

**ASSIGNMENT AND ASSUMPTION OF CONTRACT AND CONTRACT RIGHTS AND  
SECOND AMENDATORY AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACT AND CONTRACT RIGHTS AND SECOND AMENDATORY AGREEMENT (the "Assignment and Second Amendatory Agreement"), is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the CITY AND COUNTY OF DENVER, a municipal corporation and home rule city of the State of Colorado and SEQUOIA VOTING SYSTEMS, INC., ("Sequoia" or "Assignor") and DOMINION VOTING SYSTEMS, INC., ("Dominion" or "Assignee") a for-profit entity authorized to conduct business in the State of Colorado, as predecessor in interest to Sequoia Voting Systems, Inc., whose mailing address is 717 17th Street, Suite 310 Denver Colorado, 80202.

**RECITALS.**

1. Sequoia and the City entered into an Agreement dated May 4, 2006, as amended by an Amendatory Agreement dated May 23, 2006, (City Contract Control No. CE 61152) (together, the "Purchase Agreement") for the purchase and license of electronic voting machines containing certain proprietary firmware and software systems collectively known as WinEDS V 3.1. A copy of the Purchase Agreement is attached hereto as Exhibit A and incorporated herein by reference.

2. On or about June 4, 2010, Dominion acquired Sequoia's inventory and intellectual property, including but not limited to Sequoia's proprietary software, firmware, and hardware, previously licensed to the City under the Purchase Agreement, used in connection with Sequoia's precinct and central count optical scan and direct recording equipment voting machines. This sale of assets included the transfer to Dominion of Sequoia's BPS, WinEDS V 3.1, Teamwork, Edge, Edge2, Advantage, Insight, InsightPlus, and 400C systems.

3. The Purchase Agreement requires written consent of the City in order to effectuate an assignment of Sequoia's rights, benefits, and obligations under the Purchase Agreement to Dominion.

4. The parties now desire to memorialize their agreements concerning the assignment and assumption of the Purchase Agreement from Sequoia to Dominion.

DB-394-B

NOW, THEREFORE, the parties agree as follows:

1. **EFFECTIVE DATE OF ASSIGNMENT.** This Assignment and Second Amending Agreement shall take effect on June 4, 2010 (the "Effective Date").

2. **ASSIGNMENT AND ASSUMPTION.**

A. From and after the Effective Date, Assignor assigns and transfers to Assignee all its rights, title, interests, benefits, duties, and obligations in, to, and under the Purchase Agreement including all rights to license WinEDS V 3.1, and any and all other software, firmware, and hardware necessary for the City's continued use of the equipment purchased under the Purchase Agreement.

B. Assignee accepts the assignment and hereby assumes and agrees to fulfill, perform, and discharge all of the Assignor's duties, liabilities, obligations and agreements under the Purchase Agreement from and after the Effective Date including but not limited to the license of all software, firmware, and hardware, including but not limited to WinEDS V 3.1, necessary for the City's continued use of equipment purchased under the Purchase Agreement.

C. Assignor and Assignee represent and warrant that each has the power and authority to execute, deliver, and perform its obligations under this Assignment and Second Amending Agreement and each has been duly authorized by all necessary corporate action to execute this Assignment and Second Amending Agreement. Assignor and Assignee further represent and warrant that each has or will have executed and delivered all such other necessary further instruments of assignment and transfer, including any and all notices, releases, and other documents, to fully and specifically assign and transfer to and vest in Assignee the rights of the Assignor in and to the Purchase Agreement. Assignor and Assignee acknowledge that any and all monies owed to Assignor under the Purchase Agreement by the City have been fully paid as of the Effective Date.

3. **DEFENSE AND INDEMNIFICATION.**

A. Assignee hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under the Purchase Agreement ("Claims"), unless any such

Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

B. Assignee's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Assignee's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

C. Assignee will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

D. Insurance coverage requirements specified under the Purchase Agreement shall in no way lessen or limit the liability of the Assignee under the terms of this indemnification obligation. The Assignee shall obtain at its own expense, any additional insurance that it deems necessary for the City's protection.

E. This defense and indemnification obligation shall survive the expiration or termination of the Purchase Agreement.

F. This defense and indemnification obligation will also include any and all Infringement Claims, as such term is defined in Section 12 of the Agreement. Moreover, nothing in this Assignment will otherwise alter or supersede the terms of sections 12. B through D of the Purchase Agreement which sections will remain in full force and effect concerning the Assignee and the City.

4. **CONSENT.** Pursuant to Section 25 of the Purchase Agreement, the City hereby consents to this Assignment and Second Amendatory Agreement in accordance with the terms stated

herein.

5. **SUCCESSORS.** This Assignment and Second Amendatory Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6. Article 31 of the Purchase Agreement, entitled "**NOTICES**", is amended to read as follows:

" 31. **NOTICES:** Notices concerning the termination of this Agreement, notices of alleged or actual violations of the terms or conditions of this Agreement, and other notices of similar importance shall be made:

By Contractor to: Director  
Elections Division  
270 W. 14<sup>th</sup> Avenue, First Floor  
Denver, Colorado 80204  
Michael.scarpello@denvergov.org

With a copy to: Clerk and Recorder  
City and County of Denver  
231 West Colfax Avenue, Dept. 101  
Denver, Colorado 80202  
Stephanie.O'Malley@denvergov.org

And by the City to: Attn: Mike Frontera, VP/General Counsel  
Dominion Voting Systems, Inc.,  
717 17<sup>th</sup> St, Suite 310  
Denver, CO 80202  
mike.frontera@dominionvoting.com

Any notices given under this Agreement are deemed to have been received and to be effective: 1) three (3) days after the same shall have been mailed by certified mail, return receipt requested; 2) immediately upon hand delivery; 3) immediately upon receipt of confirmation that a facsimile transmission was received; or 4) immediately upon receipt of confirmation that a computerized electronic mail transmission was received. The addresses and/or names of individuals may be changed by the parties by written notice."

7. This Assignment and Second Amendatory Agreement will not be effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

8. This Assignment and Second Amendatory Agreement shall be executed in two (2) counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument.

**BALANCE OF PAGE INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first written above.

**ATTEST:**

**CITY AND COUNTY OF DENVER:**

By: \_\_\_\_\_  
STEPHANIE Y. O'MALLEY, Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver

By: \_\_\_\_\_  
M A Y O R

**RECOMMENDED AND APPROVED:**

By: Michael S. [Signature]  
Director, Elections Division  
Clerk and Recorder

By: Stephanie O'Malley [Signature]  
Clerk and Recorder

**APPROVED AS TO FORM:**

DAVID R. FINE, City Attorney for the City and County of Denver

By: \_\_\_\_\_  
Assistant City Attorney

**REGISTERED AND COUNTERSIGNED:**

By: \_\_\_\_\_  
Manager of Finance  
Contract Control No. GE 61152 (2)

By: \_\_\_\_\_  
Auditor

**"CITY"**

ATTEST: [If required by Corporate procedures]

**SEQUOIA VOTING SYSTEMS, INC.**  
I.R.S. Identification No. 37-1274619

By: \_\_\_\_\_

By: [Signature]

Title: \_\_\_\_\_

Name: Kevin Hurst  
(please print)

Title: C.E.O.

**"ASSIGNOR"**

ATTEST: [If required by Corporate procedures]

By: \_\_\_\_\_

Title: \_\_\_\_\_

**DOMINION VOTING SYSTEMS, INC.**

I.R.S. Identification No. 27-0565199

By:  \_\_\_\_\_

Name: John Paulos  
(please print)

Title: President & CEO

**"ASSIGNEE"**

**Exhibit A**

CITY CLERK  
OFFICIAL COPY

06-394

**PURCHASE AND LICENSE AGREEMENT OF VOTING SYSTEM**

**THIS PURCHASE AND LICENSE AGREEMENT OF VOTING SYSTEM ("Agreement")** is made and entered into this 4th day of May, 2006, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), acting by and through the **Denver Election Commission**, and **SEQUOIA VOTING SYSTEMS, INC.**, a for-profit entity authorized to conduct business in the State of Colorado, whose principal place of business is 7677 Oakport Street, Oakland, CA 94621 (the "Contractor" or "Sequoia").

1. **COORDINATION AND LIAISON:** The Contractor agrees that during the term of this Agreement it shall fully coordinate all services and obligations hereunder with the Denver Election Commission (the "Agency"). Each party shall appoint a project manager for all day-to-day 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:

Agency Project Manager: Matt Crane  
Sequoia Project Manager: Corene Henage

The project managers shall meet, in person or by telephone conference, at least once every thirty (30) days or at such periods as may be agreed to review progress.

Each party shall fully cooperate with the other party in connection with the other party's performance of its obligations hereunder. Notwithstanding the foregoing, the Agency's Executive Director (the "Executive Director") is the official representative of the City and shall have final decision making authority under this Agreement.

