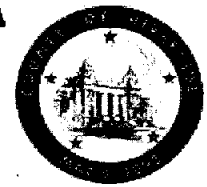


**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

531



**FROM:** Registrar of Voters

**SUBMITTAL DATE:**  
October 15, 2007

**SUBJECT:** Amendment No. 3 to Agreement Between the County of Riverside and Sequoia Voting Systems, Inc.

**RECOMMENDED MOTION:** That the Board of Supervisors approve Amendment No. 3 to the Agreement Between the County of Riverside and Sequoia Voting Systems, Inc. and authorize the Chairman of the Board to execute Amendment No. 3 on behalf of the County; and further authorize the Purchasing Agent to execute the Extended Warranty/Preventative Maintenance options, when applicable, if requested by the Registrar of Voters.

**BACKGROUND:** Amendment No. 3 provides for the County to purchase six (6) 400-C Optical Scan Central Count ballot tabulators at \$80,000 per unit plus services for a total agreement amount of \$562,800, excluding applicable sales tax.

The Purchasing Department issued a Request for Proposals (RFP) on behalf of the Registrar of Voters in March 2007 for a replacement absentee ballot counting system. Two proposals were received: Sequoia Voting System's 400C Optical Scan Central Count ballot tabulators and Election Systems & Software's (ES&S) Model 650 central count units. Sequoia Voting System was the winning bid.

- continued -

*Barbara Dunmore*

Barbara Dunmore  
Registrar of Voters

<b>FINANCIAL DATA</b>	<b>Current F.Y. Total Cost:</b>	\$ 562,800	<b>In Current Year Budget:</b>	Yes
	<b>Current F.Y. Net County Cost:</b>	\$ 562,800	<b>Budget Adjustment:</b>	No
	<b>Annual Net County Cost:</b>	\$ 0	<b>For Fiscal Year:</b>	2007/08

<b>SOURCE OF FUNDS:</b> General Fund (departmental Budget Savings Retention Plan)	<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
	<b>Requires 4/5 Vote</b>	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**  
A budget adjustment will be included in the Mid-Year Budget Report.

**APPROVE**

BY: *Jennifer L. Sargent*  
Jennifer L. Sargent

**County Executive Office Signature**

- Dep't Recomm.:  Consent  Policy
- Per Exec. Ofc.:  Consent  Policy

**Prev. Agn. Ref.:** 3.74 (9/18/07); 3.55 (8/28/07) | **District:** ALL | **Agenda Number:**

**3.23**

FORM APPROVED COUNTY COUNSEL  
BY: *Neal R. Kipnis* 10/17/07  
DATE

PURCHASING & FLEET SERVICES  
*Robert Howdays Hill, Director*

Departmental Concurrence

**Amendment No. 3**

On August 28, 2007, the Election Ad Hoc Committee comprised of Chairman Tavaglione, Supervisor Ashley, the Registrar of Voters, and the County Executive Office recommended that the Board approve the purchase of six (6) 400C Optical Scan Central Count ballot tabulators from Sequoia based on the competitive bid process conducted in March/April. At that Board meeting, your Board directed that any agreement to acquire the scanners specify the equipment be able to meet federal certification using 2005 Voluntary Voting System Guidelines ("2005 Standards") and provide for receipt of the depreciated value of the scanners by the County if they do not obtain the aforementioned certification.

As initially presented to your Board on September 18, 2007, Sequoia agreed that if the 400C scanners do not meet federal certification using 2005 Standards, the County will receive credit for the depreciated value based on the original purchase price (Year One 70%; Year Two 55%; Year Three 40%; Year Four 20%; Year Five 10%; Year Six 0%) toward new certified functionally equivalent equipment from Sequoia. If none is available, the County will be reimbursed the depreciated amount in cash.

On September 18, 2007, your Board further directed that any agreement with Sequoia not include payment due until such time that the 400C scanners are certified for the February 2008 presidential primary election and that if the 400C scanners are decertified within a 7-year period the County receive a 100% reimbursement of the purchase price of the scanners.

Exhibit 1 to Amendment No. 3 is a letter dated October 2, 2007 from the Secretary of State to the Registrar of Voters confirming the August 3, 2007 recertification of the Sequoia Voting System including the 400C scanners, subject to compliance with a number of conditions and also states that no further certification order from the Secretary of State is required or anticipated for counties to use Sequoia 400C units in 2008 and beyond.

