Resolution approving the award and execution of a $12.65 million four-year contract by
the City and County of San Francisco, through its Department of Elections, to Sequoia
Voting Systems, Inc., for the purchase of a new voting system and provision of
associated voting services.

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

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

WHEREAS, On December 1, 2006, the Department of Elections completed
negotiations and reached agreement with Sequoia, on the terms of a proposed contract (the
"Agreement"), in the amount of $12,650,233.25, with a term of four years from December 11,
2007 through December 11, 2011 with the option for the City to renew two times for one (1)
year each renewal, which contract is on file with the Clerk of the Board of Supervisors in File
No. 070040
and is hereby declared to be a part of this resolution as if set forth fully herein; and,

WHEREAS, To encourage timely certification of the voting system by the November
2008 election, including certification for ranked-choice voting (RCV), the Agreement
acknowledges that Sequoia has submitted a complete application for Federal certification,
including use of the voting system for RCV elections, on August 22, 2007; requires Sequoia to
pay certain specified liquidated damages to the City if Sequoia does not submit an application
for State certification within five business days of receipt of Federal certification; and requires Sequoia to pay liquidated damages if Sequoia fails to achieve certification of the voting system for use in the November 2008 election due to the failure of Sequoia to pursue and application for certification with reasonable care and diligence; and,

WHEREAS, To encourage voter confidence in the use of the Sequoia voting system in RCV elections, the Agreement requires Sequoia to publicly and fully demonstrate the capability of its voting equipment to record ballots cast in RCV elections by February 12, 2008. If Sequoia fails to comply with this requirement, the Agreement allows the City to withhold the $650,000 payment to Sequoia for the RCV application until such demonstration has been conducted; and,

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

WHEREAS, To help avoid breakdowns of voting equipment on election day, the Agreement requires that Sequoia pay certain specified liquidated damages to the City if 10% or more of the touch screen machines fail to operate on election day, or if 10% or more of the optical scan machines fail to operate on election day, provided that if a touch screen machine is repaired, replaced or made operational within one hour or an optical scan is repaired, replaced, or made operational within four hours, the machine will not be deemed to have failed to operate for these purposes; and,
WHEREAS, To assist the City in properly recording and tabulating all votes, the Agreement requires Sequoia to provide a contingency plan demonstrating how Sequoia will conduct a manual count if the voting system is not certified by election day, to pay for all costs associated with conducting the manual count, and to pay certain specified liquidated damages if there is an error, defect or malfunction in the voting system and Sequoia fails to provide an alternative tabulation solution that processes a statement of votes in compliance with applicable laws; and,

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

WHEREAS, To encourage a transparent, secure and fair election, the Agreement further requires the City to retain a third-party expert to review Sequoia's source code to assess whether the source code contains material security deficiencies or malicious code designed to interfere with the operation of the voting machines; release the expert report to the public; and, if the expert report discloses any material security deficiencies in the source code or any malicious code which would affect the operation of the voting machines, the Agreement requires Sequoia to take corrective action. If the problem cannot be resolved by the next election, due to Sequoia's inability to receive approval from the Federal and State certification agencies to make a change to the source code, the Agreement requires Sequoia
to provide an alternative plan for properly tabulating and recording all votes, such as a manual
count, and to pay for all costs associated with this alternative; and,

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

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

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

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

as further provided in the Agreement; and,

WHEREAS, The City has available to use for the purchase of new voting equipment $5,500,000 in Help America Vote Act (HAVA) and Proposition 41 funds; now, therefore, be it

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

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

RECOMMENDED:

JOHN ARNTZ
Department Head

FUNDS AVAILABLE:

EDWARD HARRINGTON
Controller

BOARD OF SUPERVISORS
Resolution approving the award and execution of a $12.65 million four-year contract by the City and County of San Francisco, through its Department of Elections, to Sequoia Voting Systems, Inc., for the purchase of a new voting system and provision of associated voting services.

December 11, 2007  Board of Supervisors — ADOPTED

Ayes:  9 - Alioto-Pier, Chu, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval
       Noes:  2 - Ammiano, Daly
I hereby certify that the foregoing Resolution was ADOPTED on December 11, 2007 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

12.12.07
Date Approved

Mayor Gavin Newsom