



0000039

# County of Santa Cruz

## COUNTY CLERK / ELECTIONS

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GAIL L. PELLERIN, COUNTY CLERK

March 20, 2006

**AGENDA:** March 28, 2006

BOARD OF SUPERVISORS  
County of Santa Cruz  
701 Ocean Street, 5<sup>th</sup> Floor  
Santa Cruz, CA 95060

### CONSIDER CONTRACT WITH SEQUOIA VOTING SYSTEMS, INC. FOR NEW VOTING SYSTEM

Dear Members of the Board:

On October 18, 2005 and on January 24, 2006 your Board considered and approved a number of items related to the Voting Modernization Plan (Plan) for Santa Cruz County. The Plan contained recommendations to implement the federal Help America Vote Act (HAVA) and California's Voting Modernization Act (Proposition 41). In addition to accepting our report on the Plan, and accepting and appropriating \$2.455 million in federal and state funds available to Santa Cruz County for implementation, your Board directed the County Clerk to:

- Work with the personnel office to classify an additional 2.0 FTE positions to support the elections process;
- Negotiate an agreement with Sequoia Voting Systems, Inc, in an amount not to exceed \$2.3 million, and return for authorization to sign the contract;
- Work with County departments to identify appropriate space for equipment storage; and
- Develop a plan to provide a 10% count of votes cast and counted on Digital Recording Electronic (DRE) accessible touch screen voting devices.

The purpose of this letter is to provide your Board with a status report various implementation efforts for the new voting system and provide the negotiated agreement with Sequoia Voting Systems, Inc. (Sequoia) for consideration and approval.

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The contract with Sequoia negotiated by the County Clerk is for the purchase of a blended voting system that provides one accessible touch screen unit with an attached Voter Verified Paper Audit Trail (VVPAT) device at each polling place, partnered with a precinct-based optical scan voting system with paper ballots, and paper ballots for voters who vote by mail. The voting system the County is purchasing from Sequoia has been federally qualified and state certified.

County election staff, a representative from County Counsel, and procurement and information systems staff spent several weeks negotiating key contract provisions addressing items such as: one-time and ongoing costs; liability; ADA and Title 24 compliance; payment terms; scheduling, and milestones. Additionally, the contract specifically addresses a trade-in option for purchasing a full touch screen implementation as recommended by the County Task Force should the County decide to pursue this option in the future.

The contract represents staffs best efforts to protect the County's interests by identifying potential and future issues. Issues of interest to your Board are highlighted below:

Due to the changing voting system environment, and the uncertainty of ADA and Title 24 requirements regarding voting systems, the County Clerk worked to negotiate a provision in the contract to protect the County against future costs relating to changes in legislation and accessibility. While the contract specifically covers the County against all requirements known as of the date of the contract, it does not protect the County from any future legislative or accessibility requirements specifically requiring additional hardware.

The contract provides the County with all the necessary equipment, support, and training to meet the Federal and State mandates by November 2006. Due to the fact that Sequoia is obtaining the necessary federal and state certifications just months before the June 2006 Primary, the County must phase in the deployment of the new voting system. Santa Cruz County will continue to use Mark-A-Vote optical scan paper ballots for the June 2006 Primary. The County's current system will be supplemented by as many touch screens as can be delivered to the County, acceptance tested, programmed with election data, and tested for accuracy in time for the June Primary. The touch screen voting machines will be strategically located throughout the County to provide the greatest amount of access so that any voter, regardless of disability, can vote independently and privately.

By November 2006, the full conversion will take place with one optical scan precinct-based vote tabulating machine that provides for second chance voting and one touch screen to meet the accessibility requirement. The contract also provides the County with the necessary tools to become self-sufficient by the end of 2006, reducing ongoing costs associated with vendor services.

The total contract amount is \$2,289,869.49, which represents about a \$10,000 savings over the \$2.3 million amount approved by your board in October.

### **Warehouse Space**

The new voting equipment requires new warehouse space that is secure, weatherproof, has appropriate electrical infrastructure, includes the appropriate racking for the new equipment and has appropriate space for staging all equipment associated with the elections, as well space that is appropriate to host staff to complete all of the logic and accuracy testing, which is estimated to take a number of months prior to each election.

The County Clerk has been meeting with staff from the Real Property Division of Public Works, General Services and the County Administrative Office in an effort to identify appropriate space to meet the needs of the new voting system. At the time negotiations were underway, it was announced by the Secretary of State's Office that contrary to earlier assurances, it now appears that HAVA funding may not be available to complete tenant improvements, and purchase the required racking systems. Staff will report back on the options for storing and servicing the voting equipment once funding issues are resolved.

**Additional Staffing**

The Personnel Department has determined that the appropriate classifications for the 2.0 additional positions are Senior Departmental Administrative Analyst and Departmental Information Systems Specialist. At this time, lists are in the process of being certified so that hiring can occur. As your Board is aware, HAVA grant funds can be utilized for up to the first six months of the two new positions.

It is therefore recommended that your Board:

1. Accept and file a status report on the implementation efforts for the County's Voting Modernization Plan;
2. Authorize the County Clerk to sign the contract with Sequoia Voting Systems, Inc. for the purchase of a new voting system, in the amount of \$2,289,869.49; and
3. Request the County Clerk to return with a plan to provide to store and service new voting equipment, as funding issues become resolved.

Sincerely,



Gail L. Pellerin  
County Clerk

RECOMMENDED:




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SUSAN A. MAURIELLO  
County Administrative Officer

cc: County Administrative Office  
County Counsel  
General Services Agency  
Personnel Department  
Auditor/Controller's Office  
Public Works Department, Real Property Division  
Information Services Department  
City Clerks

COUNTY OF SANTA CRUZ
REQUEST FOR APPROVAL OF AGREEMENT

TO: Board of Supervisors
County Administrative Office
Auditor Controller
FROM: County Clerk - Elections (Department)
BY: [Signature] (Signature) 3-21-06 (Date)
Signature certifies that appropriations/revenues are available

AGREEMENT TYPE (Check One)
Expenditure Agreement [X] Revenue Agreement [ ]

The Board of Supervisors is hereby requested to approve the attached agreement and authorize the execution of same.

- 1. Said agreement is between the County Clerk (Department/Agency) and Sequoia Voting Systems, Inc. 7677 Oakport St, Suite 800, Oakland, CA 94621 (Name/Address)
2. The agreement will provide voting systems and associated licenses, maintenance and support services
3. Period of the agreement is from March 28, 2006 to June 30, 2008
4. Anticipated Cost is \$2,300,000.00 [ ] Fixed [ ] Monthly Rate [ ] Annual Rate [X] Not to Exceed
Remarks: BOS Agenda: 3/28/06 Item Funds Approved 10/18/05 Item #47
5. Detail: [ ] On Continuing Agreements List for FY - Page CC- Contract No: OR [ ] 1st Time Agreement
[ ] Section II No Board letter required, will be listed under Item 8
[ ] Section III Board letter required
[ ] Section IV Revenue Agreement
6. Appropriations/Revenues are available and are budgeted in 214000 (Index) 8404 (Sub object)

NOTE: IF APPROPRIATIONS ARE INSUFFICIENT, ATTACHED COMPLETED AUD-74 OR AUD-60

Appropriations are available and encumbered. Contract No: 53467-01
are not will be By: Renee Ramirez Date: 3/21/06
Auditor-Controller Deputy

Proposal and accounting detail reviewed and approved. It is recommended that the Board of Supervisors approve the agreement and authorize

Date: 3/21/06 By: [Signature] County Administrative Office

Distribution: Board of Supervisors - White State of California
Auditor Controller - Canary County of Santa Cruz
Auditor-Controller - Pink I ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz, State of California, do hereby certify that the foregoing request for approval of agreement was approved by said Board of Supervisors as recommended by the County Administrative Office by an order duly entered in the minutes of said Board on 20

ADM - 29 (8/01) Title I, Section 300 Proc Man By: Deputy clerk

AUDITOR-CONTROLLER USE ONLY

Table with columns: CO, Document No., JE Amount, tines, H/TL, Keyed By, Date, Auditor Description, Amount, Index, Sub object, User Code

0000043

**PURCHASE AGREEMENT**  
**BETWEEN**  
**SANTA CRUZ COUNTY, CALIFORNIA**  
**AND**  
**SEQUOIA VOTING SYSTEMS, INC.**

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Schedule 1	Description of Equipment, Software and Pricing/Payment Terms
Schedule 2	Additional Services
Schedule 3	Delivery Terms
Schedule 4	Standard License Agreement

**PURCHASE AGREEMENT BETWEEN  
SANTA CRUZ, COUNTY, CALIFORNIA  
AND  
SEQUOIA VOTING SYSTEMS, INC.**

This Purchase Agreement ("Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2006, (the "Effective Date") by and between **Santa Cruz County, California**, located at 701 Ocean Street, Room 210, Santa Cruz, CA 95060-4076 (hereinafter referred to as "County") and **Sequoia Voting Systems, Inc.** (hereinafter referred to as "Sequoia"), having its offices at 7677 Oakport Street, Oakland, California 94621.

***RECITALS***

**WHEREAS**, Sequoia is in the business of providing election equipment, software, systems and services; and

**WHEREAS**, County desires to obtain from Sequoia election hardware and software on the terms and conditions set forth in this Agreement;

**WHEREAS**, Sequoia agrees that all election equipment, software, and services provided hereunder are as represented in Sequoia's Request for Quote (hereinafter referred to as "RFQ") and Request for Proposal (hereinafter referred to as "RFP") responses dated August 12, 2005 and September 7, 2005 respectively;

**NOW, THEREFORE**, in consideration of the mutual benefits and promises set forth in this Agreement, the parties agree as follows.

**1. AGREEMENT**

The Agreement shall consist of the following:

- A.** This Agreement and its attached schedules.
- B.** Sequoia's RFQ#05X1-001 and RFP#05S1-003 responses to Santa Cruz County dated August 12, 2005 and September 7, 2005 respectively.
- C.** Sequoia's manuals and other documentation for the System (the "Documentation").