Sequoia has now agreed to reimburse and payback the County 100% of the purchase price of the 400C scanners if Sequoia is ever decertified for lack of compliance with the August 3, 2007 recertification conditions. The Agreement provides that Sequoia continually comply with all applicable recertification conditions to maintain continuous and uninterrupted certification for as long as the conditions are in force.

**Top-to-Bottom Testing**

Sequoia has demonstrated its commitment to serving its California customers throughout the top-to-bottom review conducted by the Secretary of State. They were the first vendor to promptly deliver all requested hardware, firmware, software, source code, and operation/documentation manuals to the Secretary of State's office; the first to remit payment for associated costs to get the testing underway; and the first to submit (early) all plans, use procedures, and documents required to comply with the August 3<sup>rd</sup> recertification conditions.

Sequoia's actions demonstrate their commitment to continue serving their California customers and stand in contrast to another voting system vendor, Elections Systems & Software (ES&S), who chose not to submit their optical scan equipment to testing. One component of their voting system is the AutoMark. In February 2006, members of SAVE R VOTE recommended that your Board replace the County's Edge I voting units with ES&S' AutoMark units instead of upgrading to Edge II voting units. ES&S has been found to have sold five (5) California counties uncertified AutoMark voting units in 2006 (the salesman of some of that equipment recently appeared before your Board representing a Canadian voting system product). Subsequently, ES&S' equipment has been decertified for use in the state of California. Those counties owning the decertified AutoMarks are prohibited from using them in the November 2006 election and beyond until they are federally and state certified.

#### **400C Optical Scanners**

The County is using two (2) loaned 400C scanners for counting absentee ballots and paper ballots requested at the polls during the November 6, 2007 election. The scanners debuted October 9<sup>th</sup> during pre-election testing (known as logic and accuracy). Two (2) members of the public and five (5) television media outlets attended the testing conducted in the Registrar of Voters Community Room. The testing included not only a pre-marked deck of ballots, but also ballot marked by the observers were counted. The test confirmed that the scanners were reading the ballots with 100% accuracy.

Sequoia bought the optical scan product line, known as "4C," and all rights to upgrade it from Business Records Corporation (BRC) in the early 1990s. Its current name, 400C, reflects the scanner's speed to count 400 ballots (front and back) per minute. The 400C scanners read all marks made with writing implements (except red ink and yellow highlighter), eliminating the need for pencils to be mailed to absentee voters along with their ballots, and eliminates handling of the ballots by an intermediary presort house before they go to the post office for mailing. More votes will be counted as a result of new technology recognizing pen marks. In addition, the optical scanners outstack all unreadable and blank ballots for human examination. Ballots marked incorrectly (e.g., check mark, circle, etc.) but clearly demonstrating the voter's intent, will be duplicated onto another Optech ballot and counted.

All ballots on the market are designed to be read by the specific vendor's hardware. The *Optech* ballot is read by the Sequoia's 400C optical scanner and Insight precinct optical scanners. The ballot cannot be read by other voting system vendor's hardware. Four vendors (American Lithographers, Inc., K & H Integrated Printing Solutions, Martin & Chapman, and Sequoia Voting Systems) are certified by the State to manufacture and finish Optech ballots. The Registrar of Voters will seek competitive bids for printing Optech ballots if the 400C purchase is approved.

### **Mark-A-Vote**

The November 2006 election highlighted the age of the County's existing paper/absentee ballot counting system and its outmoded technology for use in a growing urban county. The Mark-A-Vote card readers were invented in 1977 and sold by DFM, Inc. to its first customer (Riverside County) in 1981. The card readers were manufactured by Documation, Inc. that has been out of business for sometime. Initially, the card readers were designed to be hooked up to a Data General computer, but the system was eventually migrated to a PC environment.

The Mark-A-Vote card readers read only marks made by No. 2 pencils at a speed of about 200 ballots per minute based on an average five card ballot. Ballots are counted in precinct order and all ballot processing must cease for 4-6 hours to produce an update. Candidates and voters are often anxious to see even incremental updates, especially in close contests. The last minute influx of returned absentee ballots on November 7, 2006 resulted in the first posted absentee update occurring 13 days after Election Day.

The Mark-A-Vote card readers have never undergone federal or state testing and are not federally qualified or state certified. They were, however, approved for use by former Secretary of State March Fong Eu and their use in California has been "grandfathered" ever since. DFM, Inc. has stated that they have no intentions of submitting the card readers to state or federal testing since the core of their business is an elections information management system. The card readers were a product that helped sell their information management system to counties in the earlier days of their business. Moreover, DFM, Inc. no longer supports the hardware or software of the card readers. Out of service units are repaired by taking parts from broken units or fabricating them.

