

AGREEMENT

BETWEEN THE COUNTY OF RIVERSIDE
AND
SEQUOIA PACIFIC VOTING EQUIPMENT, INC.

This Agreement is made and entered into this 28th day of March, 2000 by and between the County of Riverside (hereinafter referred to as "COUNTY"), having its offices at 2724 Gateway Drive, Riverside, California, and Sequoia Pacific Voting Equipment, Inc. (hereinafter referred to as "SEQUOIA"), having its offices at 410 17th Street, Suite 1950, Denver, Colorado.

WHEREAS, COUNTY has agreed to purchase and SEQUOIA has agreed to sell the AVC Edge Touch Screen Voting System and related software, products and services as set forth in this Agreement; SEQUOIA is currently and properly certified by the State of California to provide this System; and SEQUOIA has the personnel and resources necessary to provide the System and services in accordance with this Agreement and to successfully conduct the November 7, 2000 general and all subsequent elections.

NOW, THEREFORE, COUNTY AND SEQUOIA hereby agree as follows:

SECTION 1: DOCUMENTS COMPRISING THIS AGREEMENT

The following documents are by attachment or incorporation included into and made part of this Agreement:

- (1) This main Agreement.
- (2) Exhibit A (Compensation and Terms of Payment), Exhibit B (Implementation Schedule), Exhibit C (Ancillary and Support Services) and Exhibit D (Sequoia Project Team).
- (3) Exhibit E (Sequoia's Amended Proposal, which includes Sequoia's letter to County dated September 15, 1999 and Sequoia's memorandum to County dated September 9, 1999).

ORIGINAL

3/28/2000 3.26

- (4) Sequoia's Proposal for a Direct Recording Electronic (Touch Screen) Voting System and Related Services dated July 28, 1999.
- (5) Exhibit F (Escrow Agreement).
- (6) County's Request for Proposal No. 97075.

These documents are intended to be complimentary and work in a cooperative manner. However, in the event of a conflict between the terms of any of these documents, the terms of the document first listed above in this subsection shall take priority over the terms of the document listed subsequently. (That is, (1) shall have priority over (2); (2) shall have priority over (3); (3) shall have priority over (4); (4) shall have priority over (5); (5) shall have priority over (6).)

SECTION 2: SYSTEM AND SERVICES TO BE PURCHASED

- A. As used in this Agreement, the term "System" shall collectively include all aspects of the AVC Edge Touch Screen Voting System and related software, products and services to be provided pursuant to this Agreement, including but not limited to all firmware, hardware, equipment, devices, materials, components, designs, specifications, documentation and other items.
- B. COUNTY shall purchase and SEQUOIA shall provide the System and services as stated in this Agreement at the prices set forth in Exhibit A.
- C. SEQUOIA shall furnish and deliver the System to COUNTY and install the System at such sites as designated by COUNTY.
- D. SEQUOIA shall grant to COUNTY a license to use the software for the computer programs as stated in this Agreement.

SECTION 3: COMPENSATION AND TERMS OF PAYMENT

The full price to COUNTY for the System shall be \$13,788,000 as stated in Exhibit A, excluding any applicable sales or use taxes. COUNTY shall not reimburse SEQUOIA for any of its expenses related to this Agreement except as stated for Ancillary Services provided after December 31, 2000 as stated in Exhibit A.

SECTION 4: TIME SCHEDULE

SEQUOIA shall complete the project in accordance with the Implementation Schedule contained in Exhibit B. Time is critically of the essence for proper completion of this project. SEQUOIA shall immediately notify COUNTY in writing in the unlikely event that any tasks stated in the Implementation Schedule will or may not be met by the times stated, or if SEQUOIA's performance pursuant to this Agreement will be delayed.

