise, it will provide City, without charge, one (1) copy of the then-current Source Code for all of the System Software (including Upgrades) and all supporting Documentation for the System Software then operating and installed. Pursuant to this section, City shall have a personal, nonexclusive, and nontransferable limited license to use the Source Code solely and exclusively for performing Contractor's maintenance obligations under this Agreement, for complying with the Open Code Review pursuant to Section 5(A)(9), and for no other purpose whatsoever.

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(3) **Interpretive Differences.** In the event City and Contractor differ in their interpretations of the Performance Specifications, RCV Design Specifications, or Acceptance Tests, the City's reasonable interpretation (provided the same is consistent with this Agreement) shall prevail provided, however, that the City's determination shall not be binding upon or establish a presumption before, any court or governmental body adjudicating any dispute between the City and Contractor, and provided further that the Contractor's remedies shall not in any way be impaired by the City's determination. In the event of any conflict between any provisions of the Documentation and the RCV Design Specifications or Acceptance Criteria, the provisions of the RCV Design Specifications or Acceptance Criteria shall prevail.

(4) **Software and Firmware Warranty.** From January 1, 2008 through December 31, 2008, and for all subsequent years covered under this Agreement in which the City pays, in full each year from January 1, 2009, the applicable Software Maintenance Fee specified in Appendix C (Deliverables), Contractor warrants that the System Software will, for the term of this Agreement (the "Warranty Period"), perform in accordance with the then-current operating Documentation for the System Software and Firmware and Appendix A (Acceptance Test Plan and Acceptance Criteria) and (as to ranked choice voting elements of the System) the RCV Design Specifications during the term of the Warranty Period, provided that: (a) the City does not, and does not permit any party other than Contractor to, modify, change or alter any of the System Software, Firmware (as defined herein below), or Upgrades except as authorized by Contractor; (b) the City does not, and does not permit any party other than Contractor to modify, change or alter the Hardware on which the System Software, Firmware or Software Upgrades are installed, except as authorized in writing by Contractor in each instance; or (c) the error or defect is not caused by City, its agents, servants, employees or contractors.

(5) **Software Upgrades.** Upgrades shall be governed by the license terms set forth on Appendix E, whether or not installed by City. Upgrades will be provided to City at no additional cost provided City has paid Contractor in full each year during the term of this Agreement the Software Maintenance Fee stated in Appendix C.

(6) **Firmware License.** The Hardware incorporates software and logic which constitutes intellectual property rights owned by Contractor ("Firmware"). Contractor hereby grants to the City a non-exclusive and non-transferable limited license to use the Firmware, related Documentation, and any Firmware upgrade solely with and exclusively for the operation of the Hardware for the express purpose of allowing the citizens of San Francisco to vote as contemplated by this Agreement and by the license terms set forth on Appendix E. The City shall not, and shall not permit any third party to, reverse engineer, disassemble, decompile, decipher or analyze the Firmware in whole and/or in part, except as expressly, and only to the extent, authorized by this Agreement. Unless expressly required to do so by a written amendment to this Agreement signed by Contractor, Contractor has no obligation (express or implied) to modify or update the Firmware to meet any future requirements, legal or otherwise. From time to time, Contractor in its sole discretion, may release improvements to the Firmware which add,

change or enhance the functionality of the Firmware, or contain programs not included at the time of the execution of this Agreement, which Contractor makes generally available to its customers ("Firmware Upgrades"). Firmware Upgrades shall be governed by this Agreement and the license terms set forth on Appendix E whether or not installed by the City. Firmware Upgrades will be provided to City at no additional cost provided City has paid Contractor, in full each year during the term of this Agreement, the Maintenance Fee as stated in Appendix C attached hereto.

(7) **Additional Software Services.** In the event the City requests, during the term of this Agreement, software development services which Contractor is not obligated to provide under the terms of this Agreement, but which were requested by the City in the RFP pursuant to which this Agreement is entered into, Contractor will provide those services at Contractor's accounting cost plus a profit of fifteen percent (15%) of Contractor's accounting costs. Contractor and City shall enter into an amendment to this Agreement in accordance with Section 52 stating the services to be provided by, the compensation payable to Contractor and that such compensation is conditioned upon meeting the acceptance testing and/or performance criteria provided in the amendment. In no event shall Contractor be obligated to undertake or perform any services which Contractor determines, in Contractor's sole discretion, not to be commercially or technically feasible. All property developed during performance of such services shall constitute a Development Intellectual Property Right (as defined in Section 57) owned solely by Contractor and licensed to the City under the terms of this Agreement. If during the term of this Agreement (including the options to extend), Contractor enters into an agreement with another entity for sale or licensing without substantial modification of the product developed in performing such services for the City, and Contractor receives payment under that agreement, Contractor shall pay to the City a one-time payment equal to forty percent (40%) of the amounts charged to the City for such services.

(8) **Open Source Code.** Not withstanding Sections 4-1 and 53 of this Agreement:

(a) In the event that disclosed or open source code becomes a requirement of California law or the California Secretary of State promulgates a rule or regulation requiring voting system vendors in the state of California to provide disclosure of their source code or to provide open source code, Contractor will comply with the law or any rule or regulation promulgated by the California Secretary of State.

(b) In the event that the California Secretary of State certifies any voting system for use in California that is licensed under a disclosed or open source code license, Contractor shall disclose its source code or submit an application for federal certification of a disclosed or open source code voting system within one (1) year.

(9) **Open Code Review.**

(a) At a mutually agreed time in the future, Contractor shall provide the Source Code to a third party expert retained by the City who has experience in voting system technology (the "Expert") to conduct a review of the Source Code at the City's expense. Prior to conducting any such review, the City shall require the Expert to execute a confidentiality and non-disclosure agreement reasonably acceptable to Contractor and the City. The Source Code shall at all times be held in a secure location exclusively within the control of the City. Access to the Source Code will be limited to the Expert and to employees of the City having a need to know who are bound by the confidentiality provisions in Section 22 of this Agreement. Access to the Source Code shall be restricted, with a detailed record by person, time and date kept documenting all access to the Source Code. All viewing, testing and analysis of the Source Code shall take place in a room free of any electronic recording device, camera, cell phone, PDA or similar recording instrument. The only persons in the room at the time of Source Code review shall be the Expert, representatives designated by Contractor, and employees of the City having a need to know. The

review of the Source Code shall be for the sole limited purpose of assessing whether the Source Code contains material security deficiencies or malicious code designed to interfere with the operation of the Software. For purpose of this Section 5A(9), a security deficiency shall be deemed to be "material" where such deficiency creates a significant and realistic threat of election tampering, unauthorized access to the System, or the inability of the System to fully tabulate all votes cast, in the context of an actual election.

(b) Upon completion of any such review, the City shall require the Expert to provide a report summarizing the Expert's conclusions as to the existence of any material security deficiencies in the Source Code or the existence of any malicious code which would interfere with the operation of the Software (the "Report"). Prior to completing the final Report, the City shall require the Expert to provide a draft of the Report to Contractor and the City. Contractor shall, within ten (10) days of receipt of the draft report, advise the Expert in writing of any errors, inconsistencies, or misunderstandings in the Report and provide a copy of this written response to the City. The City shall require the Expert to consider all comments of Contractor in good faith and correct any errors, inconsistencies or misunderstandings described by Contractor. Thereafter, the City shall require the Expert to release the final Report to the City. The City shall make the final Report public. If the final Report discloses any material security deficiencies in the Source Code, or any malicious code which would affect the operation of the Software, Contractor shall take corrective action and shall bear all costs associated with correcting the material security deficiencies. The parties acknowledge that any changes to the Source Code will need to be submitted to federal and state authorities for certification, and that Contractor has no control over the certification process or the length of time required for certification. Contractor shall use reasonable efforts to make such corrections and submit the same for certification as soon as possible. In the event that such certification is not obtained in time for the next election, Contractor shall follow the contingency plan set forth in Section XIII of Appendix G (Support Maintenance Services), including paying all costs associated with a manual count if such a count is necessary.

(c) Each time Contractor makes material changes to its software, the City reserves the right to require an additional review of Contractor's Source Code under the terms required under Section 5.A.9.(a) and (b).

(d) Contractor will provide all non-proprietary relevant system specifications and product information for display on the Department's website.

B. Hardware

(1) Hardware Title/Authority. Contractor represents and warrants that it has title to and/or the authority to convey to City good and marketable title to the Hardware. Subject to the terms and conditions of this Agreement, and in consideration for the payments to be made, Contractor shall convey to City good and marketable title to the Hardware, free and clear of all liens, claims and encumbrances other than as stated in this Agreement. Contractor shall provide to City an electronic copy of operating instructions, user manuals and training materials for the Hardware at the time stated in Appendix B (Implementation Plan), which City may reproduce, all of which constitute confidential "Information" pursuant to Section 22 hereof.

(2) Hardware Warranty

(a). Subject to the limitations listed in Section 5B.(2)(b) herein, and upon full payment each year of the term of this Agreement of the Maintenance Fee (as described in Appendix C), Contractor shall repair and provide maintenance services for the Hardware during the term of this Agreement, as described in Appendix G, so that the Hardware is

change or enhance the functionality of the Firmware, or contain programs not included at the time of the execution of this Agreement, which Contractor makes generally available to its customers ("Firmware Upgrades"). Firmware Upgrades shall be governed by this Agreement and the license terms set forth on Appendix E whether or not installed by the City. Firmware Upgrades will be provided to City at no additional cost provided City has paid Contractor, in full each year during the term of this Agreement, the Maintenance Fee as stated in Appendix C attached hereto.

(7) **Additional Software Services.** In the event the City requests, during the term of this Agreement, software development services which Contractor is not obligated to provide under the terms of this Agreement, but which were requested by the City in the RFP pursuant to which this Agreement is entered into, Contractor will provide those services at Contractor's accounting cost plus a profit of fifteen percent (15%) of Contractor's accounting costs. Contractor and City shall enter into an amendment to this Agreement in accordance with Section 52 stating the services to be provided by, the compensation payable to Contractor and that such compensation is conditioned upon meeting the acceptance testing and/or performance criteria provided in the amendment. In no event shall Contractor be obligated to undertake or perform any services which Contractor determines, in Contractor's sole discretion, not to be commercially or technically feasible. All property developed during performance of such services shall constitute a Development Intellectual Property Right (as defined in Section 57) owned solely by Contractor and licensed to the City under the terms of this Agreement. If during the term of this Agreement (including the options to extend), Contractor enters into an agreement with another entity for sale or licensing without substantial modification of the product developed in performing such services for the City, and Contractor receives payment under that agreement, Contractor shall pay to the City a one-time payment equal to forty percent (40%) of the amounts charged to the City for such services.

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(b) In the event that the California Secretary of State certifies any voting system for use in California that is licensed under a disclosed or open source code license, Contractor shall disclose its source code or submit an application for federal certification of a disclosed or open source code voting system within one (1) year.

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(c) Each time Contractor makes material changes to its software, the City reserves the right to require an additional review of Contractor's Source Code under the terms required under Section 5.A.9.(a) and (b).

(d) Contractor will provide all non-proprietary relevant system specifications and product information for display on the Department's website.

B. Hardware

(1) Hardware Title/Authority. Contractor represents and warrants that it has title to and/or the authority to convey to City good and marketable title to the Hardware. Subject to the terms and conditions of this Agreement, and in consideration for the payments to be made, Contractor shall convey to City good and marketable title to the Hardware, free and clear of all liens, claims and encumbrances other than as stated in this Agreement. Contractor shall provide to City an electronic copy of operating instructions, user manuals and training materials for the Hardware at the time stated in Appendix B (Implementation Plan), which City may reproduce, all of which constitute confidential "Information" pursuant to Section 22 hereof.

(2) Hardware Warranty

(a). Subject to the limitations listed in Section 5B.(2)(b) herein, and upon full payment each year of the term of this Agreement of the Maintenance Fee (as described in Appendix C), Contractor shall repair and provide maintenance services for the Hardware during the term of this Agreement, as described in Appendix G, so that the Hardware is

maintained in good order so as to perform in accordance with the specifications set forth in the Documentation for the Hardware and Appendix A (Acceptance Test Plan and Acceptance Criteria) , free of any Error, Defect or Malfunction.

(b) Limitations

1. Notwithstanding any other terms or provisions of this Agreement, Contractor is not obligated to repair or replace, and Contractor's warranty obligations under this Section 5B(2) shall not be applicable to, any of the following:

a. paper, security seals, batteries (other than internal batteries on DRE voting units), or other consumable parts or supplies,

b. products which have been repaired or altered by persons other than Contractor and other than those expressly approved in writing by Contractor,

c. products from which the serial numbers have been removed, defaced or changed by City or persons under the City's control,

d. products damaged while in use by or in the control of the City as a result of accident, disaster, theft, vandalism, neglect, abuse, use of any product for a purpose other than the purpose for which it is designed or use not in accordance with Documentation furnished by Contractor,

e. products which have been subjected to physical, mechanical or electrical stress or alteration or any conversion by persons other than those expressly approved in writing by Contractor,

f. products used by any person other than City's employees or persons under City's direct supervision including without limitation the voting public.

(3) City's Remedy. Provided Contractor timely performs Contractor's warranty obligations under this Agreement, City's exclusive remedy and Contractor's entire liability for breach of the limited warranty of Section 5B(2), will be replacement of defective components during the term of this Agreement in accordance with this Section 5B(2). This subsection 5B(2) is not intended to impair or limit Contractor's indemnification obligation under Sections 21 or 24 of this Agreement.

(4) Warranty Disclaimer

Contractor disclaims all other warranties, either express or implied, not expressly and specifically set forth herein including, without limitation, the implied warranties of fitness for a particular purpose and merchantability.

(5) Availability of Replacement Parts

Contractor shall maintain spare parts for each item of Hardware throughout the term of this Agreement pursuant to the terms of Appendix G (Support Maintenance Services) attached hereto.

(6) System Warranty

Contractor warrants that, during the term of this Agreement the System will meet or exceed the functional requirements set forth in Appendix A (Acceptance Test Plan and Acceptance Criteria) and Appendix D (Performance Specifications), the RCV Design Specifications, and the Documentation.

C. System Certification

(1) The City acknowledges and agrees that (i) for the Hardware and System Software to be used in an election, components of the Hardware and System Software will require certification by the Secretary of State of California; (ii) that certification by the Election Assistance Commission and National Association of State Election Directors, as well as possibly other governmental and quasi-governmental agencies, may be required to achieve certification by the California Secretary of State; and (iii) the time required by any certifying agency to process the application for certification is not within the control of Contractor. The City agrees that Contractor shall not be in default of this Agreement, and shall have no liability under this Agreement, for any failure of Contractor to achieve any required certification within any date or time period set forth in this Agreement (including, without limitation, Appendix B) or for any delay in any subsequent deadline resulting from the certification delay where such delay is not due to the failure of Contractor to pursue a timely application for certification with reasonable care and diligence. Where the required certification is delayed for reasons other than Contractor's failure to timely pursue such application for certification with reasonable care and diligence, the dates set forth in this Agreement (including, without limitation, the dates and Critical Milestones set forth in Appendix B) shall be extended by the same period of time as is attributable to the delay in achieving certification. Without limitation of the foregoing, failure to timely achieve certification where Contractor has pursued the application for certification with reasonable care and diligence shall not constitute an Event of Default under Section 9A of this Agreement, nor shall Contractor be subject to the Liquidated Damage provisions of Section 29 of the Agreement by reason of such delay in achieving certification.

(2) Contractor attests that it submitted a complete application for Federal certification, including use of the System for RCV elections, to a certified Independent Testing Authority (ITA) on August 22, 2007. Contractor shall provide City with a copy of this application by December 1, 2007.

(3) If Contractor fails to obtain all necessary Federal and State certifications and approvals of the system for use in RCV elections in time for the November 2008 election, Contractor shall follow the contingency plan it develops as required by Section XIII of Appendix G and pay for all costs associated with this contingency plan as required by the same section.

6. Acceptance Procedure

A. RCV Design Specifications

Contractor shall deliver the RCV Design Specifications to City in accordance with Appendix B (Implementation Plan). If the City believes that the RCV Design Specifications do not fulfill the Performance Specifications, the City shall provide Contractor with a detailed and specific written summary clearly stating each failure of the RCV Design Specifications to capture the Performance Specifications. Except to the extent the City clearly and specifically objects to each failure of the RCV Design Specifications to comply with the Performance Specifications in writing within fourteen (14) calendar days of the date of its receipt of the Design Specification from Contractor, the City will be deemed to have accepted the same. After receipt from the City of a timely written notice specifically stating each failure of the Design Specification to comply with the Performance Specifications, Contractor shall within twenty (20) business days from receipt of written notice from the City correct the

maintained in good order so as to perform in accordance with the specifications set forth in the Documentation for the Hardware and Appendix A (Acceptance Test Plan and Acceptance Criteria) , free of any Error, Defect or Malfunction.

(b) Limitations

1. Notwithstanding any other terms or provisions of this Agreement, Contractor is not obligated to repair or replace, and Contractor's warranty obligations under this Section 5B(2) shall not be applicable to, any of the following:

a. paper, security seals, batteries (other than internal batteries on DRE voting units), or other consumable parts or supplies,

b. products which have been repaired or altered by persons other than Contractor and other than those expressly approved in writing by Contractor,

c. products from which the serial numbers have been removed, defaced or changed by City or persons under the City's control,

d. products damaged while in use by or in the control of the City as a result of accident, disaster, theft, vandalism, neglect, abuse, use of any product for a purpose other than the purpose for which it is designed or use not in accordance with Documentation furnished by Contractor,

e. products which have been subjected to physical, mechanical or electrical stress or alteration or any conversion by persons other than those expressly approved in writing by Contractor,

f. products used by any person other than City's employees or persons under City's direct supervision including without limitation the voting public.

(3) City's Remedy. Provided Contractor timely performs Contractor's warranty obligations under this Agreement, City's exclusive remedy and Contractor's entire liability for breach of the limited warranty of Section 5B(2), will be replacement of defective components during the term of this Agreement in accordance with this Section 5B(2). This subsection 5B(2) is not intended to impair or limit Contractor's indemnification obligation under Sections 21 or 24 of this Agreement.

(4) Warranty Disclaimer

Contractor disclaims all other warranties, either express or implied, not expressly and specifically set forth herein including, without limitation, the implied warranties of fitness for a particular purpose and merchantability.

(5) Availability of Replacement Parts

Contractor shall maintain spare parts for each item of Hardware throughout the term of this Agreement pursuant to the terms of Appendix G (Support Maintenance Services) attached hereto.

(6) System Warranty

Contractor warrants that, during the term of this Agreement the System will meet or exceed the functional requirements set forth in Appendix A (Acceptance Test Plan and Acceptance Criteria) and Appendix D (Performance Specifications), the RCV Design Specifications, and the Documentation.

C. System Certification

(1) The City acknowledges and agrees that (i) for the Hardware and System Software to be used in an election, components of the Hardware and System Software will require certification by the Secretary of State of California; (ii) that certification by the Election Assistance Commission and National Association of State Election Directors, as well as possibly other governmental and quasi-governmental agencies, may be required to achieve certification by the California Secretary of State; and (iii) the time required by any certifying agency to process the application for certification is not within the control of Contractor. The City agrees that Contractor shall not be in default of this Agreement, and shall have no liability under this Agreement, for any failure of Contractor to achieve any required certification within any date or time period set forth in this Agreement (including, without limitation, Appendix B) or for any delay in any subsequent deadline resulting from the certification delay where such delay is not due to the failure of Contractor to pursue a timely application for certification with reasonable care and diligence. Where the required certification is delayed for reasons other than Contractor's failure to timely pursue such application for certification with reasonable care and diligence, the dates set forth in this Agreement (including, without limitation, the dates and Critical Milestones set forth in Appendix B) shall be extended by the same period of time as is attributable to the delay in achieving certification. Without limitation of the foregoing, failure to timely achieve certification where Contractor has pursued the application for certification with reasonable care and diligence shall not constitute an Event of Default under Section 9A of this Agreement, nor shall Contractor be subject to the Liquidated Damage provisions of Section 29 of the Agreement by reason of such delay in achieving certification.

(2) Contractor attests that it submitted a complete application for Federal certification, including use of the System for RCV elections, to a certified Independent Testing Authority (ITA) on August 22, 2007. Contractor shall provide City with a copy of this application by December 1, 2007.

(3) If Contractor fails to obtain all necessary Federal and State certifications and approvals of the system for use in RCV elections in time for the November 2008 election, Contractor shall follow the contingency plan it develops as required by Section XIII of Appendix G and pay for all costs associated with this contingency plan as required by the same section.

6. Acceptance Procedure

A. RCV Design Specifications

Contractor shall deliver the RCV Design Specifications to City in accordance with Appendix B (Implementation Plan). If the City believes that the RCV Design Specifications do not fulfill the Performance Specifications, the City shall provide Contractor with a detailed and specific written summary clearly stating each failure of the RCV Design Specifications to capture the Performance Specifications. Except to the extent the City clearly and specifically objects to each failure of the RCV Design Specifications to comply with the Performance Specifications in writing within fourteen (14) calendar days of the date of its receipt of the Design Specification from Contractor, the City will be deemed to have accepted the same. After receipt from the City of a timely written notice specifically stating each failure of the Design Specification to comply with the Performance Specifications, Contractor shall within twenty (20) business days from receipt of written notice from the City correct the

failures stated by the City and submit revised RCV Design Specifications to the City. If the Contractor does not correct the failures(s) stated in the City's timely written notice of the failure of the RCV Design Specifications to comply with the Performance Specifications, within such twenty (20) business day period, such failure shall constitute an Event of Default.

B. Hardware Acceptance.

Hardware shall achieve acceptance by the City in accordance with the following:

Within ten (10) days of Contractor's written notice to City that it has performed acceptance testing of the Hardware and that the Hardware satisfies the Acceptance Tests, City shall either (i) notify Contractor in writing of its Acceptance of the Hardware or (ii) notify Contractor in writing by delivery of a Defect Notice of its rejection of the Hardware stating with specificity the failure of the Hardware in question to comply with the Acceptance Tests. If City fails to deliver to Contractor a Defect Notice within such ten (10) day period, the Hardware shall be deemed accepted by the City.

C. Software Acceptance.

The System Software shall achieve acceptance by the City in accordance with the following before delivery to the City:

Within ten (10) days of Contractor's written notice to City that it has performed acceptance testing of System Software and that the System Software satisfies the Acceptance Tests, City shall either (i) notify Contractor of its Acceptance of the System Software or (ii) notify Contractor in writing by delivery of a Defect Notice of its rejection of the System Software stating with specificity the failure of the System Software in question to comply with the Acceptance Tests. If City fails to deliver to Contractor a Defect Notice within such ten (10) day period, the System Software shall be deemed accepted by the City.

D. Final Acceptance of System. Upon (a) System passing the Acceptance Tests, (b) Contractor's delivery of the Documentation for the System to City as provided in Section 7 below, and (c) upon certification by the Department to the San Francisco Board of Supervisors that the official statement of votes cast in the June, 2008 elections are complete and accurate, City shall, within three (3) days thereafter, notify Contractor of its Acceptance of the System or the System's failure to achieve Acceptance. If City fails to notify Contractor in writing clearly and specifically stating the failure of the System to achieve Final Acceptance within three (3) days after the last to occur of such events, Final Acceptance will be deemed to have occurred. If following Final Acceptance (i) a legal action is instituted challenging the results of the June 3, 2008 election, and (ii) such action results in a final judgment of a court of competent jurisdiction holding that the System did not properly record and tabulate votes in such election, Contractor shall (a) be liable for Liquidated Damages in accordance with Section 29(C)(3) of this Agreement, and (b) refund to City promptly upon demand amounts paid by City to Contractor upon Final Acceptance for the Hardware and System Software (the "Final Acceptance Payment"). In such event, Contractor shall be afforded a period of thirty (30) days after notice pursuant to Section 9(A)(ii) to remedy the failure of the System to properly record and tabulate votes. Upon Contractor remedying failure of the System to properly tabulate votes within such thirty (30) day period or later provided the Agreement is not sooner terminated by the City, City shall return the Final Acceptance Payment to Contractor.

7. Documentation Delivery

Contractor shall deliver one (1) electronic copy (capable of hard copy reproduction by City) of the completed Documentation for the System, including for all System Software and Hardware, in accordance with the Appendices B (Implementation Plan) and G (Support and Maintenance Services). The City may withhold its issuance of the notice of Final Acceptance under Section 6(D) until City receives the completed Documentation. The City may make such number of copies of the Document as is required for City to conduct an election. The City shall furnish Documentation only to authorized persons acting under the direction of the City in the conduct of an election.

8. Term and Termination/Termination for Convenience

A. Implementation Plan. The Implementation Plan is set forth in Appendix B (Implementation Plan).

i. Delays. To prevent slippage in the completion of the project, Contractor agrees that if such slippage occurs due to the fault of Contractor and not due to an Excusable Delay (as defined herein Section 56), it will assign additional qualified personnel to the project.

ii. Time of the Essence. The parties agree that time is of the essence, and that the System will be developed and implemented in accordance with the Implementation Plan. Notwithstanding the foregoing, Contractor shall not be responsible for delays not caused by Contractor or due to any Excusable Delay.

iii. Critical Milestones. Contractor acknowledges and understands that the Implementation Plan contains Critical Milestones which must be attained by the dates listed in Appendix B-1 (Critical Milestones) in order to make the System available for use in the election of February 2008 and subsequent elections covered under this Agreement. In the event Contractor fails to achieve a Critical Milestone by the date set forth on Appendix B-1, and does not cure such failure within the cure period stated in Section 9(A)(ii), the City may impose Liquidated Damages in accordance with Section 29 of this Agreement.

B. Progress Reports. Contractor shall provide City weekly written status reports advising the City of its progress, which reports will be delivered not later than three (3) days following the week to which it relates. For purposes of this paragraph, a week shall mean Sunday through Saturday.

C. Termination for Cause. In the event Contractor commits an Event of Default (as defined in Section 9(A)), this Agreement may be terminated. Termination will be effective after ten (10) days written notice to Contractor. No new work will be undertaken after the date of receipt of any notice of termination. In the event of such termination, Contractor shall be paid amounts required to be paid under this Agreement up to the date of termination. However, City may offset against such amounts due to Contractor any Liquidated Damages and other direct damages which City will incur by reason of Contractor's default and which City is permitted to recover under this Agreement. Except as otherwise stated in Section 29 of this Agreement, such offset will not constitute a waiver of any other remedies available to City under this Agreement.