Currently the Registrar of Voters has sixteen (16) working Mark-A-Vote card readers. Five (5) additional card readers require hardware upgrades to get them back in working order. While three vendors (Independent Printing Company, Martin & Chapman, and Sequoia Voting Systems) are certified to manufacture and finish Mark-A-Vote ballots, Sequoia is the only vendor that has the capacity to handle Riverside's volume.

### **Other Optical Scan Vendors**

Premier Voting Systems (formerly Diebold) and Hart InterCivic are the two other vendors whose central count optical scanners are currently certified for use in California. Neither responded to the Request for Proposal (RFP) issued in March 2007, despite the fact that all voting system vendors certified in the state were mailed an RFP. They did not demonstrate an interest in partnering with the County for the provision of a paper/absentee ballot counting system.

A competitive bid process for equipment integral to the democratic process must be deliberate and unhurried. The recent (above) competitive bid process took six months (from March 2007 to August 2007) and over a hundred hours by county staff (ROV staff, Purchasing, County Counsel, and County IT) to ensure that the

equipment selected and terms negotiated best suit the provision of our services to the county's electorate.

Election cycles are now overlapping. We are currently preparing for the February primary and have not yet conducted the November 6, 2007 UDEL election. Following those elections are the June 2008 primary and November 2008 general. If the Board desires a second competitive bid process for a paper/absentee ballot counting system, the time to complete the process will be considerably lengthened due to the priority to prepare and conduct these elections first.

### **Hand Counting**

As I stated to your Board on September 18<sup>th</sup>, my reading of the Elections Code is that hand counting is only permitted in emergencies when ballots cannot be transported to the central counting place (§15213). However, there are numerous other code sections that can be construed to apply to this subject from telling poll workers what to do with ballots once the polls are closed (that don't include tallying contests §§14420-14421) to an entire Article on manual counting in the precinct that requires once the precinct board completes the count the ballots are to be sealed and thereafter not examined by any other person (§15279). In any event, none of the sections appear to permit hand counting of less than all the ballots (i.e., a percentage of ballots cast in a precinct) or fewer than all contests on a ballot, or have some precincts hand count and not others (except in emergencies per §15213). The Elections Code in this area is confusing, contradictory, outdated, and unclear.

In a growing urban county with 765,000 registered voters and at least 800 polling places projected for February 2008 staffed by 3200 poll workers, the Registrar of Voters does not recommend hand counting at the precincts or at our central counting location. Upon any clarification of the Elections Code by the Legislature in the future on the subject of hand counting it would be appropriate at that time to evaluate the implications of manual tallying accordingly.

### **February 2008**

With the Secretary of State's recent directives requiring voters to record their selections on paper ballots at the polls in 2008, it is critical to replace the County's existing paper/absentee counting system to provide for timely results on Election Night, regular post-election updates, and completion of the canvass within the 28 days provided by law.

Meanwhile preparations for the February primary are already underway with added requirements and planning to comply with the twenty-seven (27) conditions of the Secretary of State's recertification applicable to counties (see Attachment 2). These conditions must be met to place one DRE at each polling place for use by disabled voters to meet the requirements of the Help America Vote Act (HAVA).

Amendment No. 3

October 15, 2007

Page 6

Optech and Mark-A-Vote ballots are manufactured from different grades of paper and require different sizes of outgoing and return envelopes. The deadline for placing orders for these items for the February primary is rapidly approaching. Moreover, with all California counties conducting the presidential primary, a timely order will ensure appropriate stock is available for our ballots.

A final decision on which system the Registrar will use in 2008 will allow elections staff to begin developing the paper ballot layout for the February ballot. Paper ballots are printed on a "first-in first-served basis." Timely submittal of the paper ballot templates to the vendor ensures absentee ballots will be mailed on the first legally allowable day (29 days prior to Election Day).

The Registrar of Voters respectfully recommends that the Board approve Amendment No. 3 to the existing Agreement with Sequoia Voting Systems today for the purchase of six (6) 400C optical scan central count ballot tabulators for use in the February 5, 2008 presidential primary election, the June 3, 2008 general primary election, the November 4, 2008 presidential general election, and all future elections.