SECTION 5: RESPONSIBILITIES OF SEQUOIA

In addition to its responsibilities as stated elsewhere in this Agreement, SEQUOIA shall have the following obligations:

- A. In addition to services to be provided by SEQUOIA as stated elsewhere in this Agreement, SEQUOIA shall provide the services described in Exhibit C ("Ancillary and Support Services"). These shall include, but not be limited to, the services and related work for the November 7, 2000 election as described in the document entitled "November 7, 2000 Presidential Primary Election" (included in Exhibit C). These services and related work shall be included in the prices stated in this Agreement.
- B. SEQUOIA shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by SEQUOIA or its subcontractors. All services shall be conducted in accordance with practices consistent with generally accepted professional, technical and regulatory standards.
- C. All equipment and products provided by or through SEQUOIA shall at all times conform with all applicable federal, State and local laws, regulations, ordinances, resolutions and other requirements.
- D. As reasonably identified by COUNTY, SEQUOIA shall, without any additional cost to COUNTY, correct or revise any errors or defects in the System or in SEQUOIA's designs, drawings, specifications, reports, operation manuals, equipment, products or services. SEQUOIA shall be

responsible for any damages, costs or expenses (incurred by COUNTY or a third party) caused by SEQUOIA's acts or omissions arising out of errors or defects in the System or in SEQUOIA's designs, drawings, specifications, reports, operation manuals, equipment, products or services. COUNTY approval (written or otherwise) shall not relieve SEQUOIA of its obligations as stated in this Agreement.

E. SEQUOIA's staff to be assigned to this project shall be as stated in Exhibit D. COUNTY shall have the right to approve in advance in writing all SEQUOIA staff assigned at any time to this project. SEQUOIA's Project Manager shall successfully manage the proper performance of SEQUOIA's obligations as stated in this Agreement. SEQUOIA will not reassign or replace its staff assigned to this project without the prior written consent of the COUNTY, which will not be unreasonably withheld (and will depend upon the circumstances). Should any SEQUOIA staff be unable to complete his or her responsibilities, SEQUOIA shall replace such staff with an equally qualified person whom the COUNTY finds satisfactory. COUNTY shall not be responsible for any costs associated with changes in SEQUOIA's staff.

F. SEQUOIA shall furnish to COUNTY advance copies of transmittal correspondence sent to regulatory agencies related to this project.

G. SEQUOIA's officers, employees and subcontractors shall cooperate fully with COUNTY in the performance of this Agreement; and will be available on site and for consultation with COUNTY at such reasonable times as requested by COUNTY with advance notice as to not conflict with their other responsibilities.

H. SEQUOIA's performance under this Agreement shall be subject to periodic appropriate review by COUNTY. COUNTY's comments may be reported to SEQUOIA in writing as needed. COUNTY's review or comments (written or otherwise) shall not relieve SEQUOIA of its obligations as stated in this Agreement.

///

///

SECTION 6: RESPONSIBILITIES OF COUNTY

In addition to its responsibilities as stated elsewhere in this Agreement, COUNTY shall have the following obligations:

- A. COUNTY's officers and employees will cooperate with SEQUOIA in the performance of this Agreement; and will be available for consultation with SEQUOIA at such reasonable times as requested by SEQUOIA with advance notice as to not conflict with their other responsibilities.
- B. As reasonably requested by SEQUOIA, COUNTY shall, without charge, furnish to or make available for examination or use by SEQUOIA any data which COUNTY has available (including, as examples only and not as a limitation, copies of previously prepared reports, maps, plans, specifications, records, ordinances, codes, regulations, or other documents or information) related to performance of this Agreement. SEQUOIA shall return any original data provided or requested by COUNTY. COUNTY shall make all reasonable efforts to assist SEQUOIA in obtaining data or documents from other public officers, public agencies, private citizens or business firms whenever either party determines that such material is necessary for proper performance of this Agreement. SEQUOIA will not be responsible for the accuracy of information or data supplied by COUNTY or other sources to the extent such information or data can be reasonably relied upon.
- C. COUNTY shall be solely responsible for all applicable taxes (if any) for sales, use or whatever purpose or kind payable to any local, state or federal jurisdiction with respect to the products purchased or services performed under this Agreement. COUNTY shall not be responsible for any taxes based upon SEQUOIA's income.
- D. COUNTY is responsible for thoroughly testing all future upgrades and enhancements before using the System in any election.