2. **CONTRACT DOCUMENTS; ORDER OF PRECEDENCE:** This Agreement consists of Paragraphs 1 through 45, which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference:

- Schedule 1: Description of Equipment, Software and Pricing/Payment Terms
- Schedule 2: Maintenance Services/Additional Services
- Schedule 3: Implementation and Training
- Schedule 4: State of Colorado Certificate of Approval of Voting System

Except as expressly provided otherwise in this Agreement, in the event of an irreconcilable conflict between a provision of Paragraphs 1 through 45, and any of the listed attachments or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

Paragraphs 1 through 45 hereof

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Schedule 4: State of Colorado Certificate of Approval of Voting System  
Schedule 1: Description of Equipment, Software and Pricing/Payment Terms  
Schedule 2: Maintenance Services/Additional Services  
Schedule 3: Implementation and Training

**3. SALE OF VOTING EQUIPMENT AND LICENSE OF SOFTWARE:**

A. The Contractor agrees to sell and the City agrees to purchase, subject to the terms and conditions set forth in this Agreement, the Equipment listed on Schedule 1 attached to this Agreement (the "Equipment").

B. (1) Contractor hereby grants to City a personal, non-transferable, non-exclusive license (the "License") to install and use the software (identified on Schedule 1 and hereinafter referred to as the "Software") for election purposes including any elections supervised by and under the direct control of the City or for demonstration purposes supervised by and under the direct control of the City in conjunction with the Equipment at the City's election Sites or at the City's offices or warehouse facilities. This Software License may not be assigned or transferred by the City, voluntarily or by operation of law, to any party without the Contractor's express prior written permission. The City shall have no power to grant sub-licenses, prepare derivative works or modify the Software. Any use of all or any portion of the Software not expressly permitted by the terms of this Agreement is strictly prohibited. Title to and ownership of the Software, Firmware, and Upgrades will remain with Contractor. City will not reverse engineer or reverse compile any part of the Software without Contractor's prior written consent. City will not remove, obscure or deface any proprietary notice or legend contained in the Software or documentation without Contractor's prior written consent. The Software includes any and all identified documentation, subsequent versions, refinements, upgrades, alterations, enhancements, or updates to the Software and any components thereto made during the term of this Agreement.

(2) Contractor hereby grants to the City a personal non-exclusive, non-transferable limited license to use the intellectual property incorporated in the Equipment (hereinafter referred to as the "Firmware") solely with and for the operation of the Equipment, as contemplated by this Agreement. The City shall not, and shall not permit any third party to reverse engineer, disassemble, decompile, decipher or analyze the Firmware in whole or in part. Unless expressly required to do so in this Agreement or in a written amendment to this Agreement signed by Contractor, Contractor has no obligation to modify or update the Firmware to meet any future requirements, legal or otherwise.

(3) City shall not modify, or permit or suffer any third party to modify any Software, Upgrades or Firmware without the prior express written authorization of Contractor in each instance.

C. The Equipment, Software, and Firmware constitute a voting system (hereinafter collectively referred to as the "System").

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D. After the Warranty Period has expired, as such term is defined in section 13. B below, the City may purchase, and the Contractor shall provide, the Software maintenance services identified on Schedule 2 (the "Maintenance Services") Any purchase of Maintenance Services shall be evidenced by a written amendment to this Agreement or a new Agreement prepared and executed by the parties in the same manner as this Agreement at least thirty (30) days prior to the expiration of the Warranty Period. In addition, the City may purchase on an "as needed" basis, and Contractor shall provide, the additional services set forth on Schedule 2 (the "Additional Services") at the hourly rates contained in Schedule 2. Any purchase of Additional Services shall be evidenced by a written amendment to this Agreement or a new Agreement prepared and executed by the parties in the same manner as this Agreement.

E. The Contractor will provide the City, at least seven (7) days prior to delivery of the Equipment, with one (1) written and one (1) electronic copy of Contractor's operating manuals and other written documentation provided describing in detail the operating features of the Equipment, Software, and Firmware (hereinafter the "Documentation") in PDF format). The Documentation, upon receipt and acceptance by the City, will be deemed to be incorporated into this Agreement as an exhibit as if originally attached hereto. The Agency may print and/or copy additional copies of the Documentation for the Agency's internal use.

F. All modifications of the Software, upgrades, Firmware, and Equipment shall constitute Developmental Intellectual Property Rights owned by Contractor. Provided that the City has not breached this Agreement (and such breach remains uncured), the City shall have a personal, non-exclusive, non-transferable license to use such Developmental Intellectual Property Rights pursuant to the provisions of Section 3(B) above, as necessary or required for the City to use the Equipment and/or Software in the manner contemplated by this Agreement. "Development Intellectual Property Rights" shall mean any Intellectual Property Rights created by Contractor under this Agreement.

#### 4. PAYMENT TERMS:

A. Maximum Contract Amount: The City agrees to pay to the Contractor, and the Contractor agrees to accept as its sole compensation for all services rendered and costs incurred, a total amount not to exceed the sum of Four Hundred Sixty Thousand Twenty Eight Dollars (\$460,028.00) (the "Maximum Contract Amount"), payable in accordance with the price list contained in Schedule 1 and the payment schedule set forth in subparagraph 4B below. Any other provision of this Agreement notwithstanding, in no event shall the City be liable for payment for services rendered and expenses incurred by the Contractor under the terms of this Agreement for any amount in excess of the Maximum Contract Amount. The Contractor acknowledges that the City is not obligated to execute an amendment to this Agreement for any further phase of work other than the work described herein, and that any work performed by Contractor beyond that specifically described in this Agreement or any exhibit or attachment hereto is performed at Contractor's risk and without the City's authorization. The pricing/rates on Schedule 1 shall remain firm for the term of this Agreement.

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**B. Invoicing.** The City agrees to pay the Contractor for the total costs of the Equipment and Software as set forth in Schedule 1 in three equal installments. The first installment shall be in the amount of One Hundred Fifty Three Thousand Three Hundred Dollars (\$153,300.00) and shall be payable within thirty days of the date of execution of this Agreement and upon the Delivery of the Equipment by the Delivery Due Date. The second installment shall be One Hundred Fifty Three Thousand Three Hundred Dollars (\$153,300.00) and shall be payable within thirty days of the date of the City's written acceptance of the System. The third installment shall be in the amount of One Hundred Fifty Three Thousand Three Hundred Forty Two Dollars (\$153,428.00) and shall be payable within thirty days of the date of the August 2006 Colorado Primary Election provided that all Equipment and Services provided hereunder performed to the reasonable satisfaction of the City during said election. The Contractor shall submit an invoice to the City for each installment containing the City contract number listed on the signature page, the Equipment and Services provided by date, and the names of the persons performing the work by position title. The City shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Section 20-107, et. seq., of the Denver Revised Municipal Code which shall be incorporated hereto by reference.

**C. Changes to Schedule 1:** The Agency's Executive Director and the Contractor's designated authorized representative may modify the line items on Schedule 1 to increase or decrease the Equipment to be provided to the City or to adjust upward or downward specific amounts of compensation for the license fees, professional fees, and expenses identified on Schedule 1; provided, however, that no modification to Schedule 1 shall result in or be binding on the City if any proposed modification(s), individually or collectively, requires an upward adjustment to the Maximum Contract Amount. The parties' authorized representatives shall memorialize in writing any and all modifications to Schedule 1 by revising and restating said exhibit. Any modification to Schedule 1 shall not take effect unless and until it is approved in writing by both parties' authorized representatives, approved as to form by the City Attorney's office, and filed with the Denver Clerk and Recorder. Any such modification shall contain the date upon which the modified Schedule shall take effect and the City's Contract Control number stated on the signature page of this Agreement. Any modification to Schedule 1 agreed to by the parties that requires an increase in the Maximum Contract Amount shall be evidenced by a written Amending Agreement or new Agreement prepared and executed by both parties in the same manner as this Agreement.

**D. Subject to federal funds/appropriations Required:** It is understood and agreed that any and all payment obligations of the City under this Agreement, whether direct or contingent, shall not exceed the Maximum Contract Amount and shall extend only to funds appropriated by the Denver City Council for the purpose of this Agreement, encumbered for the purpose of the Agreement and paid into the Treasury of the City. The Contractor acknowledges that (i) the City does not by this Agreement, irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or

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financial obligation of the City. The Contractor acknowledges that funding for this Agreement is derived entirely and exclusively from an award of federal funds from the State of Colorado to the City for the purchase or lease of HAVA Sec. 301 –Compliant Voting Systems. The Contractor understands and agrees that any and all payment obligations of the City under this Agreement, including any extensions or renewals thereof, whether direct or contingent, shall extend only to federal funds received from the state government, approved and appropriated by the Denver City Council for the purpose of this Agreement, encumbered for the purpose of this Agreement, and paid into the Treasury of the City.

5. **TERM:** The term of the Agreement is from the date written in the first paragraph of page one of this Agreement (the "Commencement Date"), to June 30, 2007, (the "Expiration Date") (together, the "Term").

6. **CONTRACTOR'S RESPONSIBILITIES:**

A. All services to be provided under this Agreement shall be faithfully performed in accordance with the standards of care, skill, training, diligence and judgment provided by highly competent professionals who perform services of a similar nature.

B. Within thirty days of the date of execution of this Agreement, the Contractor will designate in writing to the City the assigned, qualified technical and managerial personnel who shall provide services under this Agreement and shall be designated as essential key personnel (the "Essential Personnel") to oversee the services under this Agreement. Essential Personnel shall include qualified technicians experienced with the implementation, operation, repair, and maintenance, of the System. The Contractor shall use its reasonable best efforts to notify the City in writing thirty days in advance of any reassignment of said Essential Personnel; however, if any Essential Personnel is terminated for cause or voluntarily resigns from the employ of the Contractor, the Contractor shall use its reasonable best efforts to immediately notify the City and shall provide a substitute Essential Personnel contact within twenty-four (24) hours after such termination or resignation. Upon written request from the City, the Contractor shall use commercially reasonable efforts to substitute any of the Contractor's Essential Personnel or other employees whose performance or conduct regarding the services to be performed by the Contractor under this Agreement is unsatisfactory to the City.

