

PURCHASE AGREEMENT

BETWEEN

COUNTY OF ESSEX, NEW JERSEY

AND

SEQUOIA VOTING SYSTEMS, INC.

TABLE OF CONTENTS

1.	AGREEMENT
2.	SALE AND PURCHASE OF SYSTEM
3.	DELIVERY AND INSTALLATION OF SYSTEM
4.	SOFTWARE AND FIRMWARE LICENSE
5.	TESTING AND ACCEPTANCE
6.	PAYMENT
7.	PATENT AND COPYRIGHT PROTECTION
8.	TRAINING
9.	DOCUMENTATION
10.	TAXATION
11.	LIMITED WARRANTY
12.	INDEMNIFICATION
13.	INSURANCE
14.	ASSIGNMENT
15.	SUBCONTRACTING
16.	SEVERABILITY
17.	NONDISCRIMINATION
18.	EXCUSABLE DELAYS
19.	TERM OF AGREEMENT
20.	HEADINGS NOT CONTROLLING
21.	LIMITATION OF SEQUOIA'S LIABILITY
22.	INTELLECTUAL PROPERTY RIGHTS
23.	EMPLOYEES
24.	FINANCIAL ASSURANCE
25.	PRICING
26.	COUNTY'S OBLIGATIONS
27.	DUE AUTHORIZATION
28.	TERMINATION
29.	CONFIDENTIALITY
30.	WAIVER
31.	ENTIRE AGREEMENT
32.	NOTICES
33.	CHANGE CONTROL
34.	PROJECT MANAGERS – COORDINATION OF PROJECT
35.	LAW
36.	DISPUTE RESOLUTION
37.	ARBITRATION
38.	RELATIONSHIP OF THE PARTIES
39.	NO THIRD PARTY BENEFICIARIES
Schedule 1	Description of Equipment, Software and Pricing/Payment Terms
Schedule 2	Additional Services
Schedule 3	Delivery Terms
Schedule 4	Standard Form License Agreement
Schedule 5	Acceptance Testing Logs

**AGREEMENT BETWEEN
ESSEX COUNTY, NEW JERSEY
AND
SEQUOIA VOTING SYSTEMS, INC.**

This Agreement is made and entered into as of this ____ day of _____, 2005, (the "Effective Date") by and between County of Essex, New Jersey, with offices located at the Hall of Records, Martin Luther King Boulevard, Newark, NJ 07102, acting on behalf of the Office of the Commissioner of Registration and Superintendent of Elections of the County of Essex, and the Essex County Board of Elections both with offices located at 33 Washington Street, Newark, NJ 07102 (hereinafter singly and collectively referred to as "County") and Sequoia Voting Systems, Inc. (hereinafter referred to as "Sequoia"), having its offices at 7677 Oakport Street, Suite 800, 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,

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 Purchase Agreement and its attached schedules.
- B. 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, the Purchase 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"). Anything to the contrary in Schedule 1 or elsewhere in this Agreement notwithstanding, the voting machines shall display a 28 column x 18 row switch module format.
- 2. A license for the Software listed on Schedule 1, which shall be licensed to County pursuant to Section 4 of this Agreement.

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, constitutes a voting system (which is referred to in this Agreement as the "System").

B. 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 on Schedule 1.

3. DELIVERY AND INSTALLATION OF SYSTEM

A. Delivery

The Equipment and Software shall be delivered to a warehouse to be designated by County in writing prior to shipping, which notice shall be incorporated into Schedule 3 to this Agreement. The Equipment and Software shall be delivered FOB County's warehouse. Sequoia shall 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. Risk of loss shall pass to County upon delivery to County. Title to the Equipment shall pass to County upon delivery to it of the Equipment and Software, however, a UCC filing will remain in place until full payment is received by Sequoia under this Agreement.

B. Installation

Sequoia shall assist County with installation of the Equipment at County's warehouse.

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 Upgrades

From time to time Sequoia, in its sole discretion, may release improvements to the Software which 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"). Upgrades shall be governed by the License Agreement whether or not installed by County. Upgrades will be provided to County if County has elected to purchase the same as part of the Additional Services, or if required to be provided by Sequoia, at no cost to the County as hereinafter provided.