**AMENDMENT NO. 3  
TO  
AGREEMENT BETWEEN COUNTY OF RIVERSIDE  
AND SEQUOIA VOTING SYSTEMS, INC.**

This Amendment is made by and between the County of Riverside ("COUNTY") and SEQUOIA VOTING SYSTEMS, Inc. ("SEQUOIA") with regard to the Agreement dated March 28, 2000 between the parties, as amended by Amendment No. 1 dated July 1, 2003, and Amendment No. 2 dated February 7, 2006 ("Agreement").

The Agreement shall be changed as follows:

(1) COUNTY has agreed to purchase from SEQUOIA new paper ballot counting equipment and related services as described in this amendment. As used in this amendment, this "Equipment" is defined as 400-C Optical Scan Central Count tabulators.

(2) The terms of this amendment shall apply only to the new Equipment and services described in this amendment. If there is a conflict between the terms of this amendment and the Agreement, then the terms of this amendment shall apply.

(3) Obligations of SEQUOIA which are described in the Agreement, but which have already been fulfilled by SEQUOIA, do not apply to this amendment.

(4) The following documents are made part of this amendment:

(a) COUNTY Request for Proposals No. RVARC-003 ("RFP"), including all documents attached to, made part of, or incorporated into the Request for Proposals [not attached]. In the event of a conflict between this amendment and this RFP, this amendment will control.

(b) Schedule 1: Pricing

(c) Schedule 2: Depreciation

(d) Schedule 3: Transfer

(5) PAYMENT SCHEDULE

(a) The total purchase price for Equipment and services as described in Schedule 1 to this amendment is \$562,800.00 and shall be payable in the following manner:

Milestone	Percent	Amount
30 Days After Contract Signing	10%	\$ 56,280
County Acceptance of All Equipment	45%	\$253,260
Certification of First Election Used	45%	\$253,260

All sums owing to SEQUOIA are due NET 30 days from date of receipt of invoice.

(6) DELIVERY TERMS

(a) All equipment will be delivered to the Riverside County Registrar of Voters Office, 2724 Gateway Drive, Riverside, CA 92507 no later than December 1, 2007. SEQUOIA shall provide at least 24 business hour notice to COUNTY prior to delivery. It is understood that the equipment is to be used in the February 2008 Presidential Primary Election. Title to the Equipment shall pass to COUNTY upon acceptance of the Equipment pursuant to Section 9(b) below.

(7) TERMS OF LIMITED PARTS WARRANTY

(a) SEQUOIA warrants as follows:

i) the Equipment shall comply with applicable federal and state laws, local statutes, codes, ordinances, resolutions and other regulations as such laws exist and are interpreted by the California Secretary of State, courts, or other authorized governmental agencies on the date of this amendment, and SEQUOIA shall have no obligation to cause the Equipment or any related software or firmware to comply with any changes in, or new interpretation of, applicable laws (except with respect to 2005 Voluntary Voting

System Guidelines standards (the "2005 Standards") to the extent stated in Section 8 below);

ii) for a period of one year from the date of certification by the Registrar of the election in which the Equipment is first used, the Equipment will function in accordance with the 400-C User Manual (the "Documentation").

(b) For one year from the date of Equipment Acceptance (the "Warranty/Preventive Maintenance Period"), SEQUOIA will:

i) perform one Warranty/Preventative Maintenance onsite for each 400-C Optical Scan Central Counter tabulator, inclusive of technician travel and expenses. The test is expected to be scheduled at least 30 days prior to requested test date. SEQUOIA will replace any and all parts that fail due to normal use and technician will perform any necessary repairs encountered, inclusive of parts and inclusive of technician travel and expenses subject to the limitations in Section H (5) in Amendment No. 2.

ii) if COUNTY requires SEQUOIA to make additional trips to COUNTY and said trip is scheduled at least 30 days prior to requested test date, SEQUOIA will bill COUNTY pursuant to SEQUOIA's annual published rates for services. If said additional trips are scheduled less than 30 days prior to the requested date of service or if said trip is considered an emergency, SEQUOIA will bill COUNTY \$275 per hour. All parts are included in such additional or emergency trips.

(c) Extended Warranty Options:

SEQUOIA shall offer COUNTY two additional one (1) year options for Extended Warranty/Preventative Maintenance (the "EW/PM") at \$7,000 per year per 400-C Optical Scan Central Count tabulator unit payable in advance. Should there be a break in EW/PM then the additional term is subject to a preventive maintenance check for which SEQUOIA will bill COUNTY pursuant to SEQUOIA's then current annual published rates for services.