C. The Contractor will immediately notify the Agency in writing if it receives notice from any governmental regulatory authority of intent or determination to revoke and/or suspend the certification status of the System or any components thereto.

7. **AGENCY'S RESPONSIBILITIES:**

A. The Agency shall pay Sequoia amounts owing under this Agreement when due.

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B. The Agency will make its personnel and facilities available to Sequoia as reasonably required by Sequoia for its performance under this Agreement.

C. The Agency will provide information, data, and documentation reasonably required for Sequoia's performance under this Agreement.

8. **DELIVERY; INSTALLATION; ACCEPTANCE:**

A. **Delivery.** The System shall be delivered to the locations and facilities designated in writing by the Agency (the "Sites"). The Equipment and Software shall be shipped "FOB Point of Destination" with all freight charges and insurance, at full value, prepaid by Sequoia. Sequoia shall not charge the City for any costs or expenses for boxing, crating, parcel post, insurance, handling, freight, express, or other similar charges or fees. The Equipment and Software shall be preserved, packed and marked in accordance with Sequoia's standard practice and any reasonable specifications of the Agency. Risk of loss shall pass to the City only upon delivery to the Sites. Sequoia shall bear the risk of loss, injury or destruction of goods prior to delivery. Loss, injury or destruction of goods shall not release Sequoia from any obligation hereunder. Title to the Equipment and Software shall not pass until Sequoia shall have received full payment from City under this Agreement.

B. **Delivery Due Date.** The Equipment and Software are expected to be delivered to the Sites starting the week of May 22, 2006, and shall be completed no later than 1:00 P.M. Mountain Time, June 9, 2006 (the "Delivery Due Date"). The Contractor shall notify the Agency in writing at least seventy-two (72) hours in advance of the date of shipment. Contractor's notice shall include a detailed list of the quantity of Equipment and serial numbers for all Edge II units shipped.

In the event (a) Contractor fails to deliver all Equipment and Software listed on Schedule 1 by the Delivery Due Date or (b) the City rejects the System per Section B(D) below, then no later than July 14, 2006, the Contractor, at no cost to the City, will provide and install at a location identified by the City a Sequoia 400C paper ballot counting machine (the "400C"). The 400C may be used by the City for its 2006 Colorado Primary Election. The parties will agree on a date and time for Sequoia to retrieve the 400C after the election has been finally certified by the City and the Colorado Secretary of State and any recount required or permitted by law has been completed.

C. **Implementation, Installation Support, Training, Post Election Support Services.** Contractor will provide implementation, installation support, training, and post election support services as described in Schedule 3. The City shall not be required to pay for any travel, lodging, meals, mileage, or other out of pocket expenses that may be incurred by the Contractor in providing implementation, installation support, training or post election support services. Post election support will be provided

between the hours of 7:00 A.M., to 5:30, P.M., MST, M-F, and will include a response time of four (4) hours for any request made by the Agency.

D. **Acceptance.** After delivery of the System, City will test and evaluate the System to ensure that it conforms to the specifications contained in the Documentation. If the System does not conform to the specifications contained in the Documentation, City will so notify Contractor in writing within five (5) business days. Contractor will, at its own expense, repair or replace the System within twenty (20) days after receipt of City's notice of deficiency. The foregoing procedure will be repeated until City accepts or finally rejects the System in its sole discretion.

9. **Reserved.**

10. **RETURN/TRADE-IN OF VOTING MACHINES:** The Contractor agrees to accept from the Agency certain voting machines known as "AVC Advantage" voting machines (the "Trade-In Machines") on a trade-in basis of one (1) AVC Advantage Trade-In Machine for each AVC Edge II purchased and agrees to provide to the City the total trade-in credit shown on Schedule 1 provided the number of Trade-In Machines as contemplated under this Agreement are made available to the Contractor. The Contractor will be responsible for all costs and expenses related to the pick-up, removal, and shipping of the Trade-In Machines. The parties will agree on a schedule for removal of the Trade-In Machines from City facilities. Contractor will comply with any and all Current Laws concerning the removal, disposal, and/or recycling of hazardous materials, if any, contained in the Trade-In Machines.

11. **Reserved.**

12. **INTELLECTUAL PROPERTY INDEMNITY:**

A. **Sequoia Indemnity.** Sequoia shall, at its own expense, defend, indemnify and hold harmless the City against any claim asserted by any third party that the System or any component part thereof infringes a patent, copyright or other intellectual property right of a third party (an "Infringement Claim").

B. **Notice of Infringement Claim.** The Agency will: (i) notify Sequoia in writing of any Infringement Claim or alleged Infringement Claim of which Agency becomes aware within a reasonable time thereafter (not to exceed fifteen (15) days after Agency first had knowledge of same or such shorter period as may be required in order to avoid prejudice to Sequoia); (ii) not intentionally prevent or impede Sequoia from the conduct of the defense of such claim, including negotiations for settlement or compromise; (iii) provide Sequoia with reasonable assistance in conducting the defense of such claim against the City; (iv) permit Sequoia to alter the Equipment or Software, at Sequoia's expense, to render it non-infringing if such alterations are federally and State certified in advance and retain the same functionality; and (v) authorize Sequoia to procure for City the authority to continue the use and possession of the Equipment or Software at no cost or expense to City beyond sums owing under this Agreement.

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C. **Exclusions.** Sequoia shall have no obligation to indemnify the City pursuant to the preceding provision to the extent any infringement was directly caused by any combination of the Equipment or Software with any other product, system or method unless: (a) City provided prior written notification to the Contractor and received Contractor's written acceptance of the City's plan to use the Equipment or Software in combination with such product, system or method, or (b) the product, system or method is: (i) provided by Contractor; or (ii) specified by Contractor to work with the Equipment or Software. 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 which current release has been federally and State certified in advance and retains the same functionality; (ii) use of the System by the City for a purpose not in accordance with this Agreement; (iii) use of Software or Equipment which has been altered by City or any person other than Sequoia without prior authorization from 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 the Agency's use of all or any portion of the System (the "Infringing Component") (i) becomes, or in Sequoia's reasonable opinion is likely to become, the subject of an Infringement Claim; or (ii) Sequoia is unable to successfully defend against an Infringement Claim, Sequoia may at its option and expense: (a) obtain for the City the continuing right to use the Infringing Component; (b) alter the Infringing Component or replace it with a functional equivalent so long as it no longer infringes and as long as such replacement component complies with the terms of this Agreement; or, (c) if neither (a) nor (b) is, in Sequoia's sole and absolute judgment, commercially reasonably, repurchase the Infringing Component and refund to City an amount equal to the amount required to replace the Infringing Component).

13. **WARRANTIES:**

A. Contractor represents and warrants that:

1. the Software will conform to applicable specifications, will operate in compliance with applicable documentation, and will be free from material defects in materials, workmanship, design and/or performance which prevents the Software from complying with the express requirements of this Agreement;

2. it has the requisite ownership, rights and licenses to perform its obligations under this Agreement fully as contemplated hereby and to grant to the City rights under this Agreement with respect to the Software and Services free and clear from any and all liens, adverse claims, encumbrances and interests of any third party;

3. there are no pending or threatened lawsuits, claims, disputes or actions naming the Contractor as a Party: (i) alleging that any Equipment or Software infringe,

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violate or misappropriate any third party rights; or (ii) adversely affecting any Equipment, Software, or Contractor's ability to perform its obligations hereunder;

4. the Software contains no malicious or disabling code that is intended to damage, destroy or destructively alter software, hardware, systems or data;

5. the third party media on which all Software is furnished under this Agreement are and will be, to the extent possible, under normal use, free from defects in materials and workmanship; and

6. use of the System by the City as permitted hereunder will not infringe, violate, or misappropriate any other U.S. registered patent, copyright, trademark, trade secret or other intellectual property or proprietary right of any third party.

7. the System is capable of producing a voter-verified paper record of each elector's vote, pursuant to C.R.S. 1-5-801, et. seq., and is a component of Contractor's Voting System 5.0 as such system has been certified for use in the State of Colorado and is described in Schedule 4 attached hereto.

8. The intellectual property rights licensed to the City under this Agreement are sufficient for the City's use of the System for the conduct of elections in accordance with the terms of this Agreement.

B. Contractor warrants and guarantees that the System will be free from defects in materials, design, fabrication, and workmanship, fit for the purposes of conducting vote center and precinct based elections for not less than 300,000 registered voters (active and inactive), not less than 500 precincts, 1-20 districts, 1-12 political parties, and 1-500 different ballot styles including as many as 100 ballot issues, and will function in accordance with applicable specifications and documentation. The Contractor further represents and warrants that the System, and any and all components thereto, individually and collectively, is in compliance with and has been fully certified by the Colorado Secretary of State and an independent testing authority certified by the National Association of State Election Directors pursuant to any and all applicable federal, state, and local laws, statutes, ordinances, rules, and regulations, in effect as of the date of this Agreement.

In the event that any unit of Equipment purchased under this Agreement becomes defective within one (1) year from the date of the Agency's acceptance thereof or June 30, 2007, whichever is later (the "Warranty Period"), the Contractor shall provide replacement parts for the defective unit, at no expense to the City in accordance with the limited parts warranty set forth below.