In the event that there are any conflicts or differences among the above documents, this Agreement and its attached schedules shall prevail.

## 2. SALE AND PURCHASE OF SYSTEM

### A. The System

Sequoia agrees to sell, and County agrees to purchase, on the terms set forth in this Agreement, the following:

1. The equipment listed on Schedule 1 to this Agreement (the "Equipment").
2. A license for the Software listed on Schedule 1, which shall be licensed to County pursuant to Section 4 of this Agreement (the "Software").
3. The additional services, if any, as set forth on Schedule 2 to this Agreement (the "Additional Services").

The Equipment and Software, when operated in accordance with the Documentation, constitute a voting system (which is referred to in this Agreement as the "System").

### B. System Certification and Compliance with the Law

1. Pursuant to this Agreement and by order of the Secretary of State, the System shall be certified for use in California and 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). The System 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 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.
2. Sequoia and/or its agents shall assume full responsibility for any representation that the System complies with all applicable state and federal requirements as referenced above. In the event such representation is determined to be false or misleading Sequoia or its 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 be in compliance.
3. The 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 Agreement including but not limited to, the 2002 Voting System Standards/Guidelines, developed by the Federal Election Commission and adopted by the Election Assistance Commission (EAC) and EAC Advisory 2005-004, dated July 20, 2005.

**C. Purchase Price and Payment Terms**

County shall pay the purchase price for the System set forth on Schedule 1 to this Agreement (the "Purchase Price"). The Purchase Price shall be paid in accordance with the payment terms set forth in Section 6.

**3. DELIVERY AND INSTALLATION OF SYSTEM**

**A. Delivery**

The System shall be delivered in accordance with Schedule 3 of this Agreement. The Equipment and Software shall be shipped to a location designated by the County. Once determined, Schedule 3 shall be amended to include the delivery location. Sequoia shall, at County's expense, included in the Purchase Price, insure the Equipment and Software at full value. Sequoia shall endeavor to notify County when the Equipment is shipped and the anticipated delivery date. The Equipment shall be preserved, packed and marked in accordance with Sequoia's standard practice. Title and risk of loss for each item of Sequoia Hardware purchased by the County under this Agreement will pass to County when County takes possession at the location designated by the County. However, transfer of title and risk of loss under this Section will not diminish any other rights the County has pursuant to the Agreement or any attached Schedules, including rights of testing and acceptance and rights to repairs or replacements under applicable warranty and maintenance terms. County hereby grants Sequoia a first priority security interest in the System and any proceeds thereof, effective until County has fully paid the Total Purchase Price. County shall execute and deliver UCC filings and other documents Sequoia reasonably requests to perfect this security interest.

**B. Installation**

Sequoia shall assist County with installation of the Equipment at County's delivery site specified in Schedule 3.

**4. SOFTWARE AND FIRMWARE LICENSE**

**A. License Agreement**

Sequoia shall grant to County a license for use of the Software pursuant to the software license agreement attached as Schedule 4 to this Agreement (the

"License Agreement"). Simultaneously with execution of this Agreement, Sequoia and County shall execute the License Agreement. The license of the Software shall be strictly in accordance with the terms of the License Agreement.

**B. Software and Firmware Upgrades**

From time to time Sequoia, in its sole discretion, may release improvements to the Software and Firmware that add or change functionality of the Software, or include programs not included in the Software at the time of execution of this Agreement and the License Agreement ("Upgrades"). Software and Firmware upgrades shall be governed by the License Agreement whether or not installed by County. Software and Firmware upgrades will be provided to County, as long as County is current with payment of License Fees.

**C. Firmware License**

The Equipment incorporates software and logic that constitutes an Intellectual Property Right previously owned by Sequoia pursuant to Section 22 ("Firmware"). Sequoia hereby grants to the County a non-exclusive, non-transferable limited license to use the Firmware solely with and for the operation of the System, as contemplated by this Agreement. The County shall not, and shall not permit any third party to, reverse engineer, disassemble, decompile, decipher or analyze the Firmware in whole or in part.

**D. Compliance with Law**

The Software, Upgrades and Firmware comply with applicable laws in effect at the time this Agreement was executed. Should applicable laws change in the future in such a manner as to require modifications to the Software, Upgrades or Firmware, all costs incurred in any required modification to the Software, Upgrades or Firmware will be paid by County at a price to be agreed upon at that time. All modifications shall constitute Development Intellectual Property Rights owned by Sequoia pursuant to Section 22 hereof.

In order to meet the County's specific requirements, Sequoia will deliver an alternate set of legs that the Edge Voting System may sit upon. Legs are 27.5 inches high making the top of the voting position at the highest operable part no higher than 48 inches with a clear knee space of 19 inches deep and 30 inches wide (both measured at 27 inches from the finished floor) and the edges of the metal support table for the voting machine will be rounded and will not have sharp comers or edges and have been viewed and approved by Santa Cruz County Accessibility Consultant.

**E. No Modification**

County shall not modify or permit or suffer any third party to modify any Software, Upgrades or Firmware without the prior express written authorization of Sequoia in each instance.

## 5. TESTING AND ACCEPTANCE

### A. Time of Testing

Within twenty (20) days after delivery of the System to County in accordance with Schedule 3, County shall conduct the test procedures described in the Documentation. The test procedures shall be performed in the order set forth in the Documentation. In the event that results of the tests of Equipment or Software in accordance with the Documentation indicates that the System is not performing functions correctly, County shall notify Sequoia within ten (10) days following completion of testing (a "Defect Notice"). A Defect Notice shall set forth with specificity the performance failures. Sequoia shall, within twenty (20) days from receipt of a Defect Notice, make any corrections necessary to cause the System to function in accordance with the Documentation. Within ten (10) calendar days of completion of such corrections, County shall retest the system in accordance with the Documentation.

### B. Acceptance

The Equipment and Software shall be deemed to have been accepted by County on the earlier to occur of (i) failure of County to timely test the Equipment or (ii) failure of County to timely issue a Defect Notice, or (iii) County issues notice of completion of full acceptance testing by the County, including testing of replaced or defect items.

## 6. PAYMENT

The total purchase price for System, as described in Schedule 1, is \$2,289,869.49.

All sums owing to Sequoia shall be payable in the following manner:

<b>Milestone / Date</b>	<b>Payment Due</b>
Contract Signing	<b>5% (\$114,493.47)</b>
County Acceptance of Hardware and Software	<b>60% (\$1,373,921.70)</b>
Certification of June 2006 Primary Election	<b>30% (\$686,960.85)</b>
Certification of November 2006 General	<b>5% (\$114,493.47)</b>
<b>Total:</b>	<b>100% (\$2,289,869.49)</b>

Sequoia shall assist the County in completing all paperwork to secure Proposition 41 funds from the State of California and Help America Vote Act (HAVA) funds. All sums owing to Sequoia shall be payable in full, without offset or deduction of any kind, within forty-five (45) days of invoice date. In the event Sequoia takes legal action to collect amounts owing under this Agreement (and whether or not legal action is instituted), County shall reimburse Sequoia for Sequoia's costs and expenses (exclusive of attorneys fees) incurred in connection with such collection effort.

**5. TESTING AND ACCEPTANCE**

**A. Time of Testing**

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<b>Milestone / Date</b>	<b>Payment Due</b>
<b>Contract Signing</b>	<b>5% (\$114,493.47)</b>
<b>County Acceptance of Hardware and Software</b>	<b>60% (\$1,373,921.70)</b>
<b>Certification of June 2006 Primary Election</b>	<b>10% (\$228,986.95)</b>
<b>Day After November 7,2006 General Election</b>	<b>10% (\$228,986.95)</b>
<b>Certification of November 7,2006 General Election</b>	<b>15% (\$343,480.42)</b>
<b>Total:</b>	<b>100% (\$2,289,869.49)</b>

Sequoia shall assist the County in completing all paperwork to secure Proposition 41 funds from the State of California and Help America Vote Act (HAVA) funds. **The first three payments owing to Sequoia shall be payable in full, without offset or deduction of any kind, within forty-five (45) days of invoice date; the last two payments owing to Sequoia shall be payable in full, without offset or deduction of any kind, net upon date of milestone event.** In the event Sequoia takes legal action to collect amounts owing under this Agreement (and whether or not legal action is instituted), County shall reimburse Sequoia for Sequoia's costs and expenses (exclusive of attorneys' fees) incurred in connection with such collection effort.

**5. TESTING AND ACCEPTANCE**

**A. Time of Testing**

Within twenty (20) days after delivery of the System to County in accordance with Schedule 3, County shall conduct the test procedures described in the Documentation. The test procedures shall be performed in the order set forth in the Documentation. In the event that results of the tests of Equipment or Software in accordance with the Documentation indicates that the System is not performing functions correctly, County shall notify Sequoia within ten (10) days following completion of testing (a "Defect Notice"). A Defect Notice shall set forth with specificity the performance failures. Sequoia shall, within twenty (20) days from receipt of a Defect Notice, make any corrections necessary to cause the System to function in accordance with the Documentation. Within ten (10) calendar days of completion of such corrections, County shall retest the system in accordance with the Documentation.

**B. Acceptance**

The Equipment and Software shall be deemed to have been accepted by County on the earlier to occur of (i) failure of County to timely test the Equipment or (ii) failure of County to timely issue a Defect Notice, or (iii) County issues notice of completion of full acceptance testing by the County, including testing of replaced or defect items.

