

**SEVENTH AMENDMENT TO ADDENDUM A TO MASTER WALKAWAY LEASE AGREEMENT between Enterprise FM Trust, (Lessor), as successor in interest to Enterprise Leasing Company of Denver, d/b/a Enterprise Fleet Services, and CITY AND COUNTY OF DENVER, a Colorado municipal corporation (Lessee or City); Contract Control Number CE51316**

**THIS SEVENTH AMENDMENT TO ADDENDUM A TO MASTER WALKAWAY LEASE AGREEMENT** is made and entered into between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, hereinafter referred to as the "Lessee" or "City", and **Enterprise FM Trust, a Delaware statutory trust**, hereinafter referred to as "Lessor" or "Enterprise" as successor in interest to **Enterprise Leasing Company of Denver, D/B/A, Enterprise Fleet Services**.

**RECITALS**

**A.** The City and Enterprise Leasing Company of Denver, d/b/a Enterprise Fleet Services, previously entered into a Master Walkaway Lease Agreement dated March 28, 2006, which included an Addendum A to Master Walkaway Lease Agreement and referenced Schedules, which agreement was amended by an Amendment to Addendum A to Master Walkaway Lease Agreement dated July 25, 2006, a Second Amendment to Addendum A to Master Walkaway Lease Agreement dated November 28, 2006, a Third Amendment to Addendum A to Master Walkaway Lease Agreement dated July 17, 2007, a Fourth Amendment to Addendum A to Master Walkaway Lease Agreement dated July 8, 2008, a Fifth Amendment to Addendum A to Master Walkaway Lease Agreement dated May 5, 2009, and a Sixth Amendment to Addendum A to Master Walkaway Lease Agreement dated June 15, 2010, (all of which are hereinafter collectively referred to as the "Agreement") for the City to lease certain vehicles from Enterprise.

**B.** Enterprise Leasing Company of Denver, d/b/a Enterprise Fleet Services has assigned its rights, interests and title in the Agreement to Enterprise FM Trust and the parties wish to amend the Agreement to acknowledge the assignment and modify the Agreement as set forth in more detail below.

**C.** In addition, the Agreement expires on June 30, 2012, and the City and Enterprise wish to further amend the Agreement to extend the Lease Term (for twenty-five (25) vehicles) for two more years (ending June 30, 2014), increase the total amount of compensation to be paid to Enterprise for such lease extension, and modify other provisions of the Agreement as set forth

in more detail below.

**Thus**, the parties agree as follows:

1. Enterprise FM Trust agrees to be bound by and perform the Agreement in accordance with the conditions of the Agreement, as amended herein. Enterprise FM Trust also assumes all obligations and liabilities of, and all claims against, Enterprise Leasing Company of Denver, d/b/a Enterprise Fleet Services under the Agreement as if Enterprise FM Trust was the original party to the Agreement.

2. Enterprise FM Trust ratifies all previous actions taken by Enterprise Leasing Company of Denver, d/b/a Enterprise Fleet Services, with respect to the Agreement, with the same force and effect as if the action had been taken by Enterprise FM Trust.

3. The City recognizes Enterprise FM Trust as successor in interest in and to the Agreement and consents to the assignment of the Agreement from Enterprise Leasing Company of Denver, d/b/a Enterprise Fleet Services to Enterprise FM Trust as if Enterprise FM Trust was the original party to the Agreement.

4. All payments and reimbursement made by the City to Enterprise Leasing Company of Denver, d/b/a Enterprise Fleet Services under the Agreement shall be considered to have discharged the City's obligations under those parts of the Agreement.

5. The Parties hereby acknowledge that the Lessor previously referred to herein as Enterprise Leasing Company of Denver, d/b/a Enterprise Fleet Services shall now be referred to as Enterprise FM Trust and further the parties hereby agree to assign and transfer all responsibilities and obligations of the Lessor under the Agreement from Enterprise Leasing Company of Denver, d/b/a Enterprise Fleet Services to Enterprise FM Trust. As such, the term "Lessor" shall henceforth, refer to Enterprise FM Trust.