C. Firmware License

The Equipment incorporates software and logic which 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 Equipment, 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 and in part. Unless expressly required to do so in this Agreement or in a written amendment to this Agreement signed by Sequoia, Sequoia has no obligation to modify or update the Firmware to meet any future requirements, legal or otherwise.

D. Compliance with Law

Sequoia represents that the Software, Upgrades and Firmware comply in all material respects with all applicable Federal and New Jersey laws, standards and regulations in effect as of the date of this Agreement, including, but not limited to the Federal Help America Vote Act ("HAVA"), and meet all of the requirements of Section 301 thereof. Sequoia further represents that it has obtained all requisite Federal and New Jersey certifications for the Software and Firmware. Any modifications or upgrades to the Software or Firmware necessary to comply with HAVA and its standards and regulations, or with other currently applicable law, shall be made by Sequoia without cost to County.

Sequoia further agrees to make such modifications to the Software, Upgrades and Firmware, at the cost of County, to provide not later than January 1, 2008 the voter verified paper record required pursuant to the provisions of New Jersey Senate Bill No. 29, 211th Legislature, introduced May 19, 2005 as enacted into law, regardless of whether or not the New Jersey Attorney General grants a waiver of the provisions of subsection 3.(i) of Section 2 of said Act.

Except as hereinabove provided, should applicable laws change in the future in such a manner as to require modifications to the Software, Upgrades or Firmware, Sequoia shall make the required modifications, but 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.

E. No Modification

Customer 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

Sequoia shall instruct County in writing on how to properly perform the test procedures for the Equipment and Software. Within ten (10) days of receipt of these instructions, County shall commence to conduct the test procedures. 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 five (5) days following completion of testing (a "Defect Notice"). A Defect Notice shall set forth with specificity the performance failures. Sequoia shall, within thirty (30) days from receipt of a Defect Notice, make any corrections necessary to cause the Equipment and Software 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 on the 25th day after County receives written instructions from Sequoia on how to properly perform the test procedures for the Equipment and Software or, if a Defect Notice is given within 25 days of said instructions, upon remedy of said defect.

6. PAYMENT

County shall pay Sequoia as outlined in Schedule 1 attached hereto.

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 (the "Infringing Component") becomes, or in Sequoia's reasonable opinion is likely to become, the subject of an infringement claim, 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 five (5) year period on a straight line basis.

*see Monmouth for add'l "D"
p 7*

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 County's warehouse, at times to be agreed upon by Sequoia and County. The number of training days provided as part of this Agreement is set forth in Schedule 1 Section 3.3. 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.

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 29, and shall not be copied or reproduced without the prior written consent of Sequoia.

10. TAXATION

County is exempt from payment of sales and use taxes. County will sign an exemption certificate submitted by Sequoia. Sequoia shall be responsible for payment of taxes on Sequoia's income and withholding of payroll taxes on Sequoia's employees as required by law.

11. LIMITED WARRANTY

Sequoia warrants as follows:

- A.
1. The System complies in all material respects with all applicable federal, state and county laws as such laws exist on the date of this Agreement.
 2. For a period of five (5) ^{1 yr} years from the date of acceptance or deemed acceptance of the Equipment and Software by County pursuant to Section 5B, the System will function in accordance with the Documentation.
 3. Sequoia will provide all parts to replace those which have been broken through normal wear and tear, or do not function properly (excluding items listed in 11.D.1. of this Agreement), without charge to the Customer as long as this Agreement remains in force.
 4. 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 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 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. EST. 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 customer location. All travel expenses will be billable to the county for any on-site labor.
- C. Sequoia will provide to County software upgrades, which may become available from time to time. Such upgrades shall be installed by County. They shall be at no cost, unless additional or new program or configuration chips are necessary, in which case County shall purchase such

chips at the cost then in effect.

See pg 8

D. Limitations

1. This agreement does not require Sequoia to replace:
 - A. paper, seals, 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, 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 or persons under County's direct supervision,

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

E. 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

A. By Sequoia

Sequoia hereby agrees to defend, indemnify, protect, and hold County harmless from and against any and all third party claims for damages (including, without limitation, court costs and reasonable attorneys' fees), incurred as a result of injury to any person or damage to property, including, without limitation, injury to Sequoia's employees, agents or officers to the extent caused by the negligent or intentional acts of Sequoia or its employees in performing under this Agreement.

