

**CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH FTOG, INC.**

THIS AGREEMENT is made and entered into this 5 day of May, 2015 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and FTOG, Inc., a California corporation ("Consultant").

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide consulting services for purchasing performance, as more fully described herein; and

B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

C. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit "A" (the "Project") and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, no official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. Consultant shall provide the professional services described in the Consultant's Proposal (the "Proposal") attached hereto as Exhibit "A" and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City and within the hereinafter specified. Evaluations of the work will be done by the City's Chief Executive Officer ("City CEO") or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;

- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

1.5. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code.

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

2.0. COMPENSATION AND BILLING

2.1. Compensation. Consultant shall be paid in accordance with the amount set forth in the Proposal. Consultant's total compensation shall not exceed Fifty Thousand, Six Hundred Dollars (\$50,600.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal unless the City or the Project Manager for this Project, prior to Consultant performing the additional services,

approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Consultant may submit invoices to the City for approval on a progress basis, but no more often than two times a month. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the Effective Date.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said services shall be performed in strict compliance with the timeframes set forth in the Proposal. The timeframes may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of six (6) months, ending on October 5, 2015, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall

be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant."
- (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- (e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement. The certificates of insurance shall be attached hereto as Exhibit "B" and incorporated herein by this reference.

5.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City CEO or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

FTOG, Inc.
8941 Atlanta Ave, #218
Huntington Beach, CA 92646
Tel: (714) 475-9503
Attn: Richard Amadril

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5062
Fax: (714) 754- 5040
Attn: Kathleen Orozco

6.5. Drug-free Workplace Policy. Consultant shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "C" and incorporated herein by reference. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

6.6. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.7. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

6.8. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.9. 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.

6.10. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.11. 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.

6.12. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.13. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

6.14. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.15. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or

subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.16. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.17. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.

6.18. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.19. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.20. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.21. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.22. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.23. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.24. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right

or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.25. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.26. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.27. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF COSTA MESA,
A municipal corporation

Mayor

Date: _____

CONSULTANT

Signature

Date: _____

Name and Title

Social Security or Taxpayer ID Number

ATTEST:

City Clerk and ex-officio Clerk
of the City of Costa Mesa

APPROVED AS TO FORM:

City Attorney

Date: _____

APPROVED AS TO INSURANCE:

Risk Management

Date: _____

APPROVED AS TO CONTENT:

Kathleen Orozco, Project Manager

Date: _____

DEPARTMENTAL APPROVAL

Stephen Dunivent, Interim Finance Director

Date: _____

EXHIBIT A
CONSULTANT'S PROPOSAL



PURCHASING PERFORMANCE PLAN PROPOSAL

For the City of Costa Mesa

SUMMARY OF SERVICES

The Purchasing function purchases approximately \$85 million in goods and services, process over 800 requisitions, on behalf of more than 8 different departments (CEO, Police, Fire, Development Svcs., Finance, Information Technology (IT), Parks & Community Svcs. and Public Works) per year. Purchases range from basic office supplies and equipment to information technology services to construction and renovation projects. Purchasing also provides warehouse and surplus property management for all departments. FTOG, Inc. will perform array of activities to identify several strategies that Costa Mesa can employ to achieve better procurement results. FTOG, Inc. will agree to perform the following services;

OBJECTIVE 1: Streamline and simplify the procurement process

INITIATIVE 1.1: Develop and Implement ERP (Electronic Requisition Process). FTOG, Inc. will assist the City of Costa Mesa in development and implementation of an electronic requisition system.

Goals:

- Research capability to enhance PeopleSoft access by adding e-Requisition module, in cooperation with City IT staff.
- If it is not possible to enhance PeopleSoft access to add an e-Requisition module or if expanding the module is not possible in the short-term, then coordinate with City IT staff to add an online requisition process via City Intranet (allow for internal routing – approval by designated dept. approver, Finance, etc. prior to be rec'd by Purchasing).
- Work with stakeholder City departments to ensure that they have 'buy in' on the ERP system.

TARGET IMPLEMENTATION BY: AUGUST 1, 2015

INITIATIVE 1.2: Implement process improvements to the City's Warehouse and Surplus functions. FTOG, Inc. will market and reorganize a full-service warehouse accordingly to serving the various departments.

- a. Include any and all standard commodities that are being used by various business units and all JIT programs for the Warehouse.
- b. Improve the quality of supplier base through a supplier self-service on items that are stock within the Warehouse.



- c. Introduce a material management with a revolving fund to support these services.
- d. Consolidate all warehousing needs and distribution networks.
- e. Establish the fuel ordering, inventory fuel management, fuel transportation as additional services performed by the Warehouse.