**6. PAYMENT**

The total purchase price for System, as described in Schedule 1, is \$2,289,869.49. All sums owing to Sequoia shall be payable in the following manner:

<b>Milestone / Date</b>	<b>Payment Due</b>
<b>Contract Signing</b>	<del><b>5% (\$114,493.47)</b></del>
<b>County Acceptance of Hardware and Software</b>	<del><b>60% (\$1,373,921.70)</b></del>
<b>Certification of June 2006 Primary Election</b>	<del><b>30% (\$689,960.85)</b></del>
<b>Certification of November 2006 General</b>	<del><b>5% (\$114,493.47)</b></del>
<b>Total:</b>	<del><b>100% (\$2,289,869.49)</b></del>

Sequoia shall assist the County in completing all paperwork to secure Proposition 41 funds from the State of California and Help America Vote Act (HAVA) funds. All sums **The first three payments** owing to Sequoia shall be payable in full, without offset or deduction of any kind, within forty-five (45) days of invoice date: **the last two payments owing to Sequoia shall be payable in full, without offset or deduction of any kind, net upon date of milestone event.** In the event Sequoia **takes** legal action **to** collect amounts owing under this Agreement (and whether or not legal action is instituted), County shall reimburse Sequoia for Sequoia's costs and expenses (exclusive of attorneys' fees) incurred in connection with such collection **effort.**

## 7. PATENT AND COPYRIGHT PROTECTION

### A. **Sequoia Indemnity**

Subject to clauses 7B and 7C, Sequoia shall, at its own expense, defend County against any claim asserted by any third party that the Software or Equipment infringes a registered United States patent or copyright of that third party.

### B. **Conditions**

Sequoia shall have no liability or obligation for any claim of infringement as provided in clause 7A unless County: (i) notifies Sequoia in writing of any infringement or alleged infringement of which County becomes aware within a reasonable time thereafter; (ii) does not prevent or impede Sequoia from the conduct of the defense of such claim, including negotiations for settlement or compromise; (iii) provides Sequoia with reasonable assistance, in conducting the defense of such claim; (iv) permits Sequoia to alter the Equipment or Software, at its own expense, to render it non-infringing; (v) authorizes Sequoia to procure for County the authority to continue the use and possession of the Software or Equipment at no cost or expense to County beyond sums owing under this Agreement.

### C. **Exclusions**

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

### D. **Infringement Alteration**

In the event County's use of all or any portion of the Equipment or Software becomes, or in Sequoia's reasonable opinion is likely to become, the subject of an infringement claim (the "Infringing Component"), Sequoia may at its option and expense: (i) obtain for County the continuing right to use the Infringing Component; or (ii) alter the Infringing Component or replace it with a functional equivalent so long as it no longer infringes; or if neither (i) or (ii) is reasonably practicable, (iii) on not less than ninety (90) days prior written notice to County, repurchase the Infringing Component and refund to County an amount equal to the purchase price for the Infringing Component amortized on a three (3) year period on a straight line basis.

### E. **Source Code**

Sequoia agrees to designate the County as a beneficiary under its existing source code escrow agreement ("Escrow Agreement") with the State of

California's Secretary of State's Office (hereinafter referred to as "SOS"), and to provide the County, within 45 days after the Effective Date of this Agreement, with a copy of documents evidencing such designation. Sequoia will have delivered the source code for the Software to the SOS for escrow, and Sequoia will provide updated source code for the Software to SOS in connection with updates of the Software (for as long as the County is current in the payment of the annual License Fee). In the event that Sequoia ceases to do business or ceases to offer or provide support for the Software it has provided to the County, then the County will have the non-exclusive, non-transferable right to access and use the source code internally solely as necessary to receive any Software maintenance for which the County has paid but which the County has not received.

## **8. TRAINING**

To the extent required by this Agreement, Sequoia shall provide training to County personnel on the operation and use of the System at times to be agreed upon by Sequoia and County. The training schedule is outlined in Schedule 2. Any additional training required as a result of equipment and/or software upgrades to the System purchased under this Agreement will be provided as determined by Sequoia and County at the prices set forth in Sequoia's published prices for training at the time of the upgrade. All training to be provided at a County designated site with the exception of Edge technical training that is to be held in Jamestown, NY and advanced training for the 400c that is to be held at Sequoia's lab in Oakland, CA.

## **9. DOCUMENTATION**

The Documentation shall be delivered to County upon shipment of Equipment and Software. The Documentation is subject to the confidentiality requirements of Section 28, and shall not be copied or reproduced without the prior written consent of Sequoia.

## **10. TAXATION**

County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. Sequoia shall be responsible for payment of taxes on Sequoia's income and withholding of payroll taxes for Sequoia's employees as required by law.

## **11. LIMITED PARTS WARRANTY**

- A.
  1. For a period of one (1) year commencing the date County accepts the equipment pursuant to Section 5.B above, Sequoia will provide all parts to replace those which have been broken through normal wear and tear (excluding items listed in 11.D.1. of this Agreement), as determined by Sequoia, without charge to the County as long as this Agreement remains in force.
  2. Defective components or materials should be returned at Sequoia's

expense to Sequoia in accordance with Sequoia's instructions, upon receipt from Sequoia of a Return Material Authorization Number ("RMA") and shipping instructions. Goods returned in accordance with the foregoing procedures shall be replaced or repaired, at the option of Sequoia, and returned to the County via United Parcel Service within 30 days and where possible at least 14 days prior to an election. Special handling on expedited shipments shall be at the County's expense.

- B. Sequoia will provide telephone support to answer questions on equipment use or repair during normal business days between 8:00 a.m. and 5:00 p.m. PST. Any diagnostics on machines beyond phone support, whether on-site or at a Sequoia facility will be billable to the County. This warranty does not include any labor for diagnostics or repair performed on whole units shipped back to Sequoia, or any labor performed on-site at the County location. All travel expenses will be billable to the County for any on-site labor.
- C. 1. Sequoia will provide to the County Software upgrades, which may become available from time to time. Such upgrades shall be installed by the County. They shall be at no cost, unless additional or new program or configuration chips are necessary, in which case the County shall purchase such chips at the cost then in effect.
2. Sequoia will provide to the County any and all firmware upgrades available on the AVC Edge®. These upgrades shall be installed by the County onto the AVC Edge® voting units.
- D. Limitations
1. This agreement does not require Sequoia to replace:
- a. paper, seals, batteries, or other consumable parts or supplies;
  - b. products that have been repaired or altered by persons other than those expressly approved in writing by Sequoia;
  - c. products from which the serial numbers have been removed, defaced or changed;
  - d. products damaged 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 instructions furnished by Sequoia;
  - e. products that have been subjected to unusual physical, mechanical or electrical stress or alteration or any conversion by persons other than those expressly approved in writing by Sequoia;
  - f. products used by any person other than County's employees or persons under County's direct supervision;
  - g. equipment that in equipment manufacturer's reasonable opinion cannot be repaired to a maintainable condition.



2. County's exclusive remedy and Sequoia's entire liability in contract, tort or otherwise, pursuant to this Section 11, will be to make all necessary adjustments and repairs (or at Sequoia's option replace or substitute equipment) to keep the equipment in good operating condition in accordance with the manufacturer's policies then in effect.

**E. Limited Parts Warranty Disclaimer**

**SEQUOIA 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. IN NO EVENT WHATSOEVER SHALL SEQUOIA BE LIABLE FOR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES AS A RESULT OF ITS BREACH OF ANY OF THE PROVISIONS OF THIS AGREEMENT.**

**12. INDEMNIFICATION**

Sequoia shall indemnify, defend and hold harmless County (including, without limitation, its officers, agents, employees and volunteers) from and against:

- A. Any and all third party claims, demands, losses, damages, defense costs, or liability of any kind or nature which County may sustain or incur or which may be imposed upon it for injury to or death of persons, or damage to property to the extent caused by the negligent or intentional acts of Sequoia or its employees in performing under this Agreement, excepting any liability arising out of the sole negligence of the County. Such indemnification includes any damages to the person(s), or property of Sequoia and third persons.
- B. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to Sequoia and Sequoia's officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding).

**13. INSURANCE**

- A. During the performance of this Agreement, Sequoia will maintain in full force and effect the following insurance coverage for Sequoia employees and property:

**1. Worker's Compensation**

Sequoia shall procure and maintain during the life of this contract, Workers' Compensation Insurance, including Employers Liability

Coverage, in accordance with applicable laws of the State in which County is located.

**2. General Liability Insurance**

Sequoia shall procure and maintain during the life of this contract, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability of \$1,000,000 per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent. Sequoia may elect to self-insure this coverage.

**3. Motor Vehicle Liability**

Coverage shall include all owned and non-owned vehicles and all hired vehicles in the amount of \$1,000,000.

**B. Certificate of Insurance**

Prior to execution of this Agreement, Sequoia shall provide County with a certificate evidencing such coverage and naming County as an additional insured in regards to Sequoia's negligence.

**14. ASSIGNMENT**

Neither party shall assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other party.

**15. SUBCONTRACTING**

Sequoia may use subcontractors in connection with the work performed under this Agreement.

**16. SEVERABILITY**

If any term or provision of this Agreement, or the application thereof, to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms and provisions, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

**17. NONDISCRIMINATION**

Sequoia warrants and represents that all of its employees are treated equally during employment without regard to race, color, creed, religion, national origin, ancestry, disability, medical condition (cancer related and genetic characteristics), marital

status, sex, sexual orientation, gender, age (over 18), veteran status, pregnancy or any other non-merit factor.

18. EXCUSABLE DELAYS

- A. Any failure by Sequoia to perform any obligation of Sequoia under this Agreement shall not constitute a default by Sequoia under this Agreement if such failure arises out of causes beyond the reasonable control of Sequoia or its subcontractors. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies, terrorist attack, labor disputes, freight embargoes, and abnormally severe and unusual weather conditions.
- B. Upon Sequoia's request, County shall consider the facts and extent of any failure to perform the work and, if Sequoia's failure to perform was without it or its subcontractors fault or negligence, the Agreement, Schedules and/or any other affected provision of this Agreement shall be revised accordingly, subject to County's rights to change, terminate, or stop any or all of the work at any time.

19. TERM OF AGREEMENT

This Agreement shall take effect upon the full execution by the parties. The term remains in full force and effect until the expiration of the Warranties, except as otherwise provided for herein.

20. HEADINGS NOT CONTROLLING

Headings and titles used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

21. LIMITATION OF SEQUOIA'S LIABILITY

SEQUOIA'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, NEGLIGENCE, STRICT LIABILITY, BREACH OF STATUTORY OR ANY OTHER DUTY SHALL IN NO CIRCUMSTANCES EXCEED THE TOTAL PURCHASE PRICE. SEQUOIA 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 COUNTY 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.