D. Termination for Convenience. City may terminate this Agreement for City's convenience and without cause at any time by giving Contractor thirty (30) days prior written notice of such termination. In the event of such termination, City shall pay Contractor (i) those amounts owed to Contractor under this Agreement up to the date of termination, and (ii) those expenses reasonably

failures stated by the City and submit revised RCV Design Specifications to the City. If the Contractor does not correct the failures(s) stated in the City's timely written notice of the failure of the RCV Design Specifications to comply with the Performance Specifications, within such twenty (20) business day period, such failure shall constitute an Event of Default.

B. Hardware Acceptance.

Hardware shall achieve acceptance by the City in accordance with the following:

Within ten (10) days of Contractor's written notice to City that it has performed acceptance testing of the Hardware and that the Hardware satisfies the Acceptance Tests, City shall either (i) notify Contractor in writing of its Acceptance of the Hardware or (ii) notify Contractor in writing by delivery of a Defect Notice of its rejection of the Hardware stating with specificity the failure of the Hardware in question to comply with the Acceptance Tests. If City fails to deliver to Contractor a Defect Notice within such ten (10) day period, the Hardware shall be deemed accepted by the City.

C. Software Acceptance.

The System Software shall achieve acceptance by the City in accordance with the following before delivery to the City:

Within ten (10) days of Contractor's written notice to City that it has performed acceptance testing of System Software and that the System Software satisfies the Acceptance Tests, City shall either (i) notify Contractor of its Acceptance of the System Software or (ii) notify Contractor in writing by delivery of a Defect Notice of its rejection of the System Software stating with specificity the failure of the System Software in question to comply with the Acceptance Tests. If City fails to deliver to Contractor a Defect Notice within such ten (10) day period, the System Software shall be deemed accepted by the City.

D. Final Acceptance of System. Upon (a) System passing the Acceptance Tests, (b) Contractor's delivery of the Documentation for the System to City as provided in Section 7 below, and (c) upon certification by the Department to the San Francisco Board of Supervisors that the official statement of votes cast in the June, 2008 elections are complete and accurate, City shall, within three (3) days thereafter, notify Contractor of its Acceptance of the System or the System's failure to achieve Acceptance. If City fails to notify Contractor in writing clearly and specifically stating the failure of the System to achieve Final Acceptance within three (3) days after the last to occur of such events, Final Acceptance will be deemed to have occurred. If following Final Acceptance (i) a legal action is instituted challenging the results of the June 3, 2008 election, and (ii) such action results in a final judgment of a court of competent jurisdiction holding that the System did not properly record and tabulate votes in such election, Contractor shall (a) be liable for Liquidated Damages in accordance with Section 29(C)(3) of this Agreement, and (b) refund to City promptly upon demand amounts paid by City to Contractor upon Final Acceptance for the Hardware and System Software (the "Final Acceptance Payment"). In such event, Contractor shall be afforded a period of thirty (30) days after notice pursuant to Section 9(A)(ii) to remedy the failure of the System to properly record and tabulate votes. Upon Contractor remedying failure of the System to properly tabulate votes within such thirty (30) day period or later provided the Agreement is not sooner terminated by the City, City shall return the Final Acceptance Payment to Contractor.

7. Documentation Delivery

Contractor shall deliver one (1) electronic copy (capable of hard copy reproduction by City) of the completed Documentation for the System, including for all System Software and Hardware, in accordance with the Appendices B (Implementation Plan) and G (Support and Maintenance Services). The City may withhold its issuance of the notice of Final Acceptance under Section 6(D) until City receives the completed Documentation. The City may make such number of copies of the Document as is required for City to conduct an election. The City shall furnish Documentation only to authorized persons acting under the direction of the City in the conduct of an election.

8. Term and Termination/Termination for Convenience

A. Implementation Plan. The Implementation Plan is set forth in Appendix B (Implementation Plan).

i. Delays. To prevent slippage in the completion of the project, Contractor agrees that if such slippage occurs due to the fault of Contractor and not due to an Excusable Delay (as defined herein Section 56), it will assign additional qualified personnel to the project.

ii. Time of the Essence. The parties agree that time is of the essence, and that the System will be developed and implemented in accordance with the Implementation Plan. Notwithstanding the foregoing, Contractor shall not be responsible for delays not caused by Contractor or due to any Excusable Delay.

iii. Critical Milestones. Contractor acknowledges and understands that the Implementation Plan contains Critical Milestones which must be attained by the dates listed in Appendix B-1 (Critical Milestones) in order to make the System available for use in the election of February 2008 and subsequent elections covered under this Agreement. In the event Contractor fails to achieve a Critical Milestone by the date set forth on Appendix B-1, and does not cure such failure within the cure period stated in Section 9(A)(ii), the City may impose Liquidated Damages in accordance with Section 29 of this Agreement.

B. Progress Reports. Contractor shall provide City weekly written status reports advising the City of its progress, which reports will be delivered not later than three (3) days following the week to which it relates. For purposes of this paragraph, a week shall mean Sunday through Saturday.

C. Termination for Cause. In the event Contractor commits an Event of Default (as defined in Section 9(A)), this Agreement may be terminated. Termination will be effective after ten (10) days written notice to Contractor. No new work will be undertaken after the date of receipt of any notice of termination. In the event of such termination, Contractor shall be paid amounts required to be paid under this Agreement up to the date of termination. However, City may offset against such amounts due to Contractor any Liquidated Damages and other direct damages which City will incur by reason of Contractor's default and which City is permitted to recover under this Agreement. Except as otherwise stated in Section 29 of this Agreement, such offset will not constitute a waiver of any other remedies available to City under this Agreement.

D. Termination for Convenience. City may terminate this Agreement for City's convenience and without cause at any time by giving Contractor thirty (30) days prior written notice of such termination. In the event of such termination, City shall pay Contractor (i) those amounts owed to Contractor under this Agreement up to the date of termination, and (ii) those expenses reasonably

incurred by Contractor after receipt of notice of termination. Contractor shall cease Work on receipt of notice of termination. Post-termination employee salaries, post-termination administrative expenses, or any other cost not reasonably incurred after notice of termination will not be paid by the City. This section shall not prevent Contractor from recovering costs necessarily incurred in discontinuing further work under the contract after receipt of the termination notice.

E. **Obligations upon Termination.** Upon termination of this Agreement, Contractor shall submit an invoice to City for amounts payable by the City under Section 8D, for which Contractor has not previously been compensated. Upon approval and payment of this invoice by City, City shall have no further payment obligations to Contractor provided, however, that any cause of action Contractor may have against City under this Agreement (for breach of contract or otherwise) shall not be impaired by such invoice or payment.

F. **Survival.** This section and the following sections of this Agreement shall survive termination or expiration of this Agreement: 4-3, 10.D, 13, 16, 17, 19 through 22, 24, 25, 26, 47 through 51, 54, 56, 57, 58 and 59.

G. Default by City. Contractor may terminate this Agreement by written notice to the City if:

i. City fails to pay any sum owing to Contractor within thirty (30) days of the date when due.

ii. City fails to comply with any term or provision of this Agreement (other than failure to make payment), and does not cure such failure within thirty (30) days of written notice from Contractor or such longer time as agreed upon by City and Contractor as needed by City to cure provided City begins such cure within the initial thirty (30) day period.

H. **Contractor's Remedies.** Contractor's termination rights under this Agreement (including, without limitation, Contractor's termination rights under this Section 8) are in addition to and not in lieu of all other remedies available to Contractor under this Agreement, at law, equity or otherwise, all of which remedies are reserved and each of which may be exercised simultaneously or in the alternative. Without limitation to the foregoing, Contractor may elect in lieu of terminating this Agreement in accordance with this Section 8, to suspend Contractor's performance under this Agreement (without waiver of Contractor's termination right) upon a breach of this Agreement by City, in which case such suspension may remain in effect until the first to occur of (i) cure by the City of such breach or (ii) termination of this Agreement by Contractor after expiration of the cure period (if any) afforded City under this Agreement. In the event of a suspension by Contractor, all scheduled dates and milestones of this Agreement shall be extended by a period of time equal to the duration of the suspension.

9. **Default; Remedies.**

A. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

i. Contractor is in breach of any of the following Sections of this Agreement: 16 (False Claims), 22 (Confidential Information), 23 (Insurance), 24-1 (Performance Bonds), 33 (Assignment), 53 (Compliance with Laws), 53-1 (California Secretary of State Compliance), or 54 (Private Information), and Contractor fails to (a) commence to diligently attempt to cure breach upon Contractor receiving notice of such breach, and (b) cure such breach within ten (10) days of Contractor receiving notice of such breach or such longer time as agreed upon by City and Contractor as needed by Contractor to cure provided Contractor begins such cure within the initial ten (10) day period.

ii. Contractor fails or refuses to perform or observe any term, covenant or condition contained in this Agreement (other than as set forth in Section 9(A)(i) above), and such default continues for a period of thirty (30) days after receipt of written notice thereof from City to Contractor or such longer time as agreed upon by City and Contractor as needed by Contractor to cure provided Contractor begins such cure within the initial ten (10) day period.

iii. Contractor does not correct the failures of the RCV Design Specifications to comply with the Performance Specifications within twenty (20) business days of receipt of written notice from the City as required under Section 6.A or such longer time as agreed upon by City and Contractor as needed by Contractor to cure provided Contractor begins such cure within the initial twenty (20) day period.

iv. Contractor does not correct the material security or malicious code problems identified by the third party reviewer and does not comply with the contingency plan as required under Section 5.A.9.

v. Contractor (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (E) takes action for the purpose of any of the foregoing.

vi. A court or government authority enters an order (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (B) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (C) ordering the dissolution, winding-up or liquidation of Contractor.

vii. Contractor fails to meet any Critical Milestone stated on Appendix B-1; provided however, in the case of Critical Milestones #3 and #4 only, if Contractor does not cure such failure within thirty (30) days of Contractor receiving written notice from the City or such longer time as agreed upon by City and Contractor as needed by Contractor to cure provided Contractor begins such cure within the initial thirty (30) day period.

B. On and after any Event of Default, which is not cured within the time periods stated in Section 9(A) above, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses reasonably and necessarily incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

C. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

incurred by Contractor after receipt of notice of termination. Contractor shall cease Work on receipt of notice of termination. Post-termination employee salaries, post-termination administrative expenses, or any other cost not reasonably incurred after notice of termination will not be paid by the City. This section shall not prevent Contractor from recovering costs necessarily incurred in discontinuing further work under the contract after receipt of the termination notice.

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ii. Contractor fails or refuses to perform or observe any term, covenant or condition contained in this Agreement (other than as set forth in Section 9(A)(i) above), and such default continues for a period of thirty (30) days after receipt of written notice thereof from City to Contractor or such longer time as agreed upon by City and Contractor as needed by Contractor to cure provided Contractor begins such cure within the initial ten (10) day period.

iii. Contractor does not correct the failures of the RCV Design Specifications to comply with the Performance Specifications within twenty (20) business days of receipt of written notice from the City as required under Section 6.A or such longer time as agreed upon by City and Contractor as needed by Contractor to cure provided Contractor begins such cure within the initial twenty (20) day period.

iv. Contractor does not correct the material security or malicious code problems identified by the third party reviewer and does not comply with the contingency plan as required under Section 5.A.9.

v. Contractor (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (E) takes action for the purpose of any of the foregoing.

vi. A court or government authority enters an order (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (B) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (C) ordering the dissolution, winding-up or liquidation of Contractor.

vii. Contractor fails to meet any Critical Milestone stated on Appendix B-1; provided however, in the case of Critical Milestones #3 and #4 only, if Contractor does not cure such failure within thirty (30) days of Contractor receiving written notice from the City or such longer time as agreed upon by City and Contractor as needed by Contractor to cure provided Contractor begins such cure within the initial thirty (30) day period.

B. On and after any Event of Default, which is not cured within the time periods stated in Section 9(A) above, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses reasonably and necessarily incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

C. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

10. Payments

A. Fixed Price. In consideration for the services rendered under this Agreement and for the rights in the Hardware and System Software granted hereunder, the City shall pay to Contractor the amount set forth in Appendix C (Deliverables) in accordance with the Payment Schedule attached hereto and fully incorporated herein as Appendix F (Payment Schedule). In no event shall the amount of this Agreement exceed Twelve Million Six Hundred and Fifty Thousand Two Hundred and Thirty Three and 25/100 Dollars ($12,650,233.25). Compensation shall be due and payable within thirty days of the date of Contractor's invoice. All payments from City to Contractor shall be made via wire transfer in accordance with written wire instructions provided by the Contractor.

B. Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the responsibility of Contractor to conform to the requirements of this Agreement.

C. System Trade-In.

(1) On a five (5) year straight-line depreciation schedule, from the date of the Effective Date, Contractor will allow City the option of trading in components of the System , in exchange for the latest version of certified Hardware and Software, developed or released by Contractor, at the current market price. The City may, at its sole discretion, exercise this option prior to the expiration of the five (5) year period.

Year	Depreciated %	Credit %
2009	20%	80%
2010	40%	60%
2011	60%	40%
2012	80%	20%
2013	100%	0%

(2) Effective on the date that the City notifies Contractor that it will exercise this option, Contractor shall provide City with priority of delivery over all other sales made by the Contractor after the City provides such notice.

D. Taxes. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the goods or services delivered pursuant hereto, shall be the obligation of Contractor.

Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

(1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

(2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of

any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

(3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

(4) Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

11. City Responsibilities

A. City Representative. City will make available to Contractor a qualified project manager who will be authorized to make binding decisions for the City regarding this Agreement and will promptly:

(i) review all specifications, technical materials and other documents submitted by Contractor, request necessary corrections, and approve such documents;

(ii) provide requested City information and data and assume responsibility on the adequacy of the same;

(iii) advise Contractor of City's requirements; and

(iv) upon request provide access to City's staff, facility and hardware.

12. Contractor Staffing and Support Services

A. Project Manager. Contractor shall designate a Project Manager in accordance with the requirements of Appendix G (Support and Maintenance Services).

Contractor shall use its reasonable efforts to maintain the same Project Manager until Acceptance of the System. However, if Contractor needs to replace its Project Manager, it shall endeavor to provide City with written notice thereof at least 45 days prior to the date the Project Manager is to be replaced. Notwithstanding the foregoing, Contractor may appoint temporary Project Managers in connection with short term unavailability, sick leave, or reasonable vacations, provided that Contractor gives City reasonable notification thereof in advance.

City may require Contractor to replace its Project Manager, by giving Contractor notification thereof and City's objective reasons therefore. Upon receipt of such notice, Contractor shall make reasonable efforts to replace the Project Manager as soon as reasonably possible, provided that Contractor shall not be required to remove personnel from other ongoing projects. Contractor shall not be obligated to remove any Project Manager if such removal would in the reasonable opinion of Contractor violate applicable law or subject Contractor to liability.

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Year	Depreciated %	Credit %
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(ii) provide requested City information and data and assume responsibility on the adequacy of the same;

(iii) advise Contractor of City's requirements; and

(iv) upon request provide access to City's staff, facility and hardware.

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City may require Contractor to replace its Project Manager, by giving Contractor notification thereof and City's objective reasons therefore. Upon receipt of such notice, Contractor shall make reasonable efforts to replace the Project Manager as soon as reasonably possible, provided that Contractor shall not be required to remove personnel from other ongoing projects. Contractor shall not be obligated to remove any Project Manager if such removal would in the reasonable opinion of Contractor violate applicable law or subject Contractor to liability.

B. Staffing. Work under this Agreement shall be performed only by competent personnel appropriately trained in technical skills to perform their duties under the supervision of, and (subject to subcontracting by Contractor pursuant to Section 32) in the employment of, Contractor. Contractor shall comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request must be supervised by Contractor. The personnel of each party, when on the premises of the other, shall comply with the security and other personnel regulations of the party on whose premises such individual is located.

C. System Maintenance. Contractor shall maintain the System in accordance with Appendix G (Support and Maintenance Services). On an election day through the term of the contract, Contractor shall provide thirty-three (33) field technicians to provide support. During each Election Period (defined as the period commencing on the date logic and accuracy testing begins and ending upon certification of the election results by the Department of Elections to the San Francisco Board of Supervisors that the official statement of votes cast is complete and accurate (the "Election Period")), through the term of the contract, Contractor shall during Contractor's normal business hours (excluding weekends and holidays) respond to telephone requests for assistance within four (4) business hours and use best efforts to remedy any Error, Defect or Malfunction within twenty-four (24) business hours. On an election day through the term of the contract, Contractor shall use best efforts to respond to a request for assistance by the City and use best efforts to remedy any Error, Defect or Malfunction within one (1) hour after the request for assistance.

13. City's Data.

Any data or other materials furnished by the City for use by Contractor under this Agreement shall remain the sole property of the City and will be held in confidence in accordance with Section 22 of this Agreement. Such materials shall be returned to City upon Acceptance of the Programs.

14. Guaranteed Maximum Costs

A. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. In the event that the Controller fails to certify sufficient funds to meet the City's obligation to make the next payment owed to Contractor under Appendix F (Payment Schedule) on or before a date which is fifteen (15) days before such payment is due, Contractor may suspend Contractor's performance under this Agreement pursuant to Section 8(H).

B. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in this Agreement unless the agreement is amended in writing and approved as required by law to authorize additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in this contract and which were not approved by a written amendment to the agreement having been lawfully executed by the City.

C. The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for this Agreement which would exceed the maximum amount of funding provided for in this Agreement for Contractor's performance under this Agreement. Additional funding for this Agreement in excess of the maximum provided in this Agreement shall require lawful approval and certification by the Controller of the City and County of San Francisco. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in

this Agreement which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.

D. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

15. Invoice Format

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include the Contract Progress Payment Authorization number. All amounts paid by City to Contractor shall be subject to audit by City.

Payment shall be made by City to Contractor at the address specified upon each invoice.

16. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code section 21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to $10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) Knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) Conspires to defraud the City by getting a false claim allowed or paid by the City; (d) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; (e) Is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

17. Disallowance

In the event Contractor claims or receives payment from City for a service not required by this Agreement, reimbursement for which is later disallowed by City or State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

18. INTENTIONALLY OMITTED

19. Responsibility for Furnished Equipment

City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City. The acceptance or use of such equipment by Contractor or any of its employees means that Contractor accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless City from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be

B. Staffing. Work under this Agreement shall be performed only by competent personnel appropriately trained in technical skills to perform their duties under the supervision of, and (subject to subcontracting by Contractor pursuant to Section 32) in the employment of, Contractor. Contractor shall comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request must be supervised by Contractor. The personnel of each party, when on the premises of the other, shall comply with the security and other personnel regulations of the party on whose premises such individual is located.

C. System Maintenance. Contractor shall maintain the System in accordance with Appendix G (Support and Maintenance Services). On an election day through the term of the contract, Contractor shall provide thirty-three (33) field technicians to provide support. During each Election Period (defined as the period commencing on the date logic and accuracy testing begins and ending upon certification of the election results by the Department of Elections to the San Francisco Board of Supervisors that the official statement of votes cast is complete and accurate (the "Election Period")), through the term of the contract, Contractor shall during Contractor's normal business hours (excluding weekends and holidays) respond to telephone requests for assistance within four (4) business hours and use best efforts to remedy any Error, Defect or Malfunction within twenty-four (24) business hours. On an election day through the term of the contract, Contractor shall use best efforts to respond to a request for assistance by the City and use best efforts to remedy any Error, Defect or Malfunction within one (1) hour after the request for assistance.

13. City's Data.

Any data or other materials furnished by the City for use by Contractor under this Agreement shall remain the sole property of the City and will be held in confidence in accordance with Section 22 of this Agreement. Such materials shall be returned to City upon Acceptance of the Programs.

14. Guaranteed Maximum Costs

A. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. In the event that the Controller fails to certify sufficient funds to meet the City's obligation to make the next payment owed to Contractor under Appendix F (Payment Schedule) on or before a date which is fifteen (15) days before such payment is due, Contractor may suspend Contractor's performance under this Agreement pursuant to Section 8(H).

B. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in this Agreement unless the agreement is amended in writing and approved as required by law to authorize additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in this contract and which were not approved by a written amendment to the agreement having been lawfully executed by the City.

C. The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for this Agreement which would exceed the maximum amount of funding provided for in this Agreement for Contractor's performance under this Agreement. Additional funding for this Agreement in excess of the maximum provided in this Agreement shall require lawful approval and certification by the Controller of the City and County of San Francisco. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in

this Agreement which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.

D. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

15. Invoice Format

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include the Contract Progress Payment Authorization number. All amounts paid by City to Contractor shall be subject to audit by City.

Payment shall be made by City to Contractor at the address specified upon each invoice.

16. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code section 21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to $10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) Knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) Conspires to defraud the City by getting a false claim allowed or paid by the City; (d) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; (e) Is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

17. Disallowance

In the event Contractor claims or receives payment from City for a service not required by this Agreement, reimbursement for which is later disallowed by City or State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

18. INTENTIONALLY OMITTED

19. Responsibility for Furnished Equipment

City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City. The acceptance or use of such equipment by Contractor or any of its employees means that Contractor accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless City from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be

to Contractor, its employees, City employees or third parties, or to property belonging to any of the above.

20. Independent Contractor; Payment of Taxes and Other Expenses

A. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

B. **Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that an employee of Contractor is an employee of the City for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

21. Patent Infringement; Warranty and Indemnity; Warranty of Authority; No Conflict

A. Indemnification.

If notified promptly in writing of any judicial action brought against City based on an allegation that City's use of the System Software or Hardware infringes a patent, copyright, or intellectual

property right of a third party or constitutes misuse or misappropriation of a trade secret ("Infringement"), Contractor shall hold City harmless and defend such action at its expense. Contractor shall pay the costs and damages awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the System Software and Hardware constitutes Infringement, Contractor shall pay the reasonable costs incurred by City in resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement.

In the event that a final injunction shall be obtained against City's use of the System Software or Hardware by reason of Infringement, or in Contractor's opinion City's use of the System Software and Hardware is likely to become the subject of Infringement, Contractor may at its option and expense (a) procure for City the right to continue to use the System Software or Hardware as contemplated hereunder, (b) replace the System Software or Hardware with non-infringing, functionally equivalent substitute System Software or Hardware, or (c) suitably modify the System Software or Hardware to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the System Software or Hardware. If none of these options is reasonably available to Contractor, then this Agreement may be terminated by Contractor and Contractor shall (i) if termination occurs during the first three (3) years from the date of this Agreement, refund to City all amounts paid under this Agreement, and (ii) if termination occurs thereafter, refund to City amounts paid under this Agreement depreciated on a straight line basis over a ten (10) year period from the date of this Agreement.

B. Conditions

Contractor shall have no liability or obligation for any Infringement or claim of Infringement unless City: (i) notifies Contractor in writing of any Infringement Claim or alleged Infringement of which City becomes aware within a reasonable time thereafter (not to exceed thirty (30) days after City first had knowledge of same or such shorter period as may be required in order to avoid prejudice to Contractor); (ii) does not prevent or impede Contractor from the conduct of the defense of such claim, including negotiations for settlement or compromise; (iii) provides Contractor with non-privileged information and records of the City and makes a good faith effort to provide access to relevant City personnel; (iv) permits Contractor to alter the Hardware or System Software, at its own expense, to render it non-infringing; (v) authorizes Contractor to procure for City the authority to continue the use and possession of the System Software or Hardware at no additional cost or additional expense to City beyond sums owing under this Agreement.

C. Exclusions

Contractor shall have no liability for an Infringement or alleged Infringement caused by: (i) use of a superseded or modified release of the System Software or portion thereof, if such infringement would have been avoided by the use of a current unmodified release of the System Software; (ii) use of the System in a manner not authorized by Contractor or for a purpose other than City's use in accordance with this Agreement; (iii) use of System Software or Hardware which has been altered by City or any person other than Contractor; (iv) the combination, operation, or use of the Hardware or System Software with other equipment or software not furnished by Contractor, if such infringement would have been avoided by use of the Hardware or System Software alone.

to Contractor, its employees, City employees or third parties, or to property belonging to any of the above.

20. Independent Contractor; Payment of Taxes and Other Expenses

A. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

B. **Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that an employee of Contractor is an employee of the City for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

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property right of a third party or constitutes misuse or misappropriation of a trade secret ("Infringement"), Contractor shall hold City harmless and defend such action at its expense. Contractor shall pay the costs and damages awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the System Software and Hardware constitutes Infringement, Contractor shall pay the reasonable costs incurred by City in resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement.

In the event that a final injunction shall be obtained against City's use of the System Software or Hardware by reason of Infringement, or in Contractor's opinion City's use of the System Software and Hardware is likely to become the subject of Infringement, Contractor may at its option and expense (a) procure for City the right to continue to use the System Software or Hardware as contemplated hereunder, (b) replace the System Software or Hardware with non-infringing, functionally equivalent substitute System Software or Hardware, or (c) suitably modify the System Software or Hardware to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the System Software or Hardware. If none of these options is reasonably available to Contractor, then this Agreement may be terminated by Contractor and Contractor shall (i) if termination occurs during the first three (3) years from the date of this Agreement, refund to City all amounts paid under this Agreement, and (ii) if termination occurs thereafter, refund to City amounts paid under this Agreement depreciated on a straight line basis over a ten (10) year period from the date of this Agreement.

B. Conditions

Contractor shall have no liability or obligation for any Infringement or claim of Infringement unless City: (i) notifies Contractor in writing of any Infringement Claim or alleged Infringement of which City becomes aware within a reasonable time thereafter (not to exceed thirty (30) days after City first had knowledge of same or such shorter period as may be required in order to avoid prejudice to Contractor); (ii) does not prevent or impede Contractor from the conduct of the defense of such claim, including negotiations for settlement or compromise; (iii) provides Contractor with non-privileged information and records of the City and makes a good faith effort to provide access to relevant City personnel; (iv) permits Contractor to alter the Hardware or System Software, at its own expense, to render it non-infringing; (v) authorizes Contractor to procure for City the authority to continue the use and possession of the System Software or Hardware at no additional cost or additional expense to City beyond sums owing under this Agreement.

C. Exclusions

Contractor shall have no liability for an Infringement or alleged Infringement caused by: (i) use of a superseded or modified release of the System Software or portion thereof, if such infringement would have been avoided by the use of a current unmodified release of the System Software; (ii) use of the System in a manner not authorized by Contractor or for a purpose other than City's use in accordance with this Agreement; (iii) use of System Software or Hardware which has been altered by City or any person other than Contractor; (iv) the combination, operation, or use of the Hardware or System Software with other equipment or software not furnished by Contractor, if such infringement would have been avoided by use of the Hardware or System Software alone.

D. Warranty of Authority; No Conflict.

Each party hereby warrants to the other that it is authorized to enter into this Agreement and that its performance thereof will not conflict with any other agreement.

22. Confidential Information

A. Standard of Care. Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in the performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent Contractor would use to protect its own proprietary data.