TARGET IMPLEMENTATION BY: JUNE 1, 2015

OBJECTIVE 2: Support the purchasing customers/end users in a responsive and professional manner that is in full compliance with governing laws and policies.

INITIATIVE 2.1: Develop and Implement a functional Master Contract List. FTOG, Inc. will assist the City of Costa Mesa in development and implementation of a functional Master Contract List.

Goals:

- Create list that shall allow for flagging and notification of expiring contracts.
- Develop method to extract data from PeopleSoft to decrease the amount of manual input.
- Allow for eventual link to executed standing contracts through this master list.
- Produce master contract list that is available for public posting (as requested by City CEO).

TARGET IMPLEMENTATION BY: JUNE 1, 2015

INITIATIVE 2.2: Procurement Training. FTOG, Inc. will assist Purchasing staff in coordinating and conducting training for customers/end users in various Purchasing areas, as directed by the Finance Director and Purchasing Supervisor.

- a. Once the ERP is implemented, coordinate and conduct training on the new requisition system.
- b. As other goals outlined above are accomplished, assist in coordinating and conducting trainings in various other Purchasing areas: RFP's, Solicitation & Selection, Contract Administration, sole sources, emergencies, etc.

TARGET IMPLEMENTATION BY: SEPTEMBER 1, 2015



FTOG, Inc. will assist the City of Costa Mesa in the utilization a software system that will include requisitioning/approving, sourcing, vendor registration, ordering, catalogs, contract management, receipt/payment processing. In addition, a system with searchable repository, creating contracts, red flag notices for critical elements, reports and integration with PeopleSoft, Word and Excel. FTOG, Inc. will coordinate the implementation and training of the automated system.

The City may wish to develop assessment tool that enables the tracking of quality services when contracts are completed. In no event shall FTOG, Inc. be responsible for the direction and control of Costa Mesa personnel performed within this proposal.

FTOG, Inc. retains the sole and exclusive discretion as to the specific type, nature, timing and duration of the service performed within this proposal. We will require access to those City files three to four days a week for the next six months depending on the number of contracts the City wants FTOG, Inc. to review. We will use our own laptop, computer, phones, office space and office supplies for this work. In consideration for the services to be performed by FTOG, Inc., Costa Mesa agrees to pay by the day or half day depending on the workload presented. Our half day rate is \$250 and full day rate is \$550 and will not exceed \$50,600.00 up to September 2015 without written authorization from Costa Mesa. Costa Mesa shall pay FTOG, Inc. on a semi weekly basis from invoices that show projects that were worked on by objective and initiative.

City's responsibilities will include dates and facilities for required meetings, access to the City's D&B subscription, and access to a City's email account that will be accessible from a FTOG, Inc.'s laptop, computer and a remote location for accessing certain City hard drives and files. Costa Mesa Purchasing Supervisor and FTOG, Inc., President is responsible for cooperatively resolving any disputes over services provided and adjusting the service level of desired by the City.

City shall reimburse FTOG, Inc., for any expenses that are directly attributable to work performed under this proposal with prior written approval. FTOG, Inc. will submit an itemized statement of expenses. Costa Mesa shall pay within 30 days from the date of each statement.

Either party may terminate these services at any time by giving 30 days written notice of termination. FTOG, Inc. shall be entitled to full payment for services performed prior to the date of termination.

Sincerely,

Richard Amadril, President
FTOG, Inc.
The Power of Partnerships in Contract Management

EXHIBIT B
CERTIFICATES OF INSURANCE



A Guide To Your Professional Liability Policy

The following is a guide to your Professional Liability policy. We have identified several key coverage items along with the limits and deductibles you have selected. To make it easier, we have also added a brief explanation of those items.

We want you to feel confident about your new policy. If any of the information below is incorrect or if you have any questions, please contact one of our advisors at 888-202-3007 (Mon-Fri, 8am-10pm EST) or send us an e-mail at contact@hiscox.com.

Your business details	
Name:	Richard Amadril
Business name:	FTOG, Inc.
Address:	[REDACTED]
City:	[REDACTED]
State:	CA
Zip code:	92646
Occupation:	Business Consulting
Telephone number:	[REDACTED]
Email address:	[REDACTED]

Your Professional Liability Policy	
Policy number:	[REDACTED]
Policy effective dates:	From: December 09, 2014 To: December 09, 2015
This determines the time period during which your coverage applies.	
Total cost of policy:	\$ 400.00

Your limits explained	
Each claim limit	\$ 1,000,000
The total amount we will pay for damages, claim expenses (e.g. defense costs), and supplemental payments for each claim.	
Aggregate limit	\$ 1,000,000
The total amount we will pay for damages, claim expenses (e.g. defense costs), and supplemental payments during the policy period.	