///

///

SECTION 7: CHANGES

A. COUNTY may at any reasonable time, in writing, request changes to this Agreement. However, SEQUOIA will not provide any services, software, hardware, materials or related items which cause the COUNTY to incur additional costs beyond those stated in this Agreement without the approval of the COUNTY's Board of Supervisors as may be needed. Except as specifically stated in this Agreement, COUNTY personnel have no authority to order or direct any changes to this Agreement. Failure of SEQUOIA to secure proper prior written authorization from COUNTY for any additional services, software, hardware, materials, equipment, products or related items beyond those specifically stated in Agreement will constitute a waiver by SEQUOIA of any claim for additional compensation related to such items; and such items will be deemed to be included in the prices stated in this Agreement.

SECTION 8: TRANSPORTATION OF EQUIPMENT

All shipments shall be F.O.B. point of destination and the carrier shall be selected by SEQUOIA (unless otherwise requested in advance by COUNTY). SEQUOIA shall ship all items, with insurance and freight prepaid, to the site(s) designated by COUNTY. Selection of carrier by SEQUOIA shall not be deemed an assumption of additional liability by SEQUOIA; and the selected carrier shall not be construed in any manner to be an agent of SEQUOIA. SEQUOIA shall notify COUNTY when any equipment or other items are shipped to ensure delivery dates which are mutually agreeable and in accordance with the Implementation Schedule.

SECTION 9: INSTALLATION OF SYSTEM

A. Installation of the System shall be the responsibility of SEQUOIA as described in this Agreement. COUNTY will take advantage of the appropriate training offered in SEQUOIA's Proposal prior to and subsequent to delivery of the System.

B. For services to be provided by SEQUOIA and following appropriate advance notice from SEQUOIA, COUNTY shall make all necessary

arrangements to provide SEQUOIA personnel with sufficient work space and access to install the equipment and software during normal business hours or at such other times as may be mutually agreed upon. If it becomes necessary to work outside normal business hours, COUNTY will arrange for appropriate access to buildings or resources which SEQUOIA personnel may reasonably require.

C. The System to be delivered under this Agreement shall be new when delivered and in accordance with all specifications as stated in this Agreement; and shall be in the same configuration as has already been certified for this System by NASED and the State of California.

D. Defective equipment, materials, or other components of the System may be returned to SEQUOIA at no cost to COUNTY during the year 2000. Items returned will either be replaced or repaired, at the option of SEQUOIA, and returned to COUNTY without charge as soon as possible and no later than 30 days prior to an election. Repaired or replaced items will be subject to acceptance testing as provided in this Agreement.

SECTION 10: ACCEPTANCE TESTING

A. Testing of the System, including but not limited to logic and accuracy, will be performed by SEQUOIA at the manufacturer's facility prior to delivery of the System to COUNTY. After delivery to the COUNTY, verification of the System functions will be accomplished in accordance with the acceptance testing requirements as stated in this Agreement (SEQUOIA Proposal, Appendix B). COUNTY shall have 15 days following receipt to commence acceptance testing for each AVC Edge electronic voting device and all related equipment and software. The acceptance testing procedures may be performed by SEQUOIA and/or COUNTY personnel as has been approved in advance by COUNTY. COUNTY shall notify SEQUOIA in writing when acceptance testing has been completed. COUNTY shall indicate in writing any functions which have not performed correctly. SEQUOIA shall immediately repair or replace any unaccepted or defective component.

B. SEQUOIA shall have the right, upon appropriate written advance notice to COUNTY, to have its own personnel or representative present to

observe or assist with acceptance testing at COUNTY's site to assure conformance with established testing procedures.

SECTION 11: SOFTWARE LICENSE

A. COUNTY shall have a non-exclusive, non-transferable perpetual right to use the System as purchased, except as otherwise specifically stated in this Agreement. SEQUOIA agrees to submit WinEDS for NASED certification by June 2, 2000 and strive for certification by August 1, 2000.