(d) Technician Response time:

i) SEQUOIA will provide telephone support at no charge during the warranty period, and the EW/PM if exercised, to answer questions on equipment use or repair during normal business days between 8:00 a.m. and 5:00 p.m. PST. If extended warranty options are not exercised, any diagnostics on units beyond phone support will be billable to the COUNTY based on SEQUOIA's published rates for services, at an annual increase not to exceed the CPS Index for the Inland Empire, CA region (Riverside/San Bernardino counties);

ii) During an election period, defined as thirty (30) days prior to and after an Election Day, SEQUOIA will make contact with the COUNTY within one hour of receiving notification support is needed. If needed, a SEQUOIA technician shall arrive onsite at the COUNTY within 48 hours of the original request for support.

iii) For on-site services other than for the one annual maintenance service covered under the warranty, and the EW/PM if exercised, SEQUOIA will bill the COUNTY for travel and expenses at SEQUOIA's then current published rates.

(8) COMPLIANCE AND DEPRECIATION

(a) SEQUOIA and COUNTY agree and acknowledge that the Equipment has not yet been tested to the 2005 Standards. If it is ultimately determined that the Equipment requires modifications in order to cause it to conform to the 2005 Standards, and if compliance with the 2005 Standards is required by applicable law for the conduct of elections in California, SEQUOIA will, at SEQUOIA's sole option and in SEQUOIA's sole discretion, either (i) make such modifications to the Equipment at SEQUOIA's cost and expense or, (ii) permit COUNTY to exchange the Equipment for new certified and functionally equivalent equipment from SEQUOIA and receive a credit for the depreciated value pursuant to Schedule 2 to this amendment as trade-in value toward the new equipment; or (iii) if SEQUOIA does not have certified functionally equivalent equipment available, SEQUOIA will reimburse the COUNTY the depreciated value in cash pursuant to Schedule 2.

b) Attached as Exhibit 1 to this Amendment No. 3 is a letter, dated October 2, 2007 from the Secretary of State to the Riverside County Registrar of Voters, which (i) confirms the August 3, 2007 recertification of the SEQUOIA voting system, subject to compliance with a number of conditions enumerated therein, and (ii) states that no further certification order from the Secretary of State is required or anticipated for counties to use the SEQUOIA voting system in 2008 and all subsequent elections. Pursuant to the Secretary of State's August 3, 2007 recertification, SEQUOIA shall comply with all applicable conditions to maintain certification of the Equipment. In the event the Equipment is hereafter decertified solely as a result of SEQUOIA's lack of compliance with the August 3, 2007 recertification conditions, the COUNTY may at the COUNTY's sole option and sole discretion, either i) require SEQUOIA to cure or secure recertification and provide any resulting modifications to the COUNTY at no expense; or ii) return the Equipment to SEQUOIA and SEQUOIA shall reimburse and pay back to COUNTY one hundred percent (100%) of the purchase price of the EQUIPMENT.

## (9) TESTING AND ACCEPTANCE

### (a) Time of Testing

Within ten (10) calendar days after delivery of the Equipment to COUNTY in accordance with Section (6) Delivery Terms, COUNTY shall conduct the test procedures described in (9)(c) below. The test procedures shall be performed in the order set forth in (9)(c). In the event that results of the tests of Equipment in accordance with (9)(c) indicates that the Equipment is not performing functions correctly, COUNTY shall notify SEQUOIA within five (5) calendar days following completion of testing (a "Defect Notice"). A Defect Notice shall set forth with specificity the performance failures, SEQUOIA shall, immediately upon receipt of a Defect Notice, make any corrections necessary to cause the Equipment to function in accordance with (9)(c). Within ten (10) calendar days of completion of such corrections, COUNTY shall retest the system in accordance with (9) (c).

(b) Acceptance

The Equipment shall be deemed to have been accepted by COUNTY on the earlier to occur: (i) failure of COUNTY to timely test the Equipment, or (ii) failure of COUNTY to timely issue a Defect Notice, or (iii) completion by SEQUOIA of corrections following receipt of a Defect Notice.

(c) Testing Procedures

The Documentation shall consist of the sections in the Acceptance Testing Guide directly applicable to this Equipment.

10. TRANSFER

County transfer of Equipment is subject to the conditions of Schedule 3.

All other terms and conditions of the Agreement, including all prior amendments, shall remain unchanged and in effect to the extent they are not inconsistent with the terms stated in this amendment. Terms of the Agreement as changed by prior amendments shall apply to this amendment and specifically, Sections 5, and 6 (A) first sentence, (B), (C), (G), (H) 5) and 6), (J) and (M) of Amendment No. 2 to the Agreement are incorporated herein by reference.