Supplemental payments The total amount we will pay for expenses your business reasonably incurs as a result of attending an arbitration proceeding or trial in the defense of a covered claim.	Maximum of \$250.00 per day, \$5,000 in total for your policy
Deductible The amount your business must pay (per claim) before we will make any payment under the policy. This does not apply to supplemental payments.	\$ 500
Retroactive Date This establishes how far back we will cover services you have performed (even if that date is before you were insured with Hiscox) for any unknown claims that may be made against you during the policy period.	February 01, 2012

Other policy information	
14 Day full refund Be confident that you have made the right choice. We give you 14 days to review your policy. If you are not satisfied and have not had any claims or losses, you can cancel your policy back to its start date and receive a full refund.	
Notice of claim If you have a claim, please call us at 888-202-3007. You may also e-mail us at reportclaim@hiscox.com .	

What does my Professional Liability Policy cover?

For a summary showing examples of what you are and are not covered for, please read the Coverage Summary document.

This guide does not modify the terms and conditions of your policy, which are contained in your policy documents, nor does it imply any claim is covered or not covered. We recommend that you read your policy documents to learn the details of your coverage.



Reinventing Small Business Insurance™

Professional Liability Insurance A Coverage Summary for Consulting Services

We want you to understand the Hiscox Professional Liability coverage. This summary explains the main areas of coverage and those for which your business is and isn't covered.

If you have any questions about your coverage, please contact one of our advisors at 888-202-3007 (Mon-Fri, 8am-10pm EST) or via email at contact@hiscox.com.

This policy does cover

Negligence

We cover any alleged mistakes in your provision of professional services. This includes falling in your duty of care, giving incorrect advice, making an omission (leaving something out), or failing to deliver your services.

Defense costs

If you're sued, even if you haven't made a mistake, we will appoint an attorney to defend you, even if the lawsuit is groundless.

Services performed in the past

We cover the services you have performed going back to an agreed-upon date, even if that date is before you were insured with Hiscox – for any unknown claims that may be made against you and reported to us during the policy period. This date, the retroactive date, is printed on the Declarations Page of your policy.

Worldwide insurance coverage

We cover claims arising from work done anywhere in the world as long as the claim is filed in the United States, its territories, or Canada.

Employees, temporary staff, and independent contractors

We cover claims arising from services performed by your employees, temporary staff, or independent contractors if those services were performed on behalf of your business.

Claims and damages

We cover claims for damages, including up to \$250,000 of punitive damages where allowed by law.

Personal injury

We cover claims of libel and slander as part of your professional services.

Supplemental payments

We will pay for expenses you reasonably incur as a result of attending arbitration proceedings or trials in the defense of a covered claim. We will pay up to \$5,000.

X This policy does not cover

Bodily injury or property damage

We won't cover damages or claims expenses if you injure someone or damage someone's property. Coverage for these types of risks is included in our General Liability or Business Owners Policy.

Employment matters

We won't cover you for claims alleging improper employment practices, workers' compensation claims, or employer's liability.

Known claims and circumstances

We won't cover any known circumstance that could result in a claim or any actual claim that you knew about prior to the start of your first Hiscox policy.

False advertising

We won't cover you for false advertising claims.

Personally identifiable information

We won't cover your failure to protect any personally identifiable information that is in your care.

Other services

We won't cover any medical, nursing, insurance broker/agent, legal, actuarial, architectural, or engineering services you perform. Financial related services, including advice on mergers and acquisitions, and valuations, are excluded. We also don't cover any services you perform that are not specified in your policy.

Regulatory claims

We won't cover any claims that are brought by any governmental body or licensing organization, unless it is one of your clients and makes a claim against you in that capacity.

Your costs and excluded damages

We won't cover fines, penalties, and taxes that are levied against you. Hiscox also won't cover the cost of complying with nonmonetary relief, cost overruns, or reduction of your fees.

Intellectual property

We won't cover infringement of a copyright, trademark, patent, or theft of a trade secret.

Common claims examples

Protection even if you haven't made a mistake - You advise a client to change some internal processes to increase productivity. The recommendations aren't implemented as you had specified and productivity subsequently drops by 15% rather than improving. If your client sues you to recover lost income, we will appoint an attorney to defend you.

Protection even if you haven't made a mistake - You manage the development of a new product. There are problems with the project (which are out of your control) and you cannot deliver the final product in a timely manner. If your client sues you, we will appoint an attorney to defend you.