B. Right to Copy: COUNTY will not copy or in any way duplicate software or any materials related thereto, in whole or in part, except as required to conduct the COUNTY's elections processes and related activities, as expressly authorized by this Agreement or as otherwise authorized in writing by SEQUOIA.

C. Title to Software: Except as otherwise stated in this Agreement, SEQUOIA retains ownership of all licensed software and related documentation.

D. Proprietary Rights: Except as otherwise stated in this Agreement, SEQUOIA retains for itself, and the COUNTY acknowledges that SEQUOIA so retains, all proprietary rights in and to all designs, engineering details, and other data pertaining to the System provided by SEQUOIA. SEQUOIA retains for itself the right to manufacture, lease, license and sell any and all such systems. Resale of the System or any part of the System requires written consent from SEQUOIA. COUNTY acknowledges that the System represents and embodies certain trade secrets and confidential and proprietary information of SEQUOIA.

In the event that a request is made upon the COUNTY for disclosure of materials designated by SEQUOIA to be confidential, proprietary or a trade secret, and if SEQUOIA has provided COUNTY with prior written notice of such designation, COUNTY shall notify SEQUOIA of such request as soon as possible; and SEQUOIA shall immediately be responsible to take all action necessary on behalf of both COUNTY and SEQUOIA to prevent disclosure (provided that SEQUOIA will not take action that will adversely impact the performance of this Agreement). If this occurs, COUNTY will not disclose such materials unless ordered to do

so by a court of competent jurisdiction or as authorized by SEQUOIA in writing.

E. Protection of Proprietary Software: COUNTY agrees that the software, together with all documentation and knowledge related thereto, obtained by COUNTY pursuant to this Agreement shall be held in confidence and shall not at any time, either during the term of this Agreement or thereafter, be made available in any form to any person or entity other than to COUNTY's employees, consultants or contractors to the extent such disclosure is reasonably necessary to the COUNTY's use of the Software as authorized by this Agreement, without the express written consent of SEQUOIA. The obligations of this paragraph shall survive the termination of this Agreement.

F. COUNTY shall not modify, translate, disassemble, decompile, reverse engineer or create derivative works based upon the System or any portion thereof. COUNTY shall not remove, obliterate, alter or obscure the copyright or trademark notices or the serial number on any System components.

G. (i) The annual license fee for the WinEDS Election Management Software shall be \$35,000 per year beginning on July 10, 2001; and this annual license fee shall remain unchanged through 2010. As part of this annual fee, COUNTY shall receive from SEQUOIA all software upgrades at no additional cost; but it shall be COUNTY's option whether or not to implement such upgrades. Software upgrades shall be in compliance with NASED certification. It is COUNTY's responsibility to test these upgrades to insure compliance with COUNTY requirements.

(ii) The license for the WinEDS Election Management Software shall remain in effect in perpetuity from the date of execution of this Agreement and the receipt of each copy of the WinEDS software unless terminated for one of the following reasons: (1) COUNTY may terminate it at any time by returning the WinEDS software and documentation to SEQUOIA together with all copies and merged portions in any form; (2) substantial breach of this Agreement by COUNTY; or (3) failure of COUNTY to pay the annual license fee as stated in this Agreement. On termination of this license for any reason (not due to breach of this Agreement by

SEQUOIA), COUNTY agrees to return the WinEDS software and documentation to SEQUOIA along with all copies and merged portions in any form; and that termination shall not effect any right or remedy of SEQUOIA under law for injunctive relief, damages or other relief proper under the circumstances.

SECTION 12: SUBCONTRACTING

- A. COUNTY acknowledges that the manufacture of the AVC Edge equipment will be performed by one or more subcontractors of SEQUOIA.
- B. COUNTY'S acceptance of or payment for subcontracted work shall not in any way relieve SEQUOIA of its responsibilities under this Agreement.