B. Contractor Information. Contractor represents that information concerning Contractor's Firmware, Software (including, without limitation, System Software), pricing, products, finances, and business constitute trade secrets within the meaning of Section 1060 of the California Evidence Code (trade secrets privilege) and Section 3426 et seq. of the California Civil Code (Uniform Trade Secrets Act) which are by their nature competitively sensitive and proprietary (collectively "Trade Secrets"). Contractor shall identify Trade Secrets as such at the time of their submission to the City. City therefore agrees to use its best efforts not to disclose all or any part of the information, materials or property constituting the Trade Secrets provided that Contractor indemnifies and holds harmless City from any liability, costs and expenses actually incurred by City as a result of opposing disclosure of the Trade Secrets. In the event City receives a request for Trade Secrets under the City's Sunshine Ordinance, the Public Record Act, or other applicable public disclosure law, City shall inform Contractor of such request within ten (10) days of City's knowledge or such shorter period as necessary under the applicable statute to avoid prejudice to Contractor's ability to oppose disclosure. In the event City is nonetheless required by law to disclose any of the Trade Secrets, City shall give written notice five business days prior to disclosure and the Contractor hereby releases the City from any and all claims or liability, including any and all claims now known or unknown, arising out of the City's legally-required disclosure of any of the Trade Secrets to third parties or arising out of third party use of such Trade Secrets. In no event shall this Section be interpreted as applying to the contents of this Agreement.

C. Survival. These obligations of confidentiality shall survive the termination of the Agreement.

23. Insurance

A. Without in any way limiting Contractor's liability pursuant to the "Indemnification and General Liability," section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

i. Workers' Compensation, in statutory amounts, with Employers' Liability limits not less than $1,000,000 each accident.

ii. Comprehensive or Commercial General Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

iii. Comprehensive Automobile Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned and Non-owned and hired auto coverage, as applicable.

B. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

i. Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

ii. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

C. All policies shall provide thirty days' advance written notice to City of cancellation, non-renewal or reduction in coverage, mailed to the following address:

Director
Department of Elections
1 Dr. Carlton B. Goodlett Place, Room 48
San Francisco, California 94102

D. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

E. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

F. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

G. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

H. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

D. Warranty of Authority; No Conflict.

Each party hereby warrants to the other that it is authorized to enter into this Agreement and that its performance thereof will not conflict with any other agreement.

22. Confidential Information

A. Standard of Care. Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in the performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent Contractor would use to protect its own proprietary data.

B. Contractor Information. Contractor represents that information concerning Contractor's Firmware, Software (including, without limitation, System Software), pricing, products, finances, and business constitute trade secrets within the meaning of Section 1060 of the California Evidence Code (trade secrets privilege) and Section 3426 et seq. of the California Civil Code (Uniform Trade Secrets Act) which are by their nature competitively sensitive and proprietary (collectively "Trade Secrets"). Contractor shall identify Trade Secrets as such at the time of their submission to the City. City therefore agrees to use its best efforts not to disclose all or any part of the information, materials or property constituting the Trade Secrets provided that Contractor indemnifies and holds harmless City from any liability, costs and expenses actually incurred by City as a result of opposing disclosure of the Trade Secrets. In the event City receives a request for Trade Secrets under the City's Sunshine Ordinance, the Public Record Act, or other applicable public disclosure law, City shall inform Contractor of such request within ten (10) days of City's knowledge or such shorter period as necessary under the applicable statute to avoid prejudice to Contractor's ability to oppose disclosure. In the event City is nonetheless required by law to disclose any of the Trade Secrets, City shall give written notice five business days prior to disclosure and the Contractor hereby releases the City from any and all claims or liability, including any and all claims now known or unknown, arising out of the City's legally-required disclosure of any of the Trade Secrets to third parties or arising out of third party use of such Trade Secrets. In no event shall this Section be interpreted as applying to the contents of this Agreement.

C. Survival. These obligations of confidentiality shall survive the termination of the Agreement.

23. Insurance

A. Without in any way limiting Contractor's liability pursuant to the "Indemnification and General Liability," section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

i. Workers' Compensation, in statutory amounts, with Employers' Liability limits not less than $1,000,000 each accident.

ii. Comprehensive or Commercial General Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

iii. Comprehensive Automobile Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned and Non-owned and hired auto coverage, as applicable.

B. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

i. Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

ii. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

C. All policies shall provide thirty days' advance written notice to City of cancellation, non-renewal or reduction in coverage, mailed to the following address:

Director
Department of Elections
1 Dr. Carlton B. Goodlett Place, Room 48
San Francisco, California 94102

D. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

E. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

F. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

G. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

H. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

24. Indemnification and General Liability

Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising from Contractor's performance of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this Section 24 indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

24-1. Surety Bonds

(a) Contractor shall provide a performance bond by January 1 2008 (the "Performance Bond") in the amounts set forth below to guarantee the faithful performance of the obligations of Contractor under this Agreement. The Performance Bond shall be substantially in the form of the performance bond attached hereto as Appendix H (Bond).

The amount of the Performance Bond shall be as follows:

(i) During the period of January 1, 2008 to January 1, 2009, the sum of Three Million Dollars and 00/100 ($3,000,000.00). This Bond shall be surrendered to Contractor by City upon delivery to City of the Bond as set forth in the following Section (24-1) (ii);

(ii) During the period of January 1, 2009 to January 1, 2010, the sum of One Million and 00/100 ($1,000,000.00) Dollars, which Bond shall be surrendered to Contractor by City upon delivery to City of the Bond as set forth in the following Section (24-1) (iii);

(iii) During the period of January 1, 2010 to January 1, 2011, the sum of Five Hundred Thousand and 00/100 ($500,000.00) Dollars, which Bond shall be surrendered to Contractor by City upon the expiration date of January 1, 2011;

(iv) In the event the City, in its sole discretion, extends the contract for two (2) separate one (1) year periods beyond January 1, 2011, during each one (1) year extension, Contractor shall provide a Bond in the sum of Five Hundred Thousand and 00/100 ($500,000.00) Dollars, which Bond shall be surrendered to Contractor by City upon the expiration date of the first additional one (1) year extension at January 1, 2012 and, should City extend the contract for the final extension year, Contractor shall provide a final Bond in the sum of Five Hundred Thousand and 00/100 ($500,000.00) Dollars, which Bond shall be surrendered to Contractor at January 1, 2013.

(b) The corporate surety (ies) issuing the Performance Bond shall be legally authorized to engage in the business of furnishing surety bonds in California. Each surety shall have a current A.M. Best rating of not less than A-VIII. The corporate surety(ies) issuing such bonds shall have no liability

under any bond following the expiration date of such bond except for any claims submitted to the surety prior to the expiration of such bond. The corporate surety (ies) shall have no liability and no recourse shall arise whatsoever against the corporate surety (ies) should it or they elect not to renew a Performance Bond upon its expiration date.

(c) In the event that a performance bond or other financial assurance is required by City and is provided by Contractor in connection with this Agreement or Contractor's performance hereunder, City shall not demand payment with respect to such financial assurance by reason of an alleged default by Contractor under this Agreement until City shall have provided Contractor with written notice and any applicable cure period shall have expired without such default having been cured by Contractor.

25. Maximum Liability of Contractor

CONTRACTOR'S TOTAL AGGREGATE LIABILITY FOR ANY LOSS, DAMAGE, COSTS OR EXPENSES UNDER OR IN CONNECTION WITH THIS AGREEMENT, HOWSOEVER ARISING, INCLUDING WITHOUT LIMITATION, LOSS, DAMAGE, COSTS OR EXPENSES CAUSED BY BREACH OF CONTRACT, SHALL IN NO CIRCUMSTANCES EXCEED THE AMOUNT OF LIQUIDATED DAMAGES WHICH MAY BE IMPOSED ON CONTRACTOR IN ACCORDANCE WITH THE TERMS OF SECTION 29 OF THIS AGREEMENT FOR THE YEAR IN WHICH THE CLAIM AROSE REDUCED BY THE AMOUNT OF LIQUIDATED DAMAGES ACTUALLY ASSESSED BY CITY UNDER SECTION 29 DURING THAT YEAR. THIS LIMITATION SHALL BE APPLICABLE NOTWITHSTANDING THAT ANY REMEDY AVAILABLE TO CITY MAY FAIL IN ITS ESSENTIAL PURPOSE. CONTRACTOR SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, INCIDENTAL LOSS OF DATA, INCIDENTAL LOSS OF USE OR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE WHATSOEVER, HOWSOEVER ARISING, INCURRED BY CITY OR ANY THIRD PARTY, EVEN IF THE PARTIES OR THEIR REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING THE FOREGOING, THIS SECTION 25 IS NOT INTENDED TO LIMIT OR IMPAIR (1) THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER SECTION 21, 22(B) OR 24 OF THIS AGREEMENT, (2) CONTRACTOR'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH ANY VIOLATION BY CONTRACTOR OF CITY CHARTER OR ORDINANCE, OR (3) THE LIABILITY OF CONTRACTOR FOR CAUSES OF ACTION ARISING INDEPENDENTLY OF THIS AGREEMENT INCLUDING WITHOUT LIMITATION FRAUD, MISREPRESENTATION OR INTENTIONAL TORTIOUS MISCONDUCT.

26. Liability of City

CITY'S OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 10 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

24. Indemnification and General Liability

Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising from Contractor's performance of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this Section 24 indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

24-1. Surety Bonds

(a) Contractor shall provide a performance bond by January 1 2008 (the "Performance Bond") in the amounts set forth below to guarantee the faithful performance of the obligations of Contractor under this Agreement. The Performance Bond shall be substantially in the form of the performance bond attached hereto as Appendix H (Bond).

The amount of the Performance Bond shall be as follows:

(i) During the period of January 1, 2008 to January 1, 2009, the sum of Three Million Dollars and 00/100 ($3,000,000.00). This Bond shall be surrendered to Contractor by City upon delivery to City of the Bond as set forth in the following Section (24-1) (ii);

(ii) During the period of January 1, 2009 to January 1, 2010, the sum of One Million and 00/100 ($1,000,000.00) Dollars, which Bond shall be surrendered to Contractor by City upon delivery to City of the Bond as set forth in the following Section (24-1) (iii);

(iii) During the period of January 1, 2010 to January 1, 2011, the sum of Five Hundred Thousand and 00/100 ($500,000.00) Dollars, which Bond shall be surrendered to Contractor by City upon the expiration date of January 1, 2011;

(iv) In the event the City, in its sole discretion, extends the contract for two (2) separate one (1) year periods beyond January 1, 2011, during each one (1) year extension, Contractor shall provide a Bond in the sum of Five Hundred Thousand and 00/100 ($500,000.00) Dollars, which Bond shall be surrendered to Contractor by City upon the expiration date of the first additional one (1) year extension at January 1, 2012 and, should City extend the contract for the final extension year, Contractor shall provide a final Bond in the sum of Five Hundred Thousand and 00/100 ($500,000.00) Dollars, which Bond shall be surrendered to Contractor at January 1, 2013.

(b) The corporate surety (ies) issuing the Performance Bond shall be legally authorized to engage in the business of furnishing surety bonds in California. Each surety shall have a current A.M. Best rating of not less than A-VIII. The corporate surety(ies) issuing such bonds shall have no liability

under any bond following the expiration date of such bond except for any claims submitted to the surety prior to the expiration of such bond. The corporate surety (ies) shall have no liability and no recourse shall arise whatsoever against the corporate surety (ies) should it or they elect not to renew a Performance Bond upon its expiration date.

(c) In the event that a performance bond or other financial assurance is required by City and is provided by Contractor in connection with this Agreement or Contractor's performance hereunder, City shall not demand payment with respect to such financial assurance by reason of an alleged default by Contractor under this Agreement until City shall have provided Contractor with written notice and any applicable cure period shall have expired without such default having been cured by Contractor.

25. **Maximum Liability of Contractor**

CONTRACTOR'S TOTAL AGGREGATE LIABILITY FOR ANY LOSS, DAMAGE, COSTS OR EXPENSES UNDER OR IN CONNECTION WITH THIS AGREEMENT, HOWSOEVER ARISING, INCLUDING WITHOUT LIMITATION, LOSS, DAMAGE, COSTS OR EXPENSES CAUSED BY BREACH OF CONTRACT, SHALL IN NO CIRCUMSTANCES EXCEED THE AMOUNT OF LIQUIDATED DAMAGES WHICH MAY BE IMPOSED ON CONTRACTOR IN ACCORDANCE WITH THE TERMS OF SECTION 29 OF THIS AGREEMENT FOR THE YEAR IN WHICH THE CLAIM AROSE REDUCED BY THE AMOUNT OF LIQUIDATED DAMAGES ACTUALLY ASSESSED BY CITY UNDER SECTION 29 DURING THAT YEAR. THIS LIMITATION SHALL BE APPLICABLE NOTWITHSTANDING THAT ANY REMEDY AVAILABLE TO CITY MAY FAIL IN ITS ESSENTIAL PURPOSE. CONTRACTOR SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, INCIDENTAL LOSS OF DATA, INCIDENTAL LOSS OF USE OR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE WHATSOEVER, HOWSOEVER ARISING, INCURRED BY CITY OR ANY THIRD PARTY, EVEN IF THE PARTIES OR THEIR REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING THE FOREGOING, THIS SECTION 25 IS NOT INTENDED TO LIMIT OR IMPAIR (1) THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER SECTION 21, 22(B) OR 24 OF THIS AGREEMENT, (2) CONTRACTOR'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH ANY VIOLATION BY CONTRACTOR OF CITY CHARTER OR ORDINANCE, OR (3) THE LIABILITY OF CONTRACTOR FOR CAUSES OF ACTION ARISING INDEPENDENTLY OF THIS AGREEMENT INCLUDING WITHOUT LIMITATION FRAUD, MISREPRESENTATION OR INTENTIONAL TORTIOUS MISCONDUCT.

26. **Liability of City**

CITY'S OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 10 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

27. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

28. Notices to the Parties

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, an overnight courier service providing evidence of delivery, or by fax, and shall be addressed as follows:

To City: Director
Department of Elections
1 Carlton B. Goodlett Place, Room 48
San Francisco, California 94102
Fax: (415) 554-7399

To Contractor: Sequoia Voting Systems, Inc.
Peter McManemy, VP/CFO
7677 Oakport Street
Oakland, California 94621
Fax (510) 875-1226

Any notice of default must be sent by registered mail. Notice shall be effective on receipt.

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party.

29. Liquidated Damages

A. By entering into this Agreement, Contractor agrees that if any of the events stated in this Section 29 occur, and are not corrected within the time periods stated or referenced in this Section 29, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that each sum stated below is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the liquidated damages then owing by Contractor from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of the events described below. In the event City is awarded Liquidated Damages under this Section, the amounts payable by Contractor under this Section 29 represent the sole and exclusive damage award available to City by reason of any of the events described or referenced in this Section 29, notwithstanding any other term or provision of this Agreement except the indemnification obligations of contractor under Section 21, 22(B), and 24 of this agreement.

In no event and under no circumstances will the total amount of liquidated damages imposed on Contractor pursuant to all subsections of this Section 29 exceed (i) during the first year from January 1, 2008 through December 31, 2008, the sum of Four Million Dollars ($4,000,000.00), but not exceeding the amount of Three Million and 00/100 Dollars ($3,000,000.00) in Section 29.C.3. for any single election;

(ii) during the second year from January 1, 2009 through December 31, 2009, the sum of Three Million and 00/100 Dollars ($3,000,000.00), but not exceeding the amount of Two Million Five Hundred Thousand and 00/100 Dollars ($2,500,000.00) in Section 29.C.3. for any single election; and (iii) during the balance of the term of this Agreement, the sum of Two Million Dollars and 00/100 ($2,000,000.00) per election, but not exceeding (a) One Million and 00/100 Dollars ($1,000,000.00) for any single election that does not involve ranked choice voting or (b) Two Million and 00/100 Dollars ($2,000,000.00) for any single election that includes ranked choice voting as provided in Section 29.C.3. Except that in no event shall Contractor incur or be liable for payment of liquidated damages where delay results from an Excusable Delay (as defined in Section 56 of this Agreement) or where delay is due to the failure to timely receive certification, but such delay is not a result of the failure of Contractor to pursue an application for certification with reasonable care and diligence (as provided in Section 5 C(1)) by meeting Critical Milestones #1 and #2. For purposes of calculating the maximum damages per election under this Section 29, Liquidated Damages assessed for a "single election" shall mean all Liquidated Damages assessed under Section 29C and 29B for that election.

The amounts for which Contractor is liable under this Section 29 are referred to as "Liquidated Damages".

B. Critical Milestones: In the event that Contractor fails to complete any of the Critical Milestones (as listed on Appendix B-1) and does not cure such failure within the cure period applicable to that Critical Milestone as stated in Section 9, Contractor shall be liable for Liquidated Damages in the sum of One Thousand and 00/100 ($1,000.00) Dollars per day commencing after expiration of the cure period until the Critical Milestone is met up to a maximum amount of One Hundred Thousand and 00/100 ($100,000.00) Dollars in the aggregate for a single Critical Milestone.

C. On Election Days:

1. If ten percent (10%) or more of the DRE units fail to operate on an election day, Contractor shall liable for Liquidated Damages in the amount of One Hundred Seventy Five Thousand and 00/100 Dollars ($175,000.00) provided, however, that DRE units which fail to operate but are successfully repaired, replaced or made operational by Contractor within one (1) hour of receipt of notice from City (provided that additional DRE units/parts purchased by the City are available or if no such units/parts are available that Contractor uses best efforts to obtain such units/parts and make replacements or repairs within a reasonable time) shall not be deemed to have failed to operate. In the event that Contractor is no longer providing storage and warehousing services for the Hardware, the City shall afford Contractor access to the Hardware as and when necessary for Contractor to perform Contractor's maintenance obligations under this Agreement.

2. If ten percent (10%) or more of the optical scan units fail to operate on an election day, Contractor shall be liable for Liquidated Damages in the amount of One Hundred Seventy Five Thousand and 00/100 Dollars ($175,000.00) provided, however, that optical scan units which fail to operate but are repaired, replaced or made operational by Contractor within four (4) hours of receipt by Contractor of notice from City (provided that additional optical scan units/parts purchased by the City are available, or if no such units/parts are available that Contractor uses best efforts to obtain such units/parts and make replacements or repairs within a reasonable time) shall not be deemed to have failed to operate. In the event that Contractor is no longer providing storage and warehousing services for the Hardware, the City shall afford Contractor access to the Hardware as and when necessary for Contractor to perform Contractor's maintenance obligations under this Agreement.

27. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

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Fax: (415) 554-7399

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Peter McManemy, VP/CFO
7677 Oakport Street
Oakland, California 94621
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29. Liquidated Damages

A. By entering into this Agreement, Contractor agrees that if any of the events stated in this Section 29 occur, and are not corrected within the time periods stated or referenced in this Section 29, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that each sum stated below is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the liquidated damages then owing by Contractor from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of the events described below. In the event City is awarded Liquidated Damages under this Section, the amounts payable by Contractor under this Section 29 represent the sole and exclusive damage award available to City by reason of any of the events described or referenced in this Section 29, notwithstanding any other term or provision of this Agreement except the indemnification obligations of contractor under Section 21, 22(B), and 24 of this agreement.

In no event and under no circumstances will the total amount of liquidated damages imposed on Contractor pursuant to all subsections of this Section 29 exceed (i) during the first year from January 1, 2008 through December 31, 2008, the sum of Four Million Dollars ($4,000,000.00), but not exceeding the amount of Three Million and 00/100 Dollars ($3,000,000.00) in Section 29.C.3. for any single election;

(ii) during the second year from January 1, 2009 through December 31, 2009, the sum of Three Million and 00/100 Dollars ($3,000,000.00), but not exceeding the amount of Two Million Five Hundred Thousand and 00/100 Dollars ($2,500,000.00) in Section 29.C.3. for any single election; and (iii) during the balance of the term of this Agreement, the sum of Two Million Dollars and 00/100 ($2,000,000.00) per election, but not exceeding (a) One Million and 00/100 Dollars ($1,000,000.00) for any single election that does not involve ranked choice voting or (b) Two Million and 00/100 Dollars ($2,000,000.00) for any single election that includes ranked choice voting as provided in Section 29.C.3. Except that in no event shall Contractor incur or be liable for payment of liquidated damages where delay results from an Excusable Delay (as defined in Section 56 of this Agreement) or where delay is due to the failure to timely receive certification, but such delay is not a result of the failure of Contractor to pursue an application for certification with reasonable care and diligence (as provided in Section 5 C(1)) by meeting Critical Milestones #1 and #2. For purposes of calculating the maximum damages per election under this Section 29, Liquidated Damages assessed for a "single election" shall mean all Liquidated Damages assessed under Section 29C and 29B for that election.

The amounts for which Contractor is liable under this Section 29 are referred to as "Liquidated Damages".

B. Critical Milestones: In the event that Contractor fails to complete any of the Critical Milestones (as listed on Appendix B-1) and does not cure such failure within the cure period applicable to that Critical Milestone as stated in Section 9, Contractor shall be liable for Liquidated Damages in the sum of One Thousand and 00/100 ($1,000.00) Dollars per day commencing after expiration of the cure period until the Critical Milestone is met up to a maximum amount of One Hundred Thousand and 00/100 ($100,000.00) Dollars in the aggregate for a single Critical Milestone.

C. On Election Days:

1. If ten percent (10%) or more of the DRE units fail to operate on an election day, Contractor shall liable for Liquidated Damages in the amount of One Hundred Seventy Five Thousand and 00/100 Dollars ($175,000.00) provided, however, that DRE units which fail to operate but are successfully repaired, replaced or made operational by Contractor within one (1) hour of receipt of notice from City (provided that additional DRE units/parts purchased by the City are available or if no such units/parts are available that Contractor uses best efforts to obtain such units/parts and make replacements or repairs within a reasonable time) shall not be deemed to have failed to operate. In the event that Contractor is no longer providing storage and warehousing services for the Hardware, the City shall afford Contractor access to the Hardware as and when necessary for Contractor to perform Contractor's maintenance obligations under this Agreement.

2. If ten percent (10%) or more of the optical scan units fail to operate on an election day, Contractor shall be liable for Liquidated Damages in the amount of One Hundred Seventy Five Thousand and 00/100 Dollars ($175,000.00) provided, however, that optical scan units which fail to operate but are repaired, replaced or made operational by Contractor within four (4) hours of receipt by Contractor of notice from City (provided that additional optical scan units/parts purchased by the City are available, or if no such units/parts are available that Contractor uses best efforts to obtain such units/parts and make replacements or repairs within a reasonable time) shall not be deemed to have failed to operate. In the event that Contractor is no longer providing storage and warehousing services for the Hardware, the City shall afford Contractor access to the Hardware as and when necessary for Contractor to perform Contractor's maintenance obligations under this Agreement.

3. For each election in which the City is unable to properly record and tabulate votes because of (i) an Error, Defect or Malfunction in the System, and Contractor fails to provide an alternative tabulation solution which processes a statement of votes in compliance with applicable laws (provided, however, that Contractor's obligation to comply with laws shall be limited as stated in Section 53 of this Agreement), or (ii) failure of Contractor to achieve certification of the System for use in the Election scheduled for June, 2008 and for all elections covered under this Agreement, Contractor shall be liable for Liquidated Damages as follows: for elections occurring in the first (1st) year from January 1, 2008 through December 31, 2008, the sum of Three Million and 00/100 Dollars ($3,000,000.00) per election; for elections occurring in the second year (2nd) year from January 1, 2009 through December 31, 2009, the sum of Two Million Five Hundred Thousand and 00/100 Dollars ($2,500,000.00) per election; and for elections during the balance of the term of this Agreement, the sum of (a) One Million and 00/100 Dollars ($1,000,000.00) per election not invoking ranked choice voting, and (b) Two Million and 00/100 ($2,000,000.00) Dollars per election involving ranked choice voting. Notwithstanding the foregoing, any election in which fifty percent (50%) or less of the total number of voting units supplied by Contractor are used in such election, Contractor's liability for Liquidated Damages shall be limited to the sum of Five Hundred Thousand ($500,000.00) Dollars. Except that in no event shall Contractor incur or be liable for payment of liquidated damages where delay is due to the failure to timely receive certification, but such delay is not a result of failure of the Contractor to pursue an application for certification with reasonable care and diligence (as provided in Section 5C (1)) by meeting Critical Milestones #1 and #2 or results from an Excusable Delay (as defined in Section 56 of this Agreement).

4. If due to an Error, Defect or Malfunction in the System, City's tabulation of votes during an election at ten percent (10%) or more of precincts is delayed, Contractor shall be liable for Liquidated Damages as follows: if votes are not tabulated by 11:59 p.m. on that election day, the sum of One Hundred Fifty Thousand and 00/100 Dollars ($150,000.00); if votes are not tabulated by noon of the day after that election day, the sum of Two Hundred and 00/100 Thousand Dollars ($200,000.00); if votes are not tabulated by 11:59 p.m. on the second day following that election day, the sum of Four Hundred Thousand and 00/100 Dollars ($400,000.00).

30. Bankruptcy

In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party this Agreement shall terminate and be of no further force and effect.

31. Audit and Inspection of Records

Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor shall permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personal and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The

State of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon City by this Section.

32. Subcontracting

Contractor intends to retain subcontractors to perform certain of Contractor's duties under this Agreement, subject to the consent of the City in accordance with this Section 32. Prior to retaining a subcontractor, Contractor shall notify the City in writing of the identity of the proposed subcontractor. The City shall promptly evaluate such subcontractor, and shall not unreasonably withhold, delay or condition the City's consent to such subcontractor. In the event the City rejects any subcontractor proposed by Contractor, City shall notify Contractor in writing specifically stating the City's reason for rejection of such subcontractor. To the extent that Contractor is delayed in performing Contractor's obligations under this Agreement due to a delay by the City in approving or rejecting a subcontractor, the deadlines under this Agreement shall be extended by the time period attributable to the City's delay. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

33. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement, provided that Contractor may subcontract Contractor's obligations hereunder in accordance with Section 32 above. Notwithstanding the foregoing, Contractor may assign this Agreement to any entity owned or controlled by, or under common control with Contractor provided (i) the assignee has executed an assignment and assumption agreement reasonably acceptable to City, and (ii) the assignee has the ability to perform Contractor's obligations under this Agreement.

