

SECOND AMENDATORY AGREEMENT

THIS SECOND 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 company 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".

RECITALS

A. The City and Contractor entered into an Agreement dated January 13, 2009, which was amended on June 25, 2012 (collectively referred to as the "Agreement").

B. The City and Contractor wish to amend the Agreement to extend the term and increase the maximum contract amount as set forth below.

The parties agree as follows:

1. Exhibit A to the Agreement dated January 13, 2009, will govern and control the maintenance subscription and support services to be provided for the period beginning January 1, 2015, until December 31, 2015. Effective as of January 1, 2015, Exhibit A-2, entitled "quote – 9/23/2014" attached to this Second Amendatory Agreement and incorporated herein by this reference, sets for the maximum amounts to be paid maintenance and support services for the period beginning January 1, 2015, until December 31, 2015. All references to "...Exhibit A..." in the Agreement shall be amended to read: "Exhibit A, A-1, and A-2, as applicable..."

2. Paragraph 2 of the Agreement, entitled "**TERM**", is amended to read as follows:

"2. TERM:

A. Initial Term. The initial term of the Agreement will be for twelve (12) consecutive months beginning on the first day immediately following the last day of the Post Production Warranty Period for the Software provided by the Contractor to the City under that certain Agreement executed simultaneously with this Agreement (City Contract Control No: CE92004) concerning the license, installation, and delivery of the Software, unless this Agreement is terminated earlier pursuant to the provisions of this Agreement.

B. Renewal Terms. The City will have the unilateral option to extend the Initial Term for up to five (5) additional renewal terms, each consisting of twelve (12) consecutive months, as follows: the First Renewal Term will begin on the day following the last day of the Initial Term; the Second Renewal Term will begin on the day following the last day of the First Renewal Term; the Third Renewal Term will begin on the day following the last day of the Second Renewal Term, the Fourth Renewal Term will begin on the day following

the last day of the Third Renewal term, and the Fifth Renewal Term will begin on the day following the last day of the Fourth Renewal term.. All five options to renew the initial term will be exercised in consecutive order. Each renewal option will be deemed to be exercised upon the action of the City Council in appropriating funds for the payment of maintenance subscription and support services for each renewal term as appropriate. If an appropriation for any renewal term is not made for a future fiscal year, the City will be deemed to have thereby failed to exercise its option to renew this Agreement and this Agreement shall expire at the expiration of the then current term.”

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 **Six Million, Five Hundred Forty Five Thousand Dollars (\$6,545,000.00)** (the “Maximum Contract Amount”) payable in accordance with Exhibits A, A-1, and A-2. 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 **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 A-2 | quote 9/23/2014 |
| 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, A-1, and A-2
Exhibit B (in its entirety)
Exhibit C”

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

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

7. This 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.

END

SIGNATURE PAGES AND EXHIBIT A-2 FOLLOW THIS PAGE:

Exhibit A-2

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: TECHS-CE06001-02

Contractor Name: FASTENTERPRISES LLC

By: James G. Harrison

Name: James G. Harrison
(please print)

Title: Member
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)





quote

To: Cindy Zec, City and County of Denver
 From: Eric Deffenbaugh, Fast Enterprises, LLC
 CC:
 Date: 9/23/2014
 Re: Maintenance & Support – GenTax & TAP

Cindy,

I am pleased to deliver the following quote for services January 1, 2015 through December 31, 2015 (the "Term"). Pricing is based on the same staffing and service levels currently being provided under our existing contract. Should the terms and conditions change, pricing may also change. Thank you for the opportunity to provide services to the City and County of Denver.

Software Maintenance: GenTax and Taxpayer Access Point: \$360,000 paid at the beginning of the Term.
Support Services: GenTax and Taxpayer Access Point: \$785,000 paid in equal quarterly installments.

Please note: Prices do not contain sales tax, if applicable.

Thank you,

Eric Deffenbaugh
 Director
 Fast Enterprises, LLC
 6400 S Fiddler's Green Cir
 Suite 1500
 Greenwood Village, CO 80111

Exhibit A-2