#### **1. Limited Parts Warranty**

- a. 1) In the event that the Equipment fails to function substantially in accordance with the Documentation, Sequoia shall provide such replacement parts (which may be new or rebuilt at Sequoia's discretion) to the Agency as may be necessary to cause the Equipment to function substantially in accordance with the

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Documentation. Replacement parts will be provided at Sequoia's expense during the Warranty Period. Sequoia will pay for all return shipping costs for all returned Equipment covered by warranty under this Agreement.

2). In the event of a warranty claim, the Agency shall return any defective components of the Equipment to Sequoia during the Warranty Period, which defective components shall be shipped to Sequoia at Sequoia's expense and in accordance with Sequoia's instructions. Defective components shall not be returned to Sequoia until the Agency has received from Sequoia a Return Material Authorization Number ("RMA") and shipping instructions which RMA and shipping instructions shall be provided to the Agency within three (3) business days of the Agency's request. Defective components shall be shipped to Sequoia at Sequoia's expense pursuant to the RMA and Sequoia's shipping instructions. Replacement parts will be sent to the Agency by Sequoia in accordance with the foregoing procedures (i) within thirty (30) days of receipt by Sequoia or, (ii) where feasible, within fourteen (14) days prior to an election. Any required special handling or expedited shipping shall be at the Agency's sole expense. The Agency shall be solely responsible for removal and reinstallation of any replaced components.

b. During the Warranty Period, Sequoia will provide telephone support to answer questions concerning the use or repair of the System on normal business days between the hours of 8:00 a.m. and 5:00 p.m., PST.

c. During the Warranty Period, Sequoia will provide to the City upgrades to the Firmware which may become available from time to time, at no additional cost to the City, unless additional or new program or configuration chips are necessary (in which case the City shall purchase such chips at the cost then in effect). Such upgrades shall be installed by the Agency

**d. Limitations**

1. Notwithstanding any other terms or provisions of this Agreement, Sequoia is not obligated to repair or replace, and Sequoia's warranty obligations under this Section 13 shall not be applicable to, any of the following:

- 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 Documentation 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 the City's employees or persons under the City's direct supervision,
- g. equipment that in Sequoia's reasonable opinion cannot be repaired to a maintainable condition for reasons outside Sequoia's reasonable control.

2. City's remedy under this warranty provision, provided that the City has timely complied with any and all notice requirements to the Contractor, and Contractor's entire liability under this Warranty, will be for the Contractor to make all necessary adjustments and repairs, or, at Contractor's option, replace or substitute equipment to keep the equipment in good operating condition in accordance with the manufacturer's policies then in effect. Nothing in this warranty shall be construed to limit any rights or remedies which the City may otherwise have under this Agreement or by operation of law.

**C. 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.**

**14. CHANGE CONTROL:**

**A.** Should the Agency wish to make any changes to the Equipment, Software or System, the Agency shall submit to Sequoia full particulars and specifications in writing of such proposed changes. If Sequoia, in its sole and absolute discretion, deems the requested changes or modifications to be technically and commercially feasible, Sequoia shall within a reasonable time after receipt of such a submission from the Agency, submit to the Agency a quotation for developing and implementing such modifications or changes, specifying any impact on the pricing and project schedule hereof.

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- B. Upon receipt of such quotation, Agency may elect to:
1. Accept such quotation by written notice to Sequoia within ten (10) days of receipt of such quotation; or
  2. 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. within ten (10) days of receipt of such quotation, provide Sequoia written notice of the City's intent 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; or
  4. fail to timely perform one (1) of the previous three (3) options of this Section 14, whereupon the Agency will be deemed to reject the quotation, in which case this Agreement shall continue unchanged.

C. If Sequoia wishes to suggest changes to the Equipment, Software or System, it shall submit to the Agency a description of such proposed changes including any effect on the pricing and project schedule. The Agency 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 mutually agreed upon and signed by both parties.

15. **FORCE MAJEURE:** If any party to this Agreement is rendered unable, wholly or in part, by an event of force majeure or any other cause not reasonably within its control, to perform or comply with any obligation or condition of this Agreement, such party shall, upon giving notice and reasonably full particulars to the other parties, be relieved of such obligation or condition during the continuance of such inability. The term "force majeure" shall include acts of God and the public enemy, the elements, fire, accidents, breakdowns, strikes and any other industrial, civil or public disturbance, inability to obtain materials, supplies, permits or labor, and any laws, orders, rules, regulations, acts or restraints of any government of governmental body or authority, civil or military.

16. **ESCROW:** Contractor represents that it has deposited or will deposit on or before the full execution of this Agreement, and continuously thereafter, the Software in source code form or any code or materials necessary to access and utilize the source code to the Software or Firmware with the Colorado Secretary of State or an independent escrow agent approved by the Colorado Secretary of State and the national software reference library of the National Institute of Standards and Technology pursuant to C.R.S. 1-7-511, et. seq. The following events automatically will give City

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the right to cause the release of the applicable source code from any such party or escrow agent, upon notice to the Contractor or presentation of this Agreement to escrow agent or party holding the Software in escrow: (i) the institution by or against the Contractor of insolvency, receivership or bankruptcy proceedings; (ii) Contractor's making an assignment for the benefit of creditors; (iii) Contractor's dissolution or ceasing its ongoing business operations or sale, licensing, maintenance or other support of the Software; or (iv) the Contractor's assignment or transfer of its rights or obligations under this Agreement without the City's prior written consent which shall not be unreasonably withheld.

**17. TERMINATION:**

A. **By the City.** The City may, by written Notice of Default to the Contractor, terminate the whole or any part of this Agreement in the event the Contractor or any of its officers are convicted, plead nolo contendere, or enter into a formal agreement for deferred prosecution or sentencing, in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion, violation of the Racketeer Influenced and Corrupt Organizations Act (R.I.C.O.) or substantially similar state statute or any offense of a similar nature, in connection with the Contractor's business.

B. **By the Contractor.** Sequoia may terminate this Agreement by written notice to Agency if the Agency fails to pay any sum owing to Sequoia and has not corrected said nonpayment within thirty (30) days of receipt of Contractor's notice of late payment. Notwithstanding anything to the contrary herein, the Contractor will not have the right of termination of this Agreement within thirty (30) days before or after a federal, state, or municipal election occurring during the Term hereof.

C. **By Either Party.** Either party may terminate this Agreement by written notice to the other if 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 (or within such longer period as agreed upon by the parties in writing).

D. **Software and Firmware License.** Upon the early termination of this Agreement, the Software and Firmware License and provisions contained in Section 3, B and all of the City's rights thereunder shall terminate.

E. **Effect of Termination.** In the event this Agreement is terminated early for any reason, all amounts owing to Sequoia accrued prior to such termination shall be immediately due and payable. Such termination shall not affect the rights of the parties accrued prior to the date of termination. Upon receipt of all amounts owed to Contractor prior to termination, Contractor will have no claim of any kind for payment against the City.

18. **STATUS OF CONTRACTOR:** It is understood and agreed that the status of the Contractor shall be that of an independent contractor and a person retained on a  
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contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.1 E. (x) of the Charter of the City and it is not intended, nor shall it be construed, that the Contractor or its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code or for any purpose whatsoever.

**19. EXAMINATION OF RECORDS:** The Contractor agrees that any duly authorized representative of the State of Colorado or the City, including the City Auditor, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions related to this Agreement.

A. The Contractor agrees that the Controller General of the United States of America or his authorized representative, any duly authorized representative of the federal Election Assistance Commission, any duly authorized representative of the City, including the City Auditor or his representative, or any duly authorized representative of the State of Colorado, shall, until the expiration of five years after the final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor involving payment transactions related to this Agreement. If said records exist in electronic form, the Contractor shall maintain a means of transferring said records to hardcopy form.

B. The Contractor acknowledges that it is subject to any and all applicable regulations or guidance of the United States Office of Management and Budget that are directly pertinent to the transactions under this Agreement.

C. The Contractor shall keep true and complete records, and shall, upon request of an authorized representative of an entity listed in Section 19, A above, annually furnish an accurate statement for the preceding calendar year, of all business transactions under this Agreement, which statement shall be certified by an authorized representative of the Contractor to be correct.

**20. WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any action by the City hereunder constitute or be construed to be a waiver by the City of any breach of covenant or default which may then exist on the part of the Contractor, and the City's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the City with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

**21. INSURANCE:**

A. **General Conditions.** Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or

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services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period and for three (3) years of the Agreement. The required insurance shall be underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as "A"VIII or better. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or should any coverage be reduced before the expiration date thereof, the issuing company shall send written notice to the Denver Risk Administrator (the "Administrator"), 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202 by certified mail, return receipt requested. Such written notice shall be sent thirty (30) days prior to such cancellation or reduction unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. The City reserves the right to require the Contractor to provide a bond, at no cost to the City, in the amount of the deductible or self-insured retention to guarantee payment of claims. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

**B. Proof of Insurance.** Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor further agrees to have its agent or broker provide proof of Contractor's required insurance on [www.Ins-Cert.com](http://www.Ins-Cert.com) and link the information to the City. The City reserves the right to require the Contractor to provide a certificate of insurance or other proof of insurance as required by the Administrator in his sole discretion.

**C. Additional Insureds.** For general liability, Contractor's insurer shall name the City, the City officers and employees as an additional insured.