B. By County

County hereby agrees to defend, indemnify, protect, and hold Sequoia harmless from and against any and all third party claims for damages (including, without limitation, court costs and reasonable attorneys' fees), incurred as a result of injury to any person or damage to property, including, without limitation, injury to County's employees, agents or officers to the extent caused by the negligent or intentional acts of County or its employees.

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 sole 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. Notwithstanding the foregoing, Sequoia may assign this Agreement to any entity owned or controlled, directly or indirectly, by Smartmatic International Corporation.

15. SUBCONTRACTING

Sequoia may use subcontractors in connection with the work performed under this Agreement, provided, however, that the use of subcontractors does not relieve Sequoia of its obligations 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, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

Affirm. Action missing

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 earlier to occur of (i) full execution by the parties; or (ii) appropriation and receipt by County of funding for use by County for payments of amounts owing to Sequoia hereunder. 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 SUM OF SIX MILLION NINE HUNDRED SIX THOUSAND FOUR HUNDRED AND SIXTY (\$6,906,460) DOLLARS. 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.

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 Product 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. FINANCIAL ASSURANCE

In the event that a performance bond or other financial assurance is required by County in connection with this Agreement or Sequoia's performance hereunder, the following terms shall apply:

- A. County shall not demand payment with respect to such financial assurance by reason of an alleged default by Sequoia under this Agreement until County shall have provided Sequoia with written notice and any applicable cure period under Section 28 shall have expired without such default having been cured by Sequoia.
- B. In the event County seeks payment with respect to such financial assurance, the amount County shall demand, and which may be payable to County, shall be limited to those amounts actual and necessary costs incurred by County for the sole purpose of replacing goods or services to be provided by Sequoia hereunder with those which are of reasonable equivalents.

25. 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.

Handwritten signature/initials

26. 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.

27. 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.

28. 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 thirty (30) days of notice of non-payment.
- 2. County fails to cooperate with Sequoia to the extent reasonably necessary to permit Sequoia to fulfill its obligations under this Agreement.
- 3. 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, or proposes to enter into, any bankruptcy or similar proceeding for the purpose of affording relief from creditors.

C. Effect of Termination

- 1. In the event this Agreement is terminated by County pursuant to Section 28B (1) above, County shall pay all undisputed amounts owing to Sequoia under this Agreement. In the event this Agreement is terminated for any reason other than by the County pursuant to

Section 28B(1), all amounts owing to Sequoia accrued prior to such termination shall be immediately due and payable.

2. In the event this Agreement is terminated for any reason, County shall promptly make available for retrieval by Sequoia the System and other materials provided by Sequoia which have not been fully paid for under the terms of this Agreement. Such termination shall not affect the rights of the parties accrued prior to the date of termination.

D. License Agreement

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

E. Survival

In the event of termination, the provisions of Sections 1, 11B, 11D, 11E, 12, 21, 22, 23, 24, 29, 31, 35, 36 and 37 shall survive termination of this Agreement.

29. 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) twenty (20) business days prior to disclosure or (ii) such longer period as may be required by applicable law.

5

30. 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.

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31. ENTIRE AGREEMENT

This Agreement and the License Agreement embody the entire agreement between the parties with respect to the subject matter hereof and supercedes any other agreements between the parties with respect thereto (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.

32. 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.

33. CHANGE IN LAWS

- 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 the 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.

34. 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. The initial project managers shall be:

County Project Manager: to be determined

Sequoia Project Manager: to be determined

- B. 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 parties.

35. LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey without regard to principles of conflict of laws, and the parties agree, subject to the arbitration requirements of Section 37 to submit to the exclusive jurisdiction of the courts of the State of New Jersey and the federal district courts situate in New Jersey with respect to any matter arising from or relating to this Agreement.

36. 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 head voting officer of County, for their review and resolution. If the dispute cannot be resolved by such officers, then the parties may initiate formal arbitration proceedings; however, arbitration proceedings for the 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.

