AMENDATORY AGREEMENT

THIS AMENDATORY AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), and **FAST ENTERPRISES, LLC**, a limited liability corporation registered to do business in Colorado, whose address is 6400 South Fiddler's Green Circle, Suite 1500, Greenwood Village, CO 80111 (the "Contractor"), collectively "the parties".

W I T N E S S E T H:

WHEREAS, on January 13 2009, the City and the Contractor executed three agreements to obtain a comprehensive integrated or interfaced software system known as "GenTax Software Version 7.0" to collect, manage, record, deposit, and disburse all City taxes and revenues of the City and County of Denver as required by law;

WHEREAS, one agreement provided financing for the software system through a Lease Purchase Agreement, another agreement provided for the software license and implementation of services to deliver, install, and accept the software (the "GenTax License Agreement"), and the third agreement provided for post warranty software maintenance and support services (the "GenTax Software Maintenance Agreement", dated January 13, 2009, City Contract Control No. CE 06001); and

WHEREAS, the parties now wish to amend the GenTax Software Maintenance Agreement to acquire additional software components and related services necessary for the operation of the GenTax Software system, increase the Maximum Contract Amount for the additional software and services, and to modify certain other provisions of the Agreement as set forth below;

NOW, THEREFORE, the parties agree as follows:

1. Article 1 of the Agreement, entitled "**SCOPE OF SERVICES**", is amended to include the work contained in Exhibit A-1 entitled "TCS Project – Phase 2: Taxpayer Access Point" attached to this Amendatory Agreement and incorporated herein by this reference. All references to "...Exhibit A..." in the existing Agreement shall be amended to read: "Exhibit A and A-1, as applicable...". All references in Article 5 in the existing Agreement to "...Software..." shall be amended to read: "...Software or Additional Software...". Exhibit A-1 will govern the additional services to be provided from April 1, 2012, until December 31, 2012.

2. A new paragraph numbered 39 is hereby added to the Agreement reading as

follows:

"39. **ADDITIONAL SOFTWARE AND LICENSE; ADDITIONAL IMPLEMENTATION SERVICES TO BE PERFORMED:**

A. Additional Software. Contractor, under the general direction of, and in coordination with, the City's Manager of Finance or other designated supervisory personnel (the "Manager") agrees to deliver and install the additional software listed on Exhibit A-1 (the "Additional Software") along with adequate copies of any and all documentation and written materials fully describing the functionality and use of the Additional Software. Together, the Additional Software and documentation listed on Exhibit A-1 to this Amendatory Agreement shall become a part of the GenTax Software Version 7.0 licensed to the City under that certain Agreement executed simultaneously with this Agreement (City Contract Control No. CE 92004). Contractor will also perform integration services to ensure that the original Software and the Additional Software operate together as a fully functional and up-to-date version of the GenTax Sofware System. The Contractor warrants and represents that the documentation and written materials listed on Exhibit A-1 is a complete and accurate list of all available written materials describing the complete functionality and use of the Additional Software.

B. Standard Customer Offer. It is understood and agreed that the Additional Software to be provided hereunder (including any provided hardware), along with services and warranties associated with the Additional Software that are being provided to the City hereunder are also routinely provided to all customers on standard terms and conditions that were offered to the City and are agreed to by the City in this Agreement.

C. Grant of License. Contractor hereby grants to the City a perpetual, irrevocable, non-exclusive right and license to: (a) install, display, perform, and use the Additional Software; and (b) use all intellectual property rights necessary to use the Additional Software as authorized in subsection 39.A.

D. Restrictions. Title to and ownership of the Additional Software will remain with Contractor. City will not reverse engineer or reverse compile any part of the Additional Software without Contractor's prior written consent. City will not remove, obscure or deface any proprietary notice or legend contained in the Additional Software or documentation without Contractor's prior written consent.

E. Escrow. Except as specified in an Exhibit to the Agreement, Contractor, at no expense to the City, will, within thirty (30) days after the signing of this Amendatory Agreement and continuously thereafter, deposit the Additional Software in source code form, including all enhancements, in escrow pursuant to Escrow Agreement No. 7290 between Lincoln-Parry SoftEscrow, Inc. and Contractor ("Escrow Agreement"). The following events automatically will

give City the right to cause the release of the applicable source code from Contractor or the escrow agent, whether or not contained in the Escrow Agreement, upon notice to Contractor or presentation of the Agreement to the escrow agent: (i) the institution by or against 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 Additional Software; or (iv) Contractor failing to pay the applicable fees due under the Escrow Agreement.

F. Delivery and Acceptance of Additional Software:

1. Contractor shall deliver the Additional Software and perform the integration services in accordance with Exhibit A-1. Contractor will pack, mark, label, document and deliver all Additional Software in accordance with the City's instructions and accepted industry standards.