This amendment shall become effective on the date it has been signed by both parties. This amendment may not be changed except by a writing signed by both parties. This amendment and the applicable provisions of the Agreement contain the entire understanding of the parties with respect to the transaction described herein.

**COUNTY OF RIVERSIDE**

By: \_\_\_\_\_  
Chairman, Board of Supervisors

Dated: \_\_\_\_\_

**SEQUOIA VOTING SYSTEMS, INC.**

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

Dated: \_\_\_\_\_

SCHEDULE 1  
PRICING

				<b>Sequoia</b>	<b>Sequoia</b>
<b>Item</b>	<b>Quantity</b>	<b>Unit</b>	<b>Description</b>	<b>Unit Price</b>	<b>Extension</b>
1	6	EA	Central Count Optical Scan Machines	\$ 80,000.00	\$480,000.00
2	6	EA	Warranty/Replacement Parts for year 1	Incl	Incl
3	6	EA	Warranty/Replacement Parts for year 2	\$ 7,000.00	Optional
4	6	EA	Warranty/Replacement Parts for year 3	\$ 7,000.00	Optional
5	6	EA	Interface with existing tally system	\$ 0	\$ 0
6	6	EA	Delivery and Handling	\$ 1,000.00	\$ 6,000.00
7	1	EA	Installation	\$ 22,000.00	\$ 22,000.00
8	2	EA	Training to Include: BPS II – Part I and II 400-C WinETP 400-C Operations	\$ 27,400.00	\$ 54,800.00
9			Tax Rate	7.75%	
10			Shipping Point, City, State	Oakland, CA	
				<b>Total Product &amp; Services Cost minus Taxes</b>	<b>\$562,800.00</b>

**SCHEDULE 2  
DEPRECIATION**

SEQUOIA shall depreciate the 400-C Optical Scan Central Count tabulators as follows: Year One 30%; Year Two 45%; Year Three 60%; Year Four 80%; Year Five 90%; and Year Six 100%, based on the original purchase price. Depreciation commences upon COUNTY acceptance of the 400-C Optical Scan Central Count tabulator new hardware and software.

Year	Depreciated %	Credit %
One	30%	70%
Two	45%	55%
Three	60%	40%
Four	80%	20%
Five	90%	10%
Six	100%	0%

### SCHEDULE 3 TRANSFER

(a) The COUNTY acknowledges and agrees that (i) the Equipment, all related software, firmware and Documentation (sometimes collectively referred to as the "Property") consist of, contain and utilize for their operation trade secrets and other proprietary and confidential Intellectual Property Rights (as defined in Section G(4) of Amendment No. 2) which are the sole and exclusive property of SEQUOIA and which SEQUOIA developed through the investment of considerable effort and expense, and (ii) the COUNTY is prohibited by the Agreement from in any way transferring, assigning, loaning, or otherwise conveying to any third party such software, firmware, or Documentation or any license rights granted to the COUNTY therein, and (iii) transfer of the Equipment or any component thereof to any third party may compromise SEQUOIA's Intellectual Property Rights in such Equipment, through the potential of reverse engineering or otherwise, and (iv) possession of the Property or any part of the Property by other than governmental authorities could promote attempts at election tampering and possibly jeopardize the security of the election process. In light of the foregoing, the COUNTY agrees that the COUNTY shall not, and shall not agree to or permit, transfer or conveyance in any manner whatsoever (including, without limitation, by loan, lease or bailment) of any of the Property. However, the COUNTY may sell or transfer the Equipment only (and not the balance of the Property) in accordance with this Section (a) and upon full compliance with SEQUOIA's First Refusal Right pursuant to Section (b) below. Furthermore, in the event that SEQUOIA does not exercise SEQUOIA's right to purchase to the Equipment pursuant to Section (b) below, the COUNTY will transfer or convey the Equipment, or any part thereof, only to a state of the United States or to an agency or political subdivision of such state having jurisdiction over conduct of elections (a "Government Entity"). The COUNTY acknowledges that SEQUOIA's pricing under this Agreement is based in part upon the agreements of the COUNTY in this Schedule.