37. ARBITRATION

Any disputes between the parties hereto arising out of or relating to the interpretation or performance of this Agreement, including, without limitation, any alleged breach hereof, shall be submitted to and settled by arbitration in accordance with the rules of the American Arbitration Association relating to commercial arbitration then in effect (the "AAA Rules"). The arbitration shall be conducted by a panel of three (3) arbitrators appointed in accordance with such AAA Rules. Such arbitral tribunal shall apply the substantive (not the conflicts) law of the State of New Jersey as provided in Section 35. All proceedings of the arbitration, including arguments and briefs, shall be conducted in the English language in the State of New Jersey. Any award of the arbitral tribunal shall be rendered in writing and shall be final and binding on the parties to it. Judgment on such award may be entered in any court of competent jurisdiction. The costs of arbitration shall be borne by the parties as the arbitral tribunal may award.

38. 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.

39. 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.

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

COUNTY OF ESSEX, NEW JERSEY

ATTEST:

Adrienne Davis, Clerk
Essex County Board of Chosen Freeholders

By: *Joseph Wilson Harley*
Name: _____
Title: *County Administrator*

SEQUOIA VOTING SYSTEMS, INC.

APPROVED AS TO FORM

Essex County Counsel

[Signature]

By: *[Signature]*
Name: *P. McManamy*
Title: *CFO.*

10/25/05

SCHEDULE 1

DESCRIPTION OF EQUIPMENT, SOFTWARE AND PRICING/PAYMENT TERMS

HARDWARE

1.1 AVC ADVANTAGE ELECTRONIC VOTING MACHINE \$ 4,200,000

700 Machines @ \$ 6,000 each with leg braces

Audio Component 700 @ \$2,000. \$ 1,400,000

1.2 CARTRIDGE READER KIT

2 Kits @ \$ 5,000 each \$ 10,000

2 audio @ \$5,000 each \$ 10,000

\$ 1000 for Mar

1.3 CARTRIDGE READER KITS (REMOTE TALLY) \$ 110,000

22 Kits @ \$5,000 each

1.4 OPTIONS

Spare Parts Inventory \$ 10,000

Tool Kits for Technicians (4 @ \$150. ea.) \$ 600

50 Vote Simulation Cartridges (@ \$250. ea.) \$ 12,500

50 Spare Results Cartridges (@ \$250. ea.) \$ 12,500

Secure Cartridge Storage Carts for 2 @ \$3200. \$ 6,400

AVC Edge Cartridge Trays 12 @ \$60. \$ 720

AVC Advantage Cartridge Trays 35 @ \$14.00 \$ 490

Emergency Ballot Boxes 700 @ \$40 \$ 28,000

SOFTWARE

2.1 WinEDS ELECTION DATABASE SYSTEM \$ 250,000

License Fee begins first day of year 2 (included 5 years) \$ 150,000

*250,000
not in Mar*

2.1 Win EDS SOFTWARE SUPPORT SERVICE and PROGRAMMING \$ 425,250

YEARS 2006-2007 (includes Spanish)

NC Mar

3.1 HARDWARE WARRANTY 5 year warranty \$ 280,000

3.2 INSTALLATION, TRAINING & SUPPORT N/C

Total: \$ 6,906,460

*Discount \$ 350,000

Total with Discount \$ 6,556,460

4.0 PAYMENT TERMS

Within thirty (30) days of Contract execution 25%

Delivery of voting machines and System 40%

Acceptance of voting machines and System 35%

Schedule 1

1.1 AVC ADVANTAGE ELECTRONIC VOTING MACHINE

MACHINE HARDWARE INCLUDES

Booth Light
504 Voting Positions (12x 24)
Electronic Write-In Keypad
On-Board Audit * Trail
Removable Results Cartridge
Seiko DPU-414 Printer
18Hour Battery Backup
Operator Panel
2 Sets of Keys for Each Machine
Emergency Ballot Box
Leg Braces

MACHINE SOFTWARE INCLUDES

Maintenance Diagnostics
Setup Diagnostics
Operator Log / Maintenance Log
Cartridge Ballot Setup
Voter Panel Ballot Setup
Verify the Ballot
Pre-Election Logic and Accuracy Test
Post-Election Logic and Accuracy Test
Random Storage of Ballot Images
Endorsed Candidate Logic
Vote Simulation

1.2 CARTRIDGE READER

The Cartridge Reader Kit includes a Cartridge Reader and PC interface card and supports the function of writing to and reading from the results cartridges.