The provisions of the above paragraph shall in no way limit Sequoia's indemnification obligation under Section 12.

## **22. 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 Sequoia will be owned exclusively by Sequoia; provided, however that County, provided it has not breached this Agreement, shall have a non-exclusive license to the use of such Development Intellectual Property Rights solely as necessary for County to use the System 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 during performance by Sequoia under this Agreement.

## **23. EMPLOYEES**

County shall not solicit for employment, whether directly or indirectly or otherwise, employ, engage or contract from the date of this Agreement and for a period of two (2) years thereafter, any person who is employed or contracted by Sequoia during the duration of this Agreement. If a person who is employed or contracted by Sequoia seeks to be employed or contracted by County prior to the expiration of said two (2) year period, County shall promptly advise Sequoia in writing. County agrees that the restrictions set forth in this Section 23 are fair and reasonable and are in addition to and not in substitution for any similar restrictions in any other agreements between the parties.

## **24. PRICING**

County acknowledges and understands that Sequoia has not made any promises, or given County any assurances, written or verbal, concerning the pricing under this Agreement or the relationship of these prices to those charged to any past, current or future customer of Sequoia.

## **25. COUNTY'S OBLIGATIONS**

County's obligations under this Agreement shall include, but not be limited to, the following:

- A. County shall pay Sequoia amounts owing under this Agreement when due.
- B. County shall make County's personnel and facilities available to Sequoia as required for Sequoia's performance under this Agreement.
- C. County shall comply with other requests of Sequoia as reasonably required for Sequoia's performance under this Agreement.

**26. DUE AUTHORIZATION**

County and Sequoia each represent to the other that this Agreement has been duly authorized and executed on behalf of each party, and is a legally binding obligation of each party.

**27. TERMINATION**

**A. By Sequoia**

Sequoia may terminate this Agreement by written notice to County if:

- 1. County fails to pay any sum owing to Sequoia within forty-five (45) days of invoice date.
- 2. Sufficient sums have not been appropriated by law to permit County to meet its payment obligations under this Agreement.

**B. By Either Party**

Either party may terminate this Agreement by written notice to the other if:

- 1. The other party breaches its obligations under this Agreement and fails to cure such breach within thirty (30) days of receipt of written notice from the other party.
- 2. Either party enters into any bankruptcy or similar proceeding for the purpose of affording relief from creditors.

**C. Effect of Termination**

In the event this Agreement is terminated for any reason, all amounts due and payable to Sequoia accrued prior to such termination shall be immediately due and payable. Such termination shall not affect the rights of the parties accrued prior to the termination.

**D. License Agreement**

Upon termination of this Agreement, the License Agreement and all of County's rights thereunder shall terminate. This Agreement shall terminate

automatically on termination of the License Agreement. County shall be refunded the unused portion of the licensing fee.

**E. Survival**

In the event of termination, the provisions of Sections 1, 11A, 11C, 11D, 11E, 12, 21, 22, 23, 28, 30, 34, 35, and 36 shall survive termination of this Agreement.

**28. CONFIDENTIALITY**

County acknowledges that during the course of Sequoia's performance under this Agreement, Sequoia may disclose to County information concerning Sequoia's pricing, products, trade secrets and other information which is competitively sensitive and proprietary, and which may be disclosed to County orally or in writing, in tangible or intangible form, including, without limitation, technical, operating, business, marketing and financial information, computer software and data, physical objects and samples (collectively, the "Information"). County acknowledges that disclosure of the Information would materially injure Sequoia's competitive position in the marketplace. County therefore agrees, to the maximum extent permitted by law, to keep confidential and not to disclose any of the Information to any other person or entity, or use such Information for any purpose other than as expressly contemplated by this Agreement. In the event County is required by law to disclose any of the Information, County shall give written notice to Sequoia at the earlier of (i) fifteen (15) business days prior to disclosure or (ii) such longer period as may be required by applicable law.

**29. 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 such 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 party and delivered to the other party.

**30. ENTIRE AGREEMENT**

This Agreement as defined in Section 1 embodies the entire agreement between the parties and supercedes any other agreements between the parties (all of which other agreements are void and of no further effect). This Agreement may be amended only by agreement in writing signed by both parties.

**31. NOTICES**

- A. Any notice to be given by either party under the terms of this Agreement shall be in writing and shall be given by registered or certified letter, overnight courier providing written evidence of delivery or confirmed facsimile addressed to the party for whom it is intended at its address stated in this Agreement or such other address as may be notified in writing for the receipt of notices.
- B. Every notice shall be deemed to have been given and received the earlier of (i) the date actually accepted, rejected or marked by the carrier unable to deliver or (ii) four (4) business days after the date such notice is mailed by United States registered or certified mail, as provided above, in any post office or branch post office regularly maintained by the United States Government.

**32. CHANGE CONTROL**

- A. Should applicable laws change in such a manner to necessitate modification to the Equipment, Software or System, or should the County wish to make any other changes to the Equipment, Software or System, the County shall submit to Sequoia full particulars in writing of such proposed changes. Sequoia shall, within a reasonable time after receipt of such a submission from County, submit to County a full quotation for incorporating such changes specifying any impact on the pricing and project schedule.
- B. Upon receipt of such quotation, County may elect either:
  - 1. to accept such quotation; or
  - 2. to withdraw the proposed changes by written notice to Sequoia within the ten (10) days of receipt of such quotation, in which case this Agreement shall continue unchanged; or
  - 3. to negotiate amendments with Sequoia and upon agreement the parties shall sign an amendment to this Agreement detailing the agreed changes, any price impact and any other change in terms.
- C. If Sequoia wishes to suggest changes to the Equipment, Software or System, it shall submit to County a description of such proposed changes including any effect on the pricing and project schedule. County 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 described in an amendment to this Agreement signed by both parties.

**33. PROJECT MANAGERS - COORDINATION OF PROJECT**

- A. Each party shall appoint a project manager for all administrative activities associated with this Agreement. Each project manager shall ensure that copies of all written communications relating to this Agreement are copied to the other project manager.
- B. After the effective date of this Agreement, the project managers shall meet at least once every thirty (30) days or at such periods as may be agreed to review progress. Unless otherwise agreed, meetings will alternate between the offices of the County and conference calls via telephone.

#### **34. LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflict of laws, and the parties agree, subject to the dispute resolution requirements of Section 35, to submit to the exclusive jurisdiction of the courts of the State of California and the federal district courts situate in California with respect to any matter arising from or relating to this Agreement.

#### **35. DISPUTE RESOLUTION**

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:

- A. Upon the written request of either party, the project managers of each party will meet for the purpose of endeavoring to resolve such dispute. The project managers 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 designated representatives but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other party.
- B. If the project managers cannot resolve the dispute, then the dispute shall be escalated to the Vice President of Operations of Sequoia and the County Clerk for their review and resolution. If the dispute cannot be resolved by such officers, then the parties shall submit the dispute to a mediator agreed upon by the parties. Mediation proceedings for the purpose of resolution of any such dispute may not be commenced until the earlier of:
  - 1. the designated representatives concluding in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely; or



2. twenty (20) days after the initial request to negotiate such dispute; or
  3. thirty (30) days before the statute of limitations governing any cause of action relating to such dispute would expire.
- C. 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 terminated or expire in accordance with the provisions hereof.

### **36. ARBITRATION**

Any dispute between the parties hereto arising out of or relating to the interpretation or performance of this Agreement, including, without limitation, any alleged breach hereof, that cannot be resolved under the provisions of Section 35 above, shall be submitted to formal arbitration proceedings prior to the initiation of litigation.

### **37. RELATIONSHIP OF THE PARTIES**

County and Sequoia agree that under this Agreement:

- A. Both parties are independent contractors;
- B. Neither party is a legal representative, agent or partner of the other;
- C. Neither party will represent or act on behalf of the other, unless otherwise agreed to in writing; and
- D. Both parties are free to enter into similar agreements with others and to market its products and services to others.

### **38. NO THIRD PARTY BENEFICIARIES**

Sequoia and County 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.

### **39. SYSTEM TRADE-IN**

On a five (5) year depreciation schedule, from the date of the Effective Date, Sequoia will allow County the option of trading in the components of the Optical Scan Voting System specified herein (depreciated as noted below), in exchange for the requested DRE related Sequoia Hardware and software at the same price paid herein, or the

current market price, whichever is lower. The County may, at its sole discretion, exercise this option prior to the expiration of the five (5) year period.

Year	Depreciated %	Credit %
2006	30%	70%
2007	55%	45%
2008	75%	25%
2009	90%	10%
2010	100%	0%

#### 40. INSTANT RUNOFF VOTING

If any jurisdiction or city within Santa Cruz County passes a measure or adopts Instant Runoff Voting (IRV) or similar process with requirements that significantly match the requirements of another county that has already developed and certified and it does not require re-certification, Sequoia will provide all necessary upgrades to software and firmware to meet the IRV requirement at a cost not to exceed \$100,000.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the Effective Date.


COUNTY OF SANTA CRUZ

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SEQUOIA VOTING SYSTEMS, INC.

