

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

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3 **Resolution approving the award and execution of a \$12.6 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.**

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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 \$12.6 million, with a term of four years from January 1, 2007
18 through January 1, 2011 with the option for the City to renew two times for one (1) year each
19 renewal, which contract is on file with the Clerk of the Board of Supervisors in File No. ___ and
20 is hereby declared to be a part of this resolution as if set forth fully herein; and,

21 WHEREAS, To encourage timely certification of the voting system by the November
22 2007 election, including certification for ranked-choice voting, the Agreement provides a
23 financial incentive for Sequoia if Sequoia submits a completed and ultimately successful
24 application for Federal certification by May 1, 2007; and,

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1 WHEREAS, To ensure timely certification by the November 2007 election, the
2 Agreement requires Sequoia to pay certain specified liquidated damages to the City if
3 Sequoia does not submit an application for Federal Certification by July 15, 2007; to pay
4 certain specified liquidated damages to the City if, after receipt of Federal Certification,
5 regardless of the date, Sequoia does not submit an application for State certification within
6 five business days of receipt of Federal certification; to pay certain specified liquidated
7 damages to the City if Sequoia fails to achieve certification of the voting system for use in the
8 November 2007 election due to the failure of Sequoia to pursue and application for
9 certification with reasonable care and diligence; and as further provided in the Agreement;
10 and,

11 WHEREAS, To ensure that the voting system is fully operational by election day, the
12 Agreement requires Sequoia to pay certain specified liquidated damages to the City if it has
13 not completed acceptance testing of system hardware and software within ten days after
14 delivery of equipment to the City, but no later than August 10, 2007, and to pay certain
15 specified liquidated damages to the City if logic and accuracy testing is not completed ten
16 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,

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1 WHEREAS, To assist the City in properly recording and tabulating all votes, the
2 Agreement requires Sequoia to pay certain specified liquidated damages if there is an error,
3 defect or malfunction in the voting system and Sequoia fails to provide an alternative
4 tabulation solution that processes a statement of votes in compliance with applicable laws;
5 and,

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

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

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

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

10 WHEREAS, The total cost of the contract is \$12,600,000, of which \$8,800,000 is
11 payment for voting equipment and \$3,800,000 is payment for voting services; and,

12 WHEREAS, The City has available to use for the purchase of new voting equipment
13 \$5,400,000 in Help America Vote Act (HAVA) and Proposition 41 funds; now, therefore, be it

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

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

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1 RECOMMENDED:

FUNDS AVAILABLE:

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JOHN ARNTZ
Department Head

EDWARD HARRINGTON
Controller

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