

**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.

NOW, THEREFORE, the parties agree as follows:

1. **EFFECTIVE DATE OF ASSIGNMENT.** This Assignment and Second Amendatory 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 Amendatory Agreement and each has been duly authorized by all necessary corporate action to execute this Assignment and Second Amendatory 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. Assignor'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. Assignor'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. Assignor 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 Assignor under the terms of this indemnification obligation. The Assignor 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
200 W. 14th Avenue, First Floor
Denver, Colorado 80204
Michael.scarpello@denvergov.org

With a copy to: Clerk and Recorder
City and County of Denver
201 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 17th 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.

S:\Municipal_Operations\ORTEGVJ\Election Comm\Contracts\Dominion\Assignment_Denver_V3 vo 9.2.2010 accepted.doc

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:

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

CITY AND COUNTY OF DENVER:

By: _____
M A Y O R

RECOMMENDED AND APPROVED:

By: _____
Director, Elections Division
Clerk and Recorder

By: _____
Clerk and Recorder

REGISTERED AND COUNTERSIGNED:

By: _____
Manager of Finance
Contract Control No. CE 61152 (2)

By _____
Auditor

APPROVED AS TO FORM:

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

By: _____
Assistant City Attorney

“CITY”

ATTEST: [If required by Corporate procedures]

By: _____

Title: _____

SEQUOIA VOTING SYSTEMS, INC.

I.R.S. Identification No. _____

By: _____

Name: _____
(please print)

Title: _____

“ASSIGNOR”

ATTEST: [If required by Corporate procedures]

By: _____

Title: _____

Exhibit A

DOMINION VOTING SYSTEMS, INC.

I.R.S. Identification No. _____

By: _____

Name: _____
(please print)

Title: _____

“ASSIGNEE”