34. Disadvantaged Business Enterprise Utilization; Liquidated Damages

a. The DBE Ordinance

Contractor, shall comply with all the requirements of the Disadvantaged Business Enterprise Ordinance set forth in Chapter 14A of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "DBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the DBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provision of the DBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the DBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. Compliance and Enforcement

1. Enforcement

3. For each election in which the City is unable to properly record and tabulate votes because of (i) an Error, Defect or Malfunction in the System, and Contractor fails to provide an alternative tabulation solution which processes a statement of votes in compliance with applicable laws (provided, however, that Contractor's obligation to comply with laws shall be limited as stated in Section 53 of this Agreement), or (ii) failure of Contractor to achieve certification of the System for use in the Election scheduled for June, 2008 and for all elections covered under this Agreement, Contractor shall be liable for Liquidated Damages as follows: for elections occurring in the first (1st) year from January 1, 2008 through December 31, 2008, the sum of Three Million and 00/100 Dollars ($3,000,000.00) per election; for elections occurring in the second year (2nd) year from January 1, 2009 through December 31, 2009, the sum of Two Million Five Hundred Thousand and 00/100 Dollars ($2,500,000.00) per election; and for elections during the balance of the term of this Agreement, the sum of (a) One Million and 00/100 Dollars ($1,000,000.00) per election not invoking ranked choice voting, and (b) Two Million and 00/100 ($2,000,000.00) Dollars per election involving ranked choice voting. Notwithstanding the foregoing, any election in which fifty percent (50%) or less of the total number of voting units supplied by Contractor are used in such election, Contractor's liability for Liquidated Damages shall be limited to the sum of Five Hundred Thousand ($500,000.00) Dollars. Except that in no event shall Contractor incur or be liable for payment of liquidated damages where delay is due to the failure to timely receive certification, but such delay is not a result of failure of the Contractor to pursue an application for certification with reasonable care and diligence (as provided in Section 5C (1)) by meeting Critical Milestones #1 and #2 or results from an Excusable Delay (as defined in Section 56 of this Agreement).

4. If due to an Error, Defect or Malfunction in the System, City's tabulation of votes during an election at ten percent (10%) or more of precincts is delayed, Contractor shall be liable for Liquidated Damages as follows: if votes are not tabulated by 11:59 p.m. on that election day, the sum of One Hundred Fifty Thousand and 00/100 Dollars ($150,000.00); if votes are not tabulated by noon of the day after that election day, the sum of Two Hundred and 00/100 Thousand Dollars ($200,000.00); if votes are not tabulated by 11:59 p.m. on the second day following that election day, the sum of Four Hundred Thousand and 00/100 Dollars ($400,000.00).

30. Bankruptcy

In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party this Agreement shall terminate and be of no further force and effect.

31. Audit and Inspection of Records

Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor shall permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personal and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The

State of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon City by this Section.

32. Subcontracting

Contractor intends to retain subcontractors to perform certain of Contractor's duties under this Agreement, subject to the consent of the City in accordance with this Section 32. Prior to retaining a subcontractor, Contractor shall notify the City in writing of the identity of the proposed subcontractor. The City shall promptly evaluate such subcontractor, and shall not unreasonably withhold, delay or condition the City's consent to such subcontractor. In the event the City rejects any subcontractor proposed by Contractor, City shall notify Contractor in writing specifically stating the City's reason for rejection of such subcontractor. To the extent that Contractor is delayed in performing Contractor's obligations under this Agreement due to a delay by the City in approving or rejecting a subcontractor, the deadlines under this Agreement shall be extended by the time period attributable to the City's delay. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

33. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement, provided that Contractor may subcontract Contractor's obligations hereunder in accordance with Section 32 above. Notwithstanding the foregoing, Contractor may assign this Agreement to any entity owned or controlled by, or under common control with Contractor provided (i) the assignee has executed an assignment and assumption agreement reasonably acceptable to City, and (ii) the assignee has the ability to perform Contractor's obligations under this Agreement.

34. Disadvantaged Business Enterprise Utilization; Liquidated Damages

a. The DBE Ordinance

Contractor, shall comply with all the requirements of the Disadvantaged Business Enterprise Ordinance set forth in Chapter 14A of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "DBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the DBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provision of the DBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the DBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. Compliance and Enforcement

1. Enforcement

If Contractor willfully fails to comply with any of the provisions of the DBE Ordinance, the rules and regulations implementing the DBE Ordinance, or the provisions of this Agreement pertaining to DBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or $1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the DBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the DBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's DBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14A.13(B).

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with the DBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

35. Nondiscrimination; Penalties

A. Contractor Shall Not Discriminate. In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and City employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

B. Subcontracts. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

C. Non-Discrimination in Benefits. Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

D. **Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

E. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

36. **Earned Income Credit (EIC) Forms**

Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere Federal Tax Forms can be found.

A. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

B. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within 30 days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

C. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

D. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

37. **MacBride Principles–Northern Ireland**

Pursuant to San Francisco Administrative Code Section 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

If Contractor willfully fails to comply with any of the provisions of the DBE Ordinance, the rules and regulations implementing the DBE Ordinance, or the provisions of this Agreement pertaining to DBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or $1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the DBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the DBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's DBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14A.13(B).

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with the DBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

35. Nondiscrimination; Penalties

A. Contractor Shall Not Discriminate. In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and City employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

B. Subcontracts. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

C. Non-Discrimination in Benefits. Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

D. **Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

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A. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

B. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within 30 days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

C. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

D. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

37. **MacBride Principles--Northern Ireland**

Pursuant to San Francisco Administrative Code Section 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

38. Tropical Hardwood and Virgin Redwood Ban

Pursuant to Section 804 (b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

39. Drug-Free Workplace Policy

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

40. Compliance with Americans with Disabilities Act

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that to the extent applicable, materially complies with the ADA and any other applicable federal, state and local disability rights legislation. This Section 40 does not apply to the accessibility of the System to be supplied by Contractor. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agree that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement. Contractor shall provide a System which complies with the accessibility requirements of Section 53-1 and (except with respect to the ranked choice voting elements of the System) Appendix D (Performance Specifications) and (with respect to the ranked choice voting elements of the System) the RCV Design Specifications.

41. Sunshine Ordinance

In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to requests for proposals and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

42. Requiring Minimum Compensation for Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at http://www.sfgov.org/oca/lwlh.htm. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

A. For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no

less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, Contractor shall pay a minimum of $10.77 an hour beginning January 1, 2005 and for the remainder of the term of this Agreement; provided, however, that Contractors that are Nonprofit Corporations or public entities shall pay a minimum of $9 an hour for the term of this Agreement.

B. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

C. Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting through the Contracting Department, shall determine whether such a breach has occurred.

D. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

i. The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

ii. The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;

iii. The right to terminate this Agreement in whole or in part;

iv. In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and

v. The right to bar Contractor from entering into future contracts with the City for three years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

E. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

F. Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written

38. Tropical Hardwood and Virgin Redwood Ban

Pursuant to Section 804 (b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

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Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

40. Compliance with Americans with Disabilities Act

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that to the extent applicable, materially complies with the ADA and any other applicable federal, state and local disability rights legislation. This Section 40 does not apply to the accessibility of the System to be supplied by Contractor. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agree that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement. Contractor shall provide a System which complies with the accessibility requirements of Section 53-1 and (except with respect to the ranked choice voting elements of the System) Appendix D (Performance Specifications) and (with respect to the ranked choice voting elements of the System) the RCV Design Specifications.

41. Sunshine Ordinance

In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to requests for proposals and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

42. Requiring Minimum Compensation for Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at http://www.sfgov.org/oca/lwlh.htm. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

A. For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no

less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, Contractor shall pay a minimum of $10.77 an hour beginning January 1, 2005 and for the remainder of the term of this Agreement; provided, however, that Contractors that are Nonprofit Corporations or public entities shall pay a minimum of $9 an hour for the term of this Agreement.

B. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

C. Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting through the Contracting Department, shall determine whether such a breach has occurred.

D. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

i. The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

ii. The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;

iii. The right to terminate this Agreement in whole or in part;

iv. In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and

v. The right to bar Contractor from entering into future contracts with the City for three years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

E. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

F. Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written

communications received by the Contractor from the City, which communications are marked to indicate that they are to be distributed to Covered Employees.

G. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.

H. The Contractor shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five business days to respond.

I. The City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.

J. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Contractor and a third party that requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

K. Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

L. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than $25,000 ($50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative

amount of agreements between the Contractor and this department to exceed $25,000 ($50,000 for nonprofits) in the fiscal year.

43. Requiring Health Benefits for Covered Employees

Unless exempt, Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web athttp://www.sfgov.org/oca/lwlh.htm. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

A. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

B. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3 (d) of the HCAO, it shall have no obligation to comply with part (a) above.

C. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

D. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Purchasing Division when it enters into such a Subcontract and shall certify to the Purchasing Division that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

E. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

F. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

G. Contractor shall keep itself informed of the current requirements of the HCAO.

H. Contractor shall provide reports to the City in accordance with any reporting standards

communications received by the Contractor from the City, which communications are marked to indicate that they are to be distributed to Covered Employees.

G. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.

H. The Contractor shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five business days to respond.

I. The City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.

J. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Contractor and a third party that requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

K. Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

L. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than $25,000 ($50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative

amount of agreements between the Contractor and this department to exceed $25,000 ($50,000 for nonprofits) in the fiscal year.

43. Requiring Health Benefits for Covered Employees

Unless exempt, Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web athttp://www.sfgov.org/oca/lwlh.htm. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

A. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

B. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3 (d) of the HCAO, it shall have no obligation to comply with part (a) above.

C. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

D. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Purchasing Division when it enters into such a Subcontract and shall certify to the Purchasing Division that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

E. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

F. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

G. Contractor shall keep itself informed of the current requirements of the HCAO.

H. Contractor shall provide reports to the City in accordance with any reporting standards

promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

I. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five business days to respond.

J. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

K. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than $25,000 ($50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach $75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than $75,000 in the fiscal year.

44. Limitations on Contributions

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City and County's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in section 1.126.

45. First Source Hiring Program

A. Incorporation of Administrative Code Provisions by Reference.

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

B. First Source Hiring Agreement.

i. Contractor shall comply with First Source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the exclusive opportunity to initially provide Qualified Economically Disadvantaged Individuals for consideration for employment for Entry Level Positions. The duration of the First Source interviewing requirement shall be ten (10) days, unless business necessity requires a shorter period of time.;

ii. Contractor shall comply with requirements for providing timely, appropriate notification of available Entry Level Positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of Qualified Economically Disadvantaged Individuals to participating Employers;

iii. Contractor agrees to use good faith efforts to comply with the First Source hiring requirements. A Contractor may establish its good faith efforts by filling: 1) its first available Entry Level Position with a job applicant referred through the First Source Program; and, 2) fifty percent (50%) of its subsequent available Entry Level Positions with job applicants referred through the San Francisco Workforce Development System. Failure to meet this target, while not imputing bad faith, may result in a review of the Contractor's employment records.

C. Hiring Decisions.

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

D. Exceptions

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship..

E. Liquidated Damages

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of $2,070 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

F. Subcontracts

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

46. Prohibition on Political Activity with City Funds

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of

promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

I. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five business days to respond.

J. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

K. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than $25,000 ($50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach $75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than $75,000 in the fiscal year.

44. Limitations on Contributions

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City and County's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in section 1.126.

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i. Contractor shall comply with First Source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the exclusive opportunity to initially provide Qualified Economically Disadvantaged Individuals for consideration for employment for Entry Level Positions. The duration of the First Source interviewing requirement shall be ten (10) days, unless business necessity requires a shorter period of time.;

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Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

47. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

48. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Department of Elections who shall, within ten (10) business days, render a decision on the meaning and intent of this Agreement. Contractor may avail itself of any other legal remedy available to Contractor on or after the earlier of (i) the date a decision is rendered, or (ii) upon expiration of the ten (10) business day decision period regardless of whether a decision has been rendered.

49. Agreement Made in California; Venue

A. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California and the parties agree subject to the dispute resolution requirements of this Section 49, venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

B. Any dispute between the parties either with respect to the interpretation of any provision of this Agreement or with respect to the performance by either party hereunder shall be resolved as follows: upon the written request of either party, each party or an authorized representative of each party, will meet, in person or by teleconference, for the purpose of endeavoring to resolve such dispute. The representatives of the parties shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding relating thereto. During the course of such negotiation, all reasonable requests made by one party to the other for nonprivileged information reasonably related to this Agreement will be honored in order that each of the parties may be fully advised of the other's position. The specific format for such discussions will be left to the discretion of the representatives of the parties but may include the preparation of agreed-upon statements of fact or written statements of position furnished to the other party. Except where clearly prevented by the area in dispute, both parties agree to continue performing their respective obligations under this Agreement while the dispute is being resolved unless and until such obligations are suspended, terminated or expire in accordance with the provisions hereof.

50. Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

51. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision.

52. Modifications and Change Orders

A. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with the Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20%.

B. If Contractor wishes to suggest changes to the Hardware, System Software or System, it shall submit to City a description of such proposed changes including any effect on the pricing and Implementation Plan. City shall be under no obligation to accept any such proposal, but if it does so the changes shall only take effect after the agreed changes have been have been described in an amendment to this Agreement signed by both parties.

53. Compliance with Laws

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner applicable to the performance of this Agreement, and must, to the extent applicable, at all times comply with such local codes, ordinances, and regulations and all applicable laws. In no event shall any term or provision of this Agreement require Contractor to undertake or perform changes to the Hardware, System Software or Firmware due to changes in law, or changes in interpretation of existing law by a court of competent jurisdiction, occurring after the date of this Agreement. Without limitation of the foregoing, Contractor is not obligated to cause the System, Hardware, Software or any component thereof to comply with any specifications, standards or requirements of the National Association for State Election Directors, Federal Election Commission, Election Assistance Commission, California Secretary of State or other governmental, quasi-governmental or regulatory body or agency to the extent such specifications, standards or requirements are not in effect and applicable on the date of this Agreement (including, without limitation, FEC or EAC 2002 or 2005 standards).

53-1 System Compliance with State and Federal Laws

Pursuant to this Agreement and by order of the Secretary of State, voting systems certified for use in California shall comply with all applicable state and federal statutes, regulations, rules and requirements, including, but not limited to, those voting system requirements set forth in the California Elections Code and the Help America Vote Act of 2002, and those requirements incorporated by reference in the Help America Vote Act of 2002, that are in effect as of the date of this Agreement. Further, voting systems shall also comply with all applicable state and federal voting system guidelines, standards, regulations and requirements that derive authority from or are promulgated pursuant to and in furtherance of the California Elections Code or the Help America Vote Act of 2002 or other applicable state or federal law when appropriate, that are in effect as of the date of this Agreement, including but not limited to, the 2002 Voting System Standards/Guidelines, developed by the Federal Election Commission (FEC) and adopted by the Election Assistance Commission (EAC) and EAC Advisory 2005-004, dated July 20, 2005. This does not include future final court interpretations of existing state or federal law not in effect as of the date of this Agreement.

Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

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The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

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Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Department of Elections who shall, within ten (10) business days, render a decision on the meaning and intent of this Agreement. Contractor may avail itself of any other legal remedy available to Contractor on or after the earlier of (i) the date a decision is rendered, or (ii) upon expiration of the ten (10) business day decision period regardless of whether a decision has been rendered.

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A. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California and the parties agree subject to the dispute resolution requirements of this Section 49, venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

B. Any dispute between the parties either with respect to the interpretation of any provision of this Agreement or with respect to the performance by either party hereunder shall be resolved as follows: upon the written request of either party, each party or an authorized representative of each party, will meet, in person or by teleconference, for the purpose of endeavoring to resolve such dispute. The representatives of the parties shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding relating thereto. During the course of such negotiation, all reasonable requests made by one party to the other for nonprivileged information reasonably related to this Agreement will be honored in order that each of the parties may be fully advised of the other's position. The specific format for such discussions will be left to the discretion of the representatives of the parties but may include the preparation of agreed-upon statements of fact or written statements of position furnished to the other party. Except where clearly prevented by the area in dispute, both parties agree to continue performing their respective obligations under this Agreement while the dispute is being resolved unless and until such obligations are suspended, terminated or expire in accordance with the provisions hereof.

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All paragraph captions are for reference only and shall not be considered in construing this Agreement.

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This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision.

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A. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with the Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20%.

B. If Contractor wishes to suggest changes to the Hardware, System Software or System, it shall submit to City a description of such proposed changes including any effect on the pricing and Implementation Plan. City shall be under no obligation to accept any such proposal, but if it does so the changes shall only take effect after the agreed changes have been have been described in an amendment to this Agreement signed by both parties.

53. Compliance with Laws

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner applicable to the performance of this Agreement, and must, to the extent applicable, at all times comply with such local codes, ordinances, and regulations and all applicable laws. In no event shall any term or provision of this Agreement require Contractor to undertake or perform changes to the Hardware, System Software or Firmware due to changes in law, or changes in interpretation of existing law by a court of competent jurisdiction, occurring after the date of this Agreement. Without limitation of the foregoing, Contractor is not obligated to cause the System, Hardware, Software or any component thereof to comply with any specifications, standards or requirements of the National Association for State Election Directors, Federal Election Commission, Election Assistance Commission, California Secretary of State or other governmental, quasi-governmental or regulatory body or agency to the extent such specifications, standards or requirements are not in effect and applicable on the date of this Agreement (including, without limitation, FEC or EAC 2002 or 2005 standards).

53-1 System Compliance with State and Federal Laws

Pursuant to this Agreement and by order of the Secretary of State, voting systems certified for use in California shall comply with all applicable state and federal statutes, regulations, rules and requirements, including, but not limited to, those voting system requirements set forth in the California Elections Code and the Help America Vote Act of 2002, and those requirements incorporated by reference in the Help America Vote Act of 2002, that are in effect as of the date of this Agreement. Further, voting systems shall also comply with all applicable state and federal voting system guidelines, standards, regulations and requirements that derive authority from or are promulgated pursuant to and in furtherance of the California Elections Code or the Help America Vote Act of 2002 or other applicable state or federal law when appropriate, that are in effect as of the date of this Agreement, including but not limited to, the 2002 Voting System Standards/Guidelines, developed by the Federal Election Commission (FEC) and adopted by the Election Assistance Commission (EAC) and EAC Advisory 2005-004, dated July 20, 2005. This does not include future final court interpretations of existing state or federal law not in effect as of the date of this Agreement.

Voting system manufacturers and/or their agents shall assume full responsibility for any representation that a voting system complies with all applicable state and federal requirements as referenced above. In the event such representation is determined to be false or misleading, voting system manufacturers or their agents shall be responsible for the cost of any upgrade, retrofit or replacement, of any voting system or its component parts, found to be necessary for certification or to otherwise bring the system into compliance.

Any voting system purchased with funds allocated by the Secretary of State's Office shall meet all applicable state and federal standards, regulations and requirements, including, but not limited to, those voting system requirements as set forth in the California Elections Code and the Help America Vote Act of 2002, and those requirements incorporated by reference in the Help America Vote Act of 2002 that are in effect as of the date of this (application, agreement, contract, etc.), including, but not limited to, the 2002 Voting System Standards/Guidelines, developed by the Federal Election Commission (FEC) and adopted by the Election Assistance Commission (EAC) and EAC Advisory 2005-004, dated July 20, 2005.

54. Nondisclosure of Private Information

Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

(a) Neither Contractor nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:

(i) The disclosure is authorized by this Agreement;

(ii) The Contractor received advance written approval from the Contracting Department to disclose the information; or

(iii) The disclosure is required by law or judicial order.

(b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

(c) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

(d) Any failure of Contractor to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar Contractor, or bring a false claim action against Contractor.

55. INTENTIONALLY OMITTED.

56. Excusable Delays

A. Neither party shall be liable for any failure or delay in the performance of its obligations under this Agreement that is beyond the party's control or could not have been avoided by the party's exercise of reasonable care and diligence including, without limitation, actions by the other party that prevented the party from performing or impaired the party's ability to perform, natural disaster, fire, explosion, earthquake, floods, supply disruptions, unavailability of necessary utilities, strike, war or military actions, terrorism, insurrection, quarantine restrictions, acts of God, government actions or decrees (except for failure of Contractor to comply with requirements for the testing or certification of the System existing on the date of this Agreement and established by the California Secretary of State, other governmental independent testing authorities, or other entities certifying or testing the System or components of the System (except as otherwise stated in this Agreement)) or judgment or decree of a court of competent jurisdiction (not arising out of a breach of this Agreement by the party) (collectively, an "Excusable Delay").

B. In the event of an Excusable Delay, any performance time table or deadlines under this Agreement, as well as any other affected provision of this Agreement, shall be deemed revised to the extent reasonably necessary for Contractor to complete its performance under this Agreement.

57. Intellectual Property Rights

Each party shall retain its rights in any Intellectual Property Rights owned by or licensed to it prior to the Effective Date. All Development Intellectual Property Rights whether or not developed by Contractor will be owned exclusively by Contractor; provided, however that City, provided it has not breached this Agreement, shall have a personal non-exclusive, non-transferable license to the use of such Development Intellectual Property Rights in accordance with this Agreement and Appendix E (License Terms) solely as necessary for City to use the Hardware and System Software in the manner contemplated by this Agreement. For purposes of this Agreement, "Intellectual Property Rights" shall mean rights in inventions, know-how, patents, registered designs, design rights, trade names, trademarks, service marks, trade secrets, copyrights, semiconductor design rights, mask works and topography rights whether or not registered and including any application to register any of the same, and all rights or forms of protection of a similar nature or having equivalent effect which may subsist anywhere in the world. "Development Intellectual Property Rights" shall mean any Intellectual Property Rights created or coming into being as a result of Contractor performance of this Agreement.

58. No Third Party Beneficiaries

Contractor and City agree that this Agreement is for the benefit of the parties hereto (and their permitted assignees) and is not intended to confer any rights or benefits on any third party, and that there are no third party beneficiaries of this Agreement or any part or specific provision of this Agreement, and no third party shall have any right to enforce this Agreement or any provision hereof.

59. No Transfer

City acknowledges and agrees that (i) the Hardware, System Software, Upgrades, Firmware and Documentation consist of, contain and utilize for their operation trade secrets and other proprietary and confidential Intellectual Property Rights which are the sole and exclusive property of Contractor and which Contractor developed through the investment of considerable effort and expense, and (ii) City is prohibited by this Agreement (including, without limitation, Appendix E (License Terms)) from in any

Voting system manufacturers and/or their agents shall assume full responsibility for any representation that a voting system complies with all applicable state and federal requirements as referenced above. In the event such representation is determined to be false or misleading, voting system manufacturers or their agents shall be responsible for the cost of any upgrade, retrofit or replacement, of any voting system or its component parts, found to be necessary for certification or to otherwise bring the system into compliance.

Any voting system purchased with funds allocated by the Secretary of State's Office shall meet all applicable state and federal standards, regulations and requirements, including, but not limited to, those voting system requirements as set forth in the California Elections Code and the Help America Vote Act of 2002, and those requirements incorporated by reference in the Help America Vote Act of 2002 that are in effect as of the date of this (application, agreement, contract, etc.), including, but not limited to, the 2002 Voting System Standards/Guidelines, developed by the Federal Election Commission (FEC) and adopted by the Election Assistance Commission (EAC) and EAC Advisory 2005-004, dated July 20, 2005.

54. **Nondisclosure of Private Information**

Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

(a) Neither Contractor nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:

(i) The disclosure is authorized by this Agreement;

(ii) The Contractor received advance written approval from the Contracting Department to disclose the information; or

(iii) The disclosure is required by law or judicial order.

(b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

(c) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

(d) Any failure of Contractor to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar Contractor, or bring a false claim action against Contractor.

55. INTENTIONALLY OMITTED.

56. Excusable Delays

A. Neither party shall be liable for any failure or delay in the performance of its obligations under this Agreement that is beyond the party's control or could not have been avoided by the party's exercise of reasonable care and diligence including, without limitation, actions by the other party that prevented the party from performing or impaired the party's ability to perform, natural disaster, fire, explosion, earthquake, floods, supply disruptions, unavailability of necessary utilities, strike, war or military actions, terrorism, insurrection, quarantine restrictions, acts of God, government actions or decrees (except for failure of Contractor to comply with requirements for the testing or certification of the System existing on the date of this Agreement and established by the California Secretary of State, other governmental independent testing authorities, or other entities certifying or testing the System or components of the System (except as otherwise stated in this Agreement)) or judgment or decree of a court of competent jurisdiction (not arising out of a breach of this Agreement by the party) (collectively, an "Excusable Delay").

B. In the event of an Excusable Delay, any performance time table or deadlines under this Agreement, as well as any other affected provision of this Agreement, shall be deemed revised to the extent reasonably necessary for Contractor to complete its performance under this Agreement.

57. Intellectual Property Rights

Each party shall retain its rights in any Intellectual Property Rights owned by or licensed to it prior to the Effective Date. All Development Intellectual Property Rights whether or not developed by Contractor will be owned exclusively by Contractor; provided, however that City, provided it has not breached this Agreement, shall have a personal non-exclusive, non-transferable license to the use of such Development Intellectual Property Rights in accordance with this Agreement and Appendix E (License Terms) solely as necessary for City to use the Hardware and System Software in the manner contemplated by this Agreement. For purposes of this Agreement, "Intellectual Property Rights" shall mean rights in inventions, know-how, patents, registered designs, design rights, trade names, trademarks, service marks, trade secrets, copyrights, semiconductor design rights, mask works and topography rights whether or not registered and including any application to register any of the same, and all rights or forms of protection of a similar nature or having equivalent effect which may subsist anywhere in the world. "Development Intellectual Property Rights" shall mean any Intellectual Property Rights created or coming into being as a result of Contractor performance of this Agreement.

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59. No Transfer

City acknowledges and agrees that (i) the Hardware, System Software, Upgrades, Firmware and Documentation consist of, contain and utilize for their operation trade secrets and other proprietary and confidential Intellectual Property Rights which are the sole and exclusive property of Contractor and which Contractor developed through the investment of considerable effort and expense, and (ii) City is prohibited by this Agreement (including, without limitation, Appendix E (License Terms)) from in any

way transferring, assigning, loaning, or otherwise conveying to any third party the System Software, Firmware, Upgrades or Documentation or any license rights granted to City therein, and (iii) transfer of the Hardware or any component thereof to any third party may compromise Contractor's Intellectual Property Rights in such Hardware, through the potential of reverse engineering or otherwise. In light of the foregoing, City agrees that City shall not, without the prior express written consent of Contractor in each instance, transfer or convey, in any manner whatsoever (including, without limitation, by loan, lease or bailment), any of the Hardware or any component thereof to any other person or entity. City acknowledges that Contractor's pricing under this Agreement is based in part upon the agreements of the City in this Section 59.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

Recommended by:

John Arntz
Director, Department of Elections

Approved as to Form:
Dennis J. Herrera
City Attorney

By
Ann M. O'Leary
Deputy City Attorney

Approved

Naomi Little
Director of Office of Contract Administration/ Purchaser

Resolution # 654-07

CONTRACTOR

Sequoia Voting Systems, Inc.
Name

59760
City Vendor Number

7677 Oakport Street, Suite 800
Address

Oakland, CA 94621
City, State, ZIP

PURCHASING DEPARTMENT
2007 DEC 13 AM 9:07
RECEIVED

RECEIVED
2007 DEC 10 PM 2:07
PURCHASING DEPARTMENT

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood Sec. 37, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

Sequoia Voting Systems, Inc.