By:  \_\_\_\_\_  
Name: Peter McManemy  
Title: VP CFO

APPROVED AS TO FORM:

  
Santa Cruz County Counsel

## SCHEDULE 1

## DESCRIPTION OF EQUIPMENT, SOFTWARE AND PRICING

Equipment	Selling Price Per Unit	QTY	Sub-Total	STax**	Freight	Total
AVC Edge II without printer	\$3,600.00	165	\$594,000.00	\$49,005.00	\$3,300.00	\$646,305.00
VeriVote™	1,000.00	165	165,000.00	13,612.50		178,612.50
Cover with Wheels & Cover	150.00	165	24,750.00	2,041.88		26,791.88
Storage Carts	500.00	42	21,000.00	1,732.50		22,732.50
Audio Keypad & Headset Kit	250.00	165	41,250.00	3,403.13		44,653.13
Alternate Leg Assembly	100.00	165	16,500.00	1,361.25		17,861.25
Vote Simulation Cartridges	100.00	10	1,000.00	82.50		1,082.50
Results Cartridges	150.00	10	1,500.00	123.75		1,623.75
Cartridge Tray	60.00	3	180.00	14.85		194.85
Cords - 2'	2.00	165	330.00	27.23		357.23
Cords - 10'	3.00	33	99.00	8.17		107.17
400-C Absentee Ballot Counter	85,000.00	2	170,000.00	14,025.00	2,000.00	186,025.00
Insights without Modem	5,000.00	165	825,000.00	68,062.50	24,750.00	917,812.50
Memory Pak - Cartridges for Insight	250.00	10	2,500.00	206.25		2,706.25
Memory Pak - Reader for Insight	4,500.00	2	9,000.00	742.50		9,742.50
WinEDS Software Application	150,000.00	1	150,000.00	12,375.00		162,375.00
Server - Small (1-250 Edges)	2,700.00	1	2,700.00	222.75		2,922.75
Desktops/Laptops	2,500.00	4	10,000.00	825.00		10,825.00
Installation & Training	75,000.00	1	75,000.00			75,000.00
Credit For Purchase	(16,500.00)	1	(16,500.00)	(1,361.25)		(17,861.25)
Sub-Total			2,093,309.00	166,510.49	30,050.00	
Total Purchase						\$ 2,289,869.49

California Sales Tax at the rate of 8.25% charged on Equipment and Software.

**SCHEDULE 2**  
**ADDITIONAL SERVICES**

**1. Training:**

Sequoia will provide training to the County based on the following schedule:

<b>Product</b>	<b>Course</b>	<b>Number of Days</b>	<b>Site - Location</b>
Edge/VVPAT/CA	Acceptance Test Training	1	County
	Operations and General Maintenance	1	County
	Technician Training	2	Sequoia
400C	Operations and General Maintenance	2	County
	Advance Technician Training*	2	Sequoia
Insight	Precinct Based	1 or 2	County
WinEDS	WinEDS I - Tally and Pre-LAT	2	County
	WinEDS II - Ballot & Election Setup	3	County
BPS II	General Operating Procedures	4	County
	Follow Up Training	4	County
Pollworker	Train the Trainer & Observation	3	

2. Sequoia will provide full service implementation for two (2) Elections beginning at conception of this contract, which will include a WinEDS Technician and a field rover on Election Day.
3. Sequoia will provide onsite consulting support, totaling no more than 40 hours, to the County to aid in the design, set up, and certification of Ballot on Demand printing within the County's current office space. The costs for these services are included herein.
4. **Optional Extended Warranty –Edge, VVPAT, Card Activator.**

Two Options are available to the County. The Chosen Option must be identified to Sequoia in writing 60 days prior to date of acceptance. The options are described below.

If the County elects to pay annual maintenance fees up front through 2010, there will be no annual increase in maintenance fees, therefore the County will pay the 2007 price, less a ten percent (10%) discount, for all consecutive years paid in advance. If the County does not pay the annual maintenance fees in advance, the following annual license fees will be in effect.

**A. Extended Warranty – Parts Replacement Only**

AVC Edge® - 101 – 500 units in County - \$ 85.00 per year, per unit  
 VVPAT - \$50.00 per year, per unit  
 Card Activator - \$30.00 per year, per unit.  
 Insight - \$175.00 per year, per unit

The Extended Warranty Parts Replacement Only begins one year after date of acceptance of equipment. If County chooses to exercise the Extended Warranty Parts Replacement Warranty, County shall inform Sequoia in writing 60 days prior to the annual date of Acceptance. The County will identify parts that need replacement and will ship to Sequoia, with proper paperwork to identify part for replacement. Sequoia will return the part to the County. The County will perform such tasks necessary to replace the part on the equipment. This is a parts replacement only warranty, which does include freight both ways. If County chooses to have a Sequoia technician repair the units, an additional billing of the prevailing labor rates will be charged.

**B. Extended Warranty – Parts Replacement and 1 Annual Maintenance Visit – Edge, Card Activator and VVPAT.**

AVC Edge® - 101 – 500 units in County - \$ 135.00 per year, per unit  
 VVPAT - \$50.00 per year, per unit  
 Card Activator - \$30.00 per year, per unit.  
 Insight - \$175.00 per year, per unit

The Extended Warranty, including parts and one annual maintenance visit begins one year after date of acceptance of equipment. If County chooses to exercise the Extended Warranty, including parts and one annual maintenance visit, County shall inform Sequoia in writing 60 days prior to the annual date of Acceptance. Once annually, Sequoia will travel to the jurisdiction and repair any units that have been identified by the jurisdiction as needing attention. If technician requires additional parts, said equipment may have to be shipped to a Sequoia facility for repairs or Sequoia may choose to return once the part are available. If units are shipped, the County will pay freight to Sequoia and Sequoia will pay return freight to the County. Scheduling of annual visit will be finalized between the County and the assigned Project Manager. Annual visit is to be scheduled at least 30 days in advance.

**\*The Extended Warranty, including parts and one annual maintenance visit for any equipment is only available to the County, if the AVC Edge® is included in the purchased warranty package. For clarification: The VVPAT or Card Activator is not available for the Extended Warranty with one annual maintenance visit unless the AVC Edge® is included in the package.**

## 5. Optional Extended Parts Warranty and One Annual Preventative Maintenance Plan 400-C

- a.) The Extended Warranty/Preventative Maintenance (EW/PM) Plan on the Optech 400-C Ballot Counter includes one EW/PM on site visit at \$6,000 per unit per year. County is responsible for the technician's travel and expenses. This test is expected to be scheduled at least 30 calendar days prior to requested test date. Sequoia will perform an annual inspection and will replace any and all parts that fail due to normal use. The technician will repair any necessary repairs encountered from the PM test and all parts are included.
- b.) If the County requires Sequoia to make additional trips to County and said trip is scheduled at least 30 calendar days prior to requested test date, Sequoia will bill County \$175 per hour of time servicing the equipment with a minimum of 8 hours and actual travel expenses. If the County requires Sequoia to make additional trips to County and said trip is scheduled less 30 calendar days prior to requested test date or is considered an emergency, Sequoia will bill County \$250 per hour of time servicing the equipment with a minimum of 8 hours and actual travel expenses. Parts are included in additional or emergency trips.

## 6. Additional Support & Service Fees:

Support not outlined in the above information that may be requested by the County will be available at the rates listed below. Requests for such support must be requested in writing to the Sequoia Account Manager or other appropriate Sequoia personnel.

Type of Service/Support	Level	Fee
Election Support	On-site field technicians, On-site phone tech support	\$125/hr
Election Product/Service support	Product/Account Associate	\$125/hr
Election Product/Service support	Specialist, Account/Project Manager	\$175/hr
Election Product/Service support	Senior Specialist/Project Manager, General Manager	\$225/hr
Election Product/Service support	Senior Manager/Developer	\$275/hr

Fees do not include travel and expenses for on-site support. When travel is required, there will be a minimum charge of eight hours per day if round trip travel exceeds four hours. Sequoia reserves the right to adjust the election coding fees, additional support and service fees yearly without advanced notice to the County. Associated travel expenses will be billed separately following the general guidelines listed below.

#### **6. TRAVEL AND EXPENSE GUIDELINES**

- A. Every effort will be made to choose the most efficient, prudent, and economical option available for the travel occasion.
- B. Unless otherwise stated, the maximum per Diem for meals shall not exceed \$65/day.\*
- C. Unless otherwise stated, the maximum hotel charge shall not exceed \$150/day (not including fees and taxes)."
- D. Reimbursement for employee car travel in the employee's personal vehicle will be billed at \$0.375/mile.
- E. Personal entertainment or other personal expenses will not be billed.

\*Note: Meals and hotel fares may exceed the maximum amount in certain metropolitan areas determined by the federal index to be high cost of living locations.



**SCHEDULE 3****DELIVERY TERMS**

All equipment will be delivered to a designated location in Santa Cruz County at a mutually agreed upon time by both County and Sequoia. Equipment delivery is estimated at or about 4 months from date of contract.

**SCHEDULE 4**

**LICENSE**

**AGREEMENT**

**BETWEEN**

**SEQUOIA VOTING SYSTEMS, Inc.**

**AND**

**SANTA CRUZ COUNTY, CALIFORNIA**

**INDEX OF CLAUSES**

1. Definitions
2. Grant of License
3. Delivery
4. Price
5. Prohibited Acts
6. Confidentiality
7. Termination
8. Return of Software
9. Warranty
10. Limitation of Liability
11. Entire Agreement
12. Severability
13. Waiver
14. Force Majeure
15. Notices
16. Assignment
17. Relationship of the Parties
18. No Third Party Beneficiaries
19. Governing Law

Appendix 1

License Fee

**THIS AGREEMENT** is made on \_\_\_\_\_ day of \_\_\_\_\_, 2006

BETWEEN

**SEQUOIA VOTING SYSTEMS Inc., located at 7677 Oakport Street, Suite 800 - Oakland, CA 94621** ("the Licensor")

AND

**Santa Cruz County, California** having its office at 701 Ocean Street, Room 210, Santa Cruz, CA 95060-4076 ("the Licensee").

**WHEREAS**

The Licensee wishes the Licensor to grant to it a license to use the 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 Software.   |
| "Software"       | WinEDS election management software, Ballot Production System software and WinETP software                                 |
| "License Fee"    | the license fee payable by the Licensee to the Licensor for the license of the Software herein as specified in Appendix 3. |
| "Specifications" | the specifications for the 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 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 from the date of signature of this Agreement. 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 Software. Any use of all or any portion of the 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 Software and any modifications or translations thereof. Licensee shall acquire only the limited license to the 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 Software shall be supplied in executable form together with one back-up copy and one copy of Software documentation.
- 3.2 Delivery of the 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 Fee.
- 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 Software in whole or in part except for purposes of system backup;
- 5.1.2 Reverse engineer, disassemble, decompile, decipher or analyze the Software in whole or in part;
- 5.1.3 Alter or modify the Software in any way or prepare any derivative works of the Software or any part of parts of the Software;
- 5.1.4 Alter, remove or obstruct any copyright or proprietary notices from the Software, or fail to reproduce the same on any lawful copies of the Software;  
or
- 5.1.5 Use the Software other than on the Hardware at the Locations.
- 5.1.6 Export, directly or indirectly, any Software to any country outside of the United States, or make disclosure of the Software to any foreign national where such disclosure would require an export license or other governmental permit.