2. Upon installation of the Additional Software, the City will test and evaluate same to ensure that it conforms, in the City's reasonable judgment, to the specifications outlined in Exhibit A-1. If the Additional Software does not conform, the City will so notify Contractor in writing in accordance with the phased acceptance schedule contained on Exhibit A-1. Contractor will, at its expense, repair or replace the nonconforming product within fifteen (15) days after receipt of the City's notice of deficiency. The foregoing procedure will be repeated until the City accepts or finally rejects the product, in whole or part, in its sole discretion. In the event that the Additional Software contains a defect or nonconformity not apparent on examination, the City reserves the right to repudiate acceptance. In the event that the City finally rejects the Additional Software, or repudiates acceptance of it, Contractor will refund to the City all fees paid, if any, by the City with respect to the rejected product, and the City will cease using the Additional Software and return the Additional Software to the Contractor.

3. If the City is not satisfied with the Contractor's performance of the services described in Exhibit A-1, the City will so notify Contractor within thirty (30) days after Contractor's performance thereof. Contractor will, at its own expense, re-perform the service within fifteen (15) days after receipt of City's notice of deficiency. The foregoing procedure will be repeated until City accepts or finally rejects the service in its sole discretion. In the event that City finally rejects any integration service, Contractor will refund to City all fees paid by City with respect to such service.

G. Warranties and Representations:

1. Warranty Periods. Contractor will provide a Post Production Warranty Period for the Additional Software as described in Exhibit A-1. Notwithstanding anything to the contrary in Exhibit A-1, upon the expiration of

the Post Production Warranty Period, Contractor will provide extended warranty and maintenance support services for the Additional Software at no additional cost to the City in conjunction with the Contractor's maintenance subscription and support services for the original GenTax Software (Version 7.0) as set forth on Exhibit A to the GenTax Software Maintenance Agreement. All costs and expenses for extended warranty and maintenance support services for the Additional Software are contained in the Maximum Contract Amount.

2. Representations. Contractor represents and warrants that:

a. the Additional Software will conform to the requirements contained in Exhibit A-1 and the documentation referenced in Exhibit A-1 and will be substantially free from deficiencies and defects in materials, workmanship, design and/or performance;

b. all services will be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards;

c. all services will conform to applicable specifications;

d. 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 all rights granted hereunder with respect to the software and services free and clear from any and all liens, adverse claims, encumbrances and interests of any third party;

e. there are no pending or threatened lawsuits, claims, disputes or actions: (i) alleging that any software or service infringes, violates or misappropriates any third party rights; or (ii) adversely affecting any software, service or supplier's ability to perform its obligations hereunder;

f the Additional Software will not violate, infringe, or misappropriate any patent, copyright, trademark, trade secret, or other intellectual property or proprietary right of any third party;

g. the Additional Software will contain no malicious or disabling code that is intended to damage, destroy or destructively alter software, hardware, systems or data; and

h. the media on which all Additional Software is furnished are and will be, under normal use, free from defects in materials and workmanship.

i. The Contractor further warrants, guarantees and agrees that in the event it fails to materially perform the duties and obligations required under this Agreement or in the event the Additional Software, or any unit or component thereof, becomes defective or fails to substantially perform in accordance with the documentation listed in Exhibit A-1 or the requirements contained in this Agreement and Exhibit A-1, the Contractor will from the period of April 1, 2012, until December 31, 2012, timely remedy such identified defects, deficiencies, and performance failures, including the provision of adequate repairs or replacements, and the reperformance of services, at Contractor's expense and at no expense to the City.

The failure to substantially perform under this Agreement shall mean significant defective, insufficient, incorrect, or improper performance by the

Contractor or the Additional Software which is not cured by Contractor within ten (10) days of written notice from the City specifically stating the failure or failures to perform (or, if such violation is not susceptible of cure within said ten (10) days and Contractor is pursuing a cure, such larger period as is reasonably necessary to cure such violation). Significant defective, insufficient, incorrect, or improper performance will mean the failure of the Contractor to respond to all Severity One response Agreements as such procedure is set forth on Exhibit A to the GenTax Software Maintenance Agreement. The foregoing procedure will be repeated until the City accepts or finally rejects the product, in whole or part, in its sole discretion. In the event that the Software contains a material defect or nonconformity not apparent on examination, the City reserves the right to repudiate acceptance. In the event that the City finally rejects the Additional Software, or repudiates acceptance of it, Contractor will refund to the City all fees paid, if any, by the City with respect to the rejected product, and the City will cease using the Additional Software and return the Additional Software to the Contractor.

In addition, if the City is not satisfied with the Contractor's performance of the services, the City will so notify Contractor within ten (10) days after Contractor's performance thereof. Contractor will, at its own expense, re-perform the service within ten (10) days after receipt of City's notice of deficiency. The foregoing procedure will be repeated until City accepts or finally rejects the service in its sole discretion. In the event that City finally rejects any integration service, Contractor will refund to City all fees paid by City with respect to such service.

