

1 [Department of Elections Amendment to Current Voting Systems Contract with Sequoia
2 Voting Systems, Inc.]

3 **Resolution approving an amendment to the existing contract between the City and**
4 **County of San Francisco, through its Department of Elections, and Sequoia Voting**
5 **Systems, Inc., to pay Sequoia \$1,130,000 rather than transfer to Sequoia the City's**
6 **AutoMARK ballot marking devices, in connection with a settlement of litigation by the**
7 **City against Elections System & Software involving those devices.**
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9 WHEREAS, In 2006, the City purchased AutoMARK ballot marking devices for use by
10 voters with disabilities for \$3,495,027 plus taxes from Elections System & Software ("ES&S");
11 and,
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13 WHEREAS, In December 2007 the City entered into a four-year \$12,650,233 contract
14 with Sequoia Voting Systems, Inc. ("Sequoia") for the purchase of new voting equipment and
15 voting services (the "Sequoia Contract"), as approved by the Board of Supervisors under
16 Resolution No. 654-07; and,

17 WHEREAS, As part of the Sequoia Contract, the City agreed to transfer ownership of
18 the City's 563 AutoMARK ballot marking devices to Sequoia in return for a reduction of
19 \$1,130,000 from the price of the contract otherwise payable by the City to Sequoia; and,

20 WHEREAS, On November 20, 2007, the City sued ES&S over, among other claims,
21 the failure of ES&S to provide certified AutoMARK machines in the 2006 sale of the
22 AutoMARK machines to the City; and,

23 WHEREAS, The City and ES&S have reached a settlement agreement, which the
24 Board of Supervisors approved by Ordinance No. _____ (the "ES&S Settlement
25 Agreement"); and,

1 WHEREAS, Under the ES&S Settlement Agreement, the City has agreed to transfer
2 the AutoMARK machines to ES&S and ES&S has agreed to pay the City \$3,500,000, less
3 \$421,034.75 owed by the City to ES&S for services rendered under previously unpaid
4 invoices, for a net sum of \$3,078,965.25; and,

5 WHEREAS, To allow the City to enter into the ES&S Settlement Agreement, Sequoia is
6 willing to accept payment representing the previously agreed-upon value of the AutoMARKs
7 instead of taking title to the AutoMARKs from the City as otherwise provided in the Sequoia
8 Contract; and,

9 WHEREAS, The City will pay Sequoia \$1,130,000 from a portion of the settlement
10 payment to the City by ES&S, and the Board of Supervisors has approved an appropriation of
11 such amount for such purpose under Ordinance No. _____; now,
12 therefore, be it

13 RESOLVED, That in accordance with Charter section 9.118(b), the Board of
14 Supervisors hereby approves an amendment to the Sequoia Contract, a copy of which
15 amendment is on file with the Clerk of the Board in File No. 080124 and is incorporated in this
16 resolution by reference, to pay Sequoia \$1,130,000 instead of transferring the City's
17 AutoMARK machines to Sequoia; and, be it

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

1 RECOMMENDED:

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5 JOHN ARNTZ
6 Director of Elections

EDWARD HARRINGTON
Controller