## **6. CONFIDENTIALITY**

The Licensee acknowledges that the 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 Software, or any part thereof, or otherwise disclose confidential information contained in, supplied with or relating to the Software to any third party except to such of its employees as are required to have access to the Software in the normal course of use of the 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 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 Software in its possession or control, or, if so requested by the Licensor, destroy all such Software and (ii) purge all 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 Software for a period of thirty (30) days following delivery of the Software to the Licensee, will function substantially in accordance with the Specification. The Licensor shall use reasonable efforts to correct any material failure of the Software to function substantially in accordance with the Specification provided the Licensee has given the Licensor written notice of the defect within the said thirty (30) day 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 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 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 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 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 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 fee 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 Fee for all such occurrences.
- 10.4 The limitations contained in Sections 10.1, 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 supercedes of 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 ordinary first class pre-paid mail, by nationally-recognized overnight courier service or by telex or 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 telex or 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  
**SANTA CRUZ COUNTY, CALIFORNIA**

Name 

Name \_\_\_\_\_

Title VP CFO

Title \_\_\_\_\_

**APPROVED AS TO FORM:**

  
Santa Cruz County Counsel

**LICENSE FEE**

The Licensee agrees to pay the sum of \$22,500.00 to the Licensor for the use of the WinEDS® software in accordance with this agreement for a period of one year beginning one year from the execution date of this agreement.

**RENEWALS**

The Licensor reserves the right to adjust this yearly fee within five percent (5%) of the current fee for renewals without advanced notice to the licensee. For an increase greater than five percent (5%) the Licensee will be informed by the Licensor within sixty (60) days advanced notice.

March 27, 2006

Dear Board of Supervisors, Santa Cruz County,

Late yesterday, we downloaded a copy of the proposed Purchase Agreement Between Santa Cruz County and Sequoia Voting Systems, Inc. We also received disturbing newspaper articles regarding a primary election in Cook County, Illinois last week in which they experienced serious problems using a "blended voting system" of Sequoia Voting System optical scan and DRE equipment.

We realize this is extremely short notice, however, we believe there are serious problems in the proposed Agreement that tend to benefit Sequoia Voting Systems but could have serious consequences for the County.

We have enclosed copies of the newspaper reports of the Illinois election and have tried to be as specific as possible in identifying our concerns with the Agreement.

1. The payment schedule on page 7 of the Agreement shows that the County will pay 65 % of the payment due upon accepting the hardware and software (when the agreement is signed), and will pay 95% of the payment before a single machine is received since these machines will not be used in the June 2006 election.

It is reported that Cook County, Illinois paid Sequoia \$11 million out of \$28 million or approximately 39% prior to actually using the equipment in an election - the true test of a product.

Newspaper ~~articles~~ report in a Cook County, Illinois election last week ~~hundreds of~~ Sequoia Voting Systems machines failed to properly produce votes. City and ~~County~~ officials are threatening to withhold millions of dollars in payments to Sequoia Voting Systems, and may even cancel their contract.

This event alone validates a serious concern regarding the payment schedule in our Agreement and even a greater concern regarding Sequoia Voting Systems equipment.

The concerns are further exacerbated on page 13, item 21 of the Agreement, Limitation of Sequoia's Liability which states in part "...SEQUOIA 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 COUNTY 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." (EMPHASIS IS OURS). This is again restated on page 34 of the Agreement.

2. Sequoia is also reported in ~~the~~ newspaper articles blaming the problem in Illinois on Elections staff and not on the equipment. This is a very common response by voting machine vendors, and may partially be true. However, equipment failure seems to be the major problem.

3. The one year warranty on parts and the thirty (30) day warranty on software - (Page 9 of ~~the~~ Agreement) commences the date the County accepts the equipment and software.

#13

The actual delivery date is to be determined. Again, if it is thirty (30) days or more before the November 2006 Election the software warranty will have expired before the election takes place.

We have other concerns and have only addressed those we consider to be the most serious.

We urge the Board not to accept the current Agreement, and also strongly oppose any future action which might permit the use of only DRE voting systems. At least the Optical Scan equipment has a paper ballot fed into it and that ballot can be used in case of a recount, etc.

We ask that this item be removed from the Consent Agenda.

Thank you for your consideration of this most important issue.

Sincerely, *Michael J. Smith Margaret M. Smith*

Michael J. Smith and Margaret M. Smith  
564 Santa Marguarita Drive  
Aptos, CA 95003  
(831) 688-4268

[Print this page](#)

## City, county rip voting machine firm

file: home3

March 24, 2006

BY STEVE PATTERSON Staff Reporter

City and county election officials are threatening to withhold millions of dollars in payments to the company that provided voting equipment for Tuesday's primary.

Chicago election chairman Langdon Neal said it is "embarrassing" that hundreds of machines failed to properly produce votes, while Cook County Clerk David Orr said he's having "very serious conversations" with Sequoia Voting Systems about the problems.

Sequoia won the contract last year to provide \$50 million in new voting equipment needed to comply with new federal voting laws.

### Sequoia blames training

City and county voters used touch-screen and optical-scan machines, but when election judges tried merging the systems to produce results, many failed.

And while Sequoia officials continue to insist that training is the most likely problem -- not the machines -- others aren't so sure.

"If Tuesday was opening night of the performance, it was a flop," city election commissioner Richard Cowen said. "I won't vote to approve any further distribution to Sequoia."

Neal said while the city recently prided itself on producing 90 percent of the results within an hour of polls closing, "now I'm sitting here with egg on my face."

"There will be contract ramifications from their performance," he said of Sequoia, whether they "withhold pay or seek appropriate remedies."

The city has so far paid out about \$1.1 million on its \$26 million contract, Neal said as he laid out a series of reforms he plans to install before November's election.

"Believe you me," he said, "we'll seek payment from Sequoia for anything that we have to expend in a corrective fashion."

Orr spokesman Scott Burnham said the county has paid \$8 million of its \$24 million contract with Sequoia, though "we're not going to make [further] payments until we're satisfied with the system."

Sequoia spokeswoman Michelle Shafer said the company continues to work with election officials to answer questions and solve problems.

### Fewer precincts proposed

"The machines worked very well in the polling places," she said, adding they will review procedural issues including "simplifying training" and "whatever we can do to streamline the process."

Cowen, a Republican, also proposed eliminating about 1,000 city precincts to reduce the number of judges needed. Others expressed concern that could disenfranchise some voters. Neal distanced himself from that idea but emphasized that the machines "while unacceptably slow, were accurate," and this election provided "the most fraud-free election we've had in 10 years."

Orr said this primary "asked too much of our judges" and they must do something to ease the burden on those paid \$150 to work the polls for 13 hours then transmit results. This year's snafus meant many worked into the morning.

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**Chicago Tribune**  
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<http://www.chicagotribune.com/news/custom/newsroom/chi-060322voting,1,395780.story?coll=chi-news-hed>

## Poll workers needed voting system training

By James Janega, John McCormick and David Kidwell  
Tribune **staff** reporters

March 22, 2006, 9:24 PM CST

As ballot counting stretched into a second night, judges and election officials on Wednesday blamed confusion in the primary election on vast numbers of poll workers who had not been trained for Cook County's complicated new electronic voting system.

Most of them had barely studied machines that scanned paper ballots or enabled touch-screen voting. Many didn't see those devices—or the one used to combine and send their information—until Election Day.

Langdon Neal, chairman of the Chicago Board of Election Commissioners, further said that 4,000 of Chicago's 14,000 election judges attended no training and instead relied on a judge's manual that was sent in the mail and was written in a complicated and confusing manner.

Likewise, training for county judges emphasized videos and not hands-on instruction. None of the 9,600 election judges in suburban Cook County had ever touched the scanning device used to process paper ballots, said Cook County Clerk David Orr.

Neither training effort was sufficient, election officials said.

"They just didn't know what to do," Neal said. "They really weren't capable with one three-hour training session to do this. Our judges needed more than one election cycle to figure this stuff out."

The muddle snowballed into marathon ballot counting for the primary election that stalled again Wednesday. The counting will continue Thursday morning, during which referendum proposals far down the ballot may finally be settled amid lingering questions on how the election's tabulation had gone *so* wrong.

By the November general election, city and county election officials say they may install lead judges in each precinct, with extra training, more pay and the responsibility of training other judges. Because of Tuesday's problems, all city poll workers, who made between \$100 and \$175, will be retrained before November, Neal added.

"The way it worked in the class and the way it worked in real life was different," said Bill Anderson, 58, a 38th Ward election judge who took a three-hour class last week at Wright Junior College.

"We were told it was going to work as 'A, B, C, D,' and it didn't happen like that," he said.

The election judges endured glitches, missing equipment and pervasive questions surrounding Cook County's \$54 million electronic voting system, which bogged down on its inaugural run.

But judges' headaches during the day were nothing compared to that night, when a second wave of technical problems arose while combining votes from two different voting methods and trying to transmit them on a third. The equipment is made by California-based Sequoia Voting Systems.

Amid a tumbling backlog of voting data, returns were pushed so late that many judges simply packed up their polling places late Tuesday or early Wednesday and went home. In the confusion, county and city officials had no idea which precincts were accounted for and which were not, or where records of their votes were.

At noon Wednesday, Chicago was missing 252 memory cartridges, 93 from machines that scanned in paper ballots and 159 from touch screens. County officials couldn't find 162 memory cartridges from suburban precincts—68 from optical-scanning machines and 94 for touch-screen balloting.

The problems led midday to the sight of Cook County Director of Elections Clem Balanoff—his tie loosened and eyes bleary—rifling through blue duffel bags at a county warehouse for precinct returns for uncounted votes on missing memory cartridges.