By _____
Signature

Peter McManeiny
Name

VP/CFO
Title

510-875-1200
Phone Number

37-1274619
Federal Employer ID Number

APPENDIX B-1
CRITICAL MILESTONES

	Project Tasks	Deliverables	Completion or delivery due date
Critical Milestone #1	Contractor to submit a completed application for federal certification, including RCV System certification to the Independent Testing Authority (ITA)	Copy of application of certification provided to ITA	August 30, 2007
Critical Milestone #2	Contractor to submit a completed application for state certification, including RCV System certification to California Secretary of State (SOS)	Copies of: 1. Application for certification including application Checklist, and 2. Ranked-choice voting (RCV) procedures submitted to SOS along with the application for certification	Application Submittal within 5 business days after receipt of Federal VSTL Approval
Critical Milestone #3	Contractor to complete Acceptance Testing of System Hardware and Software	Documentation of System Hardware and Software acceptance testing and any malfunctions, defects or problems discovered in the System or any of its components during the course of the testing. (See App. A [Acceptance Test Plan], App. G, sec. III.)	Completion within 10 days after each delivery of equipment completed by January 15, 2008.
Critical Milestone #4	Completion of Logic & Accuracy (L&A) Testing	L&A testing on all System components that will be used or may be used on Election Day. (See App. G, VI (D).) Provide all equipment, programming, materials and staff necessary to accomplish all aspects of the L& A testing, including but not limited to marking of test ballots.	Completed 14 days prior to election
Critical Milestone #5	Contractor to produce Official Statement of Votes Cast	Official Statement of Votes Cast	Official Statement of Votes Cast will be produced in accordance with the legally established deadline for each election under this contract; E+28

Appendix C: Deliverables

Equipment	Price Per Unit	Quantity	Sub-Total	Tax	Total
Tax Rate					
8.50%					
HAVA ADA Compliance					
Edge 2 :Includes VVPAT & Wheel and Handle	2,700.00	610	1,647,000.00	139,995.00	1,786,995.00
Audio Units	250.00	600	150,000.00	12,750.00	162,750.00
VVPAT: Additional Units	900.00	100	90,000.00	7,650.00	97,650.00
Transportation Carts	500.00	125	62,500.00	5,312.50	67,812.50
Card Activator (ACW)	1,200.00	610	732,000.00	62,220.00	794,220.00
Voter Cards	3.00	10,000	30,000.00	2,550.00	32,550.00
Vote Simulation Cartridge	150.00	200	30,000.00	2,550.00	32,550.00
Results Memory Cartridge	150.00	100	15,000.00	1,275.00	16,275.00
Cartridge Tray	60.00	20	1,200.00	102.00	1,302.00
3' Cords	2.00	650	1,300.00	110.50	1,410.50
10' Cord	3.00	650	1,950.00	165.75	2,115.75
Precinct Tabulators					
Insight	4,800.00	610	2,928,000.00	248,880.00	3,176,880.00
Additional Memory Paks	250.00	150	37,500.00	3,187.50	40,687.50
MPR	4,500.00	8	36,000.00	3,060.00	39,060.00
High Speed Optical Scan Tabulators					
Sequoia 400-C	85,000.00	2	170,000.00	14,450.00	184,450.00
Computer Hardware					
WinEDS Server	15,000.00	1	15,000.00	1,275.00	16,275.00
Backup Server	10,000.00	1	10,000.00	850.00	10,850.00
BPS II Server	10,000.00	1	10,000.00	850.00	10,850.00
Laptops	2,500.00	20	50,000.00	4,250.00	54,250.00
Software Applications					
WinEDS Application*	750,000.00	1	750,000.00	0.00	750,000.00
RCV Application*	650,000.00	1	650,000.00	0.00	650,000.00
Other					
Installation and Training	999,000.00	1	999,000.00	0.00	999,000.00
Outreach Materials	60,000.00	1	60,000.00	0.00	60,000.00
Freight all inclusive	107,000.00	1	107,000.00	0.00	107,000.00
Sub-Total			8,583,450.00	511,483.25	9,094,933.25

Trade-In of Automark	(2,000.00)	565	(1,130,000.00)		(1,130,000.00)
Total Equipment & Software					7,964,933.25
Warehouse					
Structural and Electrical Engineering / Permitting					50,000.00
Architectural Layout and Design					50,000.00
Facility Improvements					442,000.00
Total Warehouse Cost					542,000.00
Total First Year					8,506,933.25

Appendix C - 1
Election Services

Election Services	
	Price per Election
Service Oversight	
Services Management - Complete oversight of project per election	50,000.00
Pre-LAT - Plan, Test and Coordinate testing operations	65,000.00
Total Services oversight	115,000.00

Elections Preparation and Operation	
Ballot Layout and Production Management	30,000.00
DRE WinEDS Layout	30,000.00
Total Annual Election Preparation and Operations	60,000.00

Logistical Support	
Staffing - 10 Temps for 15 days per Election	65,000.00
Delivery to and collection from Polling Stations	94,000.00
Transportation	12,000.00
Total Annual Logistical Support	171,000.00

Election Day Support		
Election Day Field Response Team personnel	33 Temp Field	21,000.00
On-Site Technical Support Response Team	2 Technical Support	38,500.00
Central Processing Network Support	6 Personnel	63,000.00
Election Troubleshooting - On-Site Response Team	7 Personnel	24,500.00

Total Election Day Support	147,000.00
Consumables	4,400.00
Total cost of Services per Election	497,400.00

Appendix C - 2
Annual Maintenance & Licenses Fees

Annual Maintenance & Fees	Quantity	2008	2009	2010	2011
Edge 2 - Parts and Repairs	610	Included	61,000.00	61,000.00	61,000.00
VVPAT - Parts and Repairs	710	Included	21,300.00	21,300.00	21,300.00
HAAT- Parts and Repairs	610	Included	30,500.00	30,500.00	30,500.00
400-C - Parts and Repairs	5	Included	30,000.00	30,000.00	30,000.00
Insight - Parts and Repairs	610	Included	61,000.00	61,000.00	61,000.00
Licenses Fee WinEDS Application		Included	112,500.00	112,500.00	112,500.00
Licenses Fee RCV Application		Included	70,000.00	70,000.00	70,000.00
Total			386,300.00	386,300.00	386,300.00

Appendix D

Performance Specifications

1. Scope

This Appendix D contains the performance specifications for the System. The System shall be capable of serving at least 650,000 registered voters in approximately 700 precincts, and shall be capable of additional growth to meet any increase in voter rolls and reprecincting during the term of this Agreement, as well as any increase in absentee voting. Such growth shall be possible through the acquisition of additional polling place or central processing equipment only; The System Software and Hardware shall be capable of supporting this growth without modification.

The System shall be capable of serving these voters and these precincts spanning two Congressional districts, two State Senate districts, two State Assembly districts, three BART districts, and eleven Supervisorial districts. The System shall be capable of serving these voters and these precincts in differently configured districts if redistricting is legally mandated during the term of the Agreement.

The System shall be capable of serving voters in English, Cantonese, Mandarin and Spanish.

2. Reference Documents and Definitions

The following documents form a part of this Appendix *to the extent specified* herein:

- The Help America Vote Act of 2002 (Public Law 107-252);
- The California Elections Code, 2003 (the "Elections Code");
- The San Francisco Charter (the "Charter");
- The San Francisco Municipal Elections Code; and
- *The Voting Systems Performance and Test Standards* - Federal Election Commission, April 2002 (the "Voting System Standards").

In the event of any conflict among the requirements of the documents listed above, the order of precedence shall be as follows: (1) this Agreement, (2) The Help America Vote Act of 2002; (3) The California Elections Code; (4) the Charter; (5) the San Francisco Municipal Elections Code; and (6) the Voting System Standards.

In no event shall any term or provision of this Agreement require Contractor to undertake or perform changes to the Hardware, System Software or Firmware due to changes in law, or changes in interpretation of existing law by a court of competent

jurisdiction, occurring after the date of this Agreement. Without limitation of the foregoing, Contractor is not obligated to cause the System, Hardware, Software or any component thereof to comply with any specifications, standards or requirements of the National Association for State Election Directors, Federal Election Commission, Election Assistance Commission, California Secretary of State or other governmental, quasi-governmental or regulatory body or agency to the extent such specifications, standards or requirements are not in effect and applicable on the date of this Agreement (including, without limitation, FEC or EAC 2002 or 2005 standards).

For purposes of this Appendix, the following definitions shall apply.

"Ballot" means the one or more ballot cards (optical scan technology) or electronic images or electronic recordings (direct recording electronic, or "DRE" technology) that together are used by a voter to cast votes for all candidate and measure contests at an election. A single ballot may consist of one or more ballot cards, or one or more electronic images or recordings.

"Ballot card" means an individual paper sheet (optical scan technology) that contains all or some of the candidate and measure contests at an election.

"Ballot image" means an electronic representation of a ballot (DRE technology). A ballot image may consist of one or more electronic images that together are used by a voter to cast votes for all candidates and measures at an election.

3. Legal Requirements

During the term of the Agreement, the System shall satisfy all applicable laws and regulations, including but not limited to requirements imposed by the Help America Vote Act of 2002, the California Elections Code, the San Francisco Charter and San Francisco Municipal Elections Code, in affect as of the date of this Agreement.

In no event shall any term or provision of this Agreement require Contractor to undertake or perform changes to the Hardware, System Software or Firmware due to changes in law, or changes in interpretation of existing law by a court of competent jurisdiction, occurring after the date of this Agreement. Without limitation of the foregoing, Contractor is not obligated to cause the System, Hardware, Software or any component thereof to comply with any specifications, standards or requirements of the National Association for State Election Directors, Federal Election Commission, Election Assistance Commission, California Secretary of State or other governmental, quasi-governmental or regulatory body or agency to the extent such specifications, standards or requirements are not in effect and applicable on the date of this Agreement (including, without limitation, FEC or EAC 2002 or 2005 standards).

3.1 Election Management

The System shall include hardware and software to interface with the Department's existing elections data system (DIMSNet 2000, subject to laws in effect on the date of this Agreement).

3.2 Election Operations

The System shall be capable of performing all functions related to:

- Design of all ballots and ballot images, and production of camera-ready materials necessary for the printing of ballot cards, including sample ballots and test ballots;
- preparation of System hardware and software to record, count and tabulate votes, including votes cast in ranked-choice contests;
- early and absentee voting, including early voting at multiple sites specified by the Department;
- opening the polls;
- write-in and provisional voting;
- identification of error conditions and generation of error messages and instructions to voters for correction of errors for optical scan technology;
- preservation of voting data and production of elections reports, including but not limited to preservation and reporting of original markings on ranked-choice ballots;
- provision of a computer record for all voting equipment in all polling places indicating the number of ballots cast for each candidate and for and against each ballot measure at each precinct as required by San Francisco Charter § 13.107.5;
- closing the polls, including production of reports required to be posted at the polling place;
- producing Voting Data Reports;
- producing Audit Data Reports;
- providing for the secure transfer or transmission of voting data from the polls or transmission centers to the Department's Central Processing Network;
- aggregation of voting data, including all precinct ballots, absentee ballots, provisional ballots and remade ballots, and including votes cast for qualified write-in candidates, with a minimum of manual processing;
- application of the run-off tabulation, and preservation and reporting results at each stage of the run-off tabulation process (each round in

which one or more candidates are eliminated and votes cast for the eliminated candidate(s) are redistributed);

- preservation and maintenance of a centralized archival record of voting and audit data for each election during the term of the Agreement, in a format and according to a timetable approved by the Department, including but not limited to records of all rejected or uncounted ballots, all original markings on ranked-choice ballots, and the transfer of votes at each stage of the run-off tabulation process; and
- production of voting data and audit reports, as specified by the Department and in a format approved by the Department, for queries and research purposes.

All System components shall be fully integrated to the extent integration is feasible.

3.2.1 Preparation for Voting

3.2.1.1 Ballots

The System shall have the capability to design all ballots and ballot images, and produce camera-ready materials necessary for the printing of ballot cards, including sample ballots and test ballots.

The System shall provide for a ballot in the form of one or more cards or one or more ballot images containing printed information identifying the contests, candidates and measures. In addition, The System shall provide for an audio ballot in the specified languages.

The ballot shall allow the voter to cast votes in each contest, in any legal number and combination to which the voter is entitled.

When the Charter requires the use of ranked-choice voting, the ballot shall permit the voter to rank his or her choices among the candidates for an elective office. Subject to the limits of the System, the ballot shall permit the voter to cast as many choices as there are candidates for that office. For these purposes, the number of candidates for an office equals the number of candidates who qualified to have their names printed on the ballot, plus all qualified write-in candidates. The ballot shall allow voters to rank a number of choices in order of preference equal to the total number of candidates for each office; provided, however, if the System cannot feasibly accommodate choices equal to the total number of candidates running for each office, the System may limit the number of choices a voter may rank to no fewer than three.

If the System software must be written, installed and tested before the deadline for qualification of write-in candidates, and therefore the Department cannot know with certainty the number of candidates who will qualify as write-in candidates before the date the election-specific software is written, then the number of choices a voter may rank shall be the greater of the following:

- the number of candidates who qualified to have their names printed on the ballot, plus the number of qualified write-in candidates for the same office as of the date the election-specific software was created, or
- the number of candidates who qualified to have their names printed on the ballot, plus one.

The ballot shall allow voters to rank a number of choices in order of preference equal to the total number of candidates for each office; provided, however, if the System cannot feasibly accommodate choices equal to the total number of candidates running for each office, the System may limit the number of choices a voter may rank to no fewer than three.

The System shall have the capability to place more than one contest on the same side of a single ballot card, and shall have the capability of more than one ranked-choice contest on the same side of a single ballot card, in a format approved in advance by the Department.

The System shall have the capability to place a single contest on two sides of a single ballot card, in a format approved in advance by the Department.

The System shall have the capability to place a single contest on more than one ballot card, in a format approved in advance by the Department.

3.2.1.2 Multi-lingual Capability

The System shall be capable of generating one trilingual ballot format in English/Chinese/Spanish, and two bilingual ballot formats in English/Chinese and English/Spanish, for optical scan ballots and DRE ballot images. It shall be in the Department's sole discretion whether to use a single trilingual ballot or two bilingual ballots for an election.

Audio ballots shall be in English, Cantonese, Mandarin and Spanish. It shall be in the Department's sole discretion whether to use monolingual or bilingual audio ballots for an election.

The System shall also be capable of generating multilingual or bilingual ballot formats in additional languages.

In no event shall any term or provision of this Agreement require Contractor to undertake or perform changes to the Hardware, System Software or Firmware due to changes in law, or changes in interpretation of existing law by a court of competent jurisdiction, occurring after the date of this Agreement. Without limitation of the foregoing, Contractor is not obligated to cause the System, Hardware, Software or any component thereof to comply with any specifications, standards or requirements of the National Association for State Election Directors, Federal Election Commission, Election Assistance Commission, California Secretary of State or other governmental, quasi-governmental or regulatory body or agency to the extent such specifications, standards or requirements are not in effect and applicable on the date of this Agreement (including, without limitation, FEC or EAC 2002 or 2005 standards).

The System's voter-verified paper audit trail shall have the capability to print in English, Spanish and Chinese and other character-based languages. The paper audit trail shall be in English, except for voters who request to vote in either Chinese or Spanish. For voters who request to vote in either Chinese or Spanish, the paper audit trail shall be bilingual English/Chinese or English/Spanish, respectively.

3.2.1.3 Programming and Software Installation, Verifiability

The System shall provide a means of programming each piece of polling place or central count equipment in accordance with the ballot requirements of the election, and the jurisdiction in which the equipment will be used. The System shall have the capability to ensure the correctness of the program, and its proper installation in the equipment or in a programmable memory device if one is used.

The System shall have the capability to ensure that all software has been properly selected and installed for the election,

and that the software correctly matches the ballot formats that the software is intended to process.

3.2.1.4 Equipment Readiness Tests

Each precinct ballot counting device (optical scan technology) or direct recording device (DRE technology), and all central counting equipment, shall contain provisions for verifying proper preparation for an election, and for verifying that both the hardware and the software are functioning correctly. These tests and diagnostic procedures may be executed manually or automatically, and may allow for operator intervention to validate the proper execution of individually-selected equipment functions.

These devices shall also verify the proper calibration of the equipment, to ensure uniform calibration of all vote counting and processing equipment.

Contractor shall notify the Department in advance of this testing and verification, and the Department shall have the opportunity to observe all equipment readiness testing. Contractor shall provide the Department reports with the results of all equipment readiness testing, in a format approved by the Department.

3.2.1.5 System Readiness Tests

The System shall be capable of verifying the proper integration of all System components and equipment, providing System status logs and voting data reports from each set of equipment, and generating consolidated data reports at the polling place and higher jurisdictional levels.

Contractor shall notify the Department in advance of this verification, and the Department shall have the opportunity to observe all System readiness testing. Contractor shall provide the Department reports with the results of all System readiness testing, in a format approved by the Department.

3.2.1.6 Verification at the Polling Place

When polling place equipment is readied for the start of voting on Election Day, the System shall provide a printed record for each data storage device of all of the following:

- Election identification data;

- equipment unit identification;
- ballot format identification;
- the contents of each active candidate register by office and each active measure register, showing that they contain all zeros;
- for each ranked-choice contest, the contents of each active first-choice register, second-choice register and third-choice register, etc., showing that each register contains all zeros and that the contents of the ranked-choice voting data are blank;
- a list of all ballot fields that can be used to invoke special voting options;
- other information needed to verify the readiness of the equipment, and to accommodate administrative reporting requirements.

Polling place equipment shall permit the use of test ballots or other test devices or methods to verify the correct interpretation of the ballot format(s) the equipment is programmed to process, and to verify that processing of voting data is accurate and reliable. Test data shall be segregated from actual voting data, either procedurally or by hardware/software features, and shall be retained for the same period the Department is required to retain voted ballots for that election.

3.2.1.7 Verification at the Central Counting Place

The System shall be capable of verifying that any aggregation of polling place data at one or more central counting places, whether by extraction of voting data from transportable memory devices or by transmission over communication links, is secure and accurate. Verification shall include the use of security procedures and communications security devices to be employed during the aggregation of actual voting data, as well as aggregation of test data and during other tests needed to verify the readiness of the equipment, and to accommodate administrative reporting requirements.

When central count equipment is readied for the processing of polling place, absentee, provisional or remake ballots, the equipment shall provide a printed record of the following:

- election identification data;
- the initial contents of each active candidate register by office and each active measure register, showing that they contain all zeros;

- for each ranked-choice contest, the contents of each active first-choice register, second-choice register, third-choice register, etc., showing that each contains all zeros and that the contents of the ranked-choice voting data are blank; and
- such other information needed to verify the readiness of the equipment and to accommodate the Department's administrative reporting requirements.

Central count equipment shall permit the use of test ballots or other test devices or methods to verify the correct interpretation of the ballot format(s) it is programmed to process, and to verify that processing of voting data is accurate and reliable. Test data shall be segregated from actual voting data, either procedurally or by hardware/software features. Test data shall be retained for the same period that the Department must by law retain voted ballots from the election for which the verification was performed.

3.2.2 Early Voting, Simultaneous Elections

The System shall be capable of supporting early voting, at multiple locations specified by the Department, to the extent required by this Agreement. This capability shall include any ancillary devices needed to support early voting with either an Optical Scan ballot reader or DRE voting device, as appropriate. All early voting equipment must be programmable for all ballot types.

The System shall be capable of conducting multiple simultaneous elections.

3.2.3 Opening the Polling Place

The System shall be capable of verifying that all polling place equipment and devices are properly prepared, functional and ready for use.

The System shall provide a means of activating each optical scan ballot counting device and DRE vote recording device, and verifying that the devices have been correctly prepared and will allow the counting or casting of ballots.

3.2.4 Casting Ballots

The System shall provide for ballots on which there are printed fields (Optical Scan Technology) or display fields (DRE Technology), or audio representations of such fields, indicating the title of every contest, the name of every candidate and the title of every measure on the ballot on which the voter is entitled to vote.

The System shall provide a means by which the voter may mark the ballot to register votes. The System shall enable the voter to vote for any and all candidates and measures appearing on the ballot, in any legal number and combination to which the voter is entitled.

Ballots with a ranked-choice contest shall permit the voter to rank each candidate in the contest as provided in section 3.2.1.1 of this Appendix.

The System shall provide a voting booth or similar facility in which the voter may vote in private for DRE Technology.

Optical Scan equipment shall provide a means for the voter to place the voted ballot, or cause it to be placed, into the ballot counting device or secure receptacle. If the voter must leave the voting booth for this purpose, the System shall provide for the secrecy of the voted ballot while it is being handled either by the voter or by a polling place official.

DRE equipment shall provide a voter-verified paper audit trail that shall clearly indicate when the voter rejects or accepts and casts a ballot.

DRE equipment shall provide, in the event of power interruption at the polling place, a means for voting operations to continue. This means shall consist of an uninterruptible power supply as defined in Section 3.3.3 of this Appendix. In addition, the polling place may offer paper ballots for use until power is restored and which are readable by the optical scan component of the System.

3.2.4.1 Write-in Voting, Provisional Voting

The System shall provide a means of casting, recording, tabulating and reporting write-in votes for every office, with a minimum of manual processing.

If the voter is permitted to vote for more than one candidate for an office (such as the Community College Board), the System shall provide as many write-in spaces as the number of candidates the voter may select for that office.

For ranked-choice contests, the System shall provide write-in spaces as provided in section 3.2.1.1 of this Appendix.

The System shall have the capability to record, tabulate and report votes for multiple qualified write-in candidates for a single office. This capability shall involve a minimum of manual remakes, data entry or other manual processing.

The System shall provide a means for provisional voting.

3.2.4.2 Voting in a Recall Election

The System shall provide for the marking or casting of ballots in a recall election in the manner specified in the San Francisco Charter and Division 11 of the California Elections Code.

3.2.4.3 Special Voting Options

Ballot formats shall allow the use of all special options as authorized or required by the California Elections Code, San Francisco Charter and San Francisco Municipal Elections Code, including but not limited to cross-voting among parties in open, blanket and unitary primary elections, and ranked-choice voting for local offices.

3.2.4.4 Preservation of Voting Data, Printed Record of Ballots Cast

The System shall record and preserve all voting data. Voting data shall include, but not be limited to, the voter's original markings on ranked-choice ballots. Voting data shall also include a complete record of voter error (including but not limited to overvotes, undervotes, skipped ranks and multiple ranks), error resolution (whether the voter chose to vote the ballot "as is" or recast the ballot) and a record of each exhausted ranked-choice ballot.

The System shall be capable of producing printed records of voting data, including but not limited to records of ballots cast as required by law during the term of the Agreement. This includes, but is not limited to, a voter-verified paper audit trail required for DRE equipment. This also includes, but is not limited to, printed records required to be produced and displayed at the polling place after the close of polls.

The System shall be capable of producing printed records of voting data at the polling place. The System shall be capable of printing a separate record of voting data for each optical scan ballot counter. For the DRE voting device the separate record of voting data will be printed on the VVPAT. In addition, the System shall be capable of producing printed records that aggregate all voting data from the polling place, including voting data recorded by an optical scan ballot counter and a DRE voting device. The System will provide a printed report that aggregates

data from the optical scan ballot counter and DRE voting device. This functionality will be available for the November 2006 General Election.

The System shall have the capability to produce reports with ranked-choice voting data, as specified by the Department, that include data about the voter's original markings on the ballot before any processing in preparation for or during the run-off tabulation. These reports may also include information about undervotes and about the transfer of votes at each stage of the run-off tabulation process. These ranked-choice voting data reports shall include the Department-assigned precinct and district numbers, and identify the name of contest and whether ballot was cast at precinct or by absentee ballot, and shall be in a format approved by the Department.

The System shall have the capability to produce reports with ranked-choice voting data, as specified by the Department, Citywide, by precinct, by District, and segregated between absentee and precinct ballots.

3.2.4.5 Counting Ballots

3.2.4.5.1 Optical Scan Ballot Counter

Precinct counting devices shall accept and count ballots in any of four orientations. The ballot counter shall have:

- a four-or-more digit public counter that displays the number of ballot cards processed;
- security locks and seals for all data storage devices;
- a removable programmable memory device which contains an internal power source to preserve elections data and voting data in the event of a power interruption;
- a display screen and/or a printed record to assist voters and pollworkers in identifying, understanding and correcting error conditions; and
- a means of preventing or detecting the insertion of more than one ballot card at a time, and a messaging capability to inform the voter or pollworker which of the multiply-fed cards has been processed and which has not.

The ballot counter shall have the capability to process multiple ballot formats within a precinct, and multiple precincts within a polling place, and to produce voting data reports that correctly contain the vote totals within each precinct or polling place subdivision. The ballot counter shall have the capability to record all first choice, second choice, third choice, etc., rankings in each ranked-choice contest.

3.2.4.5.2 Ballot Box

The System shall provide a precinct ballot box with three compartments:

- a compartment for fully marked and counted ballots;
- a compartment for write-in ballots; and
- a compartment for emergency voting.

The ballot box shall have a security lock and seal or security features that are functionally equivalent to a lock and seal.

3.2.4.5.3 DRE Voting Device

DRE voting devices shall count each ballot as it is cast. The DRE voting device shall have the following:

- a four-or-more digit public counter that displays the number of ballots cast;
- security locks and seals for all data storage devices;
- a removable programmable memory device which contains an internal power source to preserve elections data and voting data in the event of a power interruption; and
- a display screen and/or a printed record to assist voters and pollworkers in identifying, understanding and making vote selections. An audio ballot shall have the capability to offer voter help instructions.

The DRE voting device shall have the capability to process multiple ballot formats within a precinct, and multiple precincts within a polling place, and to produce voting data reports that correctly contain the vote totals within each precinct or polling place subdivision.

3.2.5 Closing the Polls

Precinct count devices (including optical scan ballot counters and DRE voting devices) shall provide a means for closing the polls and preventing the further casting or counting of ballots once the polling place has closed.

3.2.6 Preservation and Printed Records of Voting and Audit Data

3.2.6.1 Voting Data

The System shall be capable of recording and preserving all voting data, including but not limited to the voter's first choice, second choice, third choice, etc, votes in each ranked-choice contest before any processing of those votes in preparation for or during the run-off tabulation.

