

Terms and Conditions

This document constitutes an agreement for environmental consulting/landscape architecture services to be provided by Whitney Environmental Consulting, Inc. dba Foothill Associates (FOOTHILL) on behalf of the City of Placerville (CITY).

Services/Expenses:

Services to be provided by FOOTHILL under this agreement are described in the attached scope of work and cost estimate. Consulting Services shall be performed on a time and materials basis. CITY also agrees to pay reimbursable expenses necessary for the performance of the services listed in the attached scope of work. Additional services beyond those outlined in the attached scope of work and cost estimate may be provided if confirmed in writing. Landscape Architect agrees to provide its professional services in accordance with generally accepted standards of its profession. Landscape Architect agrees to put forth reasonable efforts to comply with codes, laws and regulations in effect as of the date of this agreement. Landscape architects are licensed by the State of California. Should FOOTHILL be required to cease work on this project at the request of the CITY for more than 45 days, we reserve the right to renegotiate our fees for the remaining work.

Substitution of Key Personnel:

Contractor has represented to CITY that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Contractor may substitute other personnel of at least equal competence upon written approval of CITY. In the event that CITY and FOOTHILL cannot agree as to the substitution of key personnel, CITY shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to CITY, or who are determined by CITY to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by FOOTHILL at the request of CITY. The key personnel for performance of this Agreement are as follows: Project Manager - Kate Kirsh, GIS Services - Ryan McAdler, Web Services - Sandy O'Bleness and Recreation Planning & Landscape Architecture - Paul Weller, Edward Armstrong and Beverly Bass.

Representative:

City hereby designates Steve Youel, or his/her designee, to act as its representative for the performance of this agreement. Steve Youel, or his/her designee representative shall have the power to act on behalf of CITY for all purposes under this Contract. FOOTHILL shall not accept direction or orders from any person other than Steve Youel, or his/her designee representative.

Coordination of Services:

FOOTHILL agrees to work closely with CITY staff in the performance of Services and shall be available to staff, consultants and other staff at all reasonable times.

Standard of Care; Performance of Employees:

FOOTHILL shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, FOOTHILL shall perform, at its own cost and expense and without

reimbursement from CITY, any services necessary to correct errors or omissions which are caused by the FOOTHILLS failure to comply with the standard of care provided for herein. Any employee of FOOTHILL or its sub-contractors who is determined by CITY to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to CITY, shall be promptly removed from the Project by the FOOTHILL and shall not be reemployed to perform any of the Services or to work on the Project.

Control and Payment of Subordinates; Independent Contractor:

The Services shall be performed by FOOTHILL or under its supervision. FOOTHILL will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. CITY retains FOOTHILL on an independent contractor basis and not as an employee. FOOTHILL retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of FOOTHILL shall also not be employees of CITY and shall at all times be under FOOTHILL'S exclusive direction and control. FOOTHILL shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. FOOTHILL shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

Billings/Payments:

Invoices for FOOTHILL'S services and expenses shall be submitted, at FOOTHILL'S option, either upon completion of such services or on a monthly basis. Invoices shall be payable within 30 days after the invoice date. If the invoice is not paid within 30 days, FOOTHILL may, without waiving any claim or right against CITY, and without liability whatsoever to CITY, suspend or terminate the performance of the service.

Late Payments:

Accounts unpaid 60 days after the invoice date may be subject to a monthly service charge of 1.5% (or the legal rate) on the then unpaid balance. In the event any portion or all of an account remains unpaid 90 days after billing, CITY shall pay all costs of collection.

Access to Project Site and Materials:

CITY agrees to comply with all requests made by FOOTHILL for information held by CITY reasonably necessary for the performance of FOOTHILL'S duties under this Agreement. FOOTHILL will have access to the project site for activities necessary for the performance of the services described in this Agreement. FOOTHILL will take precautions to minimize damage due to these activities, but have not included in the fee the cost of restoration of any resulting damage.

Documents & Data; Licensing of Intellectual Property:

This Agreement creates a nonexclusive and perpetual license for CITY to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by FOOTHILL under this Agreement ("Documents & Data"). FOOTHILL shall require all subcontractors to agree in writing that CITY is granted a nonexclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. FOOTHILL represents and warrants that FOOTHILL has the legal right to license any and all Documents & Data. FOOTHILL makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than FOOTHILL or provided to FOOTHILL by CITY. CITY shall not be limited in any way in its use of the Documents and Data at

any time, provided that any such use not within the purposes intended by this Agreement shall be at CITY'S sole risk.