Negligent acts - You advise a client to update their employment practices. Six months later, your client contacts you, stating a part-time employee is suing the company. You had omitted a key requirement on the amount of hours part-time employees are permitted to work. If your client sues you, we will appoint an attorney to defend you.

Coverage summaries, descriptions, and claims examples are provided for illustrative purposes only and are subject to the applicable policy limits, deductibles, exclusions, terms, and conditions. Not all insurance products and services are available in all states. Hiscox recommends you read the policy documents to learn the full details of coverage.

Underwritten by Hiscox Insurance Company Inc., 104 South Michigan Avenue, Suite 600, Chicago, IL 60603, as administered by Hiscox Inc., a licensed insurance provider in all states and DC.



Certificate of Professional Liability Insurance

This certificate is issued for informational purposes only.

It certifies that the policies listed in this document have been issued to the Named Insured. It does not grant any rights to any party nor can it be used, in any way, to modify coverage provided by such policies. Alteration of this certificate does not change the terms, exclusions or conditions of such policies.

Coverage is subject to the provisions of the policies, including any exclusions or conditions, regardless of the provisions of any other contract, such as between the certificate holder and the Named Insured. The limits shown below are the limits provided at the policy inception. Subsequent paid claims may reduce these limits.

Named Insured:	FTOG, Inc.		
Insurer Name:	Hiscox Insurance Company Inc.		
Policy Number:	[REDACTED]		
Policy Effective Date:	December 09, 2014	Policy Expiration Date:	December 09, 2015

Limits of Insurance

Each Claim:	\$ 1,000,000	Each Claim
Aggregate for all Claims:	\$ 1,000,000	Aggregate for all Claims
Deductible:	\$ 500	Each Claim
Retroactive Date:	February 01, 2012	

The policy referred to in this certificate was issued on a claims made and reported basis.

Description of Endorsements/Special Provisions

Not applicable



 Authorized Representative

October 25, 2014

 Date



Certificate of Professional Liability Insurance

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Named Insured:	FTOG, Inc.		
Insurer Name:	Hiscox Insurance Company Inc.		
Policy Number:	[REDACTED]		
Policy Effective Date:	December 09, 2014	Policy Expiration Date:	December 09, 2016

Limits of Insurance

Each Claim:	\$ 1,000,000	Each Claim
Aggregate for all Claims:	\$ 1,000,000	Aggregate for all Claims
Deductible:	\$ 500	Each Claim
Retroactive Date:	February 01, 2012	

The policy referred to in this certificate was issued on a claims made and reported basis.

Description of Endorsements/Special Provisions

Not applicable



Additional Insured Status

Certificate holder maintains Additional Insured Status if this boxed checked

This certificate does not grant any coverage or rights to the certificate holder. If this certificate indicates that the certificate holder is an additional insured, the policy(ies) must either be endorsed or contain specific language providing the certificate holder with additional insured status. The certificate holder is an additional insured only to the extent indicated in such policy language or endorsement.

Cancellation

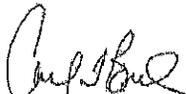
In the event of cancellation of any policy described above, the insurer will attempt to mail 10 days written notice to the certificate holder prior to the effective date of cancellation. However, failure to do so will not impose any duty or liability upon the insurer, its agents or representatives, nor will it delay cancellation.

The City of Coasta Mesa

Certificate Holder

October 25, 2014

Date



Authorized Representative

October 25, 2014

Date

PRODUCER
 VALLEY WEST FINANCIAL INS. 044669 27
 3525 HYLAND AVE, STE.110
 COST MESA CA 92626
 TELEPHONE:(714) 436-4061



**AUTOMOBILE POLICY DECLARATIONS
 IMPORTANT COVERAGE EXCLUSION**

APPLICABLE TO ALL COVERAGES, INCLUDING BUT NOT LIMITED TO, LIABILITY AND UNINSURED MOTORISTS, PROVIDED NOW OR LATER. It is agreed that the insurance afforded by this policy shall not apply nor accrue to the benefit of any insured or any third party claimant when any motor vehicle is being used or operated by a person listed below regardless of where the person resides or whether the person is licensed to drive.