**D. Waiver of Subrogation.** For all coverages, Contractor's insurer shall waive subrogation rights against the City.

**E. Subcontractors.** All subcontractors, independent contractors, suppliers or other entities providing goods or services required by this Agreement shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such subcontractors, independent contractors, suppliers or other entities as insureds under its policies or shall ensure that all subcontractors maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors, independent contractors, suppliers or other entities upon request by the City.

**F. Workers' Compensation/Employer's Liability Insurance.** Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability Insurance with limits of One Hundred Thousand Dollars (\$100,000.00) for each bodily injury occurrence claim, \$100,000 for each bodily injury

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caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.

G. **General Liability.** Contractor shall maintain limits of \$1,000,000 for each occurrence claim, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations for each occurrence, and at a minimum \$2,000,000 policy aggregate.

H. **Automobile Liability.** Contractor shall maintain combined single limits of \$1,000,000 damage applicable to all vehicles operating on City property and elsewhere.

I. **Professional Liability - Software Errors & Omissions.** Contractor shall maintain limits of \$1,000,000 for each claim, and \$1,000,000 aggregate limit for all claims.

J. **Additional Provisions.**

A. For all general liability and professional liability, the policies must provide the following:

- (1) If any aggregate limit is reduced by twenty-five percent (25%) or more by paid or reserved claims, the Contractor shall notify the City within ten (10) days and reinstate the aggregates required;
- (2) Contractual liability covering the indemnification provisions of this Agreement;
- (3) A severability of interests provision;
- (4) On the general liability policy, delete the exclusion for lawsuits by one insured against another;
- (5) A provision that coverage is primary; and
- (6) A provision that coverage is non-contributory with other coverage or self-insurance provided by the City.

B. For all general liability and professional liability, if the policy is a claims-made policy, then the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

22. **INDEMNIFICATION:** The Contractor shall defend, release, indemnify and save and hold harmless the City (including but not limited to its employees, elected and appointed officials, and representatives) against any and all claims, demands suits, actions, liabilities, causes of action or legal or equitable

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proceedings of any kind or nature, including workers' compensation claims, of or by anyone whomsoever, in any way resulting from or arising out of, directly or indirectly, from personal injury or property damage caused by: 1) the Contractor's performance of the work to be performed under this Agreement or the Contractor's activities in connection herewith, including negligence or tortuous acts, errors, or omissions of the Contractor or its officers, employees, representatives, suppliers, invitees, licensees, subconsultants, subcontractors, and agents, or 2) any breach of this Agreement by Contractor, provided, however, that the Contractor need not indemnify and save harmless the City, its officers, agents, and employees from damages to the extent resulting from the negligence of the City's officers, agents, and employees. This indemnification obligation shall survive the expiration or early termination of this Agreement.

**23. COLORADO GOVERNMENTAL IMMUNITY ACT:** The parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, *et seq.*, C.R.S. (2005). Notwithstanding any other term to the contrary in this Agreement or any attachment or exhibit hereto, the City cannot, and by this Agreement does not agree to indemnify, hold harmless, exonerate, or assume the defense of the Contractor or any other person or entity whatsoever, for any purpose whatsoever. The City and County of Denver, as a public entity supported by tax monies, in execution of its public trust, cannot and does not agree to waive any lawful or legitimate right to recover monies lawfully due it. The Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City may have to recover actual lawful damages in any court of law under Colorado or other applicable law.

**24. TAXES, CHARGES AND PENALTIES:**

A. The City shall not be liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* The City is exempt from Federal Excise Tax pursuant to Registration No. A-138560, dated April 5, 1980, and from State sales tax pursuant to Colorado State Sales Tax Exemption Number 98-02890. The price list contained in Schedule 1 shall reflect any and all applicable tax exemptions.

B. The Contractor shall promptly pay when due all taxes, excises, license fees and permit fees of whatever nature applicable to its operations, and to take out and keep current all required licenses, municipal, state or federal, required for the conduct of its business hereunder, and further agrees not to permit any of said taxes, excises or license fees to become delinquent. The Contractor further agrees to furnish the City, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment by Contractor of all required licenses and all taxes. The Contractor will allow no lien, mortgage, judgment, or execution to be filed against any City property, whether real property or personal property including but not limited to the Equipment set forth on

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Schedule 1. 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.

25. **ASSIGNMENT AND SUBCONTRACTING:** The City is not obligated or liable under this Agreement to any party other than the Contractor named herein. The Contractor understands and agrees that it shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City, which consent or approval shall not be unreasonably withheld; and in the event any such assignment or subcontracting shall occur, such action shall not be construed to create any contractual relationship between the City and such assignee or subcontractor, and the Contractor herein named shall remain fully responsible to the City according to the terms of this Agreement.

26. **NO THIRD PARTY BENEFICIARY:** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreements. It is the express intention of the City and the Contractor that any person other than the City or the Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

27. **NO AUTHORITY TO BIND CITY TO CONTRACTS:** The Contractor has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City, as required by Charter and ordinance.

28. **AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** This Agreement, including the exhibits attached and/or referenced hereto (each of which is specifically incorporated herein), is intended as the complete integration of all understandings between the parties. No prior contemporaneous or subsequent addition, deletion, or other amendment hereto shall have any force or effect, unless embodied herein in writing, and executed in the same manner as this Agreement. No oral representation by any officer or employee of the City at variance with the terms and conditions of this Agreement or any written amendment to this Agreement shall have any force or effect nor bind the City. Amendments to this Agreement will become effective when approved by both parties and executed in the same manner as this Agreement.

29. **SEVERABILITY:** The parties agree that if any provision of this Agreement or any portion thereof is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity of the remaining portions or provisions shall not be affected.

30. **CONFLICT OF INTEREST:** The parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property

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described herein and the Contractor further agrees not to hire or contract for services any employee or officer of the City which would be in violation of the Denver Revised Municipal Code, Chapter 2, Article IV, Code of Ethics, or Denver City Charter §§ 1.2.8, 1.2.9, and 1.2.12.

The Contractor agrees that it will not engage in any transaction, activity or conduct which would result in a conflict of interest under this Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after it has given the Contractor written notice which describes the conflict. The Contractor shall have thirty (30) days after the notice is received to eliminate or cure the conflict of interest (or within such longer period as is required to complete the cure provided Contractor commences to cure within such thirty (30) day period and thereafter diligently pursues a cure) in a manner which is acceptable to the City.

**31. NOTICES:** Notices concerning the termination of this Agreement, notices of alleged or actual violations of the terms or conditions of this Agreement, and other notices of similar importance shall be made:

By Contractor to:

Executive Director  
Denver Election Commission  
303 West Colfax Avenue, No. Dept 101  
Denver, Colorado 80202  
Alton.Dillard@ci.denver.co.us

With a copy to:

Clerk and Recorder  
City and County of Denver  
201 West Colfax Avenue, Dept. 101  
Denver, Colorado 80202  
Wayne.Vaden@ci.denver.co.us

And by the City to:

Attn: Peter McManemy, VP/CFO  
Sequoia Voting Systems, Inc.,  
7677 Oakport Street, Suite 800  
Oakport, CA 94821  
pmcmanemy@sequoiavote.com

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Any notices given under this Agreement are deemed to have been received and to be effective: 1) three (3) days after the same shall have been mailed by certified mail, return receipt requested; 2) immediately upon hand delivery; 3) immediately upon receipt of confirmation that a facsimile transmission was received; or 4) immediately upon receipt of confirmation that a computerized electronic mail transmission was received. The addresses and/or names of individuals may be changed by the parties by written notice.

32. **DISPUTES:** All disputes of whatsoever nature between the City and Contractor regarding this Agreement shall be resolved by administrative hearings pursuant to the procedure established by Denver Revised Municipal Code, § 56-106(b), *et. seq.* For the purposes of that procedure, the City official rendering a final determination shall be the Agency's Executive Director acting by and through an independent hearing officer.

33. **GOVERNING LAW; VENUE:** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, and the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted and/or promulgated pursuant thereto, including any amendments. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver.

34. **NONDISCLOSURE OF CONFIDENTIAL INFORMATION:**

A. By virtue of this Agreement, the Parties may have access to information that is confidential to one another ("Confidential Information"). Subject to Section 34 E below, each Party agrees to disclose only information that is required for performance of obligations under this Agreement. Confidential Information shall be limited to communications which a reasonable person would recognize from the surrounding facts and circumstances to be confidential or secret, and all information clearly identified as confidential. Contractor represents that examples of the foregoing may include, but are not limited to, Contractor's pricing, products, trade secrets and other information which is competitively sensitive and proprietary, any of which may be disclosed to City orally or in writing, in tangible or intangible form, including, without limitation, technical, operating, business, marketing and financial information, and computer software and data. City therefore agrees, to the maximum extent permitted by law, to endeavor to keep confidential and not to disclose any of the Confidential Information to any other person or entity, or to use such Confidential Information for any other purpose other than as expressly contemplated by this Agreement.

B. A Party's Confidential Information shall not include information that:  
(a) is or becomes a part of the public domain through no act or omission of the other

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Party; (b) was in the other Party's lawful possession prior to the disclosure and had not been obtained by the other Party either directly or indirectly from the disclosing Party; (c) is lawfully disclosed to the other Party by a third party without restriction on the disclosure; or (d) is independently developed by the other Party.

C. Nothing shall prevent either Party from disclosing confidential information in any legal proceeding arising from or in connection with this agreement or disclosing the information to a federal or state governmental entity as required by law.

