

SIXTH AMENDMENT TO ADDENDUM A TO MASTER WALKAWAY LEASE AGREEMENT BETWEEN ENTERPRISE LEASING COMPANY OF DENVER d/b/a ENTERPRISE FLEET SERVICES (LESSOR) AND CITY AND COUNTY OF DENVER, A COLORADO MUNICIPAL CORPORATION (LESSEE OR CITY); Contract Control Number CE51316

THIS SIXTH AMENDMENT TO ADDENDUM A TO MASTER WALKAWAY LEASE AGREEMENT is made and entered into this ____ day of _____, 2010, by and 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 LEASING COMPANY OF DENVER d/b/a ENTERPRISE FLEET SERVICES**, hereinafter referred to as "Enterprise".

4-12-10

RECITALS

A. The City and Enterprise 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, and a Fifth Amendment to Addendum A to Master Walkaway Lease Agreement dated May 5, 2009 (all of which are hereinafter collectively referred to as the "Agreement") for the City to lease certain vehicles from Enterprise.

B. The City and Enterprise now wish to further amend the Agreement to extend the lease of twenty five (25) vehicles for one more year and also increase the total amount of compensation to be paid to Enterprise for such lease extension.

Thus, the parties agree as follows:

1. 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, 2010, will expire on June 30, 2010. 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, 2010, and ending June 30, 2012, 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 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 subsequent one (1) year term. Any increase in the total amount payable over that stated in Section 19 shall, however, require a formal amendment to this Agreement."

2. 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, One Thousand, Five Hundred Ninety-Eight Dollars and Ninety-Eight Cents (\$1,001,598.98)** (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, 2010, and ending June 30, 2011, will not exceed **One Hundred Sixty Five Thousand Five Dollars and Eighty-Nine Cents (\$165,005.89)**. The amount attributable to the Schedule for the renewal term commencing July 1, 2011, and ending June 30, 2012, will not exceed **One Hundred Sixty Five Thousand Five Dollars and Eighty-Nine Cents (\$165,005.89)**. The Agreement may be extended for the renewal term (July 1, 2011 – June 30, 2012) 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 (Applicable CFDA No. 07-999). 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 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."

3. A new Section 32 is hereby added to Addendum A, as previously amended, reading as follows:

"32. Debarment: The Contractor is subject to the prohibitions on contracting with a debarred organization pursuant to U.S. Executive Orders 12549 and 12689, Debarment and Suspension, and implementing federal regulations codified at 2 C.F.R. Part 180 and 2 C.F.R. Part 376. 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 Article, 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 Article, 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" in any and 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."

4. A new Section 33 is hereby added to Addendum A, as previously amended, reading as follows:

"33. No Discrimination in Program Participation: The Contractor will comply with any and all applicable federal, state, and local laws that prohibit discrimination in programs and activities funded by this Agreement on the basis of race, color, national origin, sex, disability, and age including but not limited to Title VI of the Civil Rights Act of 1964 (Title VI), Section 504 of the Rehabilitation Act of 1973 (Section 504), the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990 (ADA), Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964 (Title VII), the Age Discrimination in Employment Act (ADEA), the antidiscrimination provision of the Immigration Reform and Control Act of 1986 (IRCA), and the Equal Pay Act (EPA). Violations may be subject to any penalties set forth in said applicable laws and the Contractor agrees to indemnify and hold the City harmless from any and all claims, losses, or demands that arise under this Article."

5. A new Section 34 is hereby added to Addendum A, as previously amended, reading as follows:

"34. 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.”

6. This Sixth 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, and this Sixth Amendment to Addendum A. As amended by this Sixth Amendment to Addendum A, the said Agreement is affirmed and ratified in each and every particular.

7. Section 11 of Addendum A, as previously amended, is hereby modified to include the terms and conditions set forth on the attached document marked as Addendum B, entitled “Self Insurance Addendum to Master Walkway Lease Agreement”. Addendum B is hereby incorporated herein by this reference.

8. This Sixth Amendment to Addendum A 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.

9. This Sixth Amendment to Addendum A 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 executed this Sixth Amendment to Addendum A as of the day and year first above written.

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: _____
MAYOR

RECOMMENDED AND APPROVED:

By: _____
Manager of Safety

By: _____
Chief of Police

By: _____
Director of Purchasing

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. CE51316(6)

By: _____
Auditor
"CITY"

ATTEST: [If required by Corporate procedures]

By: _____

Title: _____

ENTERPRISE LEASING COMPANY OF DENVER d/b/a/ ENTERPRISE FLEET SERVICES

Taxpayer (IRS) I.D. No. _____

By: _____
David Owen

Name: _____
(please print)

Title: _____
Group Sales Manager

"LESSOR"

One (1) new schedule incorporated by reference

SELF-INSURANCE ADDENDUM TO MASTER WALKAWAY LEASE AGREEMENT
(Physical Damage and Liability)

This Addendum is made to the Master Walkaway Lease Agreement dated the first day of May, 2010, as amended (the "Agreement"), by and between Enterprise Leasing Company of Denver, LLC, doing business as "Enterprise Fleet Management" ("Lessor"), and the lessee whose name is set forth on the signature line below ("Lessee").

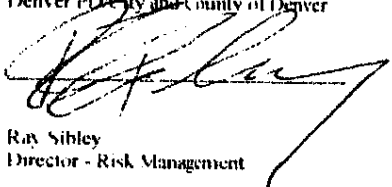
This Addendum is attached to and made a part of the Agreement (including each Schedule to the Agreement). All capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to them in the Agreement.

Notwithstanding the provisions of Section 11 of the Agreement, Lessee shall be permitted to assume and self-insure the physical damage and liability risks set forth in Section 11 of the Agreement and shall not be required to purchase or maintain any physical damage or liability insurance policy of any kind with respect to any Vehicle, provided, however, that if any Federal, state, local or other law, statute, rule, regulation or ordinance requires Lessee to maintain any amount of physical damage and/or liability insurance with respect to any Vehicle, Lessee shall purchase and maintain such amount of insurance in the form of an insurance policy which complies in all respects, other than the amount of insurance required, with Section 11 of the Agreement.

Notwithstanding the foregoing, if (a) Lessor, at any time in its good faith judgment, is not satisfied with the financial condition of Lessee or (b) any "Event of Default" (as defined therein) occurs under the Agreement, then Lessor may, at its option, revoke this Addendum and terminate Lessee's right to self-insure by providing Lessee with at least thirty (30) days prior written notice thereof. Upon the termination of Lessee's right to self-insure, Lessee shall comply in all respects with Section 11 of the Agreement and Lessee shall furnish Lessor with satisfactory proof that the required insurance coverages are in effect.

Except as amended hereby, all the terms and provisions of the Agreement shall remain in full force and effect. In the event of any conflict between this Addendum and the Agreement or any of the Schedules, the terms and provisions of this Addendum will govern and control.

LESSEE: Denver PD City and County of Denver



By: Ray Sibley
Title: Director - Risk Management

Date Signed: 4/29 2010

LESSOR: Enterprise Fleet Management



By: David Owen
Title: Group Sales Manager

Date Signed: 4/28 10

APPENDUM B