



City Council
Economic Development Subcommittee Agenda
70 N. First Street, Campbell, California
Friday, April 29, 2022, 4:00 p.m.

NOTE: To protect our constituents, City officials, and City staff, the City requests all members of the public follow the guidance of the California Department of Health Services', and the County of Santa Clara Health Officer Order, to help control the spread of COVID-19. Additional information regarding COVID-19 is available on the City's website at www.campbellca.gov.

This Special Meeting of the Economic Development Subcommittee will be conducted in person as well as telecommunication and is compliant with provisions of the Brown Act.

Those members of the public wishing to participate virtually can access the meeting at:

<https://campbellca.gov.zoom.us/j/89060320970?pwd=UHB0WlBuYkUwN3FLVUI1V1gvNFE3UT09>

Meeting ID: 890 6032 0970
Passcode: 451361

Dial by location: 1 669 900 6833

Members of the public may attend this meeting in person at Campbell City Hall.

Public comment will also be accepted via email at ClerksOffice@campbellca.gov prior to the meeting. Please indicate in the subject line "FOR PUBLIC COMMENT." Written comments received by 2:00 p.m. on the day of the meeting will be posted on the website and distributed to the Economic Subcommittee before the meeting.

A video recording will be available on the City YouTube Channel at: <https://www.youtube.com/user/CityofCampbell> following the meeting.

SPECIAL MEETING OF THE ECONOMIC SUBCOMMITTEE

Friday, April 29, 2022, 4:00 p.m.
Ralph Doetsch Conference Room – 70 N. First Street

CALL TO ORDER

PUBLIC COMMENT

UNFINISHED BUSINESS

1. Economic Development Strategy and RFP for an Update to the City's Economic Development Plan
 - Economic Development Strategy and Plan Memo*
 - Draft Request for Proposals (RFP)*

ADJOURN

* Indicates an attachment to this agenda.



To: Economic Development Subcommittee

Date: 4-28-2022

From: Brian Loventhal, City Manager

Rob Eastwood, Community Development Director

Subject: Economic Development Strategy and Plan

Economic Development Strategy

Staff recommends the use of a short term and long term economic development strategy to address Campbell's economic development goals of attracting and retaining businesses, filling commercial vacancies, creating fiscal strength, and developing and implementing a Vision, Branding, and Marketing strategy for economic growth and resilience in the City. This memo provides an update to the Council's Economic Development sub-committee regarding the status of the short term economic development strategy, that was discussed at the January 18, 2022 Council meeting, and requests the sub-committee's feedback on drafting a Request for Proposal (RFP) to obtain a consultant to support Campbell in implementing the Long Term Economic Development Strategy.

Short-Term Economic Development Strategy

At its regular meeting of January 18, 2022, the City Council considered the Economic Development Subcommittee's recommendation to obtain consultant services to assist in implementing a short-term strategy to fill commercial vacancies. This strategy would be consider sales tax leakage and other analysis and tasks including:

- Review current market demand by Campbell residents and sales tax leakage analysis
- Assess current commercial vacancies and how they provide retail and service space identified in leakage analysis
- Identify regional and national chains that provide the services/goods to meet market demand by Campbell residents that could fill commercial vacancies
- Consider new, other uses that could also fill vacancies
- Conduct initial market analysis for preferred businesses
- Develop branding and update marketing materials/GIS maps/information on available vacancies
- Work with Commercial Brokers to reach out to preferred businesses and market available vacant space

Council feedback included staff identifying local colleges and universities as possible consultants, identify new and developing industries that Campbell could attract and branding needs for attracting targeted industries.

Staff is completing a procurement process that included contacting known firms and organizations that could assist Campbell in implementing this strategy. Proposals were submitted for review in April from five economic development consulting firms and staff is finalizing the evaluation process to select the proposal that most closely aligns with

the scope of work. Staff anticipates selecting the consultant by May 6. Proposal costs range from \$21,000 to \$50,000. Amounts less than \$50,000 do not require Council authorization.

Long-Term Economic Development Plan

During its meeting on January 18, Council also discussed the need for a more comprehensive, long-term economic development plan. Campbell's current Economic Development Plan was adopted in 2017 and has typically been updated every five years. Council requested that the Economic Development subcommittee be involved with developing the RFP in advance of Council consideration.

Staff has proposed that the update to the Economic Development Plan be a comprehensive effort that includes ongoing stakeholder engagement, a SWOT (Strengths, Weaknesses, Opportunities, Threats) analysis, and creates a cohesive vision and branding document for Campbell that defines the vision of the city, resulting in policies and implementation actions that are incorporated into the land use regulations and permitting requirements.