D. Nothing in this Agreement precludes either party from using and/or disclosing General Knowledge. "General Knowledge" means generalized know-how, ideas, concepts, processes, information or techniques related to information technology that are retained solely in intangible form in the unaided memories of a party's representatives who, although the party's representatives may have had access to the Proprietary Data under this Agreement, will not knowingly or purposefully use their access to or knowledge of the Proprietary Data or Confidential Information. The use of General Knowledge shall not be deemed to impair: (a) a party's rights in and to its valid patents, copyrights, trademarks or trade secrets or (b) a third party's rights in and to its valid patents, copyrights, trademarks or trade secrets that are contained in any third-party materials provided by the disclosing party under this Agreement.

E. Notwithstanding anything to the contrary in this Agreement, the parties acknowledge that this Agreement and any and all information received by the City from the Contractor, whether marked as confidential or not, is subject to the Colorado Open Records Act, C.R.S. § 24-72-201, et. seq. In the event the City receives an open records request relating to this Agreement or the license or services provided hereunder, it shall advise the Contractor of such request immediately upon receipt thereof to give the Contractor the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. The Contractor further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claims, damages, expenses, losses or costs arising out of the Contractor's intervention to protect and assert its claim of privilege against disclosure under this Section including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

35. **LEGAL AUTHORITY:** Contractor assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

The person or persons signing and executing this Agreement on behalf of Contractor, do hereby warrant and guarantee that he/she or they have been fully authorized by Contractor to execute this Agreement on behalf of Contractor and to

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validly and legally bind Contractor to all the terms, performances and provisions herein set forth.

The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into this Agreement.

**36. NO CONSTRUCTION AGAINST DRAFTING PARTY:** Each of the Parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any Party merely because this Agreement or any of its provisions, have been prepared by a particular Party.

**37. COMPLIANCE WITH LAWS:** The Contractor represents that the System, Software, Upgrades, Firmware, and Equipment complies with all applicable laws and governmental regulations existing and in effect on the date of this Agreement ("Current Laws"). If in the future Current Laws shall be changed or interpreted or enforced in a manner not in effect on the date of this Agreement, or if new applicable laws should be enacted (all of the foregoing being collectively referred to as "Future Laws"), Sequoia shall not be obligated to cause the Software, Upgrades, Firmware or Equipment to comply with Future Laws. Notwithstanding the foregoing, Sequoia will cause the Software, Upgrades, Firmware or Equipment to comply with Future Laws, but only if (i) Sequoia, in its sole discretion which shall not be unreasonably withheld, deems changes to the Software, Upgrades, Firmware and Equipment necessary to comply with Future Laws to be technically and commercially feasible and (ii) Sequoia receives as compensation, by amendment to this Agreement or by a new Agreement between the parties executed in the same format as this Agreement, for such changes an amount equal to Contractor's then current rates for such changes. In particular, but not by way of limitation, Sequoia represents and assures that the System is fully compliant with the following Current Laws: The Help America Vote Act, Section 301, 42 U.S.C. 15481, et. seq.; Title 1 of the Colorado Revised Statutes; Election Rules of the Colorado Secretary of State, 8 CCR 1501-1, et. seq.; and All applicable rules, guidelines, or voting systems standards adopted by the federal Election Assistance Commission (including the EAC's 2005 Voluntary Voting Systems Guidelines).

By its signature below, the Contractor assures and certifies that in the provision of services hereunder it will strictly comply with all applicable Current Laws that directly pertain to its performance under this Agreement whether or not specifically referenced herein. Any references to specific state or federal requirements incorporated into this Agreement are not intended to constitute an exhaustive list of Federal, State, and City requirements applicable to this Agreement. Applicable statutes, regulations and other documents pertaining to administration or enforcement of the services referenced in this Agreement and all other applicable provisions of federal, state or local law are deemed to be incorporated herein by reference. Compliance with all such statutes, regulations and other documents is the responsibility of the Contractor. In particular, and not by way of limitation, the Contractor shall comply with the following additional federal requirements:

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A. The Help America Vote Act, Section 301, 42 U.S.C. 15481, et. seq.;

B. Title 1 of the Colorado Revised Statutes; Election Rules of the Colorado Secretary of State, 8 CCR 1501-1, et. seq.;

C. All applicable rules, guidelines, or voting systems standards adopted by the federal Election Assistance Commission (including the EAC's 2005 Voluntary Voting Systems Guidelines);

D. Debarment. If required by applicable federal law, the Contractor is subject to the prohibitions on contracting with a debarred organization set out in U.S. Executive Order 12549, Debarment and Suspension implemented at 49 C.F.R. Part 29. By its signature below, the Contractor assures and certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. The Contractor shall provide immediate written notice to the Manager if at any time it learns that its certification to enter into this Agreement was erroneous when submitted or has become erroneous by reason of changed circumstances. If the Contractor is unable to certify to any of the statements in the certification contained in this section 37D, the Contractor shall provide a written explanation to the City within thirty (30) calendar days of the date of execution of this Agreement. Furthermore, if the Contractor is unable to certify to any of the statements in the certification contained in this Section 37D, the City may pursue any and all available remedies available to the City, including but not limited to terminating this Agreement immediately, upon written notice to the Contractor. The Contractor shall include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction" as such clause is set forth at 49 C.F.R. Part 29, in all covered transactions associated with this Agreement. The Contractor is responsible for determining the method and frequency of its determination of compliance with Executive Orders 12549 and 12689 and their implementing regulations.

E. Prohibited Transactions.

1. Interest of Contractor. The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Contractor further covenants that in the performance of this Agreement; no person having any such interest will be employed.

2. Members of Congress. No member of or delegate to the Congress of the United States of America shall be admitted to any share or part hereof or to any benefit to arise from this Agreement.

3. City Employees. No officer or employee of either the City or the Contractor shall derive any unlawful personal gain, either by salary, fee payment or personal allowance, from his or her association with the other party to this Agreement. Any contractual provision that contravenes the provisions of this section shall be null and void. This section shall not prohibit an officer or administrator of one party to this Agreement from being reimbursed by the other party for actual, out-of-pocket expenses incurred on behalf of the other party.

4. No Political Activity. Without limiting the foregoing, the Contractor agrees that political activities are prohibited under this Agreement, and agrees that no funds paid to it by the City hereunder will be used to provide transportation for any persons to polling places or to provide any other services in connection with elections.

F. The Drug-Free Workplace Act of 1988 as codified at 41 U.S.C. 701, et. seq.;

G. City and County of Denver Executive Order No. 94 concerning the use, possession or sale of alcohol or drugs. The Contractor, its officers, agents and employees shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring the Contractor's personnel from City facilities or participating in City operations;

H. "New Restrictions on Lobbying" as set forth at 31 U.S.C. Sec. 1352, et. seq., and all applicable implementing regulations. Contractor assures and certifies that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

I. The Americans with Disabilities Act as codified at 42 U.S.C. 12101 et. seq.;

J. City and County of Denver policy concerning nondiscrimination in employment. In connection with the performance of work under this Agreement, the Contractor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Contractor further agrees to insert the foregoing provision in all subcontracts hereunder;

K. Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, and the Age Discrimination Act of 1975;

L. OMB Circulars A21, A87, A110, A124, and A133, as applicable; and

M. The Williams-Steiger Occupational Safety and Health Act of 1970 (Public Law 91-596), as well as with other applicable federal, state, and local codes, including City and County of Denver Codes.

**38. AGREEMENT SUBJECT STATE SUBGRANT AGREEMENT/STATE APPROVAL REQUIRED:**

A. This Agreement is subject to all of the terms and conditions of that certain Intergovernmental Subgrant Agreement With Denver City and County For the Purchase or Lease of HAVA Sec. 301-Complaint Voting Systems, City Contract Control No. GC 60003, between the City and the State of Colorado, whether or not any such terms or conditions are set forth in the text of this Agreement. The terms and conditions of said Subgrant are incorporated herein by reference.

B. This Agreement is subject to, and contingent upon, the prior written approval of the Colorado Secretary of State.

**39. SURVIVAL OF CERTAIN PROVISIONS:** The parties understand and agree that all terms and conditions of this Agreement, together with the exhibits and attachments hereto, which, by reasonable implication, contemplate continued performance or compliance beyond the termination of this Agreement, (by expiration of the term or otherwise), shall survive such termination and shall continue to be enforceable as provided herein. Without limiting the generality of this provision, the Warranty, Indemnity, Insurance, Contract Documents, Developmental Intellectual Property Rights, NonDisclosure of Confidential Information, Limitation of Contractors Liability, and Agreement as Complete Integration-Amendments provisions of this Agreement shall survive any termination effected hereunder.

**40. INUREMENT:** The rights and obligations of the parties herein set forth shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns permitted under this Agreement.

**41. TIME IS OF THE ESSENCE:** The parties agree that time is of the essence concerning the Contractor's performance of the terms, conditions, and requirements of this Agreement.

**42. PARAGRAPH HEADINGS:** The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

**43. CITY EXECUTION OF AGREEMENT:** This Agreement is expressly subject to, and shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.

**44. COUNTERPARTS OF THIS AGREEMENT:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

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**45. LIMITATION OF CONTRACTOR'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 MAXIMUM CONTRACT AMOUNT. 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 CITY 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. THIS SECTION 45 SHALL IN NO WAY LIMIT SEQUOIA'S INDEMNIFICATION OBLIGATIONS EXPRESSLY CONTAINED IN THIS AGREEMENT.