1.3 Miscellaneous

Ready (Stock) Parts Inventory
Vote Simulation (test vote) Cartridges (50)
Spare Results Cartridges (50)
Secure Cartridge Storage Carts for 500
Tool Kits (4)
AVC Edge Cartridge Trays 12
AVC Advantage Cartridge Trays 35
Emergency Ballot Boxes 700

Schedule 1

2.1 WinEDS ELECTION DATABASE SYSTEM

This is a results cartridge generation and results cartridge tally software package, which provides for central machine programming and central election results reporting. The software provides for election management and setup for a large fleet of voting machines. This system integrates with absentee system setup and results tally. Reports generated include countywide summary, town and district reports, absentee results, and many more. The above price represents the cost for installing the software on up to three workstations.

The license fee begins on first day of the second year. Price guaranteed through year five. Price not to increase per year more than 10% after year 5. This price does not include hardware.

2.1 WinEDS SOFTWARE SERVICE SUPPORT AND PROGRAMMING

Software support and programming includes:

- I. Profile Setup and Maintenance
- II. Election Database Setup
- III. WinEDS Technician on-site for election database installation, verification and proofing for each election.
- IV. WinEDS Technician on-site for Tally
- V. Audio File Creation and Setup included one Language Included

Pricing is based on the following Elections for year 2006 and 2007 and Includes Spanish language.

		Districts
2006 April	School Board	460
May	Municipal	232
June	Primary	567
November	General	567
Misc	Misc	300
2007 April SB	School Board	460
May	Special	300
June	Primary	567
November	General	567
Misc	Misc	300

Schedule 1

3.3 INSTALLATION, TRAINING & SUPPORT

INSTALLATION

The key to a successful change in election equipment is the ability of the vendor to support the installation. Essex County will be assigned a key representative with extensive experience installing the equipment purchased in jurisdictions around the US as well as in New Jersey. This representative will assist with oversight and advice during the acceptance of the new equipment. Further, he or she will provide guidance to technical staff providing maintenance and set-up of the new equipment and to those responsible for utilizing the election management software. The representative will work with designated County Staff to instruct them in both the proper and best methods for training poll workers and conducting voter outreach. Sequoia will assist the County in designing a customized and detailed procedures guide for poll workers, and will assist and guide your staff in voter outreach efforts.

TRAINING

Sequoia conducts training courses as follows.

AVC Advantage Acceptance Test Training	1 day
Pollworker train the trainer	2 days
WinEDS I -Pre-LAT and tally training	2 days
WinEDS II election management	3 days
AVC Advantage Technician Training	4 days
Total	12 days

SUPPORT

Sequoia will provide support as specified in 2.1 and 3.3. Any additional services will be based on the following schedule.

The following fees are effective February 1, 2005 – January 31, 2006 for all support services provided by Sequoia Voting Systems including but not limited to pre, post, and Election Day support; election coding; on-site training; and equipment servicing. Rates are subject to change.

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. Associated travel expenses

will be billed separately following the general guidelines listed below.

TRAVEL AND EXPENSE GUIDELINES

1. Every effort will be made to choose the most efficient, prudent, and economical option available for the travel occasion.
2. Unless otherwise stated, the maximum per diem for meals shall not exceed \$65/day.*
3. Unless otherwise stated, the maximum hotel charge shall not exceed \$150/day (not including fees and taxes).*
4. Reimbursement for employee car travel in the employee's personal vehicle will be billed at \$0.405/mile.
5. 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.

Regularly Scheduled Training at a Sequoia Facility:

Type of Service/Support	Level	Fee
Training – <i>Sequoia Facility</i>	Up to 4 attendees from any one jurisdiction	\$1500/course
	Extra attendees from same jurisdiction	\$300/each
	Tool Kits (if purchased)	\$200/kit
	Sequoia personnel travel expenses	Included
	Customer personnel travel expenses	NOT Included

SCHEDULE 3

DELIVERY TERMS

50 AVC Advantage units shall be delivered before December 31, 2005. The balance of the Equipment and Software listed in Schedule 1 shall be delivered by Feb 28, 2006. All Equipment and Software shall be delivered to Location(s) to be designated by the Commissioner.

SCHEDULE 4

STANDARD FORM LICENSE AGREEMENT

[FOLLOWING PAGES SEQUOIA STANDARD LICENSE AGREEMENT]