

**Amendment of the whole
In committee. 11/14/07**

FILE NO. 070040

RESOLUTION NO.

1 [Department of Elections contract for new voting system.]

2

3 **Resolution approving the award and execution of a \$12.66 million four-year contract by**
4 **the City and County of San Francisco, through its Department of Elections, to Sequoia**
5 **Voting Systems, Inc., for the purchase of a new voting system and provision of**
6 **associated voting services.**

7

8 WHEREAS, On March 31, 2005, the Department of Elections issued a Request for
9 Proposals seeking bids for a new voting system, including voting equipment and services, to
10 collect, count, tabulate and report votes for all elections held in the City and County of San
11 Francisco; and,

12 WHEREAS, Sequoia Voting Systems, Inc. ("Sequoia"), was the top-ranked bidder in
13 the competitive process, and on September 30, 2005 the Department of Elections issued a
14 letter of intent to negotiate a contract with Sequoia; and,

15 WHEREAS, On December 1, 2006, the Department of Elections completed
16 negotiations and reached agreement with Sequoia, on the terms of a proposed contract (the
17 "Agreement"), in the amount of \$12,664,109.00, with a term of four years from December 1,
18 2007 through December 1, 2011 with the option for the City to renew two times for one (1)
19 year each renewal, which contract is on file with the Clerk of the Board of Supervisors in File
20 No. 070040 and is hereby declared to be a part of this resolution as if set forth fully herein;
21 and,

22 WHEREAS, To encourage timely certification of the voting system by the November
23 2008 election, including certification for ranked-choice voting (RCV), the Agreement
24 acknowledges that Sequoia has submitted a complete application for Federal certification,
25 including use of the voting system for RCV elections, on August 22, 2007; requires Sequoia to

1 pay certain specified liquidated damages to the City if Sequoia does not submit an application
2 for State certification within five business days of receipt of Federal certification; and requires
3 Sequoia to pay liquidated damages if Sequoia fails to achieve certification of the voting
4 system for use in the November 2008 election due to the failure of Sequoia to pursue and
5 application for certification with reasonable care and diligence; and,

6 WHEREAS, To encourage voter confidence in the use of the Sequoia voting system in RCV
7 elections, the Agreement requires Sequoia to publicly and fully demonstrate the capability of its voting
8 equipment to record ballots cast in RCV elections by February 12, 2007 ~~December 5, 2007~~. If Sequoia
9 fails to comply with this requirement, the Agreement allows the City to withhold the \$650,000 payment
10 to Sequoia for the RCV application until such demonstration has been conducted; and,

11 WHEREAS, To ensure that the voting system is fully operational by the February 2008
12 election, the Agreement requires Sequoia to pay certain specified liquidated damages to the
13 City if it has not completed acceptance testing of system hardware and software within ten
14 days after delivery of equipment to the City, but no later than January 15, 2008, and to pay
15 certain specified liquidated damages to the City if logic and accuracy testing is not completed
16 ten days prior to the election; and,

17 WHEREAS, To help avoid breakdowns of voting equipment on election day, the
18 Agreement requires that Sequoia pay certain specified liquidated damages to the City if 10%
19 or more of the touch screen machines fail to operate on election day, or if 10% or more of the
20 optical scan machines fail to operate on election day, provided that if a touch screen machine
21 is repaired, replaced or made operational within one hour or an optical scan is repaired,
22 replaced, or made operational within four hours, the machine will not be deemed to have
23 failed to operate for these purposes; and,

24
25

1 WHEREAS, To assist the City in properly recording and tabulating all votes, the
2 Agreement requires Sequoia to provide a contingency plan demonstrating how Sequoia will
3 conduct a manual count if the voting system is not certified by election day, to pay for all costs
4 associated with conducting the manual count, and to pay certain specified liquidated damages
5 if there is an error, defect or malfunction in the voting system and Sequoia fails to provide an
6 alternative tabulation solution that processes a statement of votes in compliance with
7 applicable laws; and,

8 WHEREAS, To encourage a transparent, secure and fair election, the Agreement
9 requires Sequoia to comply with any California law or any regulation or rule promulgated by
10 the Secretary of State requiring voting system vendors in the state of California to provide
11 disclosed or open source code, and if the California Secretary of State certifies any voting
12 system for use in California that is licensed under a disclosed or open source code license,
13 the Agreement further requires Sequoia to disclose its source code or submit an application
14 for federal certification of a disclosed or open source code voting system within one year; and,