(b) The COUNTY hereby grants to SEQUOIA a right of first refusal (hereinafter referred to as the "First Refusal Right") to

purchase all of the COUNTY's right, title and interest in and to the Equipment, or such portion of it as the COUNTY intends to sell. In the event the COUNTY receives a bona fide written offer (as defined below) from any Government Entity to purchase the Equipment, or any portion thereof, which the COUNTY desires to accept, SEQUOIA may elect to purchase the Equipment, or the portion thereof which the COUNTY intends to sell, on the terms and conditions contained in the written offer (except for the time within which to close the transaction). The COUNTY shall give notice to SEQUOIA, including delivery to SEQUOIA of a true and exact copy of the written offer, and allow SEQUOIA fifteen (15) calendar days subsequent to SEQUOIA's receipt of such notice within which SEQUOIA may elect to purchase the Equipment from the COUNTY; and in the event SEQUOIA so elects to purchase the Equipment, by giving notice of such decision to purchase to the COUNTY within such fifteen (15) day period the COUNTY shall sell the Equipment to SEQUOIA, except that SEQUOIA shall not be required to close the transaction prior to forty-five (45) calendar days following the expiration of the aforesaid 15-day period. To the extent any portion of the price in the third party bona fide offer is to be paid by non-cash consideration, such consideration shall be valued at the fair market value thereof as determined by a nationally recognized accounting firm agreeable to both parties.

(c) "A bona fide written offer" shall be deemed to include (but is not limited to), and this First Refusal Right shall also be triggered, by any of the following:

- (i) a gift or gratuitous transfer of the Property, or any portion thereof, by the COUNTY,
- (ii) transfers to any entity controlled by or under common control with the COUNTY or transfers of co-ownership interests in the Property,
- (iii) grants of licenses,
- (iv) sale and leaseback financings, synthetic leases, or any other off balance sheet financing,

(v) other financing transactions of any nature no matter the structure, including financing arrangements which include lender acquisition rights,

(vi) any loan, lease or bailment.

(d) The COUNTY acknowledges and will so advise any Government Entity purchasing the Equipment that such Government Entity would need to obtain a license from SEQUOIA with respect to such software, firmware and Documentation in order to use the Equipment.

## Exhibit 1



**DEBRA BOWEN** | SECRETARY OF STATE | STATE OF CALIFORNIA  
1500 11th Street, 6th Floor | Sacramento, CA 95814 | Tel (916) 653-7244 | Fax (916) 653-4620 | www.sos.ca.gov

October 2, 2007

Barbara Dunmore  
Registrar of Voters  
2724 Gateway Drive  
Riverside, CA 92507

Dear Barbara:

Thank you for coming to Sacramento last Friday to take part in the discussion of issues arising out of my August 3 decertification/recertification order with regard to the Sequoia voting system used by several California counties, including Riverside County. The feedback from you and other registrars of voters will be very helpful in determining potential revisions and clarifications to the order, and I'm glad you found the discussion to be as productive as I did.

I want to follow up on a conversation we had about the current certification status of the Sequoia voting system. As you know, on August 3, 2007, I decertified the Sequoia WinEDS v.3.1.012/AVC Edge/Insight/Optech 400-C voting system, then immediately recertified the system, subject to compliance with a number of conditions. No further certification order is anticipated or required for counties to use this version of the Sequoia voting system in the 2008 and all subsequent elections.

As I mentioned at the conclusion of our Friday meeting, I will be clarifying some of the terms in the August 3 recertification order in the very near future. According to the terms of the order, Sequoia has submitted Use Procedures to my office, and my staff and I are in the process of reviewing them for approval.

The process of complying with the conditions imposed in the recertification order is ongoing, and requires actions before, during and after the February 5, 2008, election, some of which will be repeated for each subsequent election. For example, one of the conditions is that a county can only use one direct recording electronic (DRE) machine in each precinct on Election Day, but there is no way to determine whether a county actually complies with that condition until Election Day arrives. The recertification of the Sequoia voting system is effective August 3, 2007, and will only be revisited should it be determined the conditions are not being met.

Once again, thank you for taking time out of your schedule to come to Sacramento to meet with me. If I can be of assistance on this or any other issue, please don't hesitate to call me or my staff at (916) 653-7244.

Sincerely,

A handwritten signature in black ink that reads "Debra Bowen".