6. Section 18.B of Addendum A, as previously amended, is further amended by the addition of the following language:

**"18. MODIFICATION OF SECTIONS IN PRINTED AGREEMENT:** The following modifications are made to the printed Sections in the above-captioned Agreement: ...

**B.** Section 2 is modified by the addition of the following language: All existing Schedules in effect in 2010 that, by their terms, expire on or before June 30, 2012, will expire on June 30, 2012. A new Lease Term for each Vehicle to be leased

under this Agreement for a period of twenty-four (24) months beginning on July 1, 2012, and ending June 30, 2014, shall be set out in one or more Schedules to be incorporated in this Addendum. The parties shall agree on the types of vehicles and the rental for each vehicle incorporated into each Schedule. Each Schedule shall be consistent with a start date of July 1 and an expiration date of June 30. Each Schedule will not exceed one (1) year from the date of commencement, without being renewed by the Lessee through written notice to the Lessor, and additional appropriated funds being made available by the Lessee for continuance of each Vehicle "Lease Term" for a subsequent one (1) year term. Any increase in the total amount payable over the Maximum Contract Amount stated in Section 19 below shall, however, require a formal amendment to this Agreement."

7. Section 19 of Addendum A, as previously amended, is further amended to read as follows:

**"19. PAYMENT BY LESSEE; APPROPRIATION:** The Lessee's payment obligation under this Addendum, as amended, shall not exceed **One Million, Two Hundred Eighty Nine Thousand, Five Hundred Thirty One Dollars and Fifty-Four Cents (\$1,289,531.54)** (the "Maximum Contract Amount"). Both parties agree to review this amount annually. The Maximum Contract Amount represents the total amount of funds that may be appropriated for this Agreement if all renewal terms are exercised. The amount attributable to the Schedule commencing July 1, 2012, and ending June 30, 2013, will not exceed **One Hundred Forty Three Thousand Nine Hundred Sixty-six Dollars and Twenty Eight Cents (\$143,966.28)**. The amount attributable to the Schedule for the renewal term commencing July 1, 2013, and ending June 30, 2014, will not exceed **One Hundred Forty Three Thousand Nine Hundred Sixty-six Dollars and Twenty Eight Cents (\$143,966.28)**. The amount attributable to the Schedule for the renewal term commencing July 1, 2012, and ending June 30, 2014, will not exceed **Two Hundred Eighty-Seven Thousand Nine Hundred Thirty Two Dollars and Fifty Six Cents (\$287,932.56)**. The Agreement may be extended for the renewal term (July 1, 2013 – June 30, 2014) only upon the appropriation of funds for such renewal term. If such an appropriation for this Agreement is not made for the renewal term or any other future year, the Lessee will be deemed to have thereby failed to exercise its option to renew this Agreement for such year, and the Lessor's sole remedy will be the repossession of the affected Vehicle(s) at its expense, and the termination of this Agreement, at the expiration of the then current term.

Payments under this Agreement, whether in whole or in part, are subject to and contingent upon the continuing availability of federal funds awarded to the City (City Contract Control No. 201205483 Applicable CFDA No. 95.001). Thus, Lessor understands and agrees that certain of such maximum payment amount hereunder, as determined by the Lessee in its sole discretion, shall be payable solely from applicable federal grants awarded by the U.S. Government to the City. In the event that federal funds, or any part thereof, are not awarded to the City or are reduced or eliminated by the federal government, the City may reduce the total amount of compensation to be paid to Enterprise by modification of any existing schedule or schedules or it may terminate this Agreement.