15 WHEREAS, To encourage a transparent, secure and fair election, the Agreement
16 further requires the City to retain a third-party expert to review Sequoia's source code to
17 assess whether the source code contains material security deficiencies or malicious code
18 designed to interfere with the operation of the voting machines; release the expert report to
19 the public; and, if the expert report discloses any material security deficiencies in the source
20 code or any malicious code which would affect the operation of the voting machines, the
21 Agreement requires Sequoia to take corrective action. If the problem cannot be resolved by
22 the next election, due to Sequoia's inability to receive approval from the Federal and State
23 certification agencies to make a change to the source code, the Agreement requires Sequoia

24
25

1 to provide an alternative plan for properly tabulating and recording all votes, such as a manual
2 count, and to pay for all costs associated with this alternative; and,

3 WHEREAS, To ensure timely reporting of election results, the Agreement requires
4 Sequoia to pay certain specified liquidated damages to the City if due to an error, defect or
5 malfunction in the voting system, the City's tabulation of votes during an election at 10% or
6 more of the precincts is delayed beyond 11:59 p.m. on election night, which liquidated
7 damages increase under a specified schedule for each half-day beyond election day that the
8 delay continues; and,

9 WHEREAS, The Agreement limits Sequoia's total liability for liquidated damages
10 related to the voting system in the following amounts: in the first year, Four Million Dollars
11 (\$4,000,000), but not exceeding Three Million Dollars (\$3,000,000) for any single election; in
12 the second year, Three Million Dollars (\$3,000,000), but not exceeding Two Million Five
13 Hundred Thousand Dollars (\$2,500,000) for any single election; for the remaining term of the
14 Agreement, Two Million Dollars (\$2,000,000) for any single election that includes ranked-
15 choice voting and One Million Dollars (\$1,000,000) for any single election that does not
16 include ranked-choice voting; and as further provided in the Agreement; and,

17 WHEREAS, The foregoing limitation on liability does not restrict the indemnification
18 obligations of Sequoia under the Agreement, which include the obligation to indemnify the City
19 against: any judicial action or informal claim brought against the City based on an allegation
20 that the City's use of the voting system's software or hardware infringes a patent, copyright, or
21 intellectual property right of a third party; any liability, costs and expenses actually incurred by
22 the City as a result of opposing disclosure of the Trade Secrets contained in Sequoia's
23 firmware, software, pricing, products, finances and business; any and all loss, costs, damage,

24
25

1 injury, liability, and claims resulting from injury to or death of a person arising from Sequoia's
2 performance of the Agreement; and as further provided in the Agreement; and,

3 WHEREAS, Such limitation on liability also does not restrict Sequoia's liability to the
4 City arising out of or in connection with any violation of the City's Charter or Ordinances or the
5 liability of Sequoia to the City for causes of action arising independently of the Agreement,
6 including, without limitation, fraud, misrepresentation or intentional tortious misconduct; and
7 as further provided in the Agreement; and,

8 WHEREAS, The City has available to use for the purchase of new voting equipment
9 \$5,800,000 in Help America Vote Act (HAVA) and Proposition 41 funds; now, therefore, be it

10 RESOLVED, That in accordance with Charter section 9.118(b), the Board of
11 Supervisors hereby approves a contract with Sequoia Voting Systems, Inc. for a new voting
12 system for the City and County of San Francisco on the terms and conditions of the
13 Agreement on file with the Clerk of the Board of Supervisors in File No. 070040; and, be it

14 FURTHER RESOLVED, That the Board authorizes the Director of Elections to execute,
15 on behalf of the City, the Agreement and enter into any modification of the Agreement that the
16 Director determines, in consultation with the City Attorney, are in the best interests of City, do
17 not increase the cost of the contract, are necessary and advisable to effectuate the purpose of
18 the contract or this Resolution, and are in compliance with all applicable laws, including the
19 City's Charter and applicable City Ordinances.

20
21
22
23
24
25

1 RECOMMENDED:
2 See original legislation for signature

FUNDS AVAILABLE:
See original legislation for signature

3 _____
4 JOHN ARNTZ
5 Department Head

EDWARD HARRINGTON
Controller

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25