SECTION 13: WARRANTY


- A. SEQUOIA warrants that the System provided under this Agreement shall operate properly and shall be free of defects in material or workmanship through December 31, 2002.
- B. SEQUOIA warrants that the System and its services will conform with the terms of this Agreement as well as any other documentation provided by SEQUOIA related to the System or the services.
- C. SEQUOIA warrants that all of the System and services provided pursuant to this Agreement shall at all times be in complete conformance with all applicable federal, State and local statutes, codes, ordinances, resolutions and other regulations; and shall be fit for the purpose of properly conducting all federal, State and local government elections.
- D. SEQUOIA shall, without additional cost to COUNTY, correct any errors or deficiencies in the System or SEQUOIA's services as reasonably identified by COUNTY; and SEQUOIA shall be responsible for any damages, costs or expenses caused by or resulting from any such errors or deficiencies. Permitted or required approval by COUNTY shall not in any way relieve SEQUOIA of its obligations as otherwise specified in this Agreement.

E. SEQUOIA warrants that the System, as a whole and also including all its components, currently does and will operate and correctly process information for the Year 2000 and beyond, including all leap year calculations, without further human intervention. /

F. These warranties do not cover damage, defects, malfunctions or failure caused by: (1) failure by COUNTY to substantially follow SEQUOIA's installation, operation, or maintenance instructions or its failure to substantially fulfill its obligations under this Agreement; (2) COUNTY's modification of the System; (3) COUNTY's abuse, misuse, or negligent acts; or (4) lightning, fire, flood, accident, actions of third parties not under the reasonable control of SEQUOIA, or other events outside SEQUOIA's reasonable control. Any acts or omissions of SEQUOIA's principals, officers, employees, agents, subcontractors, consultants, vendors or suppliers are expressly recognized to be within SEQUOIA's control.

G. SEQUOIA shall not be required to repair or replace:

- (a) paper, seals, keys, batteries or other consumable parts or supplies;
- (b) products which 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 or 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 which have been subjected to 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, COUNTY's representatives, or persons under COUNTY's direct supervision.

 H. If SEQUOIA develops an internet voting option, COUNTY will be offered SEQUOIA's lowest price for participating as a Beta site.

SEQUOIA will develop the internet voting option to be compatible with SEQUOIA's system utilized by COUNTY.

SECTION 14: DOCUMENTATION

SEQUOIA shall provide both COUNTY and the California Secretary of State's Office with necessary documentation to meet all State of California certification requirements for all upgrades related to the System for the term of this Agreement and at least through 2010. Such documentation shall be provided by October 1, 2000 and shall include, but not be limited to, a user guide or training manual, maintenance manual and system documentation.

SECTION 15: TERMINATION

A. This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given (a) not less than thirty (30) days written notice of intent to terminate (other than prior to an election); and (b) an opportunity for consultation with the terminating party and the reasonable right to cure any such failure of performance prior to termination within the thirty (30) day period.

B. This Agreement may be terminated in whole or in part by COUNTY for its convenience, but only after SEQUOIA is given (a) not less than thirty (30) days written notice of intent to terminate; and (b) an opportunity for consultation with COUNTY prior to termination. In the event of termination for convenience by COUNTY, COUNTY will make all undisputed contractual payments due to SEQUOIA prior to the date of such termination; and COUNTY will also compensate SEQUOIA for all reasonable costs incurred by SEQUOIA prior to the date of such termination. COUNTY will not be obligated to make any additional payments to SEQUOIA under this Agreement. Upon receipt of a termination notice from COUNTY, SEQUOIA shall deliver or otherwise make available to COUNTY all deliverables as required under this Agreement.