Enterprise further understands and agrees that any and a All payment obligations of the City under this Agreement, including any extensions or renewals thereof, whether direct or contingent, shall extend only to funds received from the federal 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. If an appropriation for purposes of this Agreement is not made for a future year, the Lessee will be deemed to have thereby failed to exercise any option to renew this Agreement for such year, and the Lessor's sole remedy shall be the repossession of the affected Vehicle(s) at its expense, and termination of this Agreement, at the expiration of the then current term. The Lessor acknowledges that (i) the Lessee 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 financial obligation of the Lessee.

Any other provision of this Agreement notwithstanding, in no event shall the City be liable for payment to Enterprise under the terms of this Agreement for any amount in excess of the Maximum Contract Amount. The City is not obligated to execute an amendment to this Agreement for any additional costs or expenses other than the costs and expenses described herein, and that costs and expenses beyond those specifically described herein are at the Contractor's risk and without authorization under this Agreement."

8. A new Section 35 is hereby added to the Agreement reading as follows:

**“32. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:**

Lessor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree

not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.”

9. Section 15 of the Agreement, entitled “**ASSIGNMENTS**”, is hereby deleted and restated as follows:

“**15. ASSIGNMENTS:** Lessor may from time to time assign, pledge or transfer this Agreement and/or any or all of its rights and obligations under this Agreement to any person or entity. Lessee agrees, upon notice of any such assignment, pledge or transfer of any amounts due or to become due to Lessor under this Agreement to pay upon amendment to this Agreement executed in the same manner as this Seventh Amendment all such amounts to such assignee, pledgee or transferee. Any such assignee, pledgee or transferee of any rights or obligations of Lessor under this Agreement will have all of the rights and obligations that have been assigned to it. Lessee’s rights and interest in and to the Vehicles are and will continue at all times to be and only to the extent expressly provided in the assignment, pledge or transfer subject and subordinate in all respects to any assignment, pledge or transfer now or hereafter executed by Lessor with or in favor of any such assignee, pledgee or transferee, provided that Lessee shall have the right of quiet enjoyment of the Vehicles so long as no Event of Default under this Agreement has occurred and is continuing. Lessee acknowledges and agrees that the rights of any assignee, pledgee or transferee in and to any amounts payable by the Lessee under any provisions of this Agreement shall be absolute and unconditional and shall not be subject to any abatement whatsoever, or to any defense, setoff, counterclaim or recoupment whatsoever, whether by reason of any damage to or loss or destruction of any Vehicle or by reason of any defect in or failure of title of the Lessor or interruption from whatsoever cause in the use, operation or possession of any Vehicle, or by reason of any indebtedness or liability howsoever and whenever arising of the Lessor or any of its affiliates to the Lessee or to any other person or entity, or for any other reason.

Without the prior written consent of Lessor, Lessee may not assign, sublease, transfer or pledge this Agreement, any Vehicle, or any interest in this Agreement or in and to any Vehicle, or permit its rights under this Agreement or any Vehicle to be subject to any lien, charge or encumbrance. Lessee's interest in this Agreement is not assignable and cannot be assigned or transferred by operation of law. Lessee will not transfer or relinquish possession of any Vehicle (except for the sole purpose of repair or service of such Vehicle) without the prior written consent of Lessor.”

**10.** This Seventh Amendment to Addendum A, as previously amended, amends the entire Agreement, consisting of the Master Walkaway Lease Agreement, Addendum A, all referenced Schedules, the original Amendment to Addendum A, the Second and Third Amendment to Addendum A, the Fourth Amendment to Addendum A, the Fifth Amendment to Addendum A, the Sixth Amendment to Addendum A, and this Seventh Amendment to Addendum A. As amended by this Seventh Amendment to Addendum A, the said Agreement is affirmed and ratifiedd in each and every particular.

***END***

***SIGNATURE PAGES FOLLOW THIS PAGE***

Contract Control Number: POLIC-CE51316-07

Contractor Name: ENTERPRISE FLEET SERVICES

By: Enterprise FM Trust

Name: Kathy Gardner  
(please print)

Title: Kathy Gardner  
(please print)

ATTEST: [if required]

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