Confidentiality:

All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to FOOTHILL in connection with the performance of this Agreement shall be held confidential by FOOTHILL. Such materials shall not, without the prior written consent of CITY, be used by FOOTHILL for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to FOOTHILL which is otherwise known to FOOTHILL or is generally known, or has become known, to the related industry shall be deemed confidential. FOOTHILL shall not use CITY name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of CITY.

Dispute Resolution:

Any claims or disputes made during performance of the services between CITY and FOOTHILL shall be submitted to non-binding mediation. CITY and FOOTHILL agree to include a similar mediation agreement with all contractors, sub contractors, sub consultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between all parties.

Limitation of Liability:

CITY agrees that FOOTHILL'S total liability to CITY for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this agreement, from any cause or causes, shall not exceed \$47,130. Such causes include, but are not limited to, FOOTHILL'S negligence, errors, omissions, strict liability, breach of contract, or breach of warranty.

Insurance:

FOOTHILL shall not commence Work under this Agreement until it has provided evidence satisfactory to CITY that it has secured all insurance required under this section. In addition, FOOTHILL shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to CITY that the subcontractor has secured all insurance required under this section.

Types of Required Insurance Coverage's:

As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder and without limiting the indemnity provisions of the Agreement, FOOTHILL in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement, the following policies of insurance.

- (a) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, with minimum limits of at least \$1,000,000 per occurrence. Defense costs shall be paid in addition to the limits.

The policy shall contain no endorsements or provisions limiting coverage for (1) products and completed operations; (2) contractual liability; (3) third party action over claims; or (4) cross liability exclusion for claims or suits by one insured against another.

- (b) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) with minimum limits of \$1,000,000 each accident.
- (c) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.
- (d) Professional Liability: Professional Liability insurance for errors and omissions with minimum limits of \$1,000,000. Covered Professional Services shall specifically include all work to be performed under the Agreement.

If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

Insurance Endorsements:

The policy or policies of insurance required (a) Commercial General Liability and (b) Automobile Liability Insurance shall be endorsed to provide the following:

- (1) Additional Insured: The indemnified parties shall be additional insured's with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of FOOTHILL; or (4) contain any other exclusions contrary to the Agreement.
- (2) Primary Insurance and Non-Contributing Insurance: This insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance.
- (3) Severability: In the event of one insured, whether named or additional, incurs liability to any other of the insured's, whether named or additional, the policy shall cover the insured against whom claim is or may be made in the same manner as if separate policies had been issued to each insured, except that the limits of insurance shall not be increased thereby.
- (4) Cancellation: The policy shall not be canceled or the coverage suspended, voided, reduced or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon CITY except ten (10) days prior written notice shall be allowed for non-payment of premium.
- (5) Duties: Any failure by the named insured to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the indemnified parties.
- (6) Applicability: That the coverage provided therein shall apply to the obligations assumed by FOOTHILL under the indemnity provisions of the Agreement, unless the policy or policies contain a blanket form of contractual liability coverage.

Workers' Compensation:

The policy or policies of insurance required for Workers' Compensation shall be endorsed as follows:

- (1) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.
- (2) Cancellation: The policy shall not be canceled or the coverage suspended, voided, reduced or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon CITY except ten (10) days prior written notice shall be allowed for non-payment of premium.

Professional Liability:

The policy or policies of insurance required for Professional Liability shall be endorsed, as follows:

- (1) Cancellation: The policy shall not be canceled or the coverage suspended, voided, reduced or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon CITY except ten (10) days prior written notice shall be allowed for non-payment of premium.

Deductible:

Any deductible or self-insured retention must be approved in writing by CITY and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

Evidence of Insurance:

FOOTHILL, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by CITY. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with CITY. If such coverage is cancelled or reduced, FOOTHILL shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with CITY evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

Failure to Maintain Coverage:

FOOTHILL agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to CITY. CITY shall have the right to withhold any payment due FOOTHILL until FOOTHILL has fully complied with the insurance provisions of this Agreement.

In the event that FOOTHILL'S operations are suspended for failure to maintain required insurance coverage, FOOTHILL shall not be entitled to an extension of time for completion of the Work because of production lost during suspension.

Acceptability of Insurers:

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