SECTION 16: INSURANCE

- A. SEQUOIA will provide COUNTY with certificates of insurance for the coverages listed below. The adequacy of the insurance supplied by SEQUOIA is subject to the approval of COUNTY. COUNTY, its officers and employees will be named as additional insureds through December 31, 2001. There shall be no additional charge to COUNTY or the required insurance coverage.
- B. If aggregate limits are imposed on bodily injury and property damage, then the amount of such limits must not be less than \$2,000,000. All aggregate limits must be fully disclosed and the amount entered on the required certificate of insurance. SEQUOIA must notify COUNTY of any change in the aggregate limits.
- C. SEQUOIA shall obtain and maintain, during the duration of this Agreement general liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by SEQUOIA, its agents, representatives, employees, or subcontractors.
- D. General liability coverage shall be on a "per occurrence" basis only and not "claims made." The coverage must be provided either on a Commercial General Liability form or a Broad Form Comprehensive General Liability form. Policies must include, but need not be limited to, coverages for bodily injury, death, Broad Form property damage, premises operations, severability of interest, products and completed operations, contractual and independent contractors. SEQUOIA shall maintain limits of no less than \$2,000,000 combined single limit per occurrence for bodily injury (including death), personal injury and property damages.
- E. SEQUOIA shall maintain workers' compensation coverage as required by California law.
- F. If SEQUOIA fails to maintain any of the required insurance coverages, then COUNTY will have the option to declare SEQUOIA in breach, or COUNTY may purchase replacement insurance or pay the premiums that

are due on existing policies in order that the required coverages be maintained.

G. These insurance requirements do not in any way relieve SEQUOIA of its responsibilities or liabilities as otherwise stated in this Agreement or applicable law.

SECTION 17: LIMITATION OF LIABILITY

In no event shall SEQUOIA be liable to COUNTY for any damages in excess of the total amount paid by COUNTY for the System under this Agreement.

SECTION 18: GENERAL PROVISIONS

A. SEQUOIA, including its employees, agents and subcontractors, shall maintain all licenses required by the laws of the State of California or other applicable laws or regulations at all times while performing services under this Agreement. The project shall be subject to all applicable laws, rules and regulations.

B. SEQUOIA shall keep confidential all information obtained pursuant to performance of this Agreement as required by California or federal law, including but not limited to voter records.

C. Independent Contractor: SEQUOIA and its employees, agents and subcontractors will act at all times in an independent capacity with regard to performance of services or work rendered pursuant to this Agreement; and SEQUOIA and its employees, agents and subcontractors will not act as, will not be, and will not in any manner be considered to be agents, officers or employees of COUNTY. There will be no employer-employee relationship between COUNTY and SEQUOIA; and SEQUOIA and its employees, agents and subcontractors will not be entitled to any benefits payable to COUNTY employees. SEQUOIA shall be responsible for payment and deduction of all employment-related taxes on SEQUOIA's behalf and for SEQUOIA's employees, agents and subcontractors, including but not limited to all federal and state income taxes and

withholdings. COUNTY will not be required to make any deductions from compensation payable to SEQUOIA for these purposes.

D. Indemnification: SEQUOIA will defend, indemnify and hold harmless COUNTY, including its officers, employees and agents, from and against any and all liabilities, claims, debts, damages, demands, or actions of any kind (including, but not by way of limitation, wrongful death and expenses of defense and payment of attorney fees) arising out of or in any manner connected with SEQUOIA's performance (including performance of its officers, employees, subcontractors, suppliers or agents) pursuant to this Agreement, whether or not any act or omission was in furtherance of the work required by this Agreement.

E. SEQUOIA will not provide COUNTY with a product or design which violates or infringes any patent, copyright, trade secret or other intellectual property right. If COUNTY promptly notifies SEQUOIA in writing or any third party claim against COUNTY that any software or other item provided to COUNTY by SEQUOIA infringes any patent, copyright, trade secret or other intellectual property right of any third party, SEQUOIA will indemnify, defend and hold harmless COUNTY against such claims. SEQUOIA will not indemnify COUNTY, however, to the extent the alleged infringement is caused by (1) COUNTY's modification of the software or item, (2) use of the software or item other than in accordance with the documentation or this Agreement, (3) COUNTY's failure to use acceptable non-infringing corrections or enhancements made available by SEQUOIA, or (4) information, specifications or materials provided by COUNTY or any third party. If any software or other item is, or in SEQUOIA's reasonable opinion is likely to be held to be infringing, SEQUOIA will, at its expense and option: (1) procure the right for the COUNTY to continue using it; or (b) replace or modify it so that it becomes non-infringing while giving equivalent performance.