3.2.6.2 Printed Records of Voting Data, Polling Place Reports

After the polls have closed, the polling place equipment shall produce a Voting Data Report for inspection and signature by the designated polling place official(s). The System shall produce these polling place reports in the quantity specified by the Department, and in a format approved by the Department in advance of the election. The Voting Data Report shall be in a format suitable for posting at the polling place as required by Section 13.107.5 of the San Francisco Charter. This functionality will be available for the November 2006 General Election.

The System shall be capable of producing a printed Voting Data Report of the votes cast and counted at the polling place, and extracting this information from transportable programmable memory device or data storage medium if one is used. After the proper sequence of events associated with closing the polling place has been completed, the System shall allow the printing of this report and/or the extraction of data. Until the proper sequence of events associated with closing the polling place has been completed, the voting device shall not allow the printing of such reports and/or the extraction of such data.

The System shall be capable of consolidating data from the Optical Scan ballot counter and DRE voting device used at a polling place into a single Voting Data Report for the polling place. The aggregation process shall comply with the security and procedural requirements for the System as a whole, and for the individual counting devices.

At a minimum, Voting Data Reports for each precinct shall include:

- The precinct number.
- The number of ballots (optical scan technology) or ballot images (DRE technology) processed.
- The number of ballot cards (optical scan technology) processed.
- Candidate vote totals for each contest, including the number of first-choice votes cast for each candidate in each ranked-choice contest.
- Measure vote totals for each contest.
- The number of ballots or ballot images read within each precinct, by type, including totals for each party in primary elections.
- Separate accumulation of overvotes and undervotes for each race or issue (no overvotes would be indicated for DRE devices).

3.2.6.3 Data Communications

The System shall provide for the secure electronic transfer or transmission of voting data to the Department's Central Processing Network from a transmission center. The System shall be capable of simultaneous and secure transmission of precinct results from multiple transmission centers by electronic means to the Central Processing Network. The System shall not allow for any wireless transmission of voting data.

3.2.6.4 Audit Data Reports

The System shall record and preserve audit data for all phases of elections operations. The System may rely upon automated audit data acquisition and machine-generated reports, with manual input of some information. Audit data shall include, but not be limited to, audit records of the ballot preparation and election definition phase, System readiness tests, and voting and ballot-counting operations. The software shall activate the logging and reporting of audit data as described in the following sections.

The timing and sequence of audit record entries is as important as the data contained in the record. Except where noted, provisions shall be made for the creation and maintenance of a real-time record. The purpose of the real-time record is to provide

the operator or precinct official with continuous updates on machine status. This information allows effective operator intervention during an error condition, and contributes to the reconstruction of election-related events necessary for recounts or litigation.

The System shall incorporate a real-time clock as part of system hardware. It shall maintain an absolute record of the time and date or a record relative to some event whose time and date are known and recorded. All audit record entries shall include the time-and-date stamp.

The audit record shall be active whenever the System is in an operating mode; this record shall be available at all times, though it need not be continually visible. The generation of entries shall not be terminated or interfered with by program control, or by the intervention of any person. The physical security and integrity of the record shall be maintained at all times. Once the System has been activated for ballot processing, the contents of the audit record shall be preserved during any interruption of power to the System until processing and data reporting have been completed.

The System must be capable of producing audit reports that document operation of the System equipment at the polling place during Election Day, including opening and closing of the polls. These reports may include, but not be limited to, reports of voter errors and whether and how these errors were corrected. These reports may also include, but not be limited to, internal operational errors of System components.

A separate printer is not required for the audit record, and the record may be produced on the standard system hard copy output device if the following conditions are met:

- the generation of audit trail records does not interfere with the production of any voting data reports;
- the entries can be identified so as to facilitate their recognition, segregation, and retention; and
- the physical security of the audit record entries can be ensured.

The System shall be capable of producing an electronic copy of all audit records, in a format approved by the Department, for use by the Department for queries and research purposes. Vendor shall provide audit records as specified by the Department.

3.2.6.4.1 Pre-election Audit Records

During election definition and ballot preparation phases, an audit log shall be maintained of completion of the baseline ballot formats and modifications to them, a description of these modifications, and corresponding dates. This data is required to verify the election-specific database has been correctly prepared and maintained throughout subsequent modifications to the baseline format.

The pre-election audit log shall include manual data inputted by election personnel.

Contractor shall provide the Department with copies of pre-election audit records, in a format approved by the Department.

3.2.6.4.2 System Readiness Audit Records

Prior to the initiation of ballot counting, software shall be able to verify hardware and software status through an audit record. This System Readiness Audit Record shall include the identification of the software release, the identification of the election to be processed, and the results of software and hardware diagnostic tests. In the case of systems used at the polling place, the System Readiness Audit Record shall include the polling place's identification.

The ballot interpretation logic capability shall test ballot formats to be processed. Such tests shall verify the maximum number of votes each voter may cast for a single office, the combinations of voting patterns permitted or required by the City, the inclusion or exclusion of offices or measures as the result of multiple ballot formats within the polling place, and any other characteristics that may be peculiar to the election or the polling place's location.

The System software shall ensure non-contamination of voting data through checks of all data paths and memory locations to be used in actual vote recording; upon the conclusion of the readiness tests, the software shall provide evidence in the audit record that the test data have been expunged.

Contractor shall provide the Department with copies of readiness audit records, in a format approved by the Department.

3.2.6.4.3 In-Process Audit Records

The System shall provide In-Process Audit Records consisting of data documenting system operation during diagnostic routines and the casting and tallying of ballots. These records shall cover all System components, including but not limited to polling place equipment, central-processing equipment, transmission devices and tabulation devices. At a minimum, the In-Process Audit Records shall contain machine generated error and exception messages to ensure that successful recovery has been accomplished. Examples include:

- the source and disposition of System interrupts resulting in entry into exception handling routines;
- all messages generated by exception handlers;
- the identification code and number of occurrences for each hardware and software error or failure;
- notification of System log-in or access errors, file access errors, and physical violations of security as they occur, and a summary record of these events after processing
- other exception events such as power failures, failure of critical hardware components, data transmission errors, or other type of operating anomaly

Critical System status messages other than informational messages shall be displayed by the System during the course of normal operations. These items include:

- diagnostic and status messages upon startup;
- the "zero totals" check and "ready to accept ballot" check conducted before opening the polling place and before processing ballots using central count equipment;
- the initiation or termination of card reader and communications equipment operation (Optical Scan Technology) or the event and time, if available of enabling/casting each ballot (DRE

Technology), i.e.; each voter's transaction as an event.

Non-critical status messages that are generated by the machine's data quality monitor or by software and hardware condition monitors are not required in real-time and may, instead, be reported in log form.

The System shall be capable of producing an electronic copy of all in-process audit records, in a format approved by the Department, for use by the Department for queries and research purposes. Contractor shall provide copies of in-process audit records as specified by the Department.

3.2.6.4.4 Post-Election Audit Records: Aggregation of Data, Canvass

After all ballots have been counted either at the polling place or in a central count location, the System shall provide a Post-Election Audit Record of all operator actions and system events occurring during aggregation of voting data and the preparation of the official canvass.

The System shall be capable of producing an electronic copy of all audit records. Contractor shall provide copies of post-election audit records.

3.2.7 Error Conditions

To the greatest extent possible, the System shall prevent voter error or omissions, including but not limited to overvotes, undervotes, skipped ranks and multiple rankings on ranked-choice ballots as described in this subsection. If a voter casts a ballot with an error condition, the System shall produce an error message that informs the voter of the specific error and how to correct the error with a minimum of pollworker assistance. The Department, in its sole discretion, shall decide whether to activate configurable features in an election. The System shall generate error messages for error conditions which include, but are not limited to, the following:

3.2.7.1 Regular Contests

For regular (non-ranked-choice) contests, a vote is valid and shall be counted unless one of the following error conditions prevents the vote from being counted:

(1) the ballot contains more than the permissible number of votes per contest (overvote) (DRE devices shall prevent overvotes); or

(2) the ballot contains no valid marks (blank vote).

In these two instances, an error message shall notify the voter that his/her vote on the contest with the error condition will not be counted unless the voter makes the indicated corrections.

The voter shall have the option of re-marking the ballot correctly and the re-marked ballot shall be processed as a valid ballot. However, the voter shall also have the option to ignore the error condition and request that the ballot be processed "as is."

The System shall be capable of identifying and preventing undervotes for individual contests (as opposed to an entirely blank ballot with no valid marks).

3.2.7.2 Ranked-Choice Contests

3.2.7.2.1 Error Conditions That Invalidate the Vote on the Ranked-Choice Contest

3.2.7.2.1.1 First-Choice Overvotes

If the voter indicates more than one candidate as the voter's first choice for a ranked-choice contest ("first-choice overvote"), an error message shall notify the voter that his/her vote on the contest with the error condition will not be counted unless the voter makes the indicated correction. (DRE devices shall prevent first-choice overvotes.)

The voter shall have the option of re-marking the ballot correctly and the re-marked ballot shall be processed as a valid ballot. However, the voter shall also have the option to ignore the error condition and request that the ballot be processed "as is."

3.2.7.2.1.2 Blank Ranked-Choice Contest

If the voter leaves a ranked-choice contest entirely blank, an error message shall notify the voter.

The voter shall have the option of re-marking the ballot correctly and the re-marked ballot shall be processed as a valid ballot. However, the voter shall also have the option to ignore the error condition and request that the ballot be processed "as is."

3.2.7.2.2 Error Conditions That Do Not Invalidate the Vote on the Ranked-Choice Contest

When one of the following error conditions occurs, an error message shall inform the voter and provide instruction on how to correct the error. The voter shall have the option of re-marking the ballot correctly and the re-marked ballot shall be processed as a valid ballot. However, the voter shall also have the option to ignore the error condition and request that the ballot be processed "as is."

If the voter chooses to cast the ballot "as is," the vote *shall be counted* according to the rules and conventions in Section 3.2.7.3 of this Appendix.

3.2.7.2.2.1 Later-Choice Overvote

If the voter indicates more than one candidate as the voter's second or later choice for a ranked-choice contest ("later-choice overvote"), and the voter does not correct this error condition, the vote for that contest *shall be counted*, subject to the rules and conventions in Section 3.2.7.3 of this Appendix. (DRE devices shall prevent later-choice overvotes.)

3.2.7.2.2.2 Skipped Rank

If a voter skips a rank for a contest (for example, the voter selects a first and third-choice candidate, but does not select a second-choice candidate, or the voter selects first and second-choice candidates, but does not rank any of the remaining candidates for

that contest), the vote *shall be counted* according to the rules and procedures set forth in Section 3.2.7.3 of this Appendix.

3.2.7.2.3.3 Multiple Rank

If a voter ranks one candidate multiple times (for example, the voter ranks candidate A as the voter's first and third choice) for a contest, the vote *shall be counted* according to the rules and conventions set forth in Section 3.2.7.3 of this Appendix. (DRE devices shall prevent multiple rankings.)

The text of all error messages shall be approved in advance by the Department. The Department, in its sole discretion, shall decide whether to activate error messages in an election.

3.2.7.3 Interpretation of Ranked-Choice Ballots

The following table illustrates the rules and conventions for interpretation of ranked-choice ballots during application of the run-off tabulation. These rules and conventions shall be uniformly applied. The table provides examples, and is not intended to be exhaustive. As indicated above, DRE devices shall prevent many of these error conditions.

First Choice	Second Choice	Third Choice	Conditions	Interpretation
Ann/ Cat	Bob	Don	first-choice overvote	Vote on RCV contest invalid. No vote will be counted; tally as an overvote.
None	None	None	blank vote for contest	Vote on RCV contest invalid. No vote will be counted; tally as an undervote.
Bob	Ann/ Don	Cat	second-choice overvote	Count Bob as first choice, then stop. Contest vote is exhausted due to overvote.
Don	Bob	Ann/ Cat	third-choice overvote	Count Don as first choice, then Bob as second choice, then stop. Contest vote is exhausted due to overvote.
Ann	Ann	Don	multiple rank	Count Ann as first choice, then Don as second choice, then next-choice candidate (if any) as third choice, etc. If no next choice, contest vote is exhausted.
Bob	Ann	Bob	multiple rank	Count Bob as first choice, then Ann as second choice, then next-choice candidate (if any) as third choice, etc. If no next choice, contest vote is exhausted.
Bob	Ann	Ann	multiple rank	Count Bob as first choice, then Ann as second choice, then next-choice candidate (if any) as third choice, etc. If no next choice, contest vote is exhausted.
Ann	Ann	Ann	multiple rank	Count Ann as first choice, then next-choice candidate (if any) as second choice, etc. If no next choice, contest vote is exhausted.
None	Don	Cat	skipped rank	Count Don as first choice, then Cat as second choice, then next-choice candidate (if any) as third choice, etc. If no next choice, contest vote is exhausted.
Cat	None	Bob	skipped rank	Count Cat as first choice, then Bob as second choice, then next-choice candidate (if any) as third choice, etc. If no next choice, contest vote is exhausted.
None	Ann	None	skipped rank	Count Ann as first choice, then next-choice candidate (if any) as second choice, etc. If no next choice, contest vote is exhausted.
Bob	None	None	skipped rank	Count Bob as first choice, then next-choice candidate (if any) as second choice, etc. If no next choice, contest vote is exhausted.
Ann	Bob	None	skipped rank	Count Ann as first choice, then Bob as second choice, then next-choice candidate (if any) as third choice, etc. If no next choice, contest vote is exhausted.
None	None	Cat	skipped rank	Count Cat as first choice, then next-choice candidate (if any) as second choice, etc. If no next choice, contest vote is exhausted.

3.2.8 Recovery from Error Conditions

3.2.8.1 Error Messages

Error message entries shall be made and reported as they occur. Except for error messages which require resolution by a trained technician, all other error messages requiring intervention by a voter or pollworker shall be displayed or printed

unambiguously in easily understood language text, or by means of other suitable visual indicators.

When numerical codes are used for trained technician maintenance or repair, the text corresponding to the code shall be self-contained, or an instructional sheet shall be affixed inside the unit device. This is intended to reduce inappropriate reactions to error conditions, and to allow for ready and effective problem correction.

The message cue for all systems shall clearly state the action to be performed in the event that voter response is required. System design shall ensure that erroneous responses will not lead to irrecoverable error. Nested error conditions shall be corrected in a controlled sequence such that system status shall be restored to that initial state existing before the first error occurred.

3.2.8.2 Voter Error

In the event of a voter error:

- Optical Scan Technology. The System shall be capable of separating (e.g. separate bins, return ballot to voter, outstack) a ballot based on configured options or criteria .
- DRE Technology. The System shall provide a means for the voter to correct the error prior to casting the ballot.

3.2.8.3 Pollworker Error

In the event of a pollworker error in operating the optical scan ballot counter or DRE voting device, the System shall provide audible and/or visual indication of the error and a means for correcting the error which does not result in the corruption of any previously cast voting data or inhibit the continuance of voting after the error has been corrected

3.2.8.4 Preservation of Data on Errors

The System shall record and preserve data on voter and pollworker error and shall be capable of producing audit reports that document these and whether and how these errors were corrected.

3.2.9 Aggregation and Reporting of Voting Data

The System shall have the capability to quickly and easily aggregate precinct data with absentee voting data. The System shall also have the capability to quickly and easily aggregate provisional voting data, write-in voting data and remake ballot voting data.

The System shall provide for the release of unofficial voting data after closing of the polls. These reports may consist of reports of votes counted for one or more precincts, one or more offices, and one or more measures, in a format subject to approval by the Department. The System shall have the capability to suppress data about write-in votes in the unofficial voting data reports issued after closing the polls.

3.2.9.1 Tabulation of Results for Ranked-Choice Contests

The System shall have the capability to aggregate all ranked-choice ballot data in one uniform file format and conduct the run-off tabulation for the release of unofficial voting data after closing of the polls. These reports shall include the results during each round (or iteration) of the run-off tabulation process, clearly indicating the transfer of votes (origination and destination) in each round. These iteration reports shall be in a format approved by the Department.

The System shall preserve the original voting data that reflects how voters cast their ranked-choice ballots, including any undervotes, overvotes, skipped rankings and multiple rankings. In any ranked-choice contest, a ballot that is exhausted in the first iteration shall be recorded as an exhausted ballot. Unless otherwise directed by the Department, all voting data reports, including but not limited to the unofficial voting data reports issued after closing of the polls on Election Night, shall apply the rules and conventions for interpretation of ranked-choice ballots specified in Section 3.2.7.3 of this Appendix: The rules and conventions of Section 3.2.7.3 apply to all ranked-choice voting data, during the conduct of the run-off tabulation.

The System shall have the capability to conduct the run-off tabulation at any time between the time the polling places close on Election Day and the time the Department certifies the results of the election. The System shall have the capability to conduct the run-off tabulation to the voting data in each precinct, Supervisorial district and Citywide. The System shall have the capability to conduct the run-off tabulation for a single ranked-choice contest independently of other ranked-choice contests at the same election.

The Department, in its sole discretion, shall determine when to conduct the run-off tabulation, and to what portion of the voting data.

3.2.9.1.1 Resolution of Tie Votes in Ranked-Choice Contests

If there is a tie vote between or among two or more candidates with the fewest number of votes, the following rules and procedures shall apply.

If there is a tie vote between or among two or more candidates with the fewest number of votes, Contractor shall immediately notify the Department. For each of the two or more candidates with the fewest number of votes, the Department shall prepare ten pieces of paper with the full name of the candidate printed on one side. All pieces of paper shall be the same size and color. The Department shall fold each piece of paper so that the name of the candidate cannot be seen. The Department shall place all pieces of paper in an otherwise empty container (such as a glass jar or cardboard box) that has a lid. The Department shall place the lid on the container and shake its contents. The Department shall select one piece of paper from the container. The candidate whose name is written on the selected piece of paper shall be eliminated in the next iteration of the run-off tabulation process, and votes cast for that candidate shall be redistributed to the voters' next-choice candidate. The Department shall notify Contractor of the candidate whose name is written on the selected piece of paper.

All aspects of this process for resolving a tie vote shall be open to viewing by the public. The Department shall, in its sole discretion, designate a location that is open to viewing by the public, and the time for resolving tie votes.

If there is a tie vote between or among two or more candidates with the fewest number of votes, and if the total number of votes for the tied candidates is less than the number of votes for the candidate with the next fewest number of votes, the System shall eliminate the two or more tied candidates simultaneously. The System shall transfer votes cast for each of the eliminated candidates to the voter's next-choice candidate before re-tabulating the votes.

If there is a tie vote between or among two or more candidates with the highest number of votes, the Department shall resolve the tie under the California Election Code.

3.2.9.2 Official Canvass

The System shall have the capability to process write-in and provisional votes with a minimum of manual data-entry, and quickly and easily aggregate this data with other voting data.

The System shall have the capability to conduct the run-off tabulation at the precinct level, and report the results, if this application is necessary to complete the 1% manual tally required by the California Elections Code.

The System shall have the capability to produce all documentation necessary for an audit trail and production of elections reports including absentee voting results, Election Day results, neighborhood results and a complete Statement of Vote. The documentation for each ranked-choice contest must include the tabulation at each stage of the process in which one or more candidates are eliminated and votes are redistributed, and must clearly indicate the redistribution of votes at each stage of the run-off tabulation process. The System shall have the capability to produce documentation for each ranked-choice contest Citywide, by precinct, by District and segregated between absentee and precinct ballots.

Official voting data reports for the complete jurisdiction shall comply with the requirements of Division 15, Chapters 1 through 9 of the Elections Code.

The System shall have the capability to export all election data and reports in a format that can be quickly and easily uploaded into a Department database, and to other mediums as requested by the Department.

3.2.10 Security of Data Communications

The System shall provide a means to assure that all administrative and voting data transmitted from one device to another within a site, or transmitted between sites, shall be protected against unauthorized access and corruption of data.

3.2.11 Absentee and Early Voting

The System shall include the capability to generate and count absentee ballots in accordance with the requirements of the California Elections Code.

3.3 Design Requirements

The System design shall comply with the hardware design requirements of Section 3 and the software design requirements of Section 4 of the Voting System Standards, and with the specific requirements listed below.

Components of the System shall be classified by size and weight as follows:

- **Portable equipment** used at the polling place or in a central count location is defined as equipment that is regularly transported between its operating location and a place of storage. It is intended to be handled by one person, and is equipped with handles or lifting surfaces for this purpose. It shall be designed for installation on a ballot box/bin (Optical Scan Technology) or in a voting booth (DRE Technology). Its dimensions shall not exceed the space currently allocated by the Department for similar equipment, and its weight shall not exceed 60 lbs.
- **Movable equipment** used in a central count location is defined as equipment that is typically equipped with a rigid stand or base, with or without wheels or casters. It is intended to be handled by two or more persons, and handling may require the use of a dolly or lifting mechanism. There is no restriction on size or weight.

3.3.1 Ease of Use

Components of the System shall be designed and constructed so as to aid the user (whether voter, pollworker or the Department staff) in performing proper operations and to minimize the probability of error caused by the user. In particular, components shall be designed so that operations performed by the voter such as marking a ballot (Optical Scan Technology) or making a vote selection (DRE Technology) are easily understood, so that errors are prevented to the maximum extent possible, and so that recovery from an erroneous operation is facilitated by the attributes of the System. In addition, components shall be designed so that installation, set-up, operation and disassembly by pollworkers and the Department staff at the polling sites is as simple and error-free as possible.

3.3.2 Access for Voters with Special Needs

During the term of this Agreement, the System shall comply with the Help America Vote Act of 2002, the Americans With Disabilities Act and other applicable laws and regulations in effect as of the date of this agreement.

In no event shall any term or provision of this Agreement require Contractor to undertake or perform changes to the Hardware, System Software or Firmware due to changes in law, or changes in interpretation of existing law by a court of competent jurisdiction, occurring after the date of this Agreement. Without limitation of the foregoing, Contractor is not obligated to cause the System, Hardware, Software or any component thereof to comply with any specifications, standards or requirements of the National Association for State Election Directors, Federal Election Commission, Election Assistance Commission, California Secretary of State or other governmental, quasi-governmental or regulatory body or agency to the extent such specifications, standards or requirements are not in effect and applicable on the date of this Agreement (including, without limitation, FEC or EAC 2002 or 2005 standards).

The design and installation of System equipment used in the polling place shall accommodate access by voters, including but not limited to voters with visual and/or mobility impairments, in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters. Accommodation of visual impairments may include the provision of an ancillary optical magnification device (Optical Scan Technology) or a headset with an audio ballot (DRE Technology). Accommodation of mobility impairments may include the provision of wheel-chair access to the ballot marking station (Optical Scan Technology) or voting device station (DRE Technology), such that these provisions are within easy view and reach of the voter.

Polling place equipment shall have at least two universal ports for assistive devices including, but not limited to, headsets and Braille keyboards, so that two assistive devices may be used simultaneously.

3.3.3 Backup Power

The System shall provide for an extended life back-up power supply to permit the continuation of voting operations for a minimum period of 1 1/2 hours.

3.4 System Security Requirements

The Department will implement security procedures to prevent unauthorized physical access to Department facilities and to System

components located within Department facilities. Contractor's installation, integration, testing, operation, support and maintenance of the System shall be consistent with the physical access control procedures of the Department.

Contractor shall implement security procedures to prevent unauthorized physical access to facilities, other than those under the immediate control of the Department, that are used to store or stage System components, and to the System components stored or staged at those facilities. These procedures shall be subject to approval by the Department.

The System shall limit access to authorized personnel only, who shall be identified by the Department in its sole discretion. At a minimum, System access shall be limited using password protection. The System shall record and preserve a log of user access and functions or tasks executed by the user.

The operation of the System shall be consistent with the administrative access control system of the Department, enabling the access of personnel designated by the Department to system functions the Department authorized them to perform, and preventing their access to other system functions.

The System shall include and support operational features to prevent both inadvertent and deliberate operations which could result in the disruption of the elections process and corruption of election administrative and voting data.

The System shall have dedicated ports that can only be accessed by specific System components or ancillary devices.

3.5 System Usability

"Usability" of a voting system is the degree to which voters, pollworkers and election staff can use the System easily, effectively and efficiently with making minimal errors while performing such tasks as selecting and reviewing choices for contests and measures, casting ballots, counting votes, configuring parts of the System for use, creating reports and various other activities involved with the election process.

Contractor shall survey System usability, in consultation with the Department, and shall use the survey results to research improvements to the System in order to promote the usability of the System. As part of the preparations of each election, Contractor shall develop a plan for the Department's approval to survey the usability of the System. This plan may include exit surveys, mock elections held for usability experts, focus groups, and any other

methods that Contractor and the Department determine to be the most effective methods of assessing and improving the usability of the System. The Department, in its sole discretion, may include representatives of professional groups and members of the public when reviewing Contractor's proposed plan.

Contractor shall establish usability goals for the System subject to the review and approval of the Department, and a usability research program to refine and monitor implementation of those goals. Contractor shall develop research methods and procedures for collecting quantitative data on the capability of voters(including elderly, disabled and illiterate voters), pollworkers and election office staff to perform key tasks while using the System.

4. Quality Requirements

4.1 Materials and Parts

Only new and previously unused materials and parts shall be used to fabricate, assemble, repair and maintain the System and its components.

4.2 Workmanship

Workmanship standards for fabrication and assembly of the System shall meet or exceed standard commercial and industrial practice, and shall assure that the System components are free from damage or defect.

APPENDIX E

SOFTWARE LICENSE AGREEMENT

BETWEEN

SEQUOIA VOTING SYSTEMS, Inc.

AND

CITY and COUNTY OF SAN FRANCISCO, CA

INDEX OF CLAUSES

1. Definitions
2. Grant of License
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Appendix 1 License Fee

THIS AGREEMENT is made on _____ day of July, 2007

BETWEEN

SEQUOIA VOTING SYSTEMS Inc., located at 7677 Oakport Street, Suite 800, Oakland, CA 94621 ("the Licensor")

AND

CITY and COUNTY OF SAN FRANCISCO, CA, having its offices at 1 Dr. Carlton B. Goodlett Place, City Hall, San Francisco, CA 94102-4685 ("the Licensee").

WHEREAS

The Licensee wishes the Licensor to grant to it a license to use the WinEDS Software and the RCV Software in relation to the Equipment (both as hereinafter defined) and the Licensor is agreeable to granting such a license subject to the following terms and conditions:

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS

1.1 In this Agreement the following terms shall bear the following meanings:

"Documentation"	the manuals, procedures and materials accompanying the WinEDS Software and the RCV Software.
"WinEDS Software"	WinEDS election management software
"RCV Software"	Rank Choice Voting Application Software
"License Fees"	the license fees payable by the Licensee to the Licensor for the license of the WinEDS Software herein as specified and the license of the Rank Choice Voting Application Software herein as specified in Appendix 1.
"Specifications"	the specifications for the WinEDS Software and the RCV Software set forth in the Documentation.

