

**AMENDMENT NUMBER TWO
TO PROFESSIONAL SERVICES AGREEMENT**

This Amendment is made and entered into this 15th day of July, 2013 (“Effective Date”) by and between the City of Costa Mesa, a municipal corporation (“City”) and FATPOT TECHNOLOGIES, LLC, a Limited Liability Company (“Consultant”).

WHEREAS, Consultant and City entered into an Agreement on June 30, 2011 for the cost of Automated Vehicle Location/Global Positioning System software as an aid to fire and EMS apparatus dispatch; and

WHEREAS, the term of the Consultant and City’s original Agreement expired on June 30, 2013; and

WHEREAS, the original Agreement contained a provision for an initial term of one (1) year with the option to extend the Agreement for four (4) one year periods; and

WHEREAS, Consultant and City now wish to amend the Agreement to exercise the second one (1) year extension.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Paragraph 4.1 shall be amended to read, this Agreement shall commence on the Effective Date and continue until June 30, 2014. This Agreement constitutes the second extension of the original Agreement.
2. Paragraph 6.9 shall be amended to read, Indemnification and Hold Harmless: Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant’s sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be

liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

3. Paragraph 6.11 shall be amended to read, PERS Eligibility Indemnification: In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

4. All terms not herein defined shall have the same meaning and use as set forth in the original Agreement.
5. All other terms, conditions and provisions of the original Agreement not in conflict with this Amendment and previous Amendments, shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have set their hand by their duly authorized representatives as of the day and year first above written.

CITY OF COSTA MESA,
A municipal corporation



Chief Executive Officer of Costa Mesa

Date: 7/9/13

FATPOT Technologies, LLC



Date: 7-11-2013

John Sumner VP-ops
Name and Title

APPROVED AS TO CONTENT:



Date: 6-28-13

Peter Begum, Acting Deputy Chief

APPROVED AS TO FORM:



Date: 06/27/13

City Attorney