**BALANCE OF PAGE INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written

ATTEST: DEPUTY CITY CLERK CITY AND COUNTY OF DENVER

By: Wanda Vincent  
WAYNE E. VADEN, Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver



[Signature]  
MAYOR

RECOMMENDED AND APPROVED:

By: [Signature]  
Executive Director,  
Denver Election Commission

By: [Signature]  
Clerk and Recorder, Ex-Officio Member  
Denver Election Commission

APPROVED AS TO FORM:

COLE FINEGAN,  
Attorney for the  
City and County of Denver

By: Victoria Orban  
Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By: [Signature]  
Auditor  
Contract Control No. GE 61152

GE  
6

"CITY"

SEQUOIA VOTING SYSTEMS, INC.

I.R.S. Identification No.

By: [Signature]

Name: P. M. MALEWICZ  
(Please Print)

Title: VP. CFO

"CONTRACTOR"

Schedules 1-4

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**SCHEDULE I**

**DESCRIPTION OF EQUIPMENT, SOFTWARE AND PRICING/PAYMENT TERMS**

Equipment	Selling Price Per Unit	Quantity	Sub-Total	Freight	Total
<b>AVC Edge Voting Units</b>					
AVC Edge II v. 5.024	3,250.00	80	260,000.00	1,600.00	261,600.00
Advantage Trade-in	-350.00	80	-28,000.00		-28,000.00
VeriVote™ rev "B"	995.00	80	79,600.00		79,600.00
Wheels & Handles Cover	150.00	80	12,000.00		12,000.00
Transportation Carts (5 units per cart)	500.00	16	8,000.00		8,000.00
<b>AVC Edge Audio Voting</b>					
Audio Keypad & Headset Kit rev "C"	250.00	50	12,500.00		12,500.00
<b>AVC Edge Card Activator</b>					
Card Activator v. 5.0.21	700.00	50	35,000.00		35,000.00
Voter Cards	3.00	500	1,500.00		1,500.00
<b>AVC Edge Ancillary Equipment</b>					
Vote Simulation Cartridges	100.00	10	1,000.00		1,000.00
Results Cartridges	150.00	10	1,500.00		1,500.00
Cartridge Tray	60.00	2	120.00		120.00
Cords 2'	2.00	80	160.00		160.00
Cords 10'	3.00	16	48.00		48.00
<b>WinEDS Application</b>					
WinEDS Application Upgrade	Included				Included
<b>Installation &amp; Training</b>					
Installation & Training	75,000.00	1	75,000.00		75,000.00
<b>Total Equipment &amp; Software</b>					<b>468,028.00</b>

One Year Parts Only Warranty Included on all products.

## SCHEDULE 2

### MAINTENANCE SERVICES/ADDITIONAL SERVICES

#### Optional Extended Warranty –Edge, VVPAT, and Card Activator

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

If the County elects to pay annual maintenance fees up front through 2010, there will be no annual increase in maintenance fees, therefore the County will pay the 2006 price, less a ten percent (10%) discount, for all consecutive years paid in advance. If the County does not pay the annual maintenance fees in advance, the following annual license fees will be in effect for the first year of Extended Warranty. Sequoia reserves the right to adjust the annual maintenance on a yearly basis notifying the County at the time of annual renewal. All payments are due Net 30 Days from date of invoice.

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

AVC Edge® - \$100.00 per year, per unit  
VVPAT - \$50.00 per year, per unit  
Card Activator - \$30.00 per year, per unit.

The Extended Warranty -- **Parts Replacement Only** begins one year after date of acceptance of equipment under the Purchase Agreement (upon expiration of Limited Parts Warranty). If County chooses to exercise the Extended Warranty -- **Parts Replacement Only**, County shall inform Sequoia in writing 60 days prior to the annual date of acceptance (expiration of Limited Parts Warranty or, if applicable, expiration of previous year of Extended Warranty).

The County will identify parts that need replacement and will ship to Sequoia, with proper paperwork to identify part for replacement. Sequoia will return the replacement part to the County. This is a parts replacement only warranty, which does include freight both ways. The County will perform such tasks necessary to replace the part on the equipment. If County chooses to have a Sequoia technician repair the units, an additional billing of the prevailing labor rates will be charged.

In the event that firmware upgrades are available for the AVC Edge, the County will receive the firmware at no additional cost if the County is current with all Warranty charges are current. The County will be responsible for loading the firmware.

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

AVC Edge® - \$150.00 per year, per unit  
VVPAT - \$50.00 per year, per unit  
Card Activator - \$30.00 per year, per unit.

The Extended Warranty, including Parts and one Annual Maintenance Visit, begins one year after date of acceptance of equipment under the Purchase Agreement (upon expiration of Limited Parts Warranty). If County chooses to exercise the Extended Warranty, including Parts and one Annual Maintenance Visit, County shall inform Sequoia in writing 60 days prior to the annual date of acceptance (expiration of Limited Parts Warranty or, if applicable, expiration of previous year of Extended Warranty).

Once annually, Sequoia will travel to the County and repair any units that have been identified by the County as needing attention. If the Sequoia technician requires additional parts, said equipment may have to be shipped to a Sequoia facility for repairs or Sequoia may choose to return once the parts are available. If units are shipped to a Sequoia Facility for repairs, the County will pay the cost of freight to the Sequoia facility and Sequoia will pay return freight to the County. Scheduling of the annual visit (which is to be scheduled at least 30 days in advance) will be finalized between the County and the assigned Project Manager.

**\*The Extended Warranty, including Parts and one Annual Maintenance Visit, is only available to the County if the AVC Edge® equipment is included in the purchased warranty package. For clarification: the VVPAT, Card Activator, or Insight are not available for the Extended Warranty with one Annual Maintenance Visit unless the AVC Edge® equipment is included in the package.**

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

The Extended Warranty/Preventative Maintenance (EW/PM) Plan on the Optech 400-C Ballot Counter includes one EW/PM on-site visit at \$6,000 per unit per year. County is responsible for the technician's travel and expenses. This test which is expected to be scheduled at least 30 calendar days prior to requested test date will be finalized between the County and the assigned Project Manager. Sequoia will perform an annual inspection and will replace any and all parts that fail due to normal use. The technician will repair any necessary repairs encountered from the PM test and all parts are included.

If the County requires Sequoia to make additional trips to County and said trip is scheduled at least 30 calendar days prior to requested test date, Sequoia will bill County \$175 per hour of time servicing the equipment with a minimum of 8 hours and actual travel expenses. If the County requires Sequoia to make additional trips to County and said trip is scheduled less than 30 calendar days prior to requested test date or is considered an emergency, Sequoia will bill County \$250 per hour of time servicing the

equipment with a minimum of 8 hours and actual travel expenses. Parts are included in additional or emergency trips.

**D. Additional Support & Service Fees**

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

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

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

**E. 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 \$0.375/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.

**Schedule 3**  
**IMPLEMENTATION AND TRAINING**

A. Scope of Work

Sequoia Voting Systems has developed a comprehensive training curriculum which is designed to transfer knowledge of all system functionality to our customers. The curriculum includes on-site, one-on-one, hands-on training as well as small student/trainer ratio classroom lecture and demonstration sessions. During the Transition Planning phase, Sequoia will work with the City to establish a complete and thorough training program for the City's staff and poll workers. Sequoia's project manager will oversee, perform and schedule the following activities:

B. Acceptance Testing Training

Sequoia will train appropriate staff the process of Acceptance testing. Conducting an acceptance test plan requires well-kept records. To help you do this we will provide forms. One form is an Acceptance Test Log, used as a control sheet showing, equipment received, tested and accepted. The second form is a Machine Log, used to track each unit and will contain the results of each test conducted.

C. Warehouse and Logistics Training

The Sequoia staff will show how the voting units should be stored and the batteries should be charged. Logistics will be discussed concerning the Election Preparation and how voting units will be brought to the Testing Area, tested and returned to their assigned bay. The numbering and organizational system for the voting units or Transportation Carts will be explained. All aspects of the efficient operations, including the delivery of the voting units and ancillary equipment to the polling place will be taught.

D. Equipment Training

The following items will be covered:  
System hardware operations  
Routine cleaning  
Diagnostic testing  
Replacement of consumable supplies  
Replacement of system parts  
System and transportation requirements  
System preparation for Election Day

E. WinEDS Training

WinEDS Training is provided to designated City staff who are involved in either the election creation or election night tally activities.

F. Poll Worker Training

The following items are addressed in Poll Worker training. Each City differs in their approach and therefore Sequoia's Project Manager will adjust the class accordingly.

- System operations
- Poll arrangements and preparation
- Poll opening routines
- Voting procedures
- Voter demonstration and assistance
- Poll closing routines
- Reporting routines

**G. Voter Outreach**

Sequoia will assist the City in identifying the demographics, special interest community and political organizations, community newspapers and television reporters, community gathering places, and to establish a calendar of outreach events to cover all geographical areas of the county and all insular communities, communities of interest and special interest groups. Sequoia believes it is essential to involve members of the disabled community and representatives of the special language groups to participate in establishing this calendar of outreach events to ensure adequate coverage for these special needs/interest groups.

**H. Election Support**

- Early Voting Support August 2006 Primary – On-site day one support
- August 2006 Primary Election – On-Site support
- Early Voting Support November 2006 General Election– On-site day one support.
- November 2006 General Election– On-Site support

**I. Post Election Support**

- Election Canvas and Certification
- Recount if needed.