1.2 Words used in the singular shall include the plural and vice versa.

2. GRANT OF LICENSE

2.1 The Licensor grants to the Licensee a personal, non-transferable and non-exclusive license for one (1) year to use the WinEDS Software and the RCV Software solely for the Licensee's own internal business purposes and solely in conjunction with the Hardware at the Locations. The license shall take effect on January 1, 2007. This Agreement may not be assigned or transferred by the Licensee, voluntarily or by operation of law (including without limitation, by transfer of ownership interests

in the Licensee), to any party without the Licensor's express prior written permission. The Licensee shall have no power to grant sub-licenses, prepare derivative works or modify the WinEDS Software or the RCV Software. Any use of all or any portion of the WinEDS Software or the RCV Software not expressly permitted by the terms of this Agreement is strictly prohibited.

2.2 Licensor shall retain ownership of and all copyright and other proprietary rights in the WinEDS Software and the RCV Software and any modifications or translations thereof. Licensee shall acquire only the limited license to the WinEDS Software and the RCV Software granted under the express terms of Section 2.1 above.

2.3 No right is granted to Licensee by this Agreement to use any identifying mark (such as, but not limited to, trade names, trademarks, trade devices, service marks or symbols, and abbreviations, contractions or simulations thereof) owned by, or used to identify any product or service of, Licensor or a corporate affiliate of Licensor. Licensee agrees that it will not, without the prior written permission of Licensor, (i) use any such identifying mark in advertising, publicity, packaging, labeling or in any other manner to identify any of its products or services, or (ii) represent, directly or indirectly, any product or service of Licensee as a product or service of Licensor or such an affiliate or is made in accordance with or utilizes any information or documentation of Licensor or such an affiliate.

3. DELIVERY

3.1 The WinEDS Software and the RCV Software shall be supplied in executable form together with one back-up copy and one copy of each Software's documentation.

3.2 Delivery of the WinEDS Software and the RCV Software shall take place at the Location(s) or any other site of the Licensee and on the dates agreed between the parties.

4. PRICE

4.1 In consideration of the grant of the license the Licensee shall pay the Licensor the License Fees as specified on Appendix 1 of this License Agreement.

4.2 The Licensee shall pay all invoices within thirty (30) days of invoice date. Licensor reserves the right to withdraw its services and support if any invoice is not paid within ten (10) days of the date when due.

4.3 The Licensee shall pay the Licensor interest on all sums outstanding at an annual rate of interest equal to four per cent (4%) above the prime rate as published in the Wall Street Journal and changed from time to time until payment is made in full (whether before or after judgment).

4.4 Licensee shall be responsible for payment of all sales, personal property, use and other taxes or governmental impositions of any nature, with the sole exception of taxes calculated solely upon the income of Licensor ("Taxes"). Licensee shall, at the option of Licensor, pay Taxes directly to the taxing authority or reimburse Licensor immediately for any Taxes paid by Licensor.

5. PROHIBITED ACTS

5.1 The Licensee shall not (and shall not permit any other party to), except to the extent permitted by law, without the prior written permission of the Licensor:

5.1.1 Transfer or copy onto any other disk or hardware or otherwise copy the WinEDS Software or the RCV Software in whole or in part except for purposes of system backup;

5.1.2 Reverse engineer, disassemble, decompile, decipher or analyze either the WinEDS Software or the RCV Software in whole or in part;

5.1.3 Alter or modify the WinEDS Software or the RCV Software in any way or prepare any derivative works of the WinEDS Software or the RCV Software or any part of parts of the WinEDS Software or the RCV Software;

5.1.4 Alter, remove or obstruct any copyright or proprietary notices from the WinEDS Software or RCV Software, or fail to reproduce the same on any lawful copies of the WinEDS or RCV Software;

5.1.5 Use the WinEDS Software or the RCV Software other than on the Hardware at the Locations.

5.1.6 Export, directly or indirectly, any WinEDS Software or RCV Software to any country outside of the United States, or make disclosure of the WinEDS Software or the RCV Software to any foreign national where such disclosure would require an export license or other governmental permit.

6. CONFIDENTIALITY

The Licensee acknowledges that the WinEDS Software and the RCV Software is the sole and exclusive property of the Licensor or its licensors, contains confidential information of the Licensor or its licensors and embodies certain valuable proprietary information and trade secrets of the Licensor or its licensors. The Licensee shall not give or make available the WinEDS Software or the RCV Software, or any part thereof, or otherwise disclose confidential information contained in, supplied with or relating to the WinEDS Software or the RCV Software to any third party except to such of its employees as are required to have access to the WinEDS Software or the RCV Software in the normal course of use of the WinEDS Software or the RCV Software for the purpose permitted under Section 2 and under like conditions of confidentiality as contained in this Section 6. The provisions of this Section 6 shall survive the termination or expiration of this Agreement.

7. TERMINATION

7.1 Without prejudice to any other remedy which may be available, at law, equity or otherwise, Licensor may terminate this Agreement immediately upon written notice to the Licensee;

7.1.1 If the Licensee breaches any of the terms of this Agreement which, in the case of breach capable of being remedied, is not remedied within ten (10) days written notice from the Licensor, or

7.1.2 If the Licensee uses the WinEDS Software or the RCV Software for any purpose not expressly permitted hereunder.

7.2 Either party may terminate this Agreement if the other party ceases to trade, fails to pay its debts in the normal course, makes or offers to make any voluntary arrangement or composition with its creditors, commences to be wound up otherwise than voluntarily for the purposes of solvent amalgamation or reconstruction, becomes bankrupt, insolvent or if a receiver, administrator, trustee or like officer is appointed over the whole or part of its business.

8. RETURN OF SOFTWARE

Upon termination or expiration of this Agreement, the Licensee shall (i) forthwith return to the Licensor all WinEDS Software and RCV Software in its possession or control, or, if so requested by the Licensor, destroy all such Software and (ii) purge all WinEDS Software or RCV Software from any electronic media, and certify in writing to the Licensor that it has been destroyed and purged.

9. WARRANTY

9.1 The Licensor warrants that the WinEDS Software and the RCV Software will function substantially in accordance with the Specifications for a period of one (1) year from January 1, 2007 and for each additional one (1) year period starting January 1, 2008 that City pays the License Fees listed in Appendix 1. The Licensor shall use reasonable efforts to correct any material failure of the WinEDS Software and RCV Software to function substantially in accordance with the Specifications provided the Licensee has given the Licensor written notice of the defect within the said one (1) year period and provided that the Licensee can reproduce the defect to the Licensor. If the Licensor establishes that a reported defect is not covered by the foregoing warranty or is not covered by the Software maintenance fee payable by the Licensee to the Licensor, pursuant to the terms of a separate Software maintenance agreement entered between the parties (if any), the Licensee shall be responsible for the costs of the Licensor's investigative and remedial work at the Licensor's then current charging rates. The foregoing warranty shall be void in the event of the WinEDS Software or the RCV Software (i) having been modified by any party other than the Licensor or its licensors or (ii) having been used by the Licensee for purposes other than those for which the WinEDS Software and the RCV Software was designed by Licensor.

9.2 The warranty set forth in Section 9.1 is in lieu of all other warranties, express or implied, statutory or otherwise, including but not limited to any warranty of fitness for a particular purpose, warranty of merchantability, satisfactory quality, usefulness or timeliness. The remedies set forth in Section 9.1 shall be the sole and exclusive remedies available to the Licensee for breach of the warranty set forth in Section 9.1.

9.3 Licensee acknowledges that the WinEDS Software and the RCV Software may contain materials prepared by other developers. Licensor makes no warranty or representation whatsoever as to those materials not prepared by Licensor contained in the WinEDS Software or the RCV Software.

10. LIMITATION OF LIABILITY

10.1 Subject only to the provisions of Sections 10.3 and 10.4 below, the Licensor's total aggregate liability for any loss, damage, costs or expenses under or in connection with this Agreement and in connection with the WinEDS Software or the RCV Software howsoever arising, including without limitation loss, damage, costs or expenses caused by breach of contract, negligence, strict liability, breach of statutory or any other duty shall in no circumstances exceed the License fees paid by the Licensee to the Licensor under this Agreement.

10.2 The Licensor shall not be liable for any loss of profits, loss of business, loss of data, loss of use or any other indirect, incidental special or consequential loss or damage whatsoever, howsoever arising, incurred by Licensee or any third party, whether in an action in contract, negligence or other tort, even if the parties or their representatives have been advised of the possibility of such damages.

10.3 Notwithstanding the provisions of Section 10.1 above the Licensor shall be liable for loss or damage to any physical property of the Licensee caused solely by the negligence of Licensor provided, however, the Licensor's total aggregate liability to the Licensee for such loss or damage shall be limited to a maximum of the annual License Fees for all such occurrences.

10.4 The limitations contained in Sections10.1, 10.2 and 10.3 shall not apply to any injury to, illness or death of any person caused solely by the negligence of the Licensor.

11. ENTIRE AGREEMENT

This Agreement embodies the entire agreement between the parties regarding its subject matter and supersedes any previous communications, agreements or understandings. Both parties acknowledge that neither has placed any reliance on any previous communications or understandings other than those expressly incorporated in this Agreement. This Agreement may be amended only by agreement in writing signed by authorized representatives of each party.

12. SEVERABILITY

The provisions of this Agreement are declared to be severable. If any provision is held to be void, contrary to law or enforceable by a court of competent jurisdiction the validity and enforceability of the remainder of this Agreement shall not be affected.

13. WAIVER

Any failure or delay by either party to exercise or enforce any right or any time or indulgence given shall not affect that party's right to exercise or enforce that right against the other party nor shall any waiver of any breach of any provision be taken as a waiver of any subsequent breach or of the provision itself. To be effective any waiver must be in writing, signed by an authorized representative of the waiving party and delivered to the other party.

14. FORCE MAJEURE

Neither party shall be liable for any delay or failure to meet its obligations under this Agreement due to any cause outside its reasonable control including (without limitation), inclement weather,

Acts of God, war, riot, terrorism, malicious acts of damage, civil commotion, strike, holocaust, industrial dispute, refusal of license, power failure or fire or the lack of availability of materials. If performance of this Agreement is substantially prevented for a continuous period of six months by virtue of any of the aforesaid events then either party may terminate this Agreement by written notice to the other. This Section 14 shall not be applicable to a failure to pay any money owing by Licensee under this Agreement

15. NOTICES

Any notice given under this Agreement shall be sufficient if it is sent by first class pre-paid mail, by nationally-recognized overnight courier service or by confirmed fax to the other party at the address appearing at the head of this Agreement or such other address as may have been notified. Every notice shall be deemed to have been received and given on the third working day after posting if sent by mail, on the next working day if sent by overnight courier or in the case of fax, such notice shall be deemed to have been received and given at the time of transmission.

16. ASSIGNMENT

This Agreement may on notice to the Licensee be assigned by Licensor to any entity controlling, controlled by or under common control with Licensor, but otherwise this Agreement may not be assigned by either party without the written consent of the other party.

17. RELATIONSHIP OF THE PARTIES

Licensor and Licensee agree that under this Agreement:

17.1 Both parties are independent entities;

17.2 Neither party is a legal representative, agent or partner of the other;

17.3 Neither party will represent or act on behalf of the other, unless otherwise agreed to in writing; and

17.4 Both parties are free to enter into similar agreements with others and to market its products and services to others.

18. NO THIRD PARTY BENEFICIARIES

Licensor and Licensee agree that this Agreement is for the benefit of the parties hereto and is not intended to confer any rights or benefits on any third party, and that there are no third-party beneficiaries of this Agreement or any part or specific provision of this Agreement, and no third party shall have any right to enforce this Agreement or any provision hereof.

19. GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the laws of the state of California (without regard to principles of conflict of law). The parties hereby consent to the exclusive jurisdiction of the Courts of the State of California, and the Federal Courts located within

the State of California, as to any matter arising under or relating to this Agreement.

IN WITNESS WHEREOF the parties or their duly authorized representatives have set their hands and seals the day and year first above written.

SIGNED for and on behalf of **SEQUOIA VOTING SYSTEMS Inc.**	SIGNED for and on behalf of **CITY and COUNTY OF San Francisco, CA**
Name _____	Name _____
Title _____	Title _____

APPENDIX 1

LICENSE FEES

The Licensee agrees to pay the amount listed on Appendix C-2 of the Purchase Agreement between Sequoia Voting Systems, Inc. and the City and County of San Francisco to the Licensor for the use of the WinEDS® software in accordance with this agreement for the yearly periods starting on January 1, 2008.

The Licensee agrees to pay the amount listed on Appendix C-2 of the Purchase Agreement between Sequoia Voting Systems, Inc. and the City and County of San Francisco to the Licensor for the use of the RCV software in accordance with this agreement for a yearly periods starting on January 1, 2008.

RENEWALS

The Licensor reserves the right to adjust the yearly fees within five percent (5%) of the current fees for renewals without advanced notice to the licensee. For an increase greater that five percent (5%) the Licensee will be informed by the Licensor within sixty (60) days advanced notice; however, any delay in notice shall not preclude Licensor's adjustment

APPENDIX F

Payment Schedule

Summary Payment Schedule	2007	2008	2009	2010	2011	Total
Hardware & Software	4,000,000.00	2,671,308.25				6,671,308.25
Installation & Training		999,000.00				999,000.00
Outreach		60,000.00				60,000.00
Warehouse Improvements	750,000.00					750,000.00
Election Services		994,800.00	497,400.00	994,800.00	497,400.00	2,984,400.00
Maintenance and License Fees		Included	399,800.00	399,800.00	399,800.00	1,199,400.00
Total	4,750,000.00	4,725,108.25	897,200.00	1,394,600.00	897,200.00	12,664,108.25

***Election Service for years 2008, 2009, 2010, and 2011 are based on per election service charges detailed in Appendix C-1 Election Services. If the City conducts additional elections during these years in addition to the number of elections included in that year's aggregate total, additional charges shall apply. The following elections are included the pricing shown above.

2008 – Presidential Primary Election
2008 - California Primary Election
2008 – Presidential Election
2009 – General Election
2010 – Primary Election, General Election
2011 - General Election

Election Services are payable based on completion of tasks defined in table below.

Contract Payables
Equipment, Software, Warehousing, Installation & Training, Outreach

	Amount	Description
First Payment	$4,000,000.00	Due net 10 days from signing of Contract
Second Payment	$750,000.00	Due net 30 days from completion of Warehouse Improvements
Third Payment	$3,500,000.00	Due net 30 days from Acceptance of Equipment
Final Payment	$293,184.00	Due net 30 days after the certification of the February 2008, Presidential Primary Election
Total	**$8,543,184.00**	

Election Services Payables

	Amount	Description
First Payment	$175,000.00	Due net 30 days from completion of Optech Ballot Layout (submission to printer)
Second Payment	$175,000.00	Due net 30 days from completion of Pre-Logic and Accuracy testing of voting equipment.
Final Payment	$147,400.00	Due net 30 days after the certification of the election
Total	**$497,400.00**	

Appendix G

Support and Maintenance Services

I. PROJECT MANAGEMENT

During the term of the Agreement, Contractor shall assign a project manager responsible for ensuring timely delivery of all deliverables and services required under this Agreement (the "Project Manager") and a project support team to provide all maintenance and support services required by this Agreement.

Starting 14 weeks before each Election Day and continuing until seven calendar days before Election Day, the Project Manager shall be on-site (at the Department's main office in San Francisco City Hall) or available by cell phone or pager, Monday through Friday during the Department's regular business hours, to answer questions or respond to problems or concerns regarding election preparations. Starting 8-weeks before each Election Day and continuing until production of Statement of Vote if the Project Manager receives a page or telephone call from the Department requesting the Project Manager's presence on-site, the Project Manager shall make a good faith effort to immediately travel to the site to address any problems or concerns identified by the Department. If the Project Manager and the Department agree that an alternative staff member may respond to the Department's request, then such staff member may attend in lieu of the Project Manager.

Starting seven calendar days before Election Day and continuing until completion of the Statement of Vote, the Project Manager shall be on-site or available by cell phone or pager 24 hours a day to answer questions or respond to problems or concerns regarding the voting and tabulation Hardware and Software, the aggregation or tabulation of voting data, the canvass, audit data or reporting of election results.

II. PROJECT COMMUNICATION

During the term of the Agreement, the Project Manager shall meet with the Department at least once in advance of each election to plan requirements and activities for the next election ("pre-election planning"), and at least once following each election for election debriefing ("post-election debriefing").

The pre-election planning meeting shall occur at the Department no later than 90 days before the Election Day (E-90), and shall include but be not limited to discussions of an election timeline, assignment of tasks, ballot and ballot image design, staff and poll worker training, Logic and Accuracy testing, preparation and number of DRE units needed for early voting, delivery and retrieval of polling place equipment, and procedures for processing outstacked ballots and write-in votes. For purposes of this Agreement, the term "E-Day" shall mean Election Day, the term "E-X" shall mean "X" days before Election Day, and the term "E+X" shall mean "X" days after Election Day.

The post-election debriefing shall occur at the Department no later than E+45 , and shall include, but not be limited to, discussions of any malfunctions, defects or problems discovered in the System or any of its components during the course of the election or the canvass, and the written report of election day support operations and

problem resolution that Contractor must deliver to the Department no later than E+38 (see Section VI(F) of this Appendix).

The Department shall set the meeting date and time for each pre-election planning and post-election debriefing meeting after exercising a reasonable effort to consult with Contractor on the meeting date.

In addition to the pre-election planning meeting and post-election debriefing meeting, during the period starting E-90 and ending E+45, the Project Manager shall be available for other meetings at the Department's request. The Department shall set the meeting date and time for each meeting, after exercising a reasonable effort to consult with Contractor on the meeting date.

III. INSTALLATION, INTEGRATION & ACCEPTANCE TESTING

Contractor shall be responsible for installation and integration of the System and all System components, and all acceptance testing of the System and its components. Acceptance testing shall include, but not be limited to end-to-end testing and logic and accuracy testing.

Following delivery, installation and integration of the System by Contractor, Contractor shall conduct thorough and comprehensive acceptance testing of the System. This testing shall include, but not be limited to, testing of all hardware (including firmware) and software components of the System to evaluate the functionality and capabilities of each component to manage a high volume of varied election data. Contractor shall provide and prepare all materials and devices, including but not limited to test ballots, for acceptance testing. The Acceptance Test Plan is attached to this Agreement as Appendix A.

Contractor shall install, integrate and test the System at a date, time and location designated by the Department, in accordance with Appendix B of this agreement (Implementation Plan). The Department, in its sole discretion, may observe these activities. Contractor shall provide documentation to the Department, in a format approved in advance by the Department, of this acceptance testing.

Installation, integration and acceptance testing shall be performed in accordance with Appendix B of this Agreement (Implementation Plan). In addition to and in conjunction with the services described above concerning installation, integration and acceptance testing, Contractor shall:

- Verify that the System and each of its components are approved, and certified for use, by a federal Independent Testing Authority and the California Secretary of State.
- Verify proper installation of the System and each of its components.
- Verify that there is full integration of the System including but not limited to integration of all network components and integration with City equipment and systems.
- Verify that the System and each of its components are operating according to the Agreement and System specifications.
- Certify the results of acceptance testing, in a format acceptable for transmission to the Secretary of State.

Contractor shall verify each of these items in writing to the Department no later than 14 days after completion of acceptance testing.

During installation, integration and acceptance testing period if the Project Manager receives a page or telephone call from the Department requesting the Project Manager's presence on-site, the Project Manager shall make a good faith effort to immediately travel to the site to address any problems or concerns identified by the Department. If the Project Manager and the Department agree that an alternative staff member may respond to the Department's request, then such staff member may attend in lieu of the Project Manager.

IV. SYSTEM DOCUMENTATION

Contractor shall develop and document the following:

- Hardware design specifications that include performance and design standards and compatibility requirements, equipment interface requirements, and a description of the System operating environment and configurations.
- System Software design specifications that include specifications for the System's operating environment and interface between Hardware components, System Software components and operator/user functions, and software test and verification specifications.

In addition, Contractor shall develop and document the following for a non-technical reader:

- A System operations manual that describes the Hardware and System Software components, operational features and procedures for invoking them, and the support resources required for System operation.
- System maintenance procedures to trouble-shoot malfunctions for fault detection, fault isolation, Hardware or System alignment or adjustment, and removal and replacement of failed components. This must include proper calibration procedures for DRE equipment.
- Procedures for sensitivity testing of optical scan devices.
- Equipment set-up for the System, including but not limited to central processing and network components used to count, record and tabulate votes or aggregate or transmit voting data.
- Procedures for ballot, ballot image and audio ballot design.
- Procedures for election coding including, but not limited to, coding for ranked-choice contests, including ranked-choice contests with a single candidate and the possibility of one or multiple qualified write-in candidates.
- Procedures for preparing an election-specific database.
- Procedures for comprehensive logic and accuracy testing to be conducted in advance of each election.
- Equipment delivery, set-up and retrieval procedures and logistics for equipment and devices used at the polling place.
- Absentee and early voting procedures and logistics.
- Polling place procedures and logistics, including but not limited to initialization of all polling place equipment, equipment operation, routine trouble-shooting by poll workers, and closing of the polls.

- Auxiliary (emergency) voting procedures and logistics, for use in the event of a System failure.
- Provisional voting procedures and logistics.
- Write-in voting procedures and logistics.
- Election Day troubleshooting procedures.
- Procedures and logistics for aggregation and reporting of voting data at the polling place.
- Procedures and logistics for the transfer or transmission of voting data from the polling place or transmission center to the Department's central processing network.
- Procedures and features to ensure that all administrative and voting data is protected against unauthorized access or corruption, from initial coding of an election to the final certification of election results, including, but not limited to features that secure and protect the integrity of data during transmission and that confirm or validate the data following transmission.
- Procedures and logistics for the aggregation of voting data in Department's Central Processing Network, including data concerning absentee ballots, precinct ballots, provisional ballots, remake ballots and write-in voting.
- Procedures and logistics for aggregating ranked-choice voting data, interpreting that data according to the San Francisco Charter, and conducting the run-off tabulation, as needed, for ranked-choice contests at the precinct, district, and Citywide level. These procedures shall include procedures for resolving tie votes at any stage during the run-off tabulation process.
- Procedures for conducting a 1% manual tally as required by law after each election, including but not limited to: procedures for using the voter-verified paper trail to conduct this tally; and procedures for tallying ranked-choice voting data.
- Procedures necessary to complete the official canvass of votes and report voting data, audit data and election results as required by law or this Agreement after each election.
- Procedures for conducting a recount, including but not limited to procedures for using the voter-verified paper trail to conduct the recount.
- Procedures for manual processing and reporting of voting data, including but not limited to ranked-choice voting data, for use in the event of a System failure.
- Storage, repair and maintenance requirements and procedures for the System.

Contractor shall deliver to the Department the materials described above in accordance with Section 6 of this Agreement and Appendix B (Implementation Plan). If a delivery date for any of the documents listed above is not specified in Section 6 or Appendix B such document shall be delivered not later than one week before the commencement of early voting, unless otherwise agreed to in writing by Contractor and the Department by amendment to the baseline implementation plan.

V. TRAINING

A. DEPARTMENT ORIENTATION

In advance of the November 2007 Election and the June 2008 Election the Contractor shall provide to the Department's staff a comprehensive orientation concerning the System. This orientation shall include, but not be limited to: an overview of the System and all Hardware and System Software components; equipment set-up; System operation; election production, including but not limited to ballot design, election coding, logic and accuracy test design and procedures, and production of the Official Statement of Votes; staging equipment for delivery to and retrieval from the polling place; routine maintenance; and trouble-shooting. The orientation shall include a demonstration of all polling place and central processing equipment. The Department may choose to forego the June 2008 orientation.

The Department shall, in its sole discretion, identify Department staff for this orientation and specify the time and location for this orientation, per mutually agreed upon baseline implementation plan.

In addition to the Department staff orientation, in advance of each election, Contractor shall provide the following training:

B. POLL WORKER TRAINING, TRAINING OF ELECTION DAY FIELD SUPPORT PERSONNEL

In advance of the November 2007 and June 2008 elections, Contractor shall conduct the following training sessions (unless otherwise identified in the text descriptions below):

Product/Item	Course	Manual	Days	Sessions	# of Staff
Orientation Training	System Component Orientation	PowerPoint	1	2	30
Edge®, VVPAT, Card Activator	Acceptance Test Training	Yes	1	1	10
	Operations and General Maintenance	Yes	1	1	4
	Pre-election Logic and Accuracy Testing	Yes	1	1	10
Insight®/400C	Operations and General Maintenance	Yes	3	1	4
	Pre-election Logic and Accuracy Testing	Yes	1	1	10
WinEDS/BPS	WinEDS I - Tally and Pre-LAT	Yes	2	1	3
	WinEDS II & BPS – Election Management and Ballot Layout	Yes	8	1	3
Tally Support	Remote Tally & Precinct Transmission	Yes	2	1	10
Pollworker	Train the Trainer	Yes	2	2	25
Field Technician	Election Day Field Technician Training	Yes	1	2/Day	30

The Contractor will first provide a System Implementation Orientation and Transition seminar for all City Election Department staff. Edge® (and ancillary Edge® equipment), Insight® /400C, WinEDS/BPS, Remote Tally/Transmission and Pollworker training will be provided for a number of staff mutually agreed upon by the City and Sequoia. Recommended number of staff for most effective training is indicated in the table above. Training will include materials and guides (manuals) for the various systems. Training will be conducted as outlined above:

General course descriptions follow. For each course, a test will be administered to measure basic competency.

Acceptance Testing Training - This course reviews the step-by step procedures for all facets of acceptance testing the voting system including the Edge®, Card Activator, VeriVote, and Insight® to include performing a physical inspection of each and an overall system testing incorporating all aspects of each of the components of the voting system. The overall system acceptance testing training will include training on remote transmission.

Edge® Operations and General Maintenance - Course participants will develop a working knowledge of the operation and function of the Edge® and VeriVote. Hands-on training will include the system operating modes, election setup procedures and basic troubleshooting skills. At the end of this course, each participant will have the skills necessary to maintain and prepare the Edge® for an election. This course will be provided for department staff who will be working directly with the operations and maintenance of the Edge®. Sequoia will also assist the City with their training of temporary personnel in the operations and general maintenance of the Edges®. (One Time – TBD).

Edge®, VeriVote and Card Activator Pre-Election Logic and Accuracy Testing– Course participants will learn recommended logistics for setting up the work area and personnel assignments for preparing and staging Edge® machines, VeriVotes and Card Activators for the election. Hands-on training will also be given in the step-by-step process for conducting pre-election logic and accuracy testing.