Debra Bowen  
Secretary of State

DB:elgi:lf:elgii

**Voting System Recertification Conditions Applicable to Counties**  
(Numbering reflects actual condition number listed in recertification document)

- 1) **Limit on DREs** No more than one (1) Edge DRE voting unit per precinct on Election Day; and to preserve privacy ensure that at least five (5) voters voluntarily cast ballots on the DRE over the course of Election Day.
- 2) **Early Voting (EV)** Requires securing voting equipment against tampering and return it to the Registrar of Voters' (ROV) secure storage facility each day; EV centers may only be staffed by election employees; one employee must be solely responsible for monitoring equipment; maintain chain of custody for each piece of equipment; and perform 100% manual count of all votes cast on the voting units.
- 3) **Reinstallation of all hardware and firmware prior to February primary** The ROV must obtain software directly from the federal testing laboratory or the Secretary of State and reinstall all software and firmware (including reformatting all disk drives and reinstalling the operating systems) on all servers, workstations, voting devices and hardware components of the voting system.
- 4) **Parallel election management systems** The ROV must establish at least three (3) parallel election management systems separated by an "air gap." (More are required when election cycles overlap.)
- 5) **"Hardening" platform configurations** Includes, but is not limited to, BIOS configuration, disabling non-essential services and ports, or physically blocking them, audit logging configuration, assignment of "least privileges" to users, and password strengthening.
- 7) **Reaffirmation of firmware and/or hardware integrity after repair or modification** The integrity of the hardware and/or software must be verified after any repair or modification or reinstalled using firmware and/or software supplied directly from the federal testing laboratory or Secretary of State before the equipment can be put back in service.
- 8) **Prohibition of installing software applications not identified by the vendor or approved by the Secretary of State.**
- 10) **Development of uniform requirements and use procedures** Within 45 days (Sept. 17, 2007) the vendor and jurisdiction users must develop and submit to the Secretary of State for approval uniform requirements and use procedures for operating and maintaining the physical and logical security of the system.

- 11) **Network connections prohibited** Wireless or modem transmission is prohibited at any time. The voting system may not be connected to the Internet, directly or indirectly, at any time.
- 12) **Development of uniform requirements and use procedures** Within 45 days (Sept. 17, 2007) the vendor and jurisdiction users must develop and submit to the Secretary of State for approval uniform requirements and use procedures for programming, pre- and post-election testing, transporting and operating voting equipment to prevent or detect unauthorized access.
- 13) **Tamper-evident seals** Tamper-evident seals must be serialized and the vendor must specify in each instance the type of seal and the exact placement of the seal.
- 14) **Public inspection of seals** Public members must be allowed to observe and inspect, without physical contact, externally visible seals without interfering with the conduct of the election or privacy of any voter.
- 15) **Posting of voting unit results** Poll workers are required to print two (2) copies of the accumulated results and post one outside the polling place. The second copy is returned to the ROV.
- 16) **No recordation of voting order** No poll worker or other person may record the time or order in which voters vote at polling places.
- 17) **Poll workers not permitted access to the VeriVote voted paper roll.**
- 18) **Development of uniform requirements and use procedures** Within 60 days (Oct. 2, 2007) the vendor and jurisdiction users must develop and submit to the Secretary of State for approval uniform requirements and use procedures to validate vote results and detect unauthorized manipulation of vote results.
- 20) **Additional post-election manual count auditing requirements** The Secretary of State has established additional post-election manual count auditing requirements that escalate based on the margins of be victory. Smaller margins require larger auditing samples.
- 21) **100% manual count audit of all ballots cast on a DRE in use on Election Day.**
- 22) **Polling place log to record problems/issues with voting equipment** The Secretary of State will specify the log format for poll

workers to record all problems/issues with voting equipment on Election Day.

- 23) **Poll worker training** Specifies what must be included in poll worker training.
- 24) **Privacy sleeves required for paper ballots at polls.**
- 25) **Posted warning in voting booth** A warning must be posted in the each voting booth that states tampering with voting equipment or altering vote results constitutes a felony, punishable by imprisonment.
- 26) **Actions in response to chain-of-custody or tamper-evident seal compromises** Requires equipment to be removed from service, a 100% manual audit, imaging of all software and firmware and vote results cartridge to be retained for the full election retention period, and reinstallation of software and firmware from version supplied by the federal testing laboratory or Secretary of State.
- 27) **Fatal error from which the voting unit cannot recover “gracefully”** Any unit that requires rebooting to restore to operation is subject to the same requirements of condition 26.
- 28) **Requirements and procedures become binding on all users** When finalized by the Secretary of State all uniform requirements and use procedures become binding upon all users.
- 29) **No substitution or modification of the system** Secretary of State must determine that it does not impair the accuracy and efficiency of the voting system.
- 30) **Secretary may modify use procedures at any time** With reasonable notice the Secretary of State may modify the voting system use procedures at any time and impose additional requirements with respect to the system.