**J. Training**

Product	Course	Number of Days
Edge II / VeriVote	Acceptance Test Training	1
	Operations and General Maintenance	1
	Technician Training	12
400C	Operations and General Maintenance	12
	Technician Training	2
WinEDS	WinEDS Overview	1
Pollworker	Train the Trainer & Observation of Classes	3



**Schedule 4**

**Follows this page**

**STATE OF COLORADO**  
**Department of State**

1700 Broadway, Suite 270  
Denver, CO 80290



**Gigi Dennis**  
Secretary of State

**John Gardner**  
Voting System Specialist

March 30, 2006

Sequoia Voting Systems  
Mr. Paul Nolte  
Certification Manager  
13301 Rivercrest Dr.  
Little Rock, AR 72212

Dear Mr. Nolte:

I am pleased to inform you that the Sequoia Voting System 5.0 appears to be in compliance with the requirements of the Colorado Revised Statutes. The voting system certification contains the following components:

- WinEDS v 3.1
- AVC Edge II DRE Firmware v. 5.0.24
- Optech Insight Precinct/Absentee Ballot Scanner v. HPX 1.42, APX 2.10
- Optech 400-C Central Count / Absentee Scanner v. 1.12.4
- Veri-Vote Printer Rev. "B"
- Audio Accessory Rev. "C"
- Card Activator Firmware v. 5.0.21

Therefore, the "Sequoia 5.0" voting system and applicable components are hereby certified for use in the State of Colorado. Enclosed is a Certificate of Approval for Voting System Use of the aforementioned equipment. As mentioned on the certificate, and in our discussions, the AVC Edge II DRE does not meet the current requirements for Provisional Ballot processing, and as such cannot be used for this type of voting.

Pursuant to Colorado Revised Statutes Title 1, Article 5, Section 6 this office will be preparing a qualification report including the detailed results and findings of our certification testing.

If this office can be of further assistance, please call 303-894-2200 ext. 6318.

Sincerely,

Ginette Dennis  
Secretary of State

Main Number (303) 894-2200  
TDD (303) 894-4867  
Fax - Administration (303) 894-4861

Web Site  
E-mail

www.sos.state.co.us  
john.gardner@sos.state.co.us

**CERTIFICATE OF APPROVAL  
FOR VOTING SYSTEM USE:**



Awarded to:

**SEQUOIA VOTING SYSTEMS  
VOTING SYSTEM "5.0" AND COMPONENTS**

*This shall certify that the following components of the Sequoia Voting System 5.0, have met the requirements of the National Association of State Election Directors (NASED), and the requirements in accordance with Colorado Revised Statutes Title 1, Article 5, Part 6. Please refer to the qualification report for additional information regarding this voting system. The following components are included:*

- WinEDS v. 3.1
- AVC Edge II DRE Firmware v. 5.0.24
- Optech Insight Precinct/Absentee Ballot Scanner v. HPX 1.42. APX 2.10
- Optech 400-C Central Count / Absentee Scanner v. 1.12.4
- Veri-Vote Printer Rev. "g"
- Audio Accessory Rev. "c"
- Card Activator Firmware v. 5.0.21

*Therefore, the aforementioned components of Sequoia Voting System 5.0 are hereby certified for use in the State of Colorado.*

*Dated this 30<sup>th</sup> day of March, 2006  
Denver, Colorado*

  
Ginette Dennis  
Secretary of State

AMENDATORY AGREEMENT

CITY CLERK  
OFFICIAL COPY

06-304-H  
4-768-90

THIS AMENDATORY AGREEMENT is made and entered into this 22nd day of May, 2006, by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (the "City"), acting by and through the Denver Election Commission, and SEQUOIA VOTING SYSTEMS, INC., (the "Contractor").

WITNESSETH:

WHEREAS, the City and the Contractor previously entered into a Purchase and License Agreement of Voting Agreement dated on or about May 4, 2006, wherein the City purchased a voting system from the Contractor (the "Existing Agreement"); and

WHEREAS, the parties now desire to amend the Agreement to increase the number of voting machines and related equipment; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations herein set forth, the parties agree as follows:

1. Article 2, **CONTRACT DOCUMENTS; ORDER OF PRECEDENCE**, is amended to provide that the additional Equipment reflected on Schedule 1-A attached hereto shall be made a part of the Equipment to be provided to the City under the Existing Agreement. All references to "...Schedule 1..." in the Existing Agreement shall be amended to read: "...Schedule 1 and 1-A, as applicable...". The Equipment listed on Schedule 1-A will be delivered to the City on or before the Delivery Due Date set forth in the Existing Agreement. Schedule 1-A is hereby incorporated herein and made a part of the Existing Agreement by reference.

2. Article 5.A of the Existing Agreement is amended by deleting the portion which reads:

"... Four Hundred Sixty Thousand Twenty Eight Dollars (\$460,028.00) ..."

and by now providing:

"... One Million Three Hundred Three Thousand Four Hundred Fifty Nine (\$1,303,459.00) ..."

3. Article 5.B of the Existing Agreement is hereby deleted and replaced in its entirety with the following language:

"B. Invoicing. The City agrees to pay the Contractor for the total costs of

the Equipment and Software as set forth in Schedule 1 and 1-A according to the following payment schedule: The first installment shall be in the amount of One Hundred Fifty Three Thousand Three Hundred Dollars (\$153,300.00) and shall be payable within thirty days of the date of execution of the Existing Agreement and upon the Delivery of the Equipment by the Delivery Due Date. The second installment in the amount of Three Hundred Thousand Dollars (\$300,000.00) shall be payable within twenty days of the Delivery Due Date. The third installment in the amount of Four Hundred Twenty Five Thousand Fifteen Dollars and Fifty Cents (\$425,015.50) shall be payable within thirty days of the date of the City's written acceptance of the System. The fourth and final installment shall be in the amount of Four Hundred Twenty Five Thousand One Hundred Forty Three Dollars and Fifty Cents (\$425,143.50) and shall be payable within thirty days of the date of the August 2006 Colorado Primary Election provided that all Equipment and Services provided hereunder performed to the reasonable satisfaction of the City during said election. The Contractor shall submit an invoice to the City for each installment containing the City contract number listed on the signature page, the Equipment and Services provided by date, and the names of the persons performing the work by position title. The City shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Section 20-107, et. seq., of the Denver Revised Municipal Code which shall be incorporated hereto by reference."

4. Except as herein amended, the Existing Agreement is affirmed and ratified in each and every particular.

5. This Amendatory Agreement is expressly subject to and shall not become effective or binding on the City until approved by Denver's City Council and fully executed by all signatories of the City and County of Denver.

6. This Amendatory Agreement shall be executed in two (2) counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

ATTEST:

By:

WAYNE E. VADEN, Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver



CITY AND COUNTY OF DENVER

MAYOR

RECOMMENDED AND APPROVED:

By:

Executive Director, Denver Election Commission

By:

Clerk and Recorder, Ex-Officio Member Denver Election Commission

APPROVED AS TO FORM:

COLE FINEGAN, Attorney for the City and County of Denver

By:

Auditor Contract Control No. DE 61152(1)

By:

Victorie Ortega Assistant City Attorney

"CITY"

SEQUOIA VOTING SYSTEMS, INC. I.R.S. Identification No. 37-1274619

By:

Name: Peter McManemy (Please Print) Title: VP/CFO

"CONTRACTOR"

Schedule 1-A

City/County/Recorder/ Auditor Contract Control No. DE 61152(1) 45 07 06

**SCHEDULE I-A**

**DESCRIPTION OF EQUIPMENT, SOFTWARE AND PRICING**

Equipment	Selling Price Per Unit	Quantity	Sub-Total	Tax	Freight	Total
<b>AVC Edge Voting Units</b>						
AVC Edge II v.5.0.24	3,250.00	160	520,000.00		3,200.00	523,200.00
Advantage Trade-In	-350.00	160	-56,000.00			-56,000.00
VeriVote™ rev."B"	995.00	235	233,825.00			233,825.00
Wheels & Handles Cover	150.00	160	24,000.00			24,000.00
Transportation Carts (5 units per cart)	500.00	32	16,000.00			16,000.00
<b>AVC Edge Audio Voting</b>						
Audio Keypad & Headset Kit rev."C"	250.00	50	12,500.00			12,500.00
<b>AVC Edge Card Activator</b>						
Card Activator v.5.0.21	700.00	50	35,000.00			35,000.00
Voter Cards	3.00	1,000	3,000.00			3,000.00
<b>AVC Edge Ancillary Equipment</b>						
Vote Simulation Cartridges	100.00	25	2,500.00			2,500.00
Results Cartridges	150.00	25	3,750.00			3,750.00
Cartridge Tray	60.00	4	240.00			240.00
Cords 2'	2.00	160	320.00			320.00
Cords 10'	3.00	32	96.00			96.00
<b>Sequoia 400-C Absentee Tabulator</b>						
400-C 2002 Upgrade v.1.12.4	22,500.00	2	45,000.00			45,000.00
<b>WinEDS Application</b>						
WinEDS Application Upgrade v.3.1	Included					Included
<b>Total Equipment &amp; Software</b>			<b>840,231.00</b>		<b>3,200.00</b>	<b>843,431.00</b>

**One Year Parts Only Warranty included on all products.**