F. Any notice given pursuant to this Agreement shall be deemed to have been given when received by the party to whom it is directed by personal

///

///

service, hand delivery, overnight delivery service or U.S. mail at the following addresses:

TO COUNTY: COUNTY OF RIVERSIDE
2724 Gateway Drive
Riverside, California 92507
Attn: Registrar of Voters

TO SEQUOIA: SEQUOIA PACIFIC VOTING EQUIPMENT, INC.
410 17th Street, Suite 1950
Denver, CO 80202
Attention: Robert Click

G. Non-Discrimination: SEQUOIA shall not discriminate in its recruiting, hiring, promotion, demotion, or termination practices on the basis or race, religious creed, color, national origin, ancestry, physical handicap, medical conditions, marital status, age or sex in the performance of this Agreement, and, to the extent they shall apply, with the provisions of the California Fair Employment Practices Act (commencing with Section 1410 of the Labor Code) and the Federal Civil Rights Act of 1964 (PL 88-352).

* H. Conflict of Interest: SEQUOIA warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon a contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide permanent employees. For breach or violation of this provision, COUNTY shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee. SEQUOIA covenants that it presently has no interest, and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services to be performed under this Agreement; and SEQUOIA further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

I. Neither party shall be considered in default in the performance of its obligations to the extent that performance is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party. Delays arising from the actions or inactions of one or more of SEQUOIA's principals, officers, employees, agents, subcontractors, consultants, vendors or suppliers are expressly recognized to be with SEQUOIA's control.

J. Assignment: Any attempt by either party to assign or otherwise transfer any interest in this Agreement without the prior written consent of the other party shall be void. In the event there is a transfer of the ownership of SEQUOIA, the new owner of SEQUOIA shall completely assume and fulfill all the obligations of SEQUOIA as stated in this Agreement.

K. Governing Law; Jurisdiction: This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court for the State of California located in Riverside, California.

L. Mandatory Dispute Resolution Procedure: COUNTY and SEQUOIA shall immediately make a good faith effort to resolve any dispute or problem relating to or arising under this Agreement. Within 14 business days of a written notice of a dispute or problem sent by either party, SEQUOIA's Project Manager and COUNTY's Project Manager will meet to discuss the issues involved. If the dispute or problem is not resolved within seven (7) business days of the meeting of the Project Managers, then SEQUOIA's Chief Executive Officer and COUNTY's Registrar of Voters will immediately meet in person to attempt to resolve the dispute or problem. Other meetings will follow as necessary or as requested by either party.

M. The rights and remedies of COUNTY and SEQUOIA provided for in this Agreement are in addition to any other rights or remedies provided by law.

N. The delay or failure by either party to exercise or enforce any of its rights under this Agreement will not constitute or be deemed a waiver of

that party's right thereafter to enforce those rights; nor will any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

O. SEQUOIA shall continuously maintain an escrow for the AVC Edge Touch Screen Voting System source code as described in Exhibit F.

P. Severability: In the event any of the terms, conditions, or provisions of this Agreement are held to be illegal or otherwise unenforceable, such term, condition or provision shall be deemed severable from the remainder of this Agreement and shall not cause any other part or provision of this Agreement to be illegal or unenforceable.

Q. Entire Agreement: This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between COUNTY and SEQUOIA relating to the subject matter of this Agreement. The Agreement may not be modified except by a written document signed by both parties.

R. The term of this Agreement shall be through December 21, 2010 except as otherwise stated in this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written,

COUNTY OF RIVERSIDE

FORM APPROVED
COUNTY COUNSEL

By: [Signature]
Tom Mullen **TOM MULLEN**
Chairman, Board of Supervisors

MAR 03 2000
By: [Signature]

SEQUOIA PACIFIC VOTING EQUIPMENT, INC. GERALD A. MALONEY

CLERK of the BOARD OF SUPERVISORS
County of Riverside, State of California

By: [Signature]
Name and title:
Robert E. Click
General Manager

3/28/2000
ATTEST:
GERALD A. MALONEY, Clerk
By: [Signature]
DEPUTY