Edge® Technician Training – Course participants will develop a working knowledge of the technical aspects of the Edge®. Hands-on training will include diagnostics and repair of standard components. At the end of this course, each participant will receive a technician level certification. (One Time – TBD)

Insight®/400C Operations and General Maintenance - Course participants will learn how to process ballots through the Insight® and 400C, learn tips for general user maintenance of the machine, and troubleshooting techniques. At the end of this course, each participant will have the skills necessary to maintain and prepare the Insight® and 400C for an election. (One-Time – TBD).

Insight®/400C Pre-Election Logic and Accuracy Testing – Course participants will receive hands-on training for preparing the Insights® and 400C for the election. Hands-on training will be given in the step-by-step process for conducting pre-election logic and accuracy testing.

Insight® Technician Training – Course participants will develop a working knowledge of the technical aspects of the Insight®. Hands-on training will include diagnostics and repair of standard components. At the end of this course, each participant will receive a technician level certification. (One Time – TBD).

WinEDS I Tally and Pre-LAT - Course participants will learn how to use WinEDS to effectively support and complete tally procedures for an election. The training will include cartridge creation and processing, precinct transmission procedures, tally procedures and reporting. At the end of this course, each participant will have the understanding and skills necessary to execute election night tally procedures.

Win EDS II Election Management and Ballot Layout - Course participants will learn how to use WinEDS components to generate elections. Hands-on training includes modifying profile data, generating ballot headers, ballot styles and layouts and creating an election. At the end of this course, each participant will have the skills necessary to define an election. (One Time – TBD).

Pollworker Train the Trainer - Course participants will learn how to effectively present and facilitate pollworker training sessions, including Edge® and Insight® voting unit setup, Card Activator setup, processing votes, closing polls, precinct transmission on Card Activator, voting unit disassembly, and troubleshooting.

Field Technician Training – Course participants will develop a working knowledge of the technical aspects of the Edge®, Insight® and Card Activator. Hands-on training will include polling place procedures, assembly/disassembly of voting units and troubleshooting.

The Department shall, in its sole discretion, identify Department staff for this training and specify the time and location for this training.

Upon the Department's request, Contractor shall provide additional orientation and training under the terms and at the rates specified in Appendix F (Payment Schedule).

VI. ELECTIONS PREPARATION AND OPERATIONS

During the term of the Agreement, Contractor shall be responsible for elections preparation and operations as described below, and in accordance with Appendix B of this Agreement (Implementation Plan).

A. BALLOT AND BALLOT IMAGE DESIGN

Contractor shall design all ballots, ballot images and audio ballots. Contractor shall produce camera-ready materials necessary for the printing of ballot cards and sample ballots. The ballot will be a single trilingual ballot (English, Chinese and Spanish), or two bilingual ballots (English/Chinese and English/Spanish). It shall be at the Department's sole discretion whether to have a single trilingual or two bilingual ballots for any election.

Contractor shall provide all election definition coding for early, absentee and in-precinct ballot styles, including direct recording electronic provisional ballots.

Ballot design shall comply with all applicable laws. In addition, Contractor shall design and lay out ballot cards to avoid possible voting-position alignment problems -- such as those associated with "bleed through" of ballot marks from the opposite side of the ballot card, and with score marks that indicate where to fold absentee ballots -- that could cause the System to misinterpret ballot marks on the opposite side of the ballot card or score marks as votes.

Ballot design shall be subject to the Department's advance review and approval. Upon design of ballot cards, Contractor shall provide the Department with samples of what the final printed ballot cards will look like. The sample cards shall be printed on both sides, if applicable, and shall indicate score marks or fold marks for absentee ballots. The sample cards shall be actual size. The Department may reject Contractor's proposed ballot design if the Department determines, in its sole discretion, that the design may create voting-position alignment problems that could cause the System to misinterpret ballot marks on the opposite side of the ballot card or score marks as votes. Contractor shall modify the ballot design as directed by the Department.

Upon design of audio ballots, Contractor shall provide the Department with samples of the final recorded ballots that will enable the Department to assess the design, including but not limited to ballot content and clarity of speech and sound. The Department may reject Contractor's proposed audio ballots if the Department determines, in its sole discretion, that the content or quality of speech or sound is inadequate within the technical limitations of the System. Contractor shall modify the design of audio ballots as directed by the Department within the technical limitations of the System.

No changes may be made to the design of a ballot, ballot image or audio ballot that has been approved by the Department without the advance approval of the Department.

Upon delivery of ballot cards, including test ballots, Contractor shall verify that the ballot cards will be read accurately by the central-processing and polling place-based optical scan equipment. Translation for ballots including audio will be provided by the Department.

B. CUSTOMIZATION FOR EACH ELECTION

Contractor shall prepare an election-specific database for each election during the term of the Agreement, and design and perform all election coding. Coding for ranked-choice contests may involve ranked-choice contests with a single candidate, and a single candidate with the possibility of one or more qualified write-in candidates. Contractor shall design, produce and prepare all firmware and software needed to customize the System and its components for the election.

C. RECALIBRATION OF EQUIPMENT

In addition to routine maintenance of the System and its components, prior to each election Contractor shall:

- recalibrate all vote-counting and vote-recording equipment to the same standard
- provide documentation to the Department, in a format approved in advance by the Department, of all recalibration and any malfunctions, defects or problems discovered in the System or any of its components during the course of recalibration.

D. LOGIC AND ACCURACY TESTING

Prior to each election, Contractor shall be responsible for "Logic and Accuracy" ("L&A") testing of the System. L&A testing shall verify the proper functioning and accuracy of all Hardware and System Software used for each specific election, including hardware and software used for early and absentee voting and polling place voting, transmission, aggregation and reporting of results, and counting and tabulation of votes, including but not limited to counting and tabulation of ranked-choice ballots. L&A testing shall verify that the System properly identifies and responds to each possible voter error that could occur in the election for which the test is conducted.

Unless otherwise agreed upon at the pre-election planning meeting (see Section II of this Appendix), Contractor shall design the L&A test plans and scripts for each election, which shall conform to applicable laws and California Secretary of State guidelines. The test plans and scripts shall include every contest, ballot style and party affiliation (if applicable) for the election for which the testing is conducted. The test plans and scripts shall include every kind of ballot marking and error condition as is reasonably possible to include, including but not limited to undervoted, overvoted, blank and exhausted ballots.

Contractor's L&A test plans and scripts shall be subject to advance review and approval by the Department and the Department's independent Logic and Accuracy Board (collectively "the Department"). The Department may reject Contractor's proposed L&A test plan if it determines, in its sole discretion, that the plan is not sufficient to simulate an actual San Francisco election or is not otherwise sufficient to verify the proper functioning and accuracy of the Hardware and System Software used for the specific election. Contractor shall modify L&A test plans as directed by the Department. The Department shall decide, in its sole discretion, the volume and nature of test data to be used in L&A testing.

In the alternative, the Department may, in its sole discretion, design the L&A test plans and scripts to be used for each election. If exercising this option, the Department shall inform Contractor no later than the pre-election planning meeting. The L&A scripts will be mutually agreed to by the project managers.

Contractor shall provide all equipment, programming, materials and staff necessary to accomplish all aspects of the L& A testing, including but not limited to marking of test ballots. The Department may, in its sole discretion, review and approve Contractor's L&A practices, procedures and materials. Contractor shall modify L&A practices and procedures as directed by the Department.

Contractor shall conduct the L&A testing, and the Department may, at its sole discretion, observe and review results of the testing.

L&A testing shall include the marking of test ballots (for optical scan equipment) or other testing devices (for direct recording electronic equipment) with predetermined

totals for each contest, including ranked-choice contests, for each ballot type. The test shall include ballots marked with as many different error conditions as reasonably possible, including but not limited to undervoted, overvoted, blank and exhausted ballots. The test results shall be transmitted to the Department's Central Processing Network and stored by precinct. Contractor shall conduct the run-off tabulation if necessary to determine a winner in any ranked-choice contest. Contractor shall proofread and verify the results by comparing the results with the predetermined totals. Contractor shall report the results in writing to the Department, including information about any errors or problems detected during the testing, and steps taken to correct such errors or problems.

L&A testing shall include testing of all optical scan ballot counters and printers, all DRE voting devices and printers, all hardware, software or other devices used to aggregate voting data at the polling place and at the Department's Central Processing Network Center, and all remote transmission and vote counting and tabulating equipment that will be used in the election for which the testing is conducted. The transmission equipment must be tested to verify data gathering methodologies, Central Processing Network software, results display, transmission of reports to the Secretary of State and preparation and distribution of cumulative reports. In addition to testing every System component used on Election Day, the testing shall include all back-up components that may be used on Election Day. Testing of direct-recording electronic DRE voting devices shall include testing of the audio features, the voter-verified paper trail and the universal port.

In addition to and in conjunction with the L&A testing services described above, L&A testing shall include:

- Initialization of all polling place equipment to simulate opening the polls.
- Initialization of the optical scan equipment used to count absentee ballots.
- Counting test ballots, including precinct, absentee and provisional ballots.
- Simulating closing of the polls.
- Aggregating voting data from a polling place, while preserving the original voting data from each (optical scan) ballot counter and each (direct recording electronic) DRE voting device, and printing the precinct vote totals.
- Transmitting polling place data to the Department's Central Processing Network.
- Aggregating precinct and absentee voting data to produce District and Citywide vote totals.
- Conducting the run-off tabulation if the election includes a ranked-choice contest and if the run-off tabulation is necessary to determine a winner.
- Production of audit data reports as required by law.
- Aggregation of voting data concerning absentee ballots returned at the precinct, provisional ballots, remake ballots and write-in votes. This data shall be stored by precinct.
- Preparation of voting data reports and other reports of election results as requested by the Department, including printing the Official Statement of Votes.

In addition to and in conjunction with the L&A testing services described above, L&A testing shall also include a System Mock Election, including testing of all equipment used in transmitting results from remote locations, 400Cs, ballot tabulation

functions, results accumulation and RCV functionality for each election contest. The workstations and/or laptops and ancillary equipment to support the remote tally locations will be provided by the Department.

Contractor shall complete L&A testing no later than 10 days prior to the election for which it is conducted.

E. DELIVERY, INSTALLATION, SET-UP AND RETRIEVAL OF EQUIPMENT

For each election, the Department shall assist the Contractor in delivery, installation, set up and retrieval from polling sites, including early voting sites, all polling place equipment (including System hardware as well as non-System equipment such as booths, tables and chairs owned by the Department), ancillary devices and supplies according to the Department's timetables and instructions. Contractor shall ensure that all System equipment is fully prepared to be initialized. The Department shall provide the schedule and route assignments for equipment delivery and retrieval, and shall handle all communications with polling place owners.

The Department will work with the Contractor to document that the correct System equipment was delivered, installed, set up and prepared for voting in each polling place.

F. ELECTION DAY SUPPORT

In addition to the Project Manager, Contractor shall provide sufficient, experienced technical support personnel on Election Day to troubleshoot and repair the System and its components.

In addition to the Project Manager, the Election Day personnel shall include:

- at least 33 persons (three per District for 11 Districts) to troubleshoot and make repairs at the polling place level;
- at least two persons at the Department's Election Center (located at City Hall or other location designated by the Department) to respond to calls from polling places regarding voting equipment malfunctions, and assign staff and resources to resolve any issues relating to malfunctioning of polling place equipment;
- at least two high-level technical specialists on-site at a location to be specified by the Department to repair malfunctioning polling place voting equipment;
- at least four persons at the Department's Central Processing Network center (located at City Hall or other location designated by the Department) to troubleshoot Hardware and Software problems and make repairs at the central processing level during the tabulation of votes.

Contractor shall be responsible for providing transportation and communication devices, as needed, for its Election Day personnel.

Contractor shall be responsible for all trouble shooting and responding to and resolving all problems concerning the System, according to the priority protocols specified in the Agreement.

Following each election, Contractor shall provide to the Department, in a format approved in advance by the Department, a written report of election day support operations and problem resolution. Contractor shall deliver this report no later than E+38.

G. BALLOT PROCESSING AND CANVASS SUPPORT

Contractor shall process absentee ballots beginning at the earliest E-7 and continuing until the completion of the canvass.

Contractor shall upload voting data from devices used to record voting data at the polling place, and verify all precinct results, write-in ballot totals and activity audit logs. Contractor shall process all provisional and absentee ballots submitted at polling places and all error ballots.

Contractor shall develop and document canvass procedures for the System that meet all applicable legal requirements. These procedures shall include, but not be limited to, procedures for processing and tabulating write-in votes and provisional direct recording electronic ballots.

Contractor shall assist the Department's staff in resolving discrepancies identified during the canvass, and preparing and issuing voting data reports and the Statement of Vote. These reports may include, but are not limited to: tally reports of each batch of absentee ballots that are processed, that sort the absentee ballots by precinct; tally reports for each precinct; Election Day results for each precinct; Election Day results for each (optical scan) ballot counter and each (direct recording electronic) DRE voting device; precinct-specific reports of ranked-choice voting data, including the results of the run-off tabulation at the precinct level; and reports of provisional voting for each (direct recording electronic) DRE voting device.

Contractor shall track and log all memory devices used to record voting data at polling places, and verify their return from polling places.

H. SECURE STORAGE AND STAGING AREA

Contractor shall provide secure storage facilities (including utilities) and services for all polling place equipment (including System hardware as well as non-System equipment such as booths, tables and chairs owned by the Department), at a facility that includes enough space and infrastructure to conduct L&A testing and stage the equipment for delivery and return. The facility shall have a loading dock, desk space for five Department staff, telephone lines to support at least five computers and five telephones and restroom facilities. The Department would prefer that the facility be located in San Francisco and accessible by public transportation.

The Department shall have access to the facility and to the polling place equipment stored at the facility at any time without charge. Contractor shall assist the Department to inventory this equipment in advance and following each election.

I. REPORTING AND PRESERVATION OF ELECTION RESULTS

Contractor shall produce all reports of voting data and election results as required by law or this Agreement, including but not limited to absentee voting results, Election Day results, neighborhood results and the Official Statement of Votes.

Contractor shall produce documentation for each ranked-choice contest that includes the tabulation at each stage of the run-off tabulation process in which one or more candidates are eliminated and votes are redistributed. This document shall clearly indicate the redistribution of votes at each stage of the run-off tabulation process.

Contractor shall produce all audit data records and all documentation necessary for an audit trail as required by law or this Agreement.

Contractor shall export all election data and audit data in a format that can be uploaded into a Department database and to other media as requested by the Department, for use by the Department on Election Night and thereafter.

VII. SYSTEM SUPPORT

During the term of the Agreement, Contractor shall be responsible for providing general support for the System, and shall supply all devices and materials required to operate, support and maintain the System.

At least once every two years during the term of the Agreement, Contractor shall assist the Department in inspecting the System and its components to determine accuracy, and in certifying the results of the inspection to the Secretary of State under California Elections Code section 19220. The Department shall set the date and time for inspection after exercising a reasonable effort to consult with Contractor on the inspection date. When possible, these inspections will be conducted simultaneously with L&A testing.

VIII. TROUBLESHOOTING AND RESPONDING TO PROBLEMS

During the term of the Agreement, Contractor shall be responsible for all trouble shooting and responding to and resolving all problems concerning the System, according to the priority protocols specified in the Agreement

Contractor shall promptly respond to each problem, propose a solution, and document both the problem, proposed solution and actual solution in writing to the Department in a format approved in advance by the Department.

Contractor shall track and maintain a written history, in a format approved in advance by the Department, of System components that malfunction or exhibit problems, the action taken to resolve the malfunction or problem, and the identity of the person or persons who service or repair the component. Contractor shall provide this history to the Department on request.

IX. MAINTENANCE, QUALITY CONTROL

During the term of the Agreement, Contractor shall be responsible for maintenance of the System, which shall be performed on-site. Contractor shall provide the personnel, equipment and material, including spare or repair parts, required to perform on-site maintenance of the System and its components. Maintenance shall include, but not be limited to, the repair or replacement of any failed Hardware, device or other System component. At the beginning of each calendar year of the term of this Agreement, Contractor shall provide the Department with a maintenance plan and timetable for routine maintenance.

Contractor shall inform the Department of the date, time and location of all maintenance services, and the Department, in its sole discretion, may observe these activities. Contractor shall provide documentation to the Department, in a format approved by the Department, of all maintenance and any malfunctions, defects or problems discovered in the System or any of its components during System maintenance.

Contractor shall maintain a quality control system, covering all aspects of design, fabrication, testing, delivery, calibration and support of the System, including any modifications made thereto. This quality control system shall include documentation of all inspections and tests performed on the System and its components, and any System

modifications. Contractor shall provide this documentation to the Department on request, in a format approved by the Department.

X. UPGRADES AND MODIFICATIONS

During the term of the Agreement, Contractor shall provide all Software Upgrades. All Software Upgrades are to receive prior approval from the Department.

XI. VOTER EDUCATION AND OUTREACH

Contractor shall develop and document a Voter Education and Outreach Plan, including a calendar of outreach events, and shall include members of the disabled community and language minority groups in the process of developing the Plan and calendar. Contractor shall deliver the Plan to the Department for review and approval, make any changes requested by the Department, and deliver the final materials in accordance with Appendix B (Implementation Plan).

Contractor shall design and document the voter education and outreach materials described below. Contractor shall deliver these materials to the Department for review and approval, make any changes requested by the Department, and deliver the finalized materials in accordance with Appendix B (Implementation Plan). Contractor shall deliver a hard copy and an electronic copy of each of the finalized materials. The Department shall own these materials, and shall have the right to modify, translate and reproduce these materials at its sole discretion. Contractor will provide one camera-ready copy in English of the following materials. The Department will be responsible for translation services. Upon completion of the translation services by the Department; the Contractor will provide camera-ready copies of Spanish and Chinese, respectively.

FEBRUARY 2008 ELECTION

Instructional Video and Clips to be used for PSA's: Script, Development, Production (English Only)
Mailing Postcard: Camera Ready Copy
How to Vote Brochure: Camera Ready Copy
Edge Panel Insert: Camera Ready Copy
Media Outreach Plan
Community Based Outreach Plan
PowerPoint Presentation (1)
Demonstration RCV Ballot (DRE & Optech) (Camera-Ready)

JUNE 2008 ELECTION

Instructional Video and Clips to be used for PSA's: Script, Development, Production (English Only)
Postcard Mailer: Camera Ready Copy
How to Vote Brochure: Camera Ready Copy
Edge Panel Insert: Camera Ready Copy
Media Outreach Plan
Community Based Outreach Plan
PowerPoint Presentation (1)
Demonstration Ballot (DRE & Optech) (Camera-Ready)

Following the first election during the term of the Agreement, Contractor shall work with the Department to evaluate the effectiveness of the Voter Education and Outreach Plan and materials, and shall refine the Plan and materials for the June 2008 Election.

A. Outreach Events Featuring Demonstrations of the System

Contractor shall assist the Department in conducting neighborhood-based demonstrations of the System. The Department will conduct at least two demonstrations in each of the eleven supervisorial districts in San Francisco, at dates, times and locations specified by the Department. Contractor shall work with the Department to schedule, locate, publicize and staff community-based outreach events featuring demonstrations of the System.

Contractor shall recruit poll workers and others to participate in these community-based outreach events and demonstrations, through telephone calls, special mailers, press releases, public service announcements and media reports. Contractor recruitment of pollworkers and participants shall include members of San Francisco's minority language communities, disabled community and senior citizen community. Contractor shall train these pollworkers and participants on operation and troubleshooting of the System.

Contractor shall arrange for live media coverage of these events, and shall administer voter surveys at these events (see subsection (I), below).

Contractor shall be responsible for delivery, set-up and retrieval of System components for all outreach events. Contractor shall assist the Department in conducting two demonstrations in each of the eleven supervisorial districts in San Francisco. Upon completion of this support requirement for November 2007 and June 2008 Elections, Contractor shall provide telephone support for all outreach events and demonstrations.

B. Voter Surveys

Contractor shall work with the Department to develop a survey for use during outreach events and demonstrations, and shall provide the staff needed to compile and process the survey results on a daily basis. Contractor, in consultation with the Department, shall use the survey results to fine-tune its training procedures and materials.

XII. MEDIA OUTREACH

Contractor shall provide a media relations team (the "Team") to assist the Department during implementation of the System and throughout the term of the Agreement. The Team shall be available by telephone 24 hours per day, seven days per week. The Team shall make available to the Department a portfolio of media and public relations materials that can be tailored for use by the Department at the Department's sole discretion.

The Team shall develop and document a media outreach plan (the "Plan") and deliver the Plan to the Department for review and approval, make any changes requested by the Department, and deliver the final Plan in accordance with Appendix B (Implementation Plan). The Plan shall include outreach to all local media, including ethnic media. The Plan shall identify: venues for outreach events and demonstrations; print media (dailies and weeklies); radio talk shows; live remote broadcasts; television news programs; multilingual language print and broadcast media; public service

broadcast channels; military publications; and niche media (including senior citizen and family publications).

The Team shall participate in implementation of the Plan by **[to be determined during Planning Meetings]**.

The Team shall design, document and produce the media outreach materials described below and deliver these materials to the Department for review and approval, make any changes requested by the Department, and deliver the finalized materials in accordance with Appendix B (Implementation Plan):

[Deliverables to be determined during Planning Meetings.]

A. Multilingual instructional materials on use of the System

B. Press releases

C. Press packets and media guides

Contractor shall deliver a hard copy and an electronic copy of each of the finalized materials. The Department shall own these materials, and shall have the right to modify, translate and reproduce these materials at its sole discretion. These materials may include instructions on how to use the System in general and information regarding specific elections.

In addition to the media outreach materials described above, the Department may use or create images of the System and its components, including but not limited to polling place equipment, ballot cards, ballot images and screen presentations displayed on direct recording electronic devices, for voter education and outreach and media outreach. The Department shall own these materials, and shall have the right to use and reproduce these materials at its sole discretion.

Following the first election during the term of the Agreement, Contractor shall work with the Department to evaluate the effectiveness of the Plan and materials, and shall refine the Plan and materials for the June 2008 Election.

XIII. CONTINGENCY PLANNING

Contractor shall obtain all necessary Federal and State certifications and approvals for the System, so that the System is fully certified, approved and tested in time to be implemented for any election conducted on or after January 1, 2008. Contractor shall deliver to the Department the certified and approved System, and shall complete all required off-site testing and on-site acceptance testing according to Appendix B (Implementation Plan). Time is of the essence with respect to these deadlines.

Contractor shall develop and document a contingency plan for non-RCV elections, including primaries, and a contingency plan for RCV elections (separately and collectively "The Contingency Plan") that shall include, but not be limited to manual processing and/or tabulation of ballots. Contractor shall be responsible for conducting all manual processing, including but not limited to providing and training the staff necessary to manually process the ballots. Contractor shall be responsible for all expenses associated with manual processing, including but not limited to the expense of staging and securing the ballots during processing. In the event that Contractor fails to secure all required approvals for use of the System, in the event that the System is fully or partially approved but malfunctions and cannot be made operable on Election Day, or the final Open Code Review Report, required under Section 5.A.9, reports any material security deficiencies in the Source Code, or any malicious code which would affect the operation of the Software and the Contractor is unable to resolve the problem and complete the

certification process prior to the next election, Contractor shall implement the Contingency Plan

Contractor shall provide the Contingency Plan to the Department for review and approval, make any changes requested by the Department, and deliver the final, approved plans in accordance with Appendix B (Implementation Plan).

APPENDIX H

KNOW ALL MEN BY THESE PRESENTS, that WHEREAS, the City and County of San Francisco, State of California, has awarded to:

_____

hereinafter designated as the "Principal", a contract, dated, _____, for the City and County of San Francisco's Office of Contract Administration for a new voting system and certain related services (the "Contract").

WHEREAS, said Principal is required under the terms of said Contract to furnish a bond for the faithful performance of said Contract (the "Bond");

NOW, THEREFORE, we the Principal and _____, as Surety, are firmly bound unto the City and County of San Francisco ("City") in the penal sum of _____ _____ Dollars ($_____) lawful money of the United States for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents for a performance bond. The conditions of this obligation is such that if the said Principal does well and faithfully performs all the conditions and covenants of said Contract, according to the true intent and meaning thereof, upon its part to be kept and performed, then the above obligation is to be null and void, otherwise to remain in full force and effect.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounden Principal, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the said Contract, including the provisions for liquidated damages in the said Contract, any changes, additions or alterations thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City and County of San Francisco, its officers and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same and no inadvertent overpayment of progress payments shall in any way affect its obligations on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the specifications or of any inadvertent overpayment of progress payments.

DEPARTMENT OF ELECTIONS
City and County of San Francisco
www.sfelections.org

John Arntz
Director

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2013 AUG -5 AM 10:53

Memorandum

To: **Angela Calvillo, Clerk of the Board of Supervisors**

From: **John Arntz, Director**

Date: **August 2, 2013**

RE: **Resolution to Extend Contract with Voting System Vendor for Three Years**

I am submitting the attached resolution approving a third amendment of the contract between the City and Dominion Voting Systems for the Board of Supervisors' consideration. This amendment allows for the extension of the contract for three additional years through December 10, 2016 and for an amount not to exceed $2,264,800.

Included in this packet are two copies of the following items:

1. The resolution
2. The original contract
3. Two previous amendments to the original contract

Additionally, I will forward to your office the electronic files of all documents included with this memorandum. Please contact me if you need any additional information regarding these materials.

Voice (415) 554-4375
Fax (415) 554-7344

1 Dr. Carlton B. Goodlett Place, Room 48
San Francisco, CA 94102-4634

TTY (415) 554-4386
www.sfelections.org

File No. 130797

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information *(Please print clearly.)*	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information *(Please print clearly.)*	
Name of contractor: Dominion Voting Systems, Inc.	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. ***Use additional pages as necessary.*** Sole Board Director: John Poulos CEO: John Poulos CFO: Ian Macvicar COO: N/A Dominion Voting Systems, Inc. is a wholly owned subsidiary of Dominion Voting System Corporation	
Contractor address: 1201 18th St, Suite 210, Denver CO 80202	
Date that contract was approved: *(By the SF Board of Supervisors)*	Amount of contracts: $ $3,645,900
Describe the nature of the contract that was approved: Election System licensing, warranty and support services.	
Comments:	

This contract was approved by (check applicable):

☐ the City elective officer(s) identified on this form

☑ a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

☐ the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

_____
Print Name of Board

Filer Information *(Please print clearly.)*	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

_____ _____
Signature of City Elective Officer (if submitted by City elective officer) Date Signed

_____ _____
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk) Date Signed