This warranty/guarantee commitment shall be in addition to any other warranty supplied by the Contractor or otherwise required under this Agreement. In addition, Contractor shall have or establish a single, local source that will accomplish or coordinate any necessary warranty work. The City expressly reserves any and all remedies available to it at law."

3. Paragraph **3.D.** of the Agreement, entitled "**Maximum Contract Liability**", is amended to read as follows:

"**D. Maximum Contract Liability:**

(1) Any other provision of this Agreement notwithstanding, in no event shall the City be liable to pay for services rendered and expenses incurred by the Contractor under the terms of this Agreement, if all Renewal Terms are exercised, for any amount in excess of **Five Million, Four Hundred Thousand Dollars ($5,400,000.00)** (the "Maximum Contract Amount") payable in accordance with Exhibits A and A-1. The Contractor acknowledges that the City is not obligated to execute an amendment to this Agreement for any services and that any services performed by the Contractor beyond that specifically

described herein are performed at Contractor's risk and without authorization under this Agreement.

(2) The Parties agree that the City's payment obligation, whether direct or contingent, shall extend only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. The Parties agree that (a) the City does not by this agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years and (b) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City."

4. Paragraph **10** of the Agreement, entitled "**INSURANCE**", is deleted and restated as follows:

"10. 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 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 after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized 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 requiring notification to the City in the event any of the above-described policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement and shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. 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 may not commence services or work relating to the Agreement prior to placement of coverage. Contractor certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

C. Additional Insureds: For Commercial General Liability, Auto Liability and Excess Liability/Umbrella, Contractor and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

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

E. Subcontractors and Subconsultants: All subcontractors and subconsultants (including 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 as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

F. Worker's 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 $100,000 per occurrence for each bodily injury claim, $100,000 per occurrence for each bodily injury 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. Commercial General Liability: Contractor shall maintain a Commercial General Liability insurance policy with limits of $1,000,000 for each occurrence, $1,000,000 for each personal and advertising injury claim, $2,000,000 products and completed operations aggregate, and $2,000,000 policy aggregate.

H. Business Automobile Liability: Contractor shall maintain Business Automobile Liability with limits of $1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

I. Professional Liability: Contractor shall maintain limits of $1,000,000 per claim and $1,000,000 policy aggregate limit.

J. Crime/Employee dishonesty: Contractor shall maintain coverage limits of $1,000,000 during the then current term.

K. Additional Provisions:

(1) For Commercial General Liability and Excess Liability, the policies must provide the following:

(i) That this Agreement is an Insured Contract under the policy but only to the extent of bodily injury or property damage to a third party;

(ii) Defense costs are in excess of policy limits;

(iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and

(iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(2) For claims-made coverage:

(i) 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.

(3) Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the

Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force."

5. Paragraph **36** of the Agreement, entitled "**NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT**", is deleted and restated as follows:

"36. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:

A. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

B. The Contractor certifies that:

(i) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(ii) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

C. The Contractor also agrees and represents that:

(i) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(ii) It shall not enter into a contract with a sub-consultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(iii) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

(iv) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Contractor to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(v) If it obtains actual knowledge that a sub-consultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City

within three (3) days. The Contractor will also then terminate such sub-consultant or subcontractor if within three (3) days after such notice the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the sub-consultant or subcontractor provides information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(vi) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

D. The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City."

6. Paragraph **37** of the Agreement, entitled "**CONTRACT DOCUMENTS: ORDER OF PRECEDENCE**", is deleted and restated as follows:

"37. CONTRACT DOCUMENTS: ORDER OF PRECEDENCE: This Agreement consists of Paragraphs 1 through 40, which precede the signature page, and the following attachments which are incorporated herein and made a part hereof by reference:

Exhibit A	Performance Objectives and payment Terms
Appendix A to Exhibit A	System Scope
Appendix B to Exhibit A	Production Issues
Exhibit A-1	Scope of Work/Budget/Description of Additional Software
Exhibit B	Description of original Software
Exhibit C	Certificate of Insurance

In the Event of an irreconcilable conflict between a provision of Paragraphs 1 through 40, 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 40
Exhibits A and A-1
Exhibit B (in its entirety)
Exhibit C"

7. A new Paragraph **40** of the Agreement, entitled "**ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS**," is added to read as follows:

"**40. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Contractor 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."

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

9. This Amendatory Amendment may be executed in counterparts, each of which is an original and constitute the same instrument.

10. This 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.

END

SIGNATURE PAGES AND EXHIBITS FOLLOW THIS PAGE:

Exhibit A-1
Exhibit C

Contract Control Number: TECHS-CE06001-01

Contractor Name: FASTENTERPRISES LLC

By: _____

Name: James G. Harrison
(please print)

Title: Member
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)