DANIEL AMADRIL

MAILING ADDRESS

CAR	YEAR	VEHICLE DESCRIPTION	SERIAL NUMBER	COST OR VALUE	NEW/USED	PURCH. DATE	I.P./CID
1	2005	TOYOTA SEQUOIA LTD UTL 4X2 4D	5TDZT38A15S260005		N	06/2006	
2	2014	CADILLAC CTS PERFORMANCE CPE	1G6DC1E39E0100103		N	05/2014	

CAR	LP-ALLA RA-RO	LOSS PAYEE(S) (LP), ADDITIONAL INTERESTS (AI), LOSS PAYEES AND ADDITIONAL INTERESTS (LA), GARAGING ADDRESSES (GA) AND REGISTERED OWNERS (RO) OTHER THAN THOSE LISTED ABOVE
1	LP	HUNTINGTON BEACH CITY EMPLOYEES C. PO BOX 910 HUNTINGTON BEACH CA 92648

Coverage applies only if premium charge is listed below. Coverage/Limits are subject to all policy terms.

COVERAGES	LIMITS OF LIABILITY			PREMIUMS			NON-FACTORY EQUIPMENT		
				CAR1	CAR2	CAR			
BODILY INJURY LIABILITY	\$100,000	EACH PERSON \$300,000	EACH ACCIDENT	118	76		ITEMS INSURED AND AMOUNTS OF INSURANCE FOR EACH ITEM ARE STATED HEREIN. ITEMS INSURED ARE SUBJECT TO THE DEDUCTIBLE.		
PROPERTY DAMAGE LIABILITY	\$50,000	EACH ACCIDENT		155	109				
UNINSURED MOTORISTS BODILY INJURY LIABILITY	\$25,000	EACH PERSON \$50,000	EACH ACCIDENT	18	9				
UNINSURED MOTORISTS PROPERTY DAMAGE LIABILITY	\$	MAXIMUM							
COLLISION DEDUCTIBLE WAIVER				2	2				
MEDICAL EXPENSE	\$2,000			7	6				
LEASE/LOAN GAP COVERAGE	CAR	CAR	CAR						
REPAIR OR REPLACEMENT COST COVERAGE	CAR	CAR 2	Y CAR			34			
COMPREHENSIVE	DEDUCTIBLE CAR1 \$250	CAR2 \$250	CAR \$	20	36		CALIFORNIA ASSESSMENTS		
COLLISION	DEDUCTIBLE CAR1 \$500	CAR2 \$500	CAR \$	105	256		CA FRAUD FEE		
ROADSIDE ASSISTANCE PER OCCURRENCE	CAR1 \$75	CAR2 \$75	CAR	3	3		GIGA FEE		
RENTAL CAR BENEFIT	\$30 PER DAY	30 DAYS		15	15				
ENDORSEMENTS ATTACHED TO THE POLICY				PREMIUMS PER CAR					
U-10 04/2013 U-234 U-45B U-236				443	546				
				POLICY FEE					
						TOTAL PREMIUM	969.00		

IMPORTANT INFORMATION

EFFECTIVE 03/18/2015
 This amended policy declarations page replaces all declarations with the same or prior effective date.
 Reason(s) Amended
 ADD ENDORSEMENT(S)
 If there is a lapse, coverage will not be provided during the lapse period. This change has resulted in no additional premium. Any outstanding amount is due as previously billed. If you have any questions, please contact your agent or broker at the phone number provided above. Thank you for placing your business with Mercury Insurance Company.

CAR	OCG DRV	RAT DRV	PRH DRV	PTS	SD PTS	GD STD	M/C	NK SYM	MDL SYM	SYL SYM	PD SYM	CLASS	USE	MIL	FIN RES	PERG	FLG	GRP CD	MULTI POL	DOB	BR CHG	GD DRV	REST	ALL BRK	A/T DRV
1			1	01		N	Y	TY	SQ	58	14	28A	PL	1		5			H	1963	N	Y	1	1	3
2			2	00		N	Y	CD	CT	48	22	19A	PL	1		5			H	1952	N	Y	1	1	3

UND: B. McCabe AMOUNT DUE: \$ 00.00 DUE DATE: MAILING DATE: 03/25/2015

PRODUCER COPY
 U-177 04/2013

Process Date: 03/24/2015

EXHIBIT C

CITY COUNCIL POLICY 100-5

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	1 of 3

BACKGROUND

Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a sub-grantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa's commitment to a drug-free society.
2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

POLICY

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:
 - a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor's and/or sub-grantee's workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	2 of 3

- b. Establishing a Drug-Free Awareness Program to inform employees about:
 - 1. The dangers of drug abuse in the workplace;
 - 2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;
 - 3. Any available drug counseling, rehabilitation and employee assistance programs; and
 - 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- c. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;
- d. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:
 - 1. Abide by the terms of the statement; and
 - 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- e. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;
- f. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:
 - 1. Taking appropriate personnel action against such an employee, up to and including termination; or
 - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	3 of 3

- g. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.
2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
 - a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;
 - b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;
 - c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.
 3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.