The frantic count took a pause Wednesday afternoon when Forrest Claypool, Democratic challenger for Cook County Board president, conceded defeat by a razor-thin margin to incumbent John Stroger. He said slow vote reporting had delayed the outcome but didn't influence it.

With the county's highest-profile race settled, attention turned to others.

Residents in Bellwood, for example, are waiting to learn about a \$14 million referendum proposal for a new library. At the end of counting Wednesday, results were roughly tied with 62 percent of the vote in and counting to resume Thursday.

"It's still a jump ball," said Mayor Frank Pasquale.

There were dozens of other referendum proposals on the ballot. Some close, their outcomes equally unknown.

Tuesday's counting had continued into the wee hours Wednesday, with election officials and supporters of candidates in close races literally wandering in the dark when lights snapped off in the Cook County Building at 69 W. Washington St.

They began again in the afternoon, dogged by doubts and fatigue, while confusion led to concerns of possible fraud.

The women were met by official assurances that—while nobody knew where all the ballots and computerized memory cartridges were—they were most assuredly not lost.

"I don't trust that," said U.S. Rep. Bobby Rush (D-Ill.), a Stroger supporter. "Something in the core of my soul and my spirit says those are the kind of answers, those are the kind of excuses, those are the kinds of machinations that you always should be concerned about.

"This is Chicago. This is Cook County. We created vote fraud, vote scandal and stealing votes. We created that mechanism. It became an art form," he said.

No real evidence of wrongdoing emerged Wednesday.

The supplier's voting system has had technical glitches elsewhere, ranging from hard-drive crashes in Florida to a single precinct holding up Nevada's primary election results.

On Feb. 10, the Illinois State Board of Elections approved the equipment anyway, as concerns mounted that Cook County would not be able to implement an even more complicated and untested version of the system within six weeks.

"It was not helpful that the certification process took so long to get done," said Paul DeGregorio, chairman of the federal Election Assistance Commission, formed after the controversial 2000 presidential election to promote new voting technology.

"You want more time to introduce this equipment to your own staff and to the poll workers," he said.

Tribune staff reporters Josh Noel, Carlos Sadovi, Courtney Flynn, Charles Sheehan, Hal Dardick, Tonya Maxwell, David Mendell and Liam Ford contributed to this report.

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*This story ran on nwtimes.com on Thursday, March 23, 2006 12:14 AM CST*

## **Votes still not tallied**

**BY TERRIE HENDERSON**  
**thenderson@nwtimes.com**  
**219.933.4158**

Officials from the Cook County clerk's office hope today to have the final results from Tuesday's Illinois primary election.

Kelley Quinn, spokeswoman for Cook County Clerk David Orr, said there were minor problems with the new dual voting system that was piloted this year.



Quinn said that about 4:30 p.m. Wednesday, about 90 percent of precincts had posted results. She said the tallying started at 7 p.m. Tuesday and went early into the next morning. The clerk's office called it quits at 3:30 a.m. Wednesday.

She said officials resumed counting again at 1:30 p.m. Wednesday and were not able to finish by 5 p.m., but they plan to start counting again at 9 a.m. today.

Quinn said after some polling places starting reporting problems at the polls, the ballots were taken to designated receiving stations and then to the clerk's office.

"We told people from the beginning that if the judges were incapable of doing this, we were going to bring them downtown, and we were going to do them here," Quinn said.

She said a cord sticking out of the scanning machines caused some backups, and the judges did a good job dealing with problems. She said the clerk's office knew problems could arise because the voting equipment is new.

"They hung in there," Quinn said of the judges. "They were troopers."

Quinn said the clerk's office plans to evaluate the system and try to identify problems in the system so that the November elections will run smoothly.

Sean Howard, Dolton spokesman, said the clerk's office could have done a better job preparing the judges.

"If there was a grade to be given to the Cook County clerk's office, they receive a flat F-plus. They've got to rebound themselves," Howard said. "This was a nightmare of an election day. I've never witnessed such chaos as last night. This can not repeat itself ... Cook County should be embarrassed."

Robert L. Ryan, who ran in the county board commissioner 6th District race, said it's not looking hopeful that he will snag the Democratic nomination.

"It's a shame that it's 5 o'clock the next day, and you are still waiting for tallies," Ryan said.

**Chicago Tribune**  
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<http://www.chicagotribune.com/news/local/west/chi-0603240240mar24,1,858735.story?coll=chi-newslocalwest-hed>

**ELECTION 2006**

## Voting-system maker blasted

### County, city might withhold payments over count problems

By John McCormick and David Kidwell, Tribune staff reporters. Tribune **staff** reporters Mickey Ciokajlo and Josh **Noel** contributed to **this** report

March 24, 2006

With ballot counting not expected to be done in Cook County until this weekend, election officials said Thursday they may withhold payments to Sequoia Voting Systems until the equipment manufacturer has fixed any problems.

Election officials have acknowledged a lack of training for election judges facing the daunting task of using a new and complex system in Tuesday's primary. But they increased their public criticism of Sequoia, saying it "did not perform adequately."

Scott Burnham, a spokesman for Cook County Clerk David Orr, said the county has paid California-based Sequoia about \$7.8 million so far. "We will not make additional payments until we are satisfied with the system," he said.

"There will be contract ramifications from their performance," said Langdon Neal, chairman of the Chicago Board of Election Commissioners, noting that about \$15 million of the city's portion of the Sequoia contract remains unpaid. As the counting continues, the lack of final totals has left several area communities uncertain about referendum outcomes for libraries and other projects. With 96 percent in, a tight race also remains for the Republican

nomination in the 15th District for the Cook County Board between Carl Hansen and Timothy Schneider.

Chicago commissioners in June approved a contract worth about \$28 million for a dual voting system that includes optical scanners for paper ballots and touch-screen voting machines. A few days earlier, Orr had recommended Sequoia for a county contract worth \$23.8 million.

As the election board prepares for November's general election, when there will be a much heavier turnout, Neal said "immediate steps" are needed to resolve the problems, including the hiring of an independent expert to review Sequoia's software and hardware.

Neal said the board plans to appoint an election judge for each polling place who will receive added training and extra pay. He said a survey of election judges would also be done to solicit suggestions for fixes.

After seeing scanners jam on 21-inch ballots, Neal promised "extensive testing" before those machines are redeployed. He said efforts would be made to simplify the machine that is supposed to combine results from the two voting systems and transmit them downtown.

Neal, who called the last few days "extremely embarrassing," said the most severe problems were primarily limited to about 15 percent of precincts. He said at least some memory cards containing vote totals were defective or damaged, perhaps because they were inserted into a compiling machine while it was on, even though that is something Sequoia warned against doing. Paper trails are available for both voting systems, if the data storage devices are compromised.

"This is something we knew about, and elections departments have known about, all along," said Michelle Shafer, a Sequoia spokeswoman. "That is why in training we are so emphatic about turning the machines off before the cartridges are inserted."

Shafer said she had not heard about the possibility of payments being withheld because of the problems. "Right now, we are just working as closely with our clients as we can to close out this election," she said.

Those waiting for results say they are increasingly frustrated.

"I'm becoming more and more concerned about the integrity because no one can give me any answers," said Schneider, one of the County Board candidates still waiting for results in a close race.

Burnham said election officials are also frustrated with the delays, "but we can vouch for the integrity of the ballots."

A Tribune survey of other counties that use Sequoia showed Chicago and Cook County are on the low end when it comes to training times for poll workers. Training lasted three hours here. In Pinellas County, Fla., election judges get three to seven hours of training, while those in Carson City, Nev., get about six hours.

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<http://www.chicagotribune.com/news/local/west/chi-0603240218mar24,1,2628212.story?coll=chi-newslocalwest-hed>

## Voting glitch under review

### Citizens panel studies impact on St. Charles' failed school proposal

By James Kimberly  
Tribune staff reporter

Supporters of a failed \$86 million building referendum measure for St. Charles schools are investigating the significance of a "snafu" that prevented some people from voting in the primary election.

St. Charles School District 303 School Board President Bobbie Raehl said a citizens committee that campaigned on behalf of the referendum measure met Thursday to discuss the election but is not yet sure how to respond.

"It's a matter right now of investigating what happened and whether it was significant," Raehl said.

Some people who were supposed to vote at the Thornwood Sports Core in South Elgin said they were turned away Tuesday afternoon because new electronic voting machines had run out of paper.

Supporters of the referendum measure believed they would get strong support out of South Elgin because the bond issue would pay for a new elementary and middle school there at Silver Glen and Randall Roads, as well as an addition to St. Charles North High School.

The referendum measure was defeated Tuesday by 134 votes, according to the school district.

Raehl said the citizens committee wants to determine how many people were denied a chance to vote and whether that would have changed the outcome of the election.

Kane County Clerk John "Jack" Cunningham acknowledged there was a problem with the South Elgin polling place but said he did not know how many people were turned away.

"Nobody should be disenfranchised," Cunningham said. "We feel badly about it."

Cunningham said the polling place was closed briefly Tuesday because the voting machines ran out of paper.

Cunningham said preliminary tests showed each polling station had enough paper to record 250 votes. But he said the Illinois State Board of Elections required a thicker bond of paper when it approved the machines for use a little more than a month before the election, and so the machines had enough paper for only about 190 ballots, Cunningham said.

Cunningham said each polling place had paper ballots they could have used, but the election judges chose not to. He said he did not know why the judges did not use the paper ballots.

Cunningham also said he had a plan to shuttle more paper to polling places, but the plan broke down when the employee assigned the task accidentally locked his keys and his cell phone in his car.

Cunningham said that all in all, the election went smoothly, considering it was the first time Kane County used electronic voting equipment.

"We're sorry [these problems] happened, but they are an opportunity to improve," Cunningham said.

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jkimberly@tribune.com

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On Mar 26, 2006, at 11:29 PM, maureen smith wrote:

Bob,

Thanks for your response. Please send us the information regarding the recent problems in Cook County, Illinois with Sequoia

I fully agree with all three of the items you intend to bring before the BOS

Here are some other concerns I have after reading the contract:

**From:** Robert Kibrick <bob@verifiedvoting.org>  
**Date:** Mon Mar 27, 2006 12:35:35 AM US/Pacific  
**To:** maureen.smith <mmsmith@cruzio.com>  
**Cc:** Emily Levy <juiceforjustice@baymoon.com>  
**Subject:** Re: Contract with Sequoia

Mike and Maureen.

I've appended below the recent newspaper articles about the problems with the Sequoia "blended voting system" used for the first time last week in Cook County, Illinois, along with an article describing the possibility of Voter Action filing a lawsuit against the recent certification of the Sequoia DREs.

I share your concerns with the contract. I'm also appalled at the prices quoted, including \$1,000 for each VeriVote printer. I'm also amazed that the County would agree to fork over 95% of the contract value months before the full system (scanners plus DREs) receives its first real use in November, especially in light of the problems that did not come to light in Cook County until their full system was used in an actual election.

More comments tomorrow.

Best regards,

Bob

### The article about a possible lawsuit to challenge last week's certification of the Sequoia DRE:

see: <http://www.gilroydispatch.com/printer/article.asp?c=182042>

## County's Voting Machines in Question

Thursday, March 23, 2006

By Matt King

Gilroy - A voter advocacy group that filed suit this week to block the use of certain types of electronic voting machines in California is considering additional legal action over the machines used in Santa Clara County.

"The machines are not only insecure and vulnerable to hacking, but actually produce inaccurate results," Lowell Finley, co-director of Voter Action, said Wednesday of the Sequoia Voting Systems machines used in this county. "We focused this lawsuit against Diebold because the case for decertification is just so strong. We are looking very seriously at a case to challenge to Sequoia touch screens as well."

Tuesday, Voter Action filed suit against the state and 18 counties to block the use of machines made by Diebold Election Systems. The suit claims the touch screen voting machines are not secure and not easily used by the disabled. It asks that new voting systems be in place in time for the November general election, not the June primary election.

"Ideally, we hope these systems would not be used in any major election," Finley said, "but given how close it is to June we're not asking the court to do something that would put counties in a difficult crunch time."

Last year, Voter Action filed suit against Sequoia machines in New Mexico, alleging security problems similar to those in the Diebold machines. In January that state delayed the purchase of hundreds of Sequoia machines.

"Right now, the systems that are most trustworthy are optical scan paper ballots," Finley said. "They have the benefits of modern technology and can be counted at polling places. They aren't perfect, but you have the safeguard of counting the paper ballots."

Tuesday, California Secretary of State Bruce McPherson certified Sequoia machines for use in this state, provided the machines provide a paper record of votes, as required by California law.

Sequoia machines have been used in Santa Clara County since November 2003. The county registrar of voters could not be reached for comment Wednesday, but in a previous interview, he said that electronic voting has progressed seamlessly and allowed his office to announce final results just hours after polls close.

Registrar spokeswoman Elma Rosas said the paper trails "give voters another level of confidence in the system."

But opponents of electronic voting say the paper trails are not easily audited and that security holes in the system put too much pressure on poll workers and election officials to guard against possible breaches and unreliable vote counts.

"There are security issues with all of the electronic voting systems the secretary of state has decided to certify this year," said State Senator Debra Bowen, D-Redondo Beach, who authored the bill that requires a paper trail. "The Sequoia machines have had problems in Chicago and they've had problems in Florida, and I guess we'll have to wait until June to see if they have problems in California. Certifying voting machines isn't the goal here, the goal is to ensure people's votes are accurately recorded."

A spokeswoman for Sequoia said the decisions about voting systems usually have more basis in politics than technology. She said Sequoia equipment has undergone intense scrutiny at the state and federal level and performed well in previous elections.

"We feel very confident in the security of our systems," Michelle Shafer said. "No votes have ever been tampered with. Our track record speaks for itself in how our equipment has performed, especially there in Santa Clara County."

### What's the Problem

- A February study of Diebold voting machines, which are very similar to Sequoia's equipment, said the electronic vote counters have "a number of security vulnerabilities."

- The biggest security risks are the memory cards that store vote counts. The study detailed that one man changed election results by modifying a card, all without a password, cryptographic key or access to any other part of the voting system.

Matt King

Matt King covers Santa Clara County for The Dispatch. He can be reached at 847-7240 or mking@gilroydispatch.com.

## Recent articles regarding problems encountered with Sequoia Voting Systems In Cook County, Illinois

[http://www.thestate.com/mld/thestate/news/special\\_packages/election2004/14171240.htm?template=contentModules/printstory.jsp](http://www.thestate.com/mld/thestate/news/special_packages/election2004/14171240.htm?template=contentModules/printstory.jsp)

Posted on Thu, Mar. 23, 2006

### Elections officials put much of blame for problems on company that provided equipment

**DON BABWIN**  
Associated Press

**CHICAGO** - As workers continued counting primary election ballots, embarrassed election officials on Thursday put much of the blame for the confusion and delays on the company that provided the high-tech equipment - and said some of the cost of getting to the bottom of what happened will come out of the company's wallet.

"I think there will be contract ramifications from their performance last night," Langdon Neal, chairman of the Chicago Board of Election Commissioners said of Sequoia Voting Systems. "Whether it's withholding pay, seeking appropriate remedies, all that's got to be assessed."

Langdon also said he would push for Sequoia to pay to find out what caused Tuesday's delays.

Commissioner Richard Cowen said he would not vote to pay the company the \$15 million the city still owes of a \$25 million contract "until the problems are solved."

Officials with the Oakland, Calif.-based company did not immediately return a call for comment.

The primary marked the first time in Cook County that polling places employed electronically scanned paper ballots and touch-screen voting instead of punch cards. The problems in the city easily dwarfed any of the isolated equipment problems state election officials reported around Illinois.

Neal also said election judges did not have the required technical skills and that before November's general election more judges with computer skills must be hired to contend with the mechanical problems that overwhelmed them Tuesday.

"We asked them to do a tremendous amount," Neal said of the judges, adding that much of the training consisted of a three-hour class and a 70-page booklet.

Cowen said one way to reduce what he called "judge overload" is to reduce the number of precincts from about 2,600 to 1,500.

Neal also called for an outside computer expert from a university or a high-tech firm to be brought in to study what went wrong Tuesday.

Neal called the mechanical and human failures "extremely embarrassing," but said he still believes the new high-tech system is an improvement over the old punch-card system, pointing out that there were no reports of voter fraud.

"Yes, it's more accurate than the previous system," he said.

He said voters also told workers at the polling places that they liked the new system.

"I'm optimistic we can fine-tune the system," he said.

In the meantime, Board of Election Commissioners spokesman Tom Leach said about 86 percent of the votes had been counted as of Thursday afternoon and that all would be counted by Friday or Saturday at the latest.

## Vote snafu: Some blame new equipment

March 23, 2006

BY STEVE PATTERSON Staff Reporter

A Cook County commissioner says the board should consider revoking a multimillion-dollar contract awarded to a California company that provided the new voting machines blamed for Tuesday's troubled primary.

"For \$52 million, I expect to have better results here than in Baghdad," said Tony Peraica, who ran unopposed Tuesday as the Republican candidate for board president

Also taking a shot was Commissioner Forrest Claypool, who conceded the Democratic race for board president almost 24 hours after polls closed, with votes still uncounted.

"The administration of this election was a train wreck," he said

Thousands of votes in more than 500 precincts went uncounted Tuesday night in the county and in Chicago, which also uses the high-tech system provided by Sequoia Voting Systems. City and county election boards still hadn't tallied up all of the votes by Wednesday night.

The system uses optical scanners and touch-screen voting machines. Some of the delay was blamed on the difficulty of combining results from the two machines. Some polling places were unable to transmit results to election headquarters. There were also paper ballots that wouldn't scan properly and had to be taken downtown.

Minor breakdowns of some equipment exacerbated the problems, but Sequoia officials insisted Wednesday that the system "performed very well, overall."

Sequoia spokeswoman Michelle Shafer said "implementing two distinctly different technologies" was "a major undertaking" and conceded there were "isolated incidents."

### 'Can't say anything went wrong'

"This was the first time going through all this for the city and county, so the goal, above all else, was accuracy," she said

Last year, Cook County commissioners approved a contract with Sequoia for more than \$24 million for the new machines, which many anticipated would make the election smoother. The city paid more than \$26 million for new equipment.

Cook County Clerk David Orr and Chicago Board of Elections Chairman Langdon Neal stood by the equipment, saying many of the problems could be attributed to human error.

While the main computers couldn't read data cartridges from all of the polling sites, "that happens in every election," Neal said. Other than human error and mechanical problems that were fixed, he said he "really can't say anything went wrong."

"Was it perfect? No. Was I pleased with it? No," Neal said. "But will we get better? Yes, I promise you, we will."

Orr said the problems were highlighted only because some people "acted like something was wrong if they didn't get the results by the 10 o'clock news."

Election judges drew some of the blame. Some were described as unfamiliar with technology or uninformed on options for the machines. Some didn't get training before going into polls, and others didn't show up.

**Contributing:** *Abdon* Pallasch

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## Terry Dorsey

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**From:** Ellen Pirie  
**Sent:** Tuesday, March 28, 2006 8:18 AM  
**To:** Terry Dorsey  
**Subject:** FW: voting machine contract

-----Original Message-----

**From:** theodora kerry [mailto:thekerry@comcast.net]  
**Sent:** Monday, March 27, 2006 10:39 PM  
**To:** Mark Stone; Jan Beautz; Ellen Pirie; Mardi Wormhoudt; Tony Campos  
**Subject:** voting machine contract

Dear Supervisor,

Please count me among the many who are deeply concerned about the safety of voting machines in general, and the proposed contract with Sequoia in particular. While the need for voting systems for disabled citizens is real, the need for safe, reliable systems comes first. Since the reliability of Sequoia's systems is in question by other communities who have mounted lawsuits, it seems premature to tie up our tax dollars by contracting with this company at this time. Have they even been certified yet?

Lets not put the cart before the horse. A good machine is worth waiting for, and we shouldn't have to go on faith when spending county dollars.

Theodora Kerry  
150 Canfield Ave. #2  
Santa Cruz, CA 95060

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