The Economic Development Plan Update would include the following steps:

1) Scoping Economic Development Plan Update

- Evaluation of Existing Plan – Relevance
- Identify targeted outcomes of new Economic Development Plan
- Evaluation of Data, Metrics, Considerations in Plan update
- Consultant and Cost Options

2) Creation of Advisory Committees -

- Internal Stakeholders – (EDAC / Campbell Chamber, business owners)
- Outside Advisory Board - Experts in the economic development field
- Additional Stakeholders

3) Existing Conditions Evaluation -

- Economic Composition and Demographics / Labor Market
- Market Conditions
 - Regional Setting
 - Other Factors

4) SWOT Analysis - Strengths, Weaknesses, Opportunities, Threats

5) Visioning and Branding

- Stakeholder Engagement
- Council Review and Direction

6) Plan Development

- Future Economic State
- Implementation Actions
- Land Use Modifications
- Economic Development Tools and Programs
 - Metrics

7) Stakeholder and Public Review -

8) Council Adoption

Staff proposes creating an RFP (draft attached) that requests support from a consulting firm in updating Campbell's Economic Development Strategy using this approach. Staff has obtained estimated costs for a long-term plan that range from \$55,000 to \$130,000 with optional services ranging from \$31,000 to \$50,000.

Based on the Economic Subcommittees feedback on this scope of work and the draft RFP, staff will finalize the RFP and bring to the Council for review and authorization for release. Staff is targeting the May 17th Council meeting



REQUEST FOR PROPOSALS (RFP)

Economic Development Plan Update City of Campbell, California

RFP Release Date

TBD, 2022

Proposal Submittal Deadline

TBD, 2022 - 4:00p.m.

Contact Person: Michael Thomas
Economic Development Specialist
City of Campbell
70 North First Street
Campbell, CA 95008
(408) 866-2192

michaelt@campbellca.gov

REQUEST FOR PROPOSALS

Long-Term Economic Development Plan

The City is issuing this Request for Proposals (“RFP”) for consultant support in updating Campbell’s Economic Development Plan for a cost not to exceed \$130,000.

Consultants are solely responsible for ensuring proposals are received by the City on or before the submittal deadline. Proposals must be received (physically) no later than **4:00 p.m., on TBD, 2022**, at the following address:

City of Campbell
Attn: Michael Thomas
c/o City Clerk
70 North First Street
Campbell, CA 95008

An original copy must be signed by a representative authorized to bind the company. Proposals submitted by e-mail are not acceptable and will not be considered. **Submit the original signed copy, six (6) hard copies and an electronic copy in PDF format on a USB stick in sealed packages with the name of the Consultant and RFP title clearly marked on the outside of the package. Consultant’s fee proposal is to be submitted in a separate sealed envelope.**

Failure to comply with the requirements set forth in this RFP may result in disqualification. Proposals and/or modifications received subsequent to the hour and date specified above will not be accepted. Submitted proposals may be withdrawn at any time prior to the submission time specified in this RFP, provided notification is received in writing before the submittal deadline. No handwritten notations or corrections will be allowed. The responding Consultant is solely responsible for all costs related to the preparation of the proposal.

The City reserves the right to reject all proposals and to waive any minor informalities or irregularities contained in any proposal. Acceptance of any proposal submitted pursuant to this RFP shall not constitute any implied intent to enter into a contract.

The contract award, if any, will be made to the Consultant who, in the City’s sole discretion, is best able to perform the required services in a manner most beneficial to the City. Please submit all inquiries to michaelt@campbellca.gov or via phone to Michael Thomas at (408) 866-2192 by the Request for Clarifications due date listed below.

Project Schedule

Below is a desired schedule for initiation of this project; however, dates may be subject to change and adjusted as necessary.

RFP Issued	TBD, 2022
Request for Clarifications Due	TBD, 2022
Clarification Responses Provided	TBD, 2022
Proposal Submittal Deadline	TBD, 2022
Phone/Web Interviews (conducted at City’s discretion)	TBD, 2022
Contract awarded by Community Development Director	TBD, 2022

Background

The City of Campbell is located in the West Valley area of Santa Clara County and encompasses 6.35 square miles. The City was founded in 1887, and incorporated in 1952 as a general law city. As of May 2021, the City's population was 42,221. Campbell operates under a Council/Manager form of government and is organized into six departments - City Administration, Recreation and Community Services, Finance, Community Development, Police, and Public Works. Fire services are provided by contract with the Santa Clara County Fire Department. The City provides library, animal control, solid waste collection and recycling, and storm water management services via Joint Powers Agreements (JPA's).

Objective

The City of Campbell is requesting proposals from firms or individuals an update to the City's Economic Development Plan. The update will be a comprehensive effort that includes ongoing stakeholder engagement, a SWOT (Strengths, Weaknesses, Opportunities, Threats) analysis, and creates a cohesive vision and branding document for Campbell that defines the vision of the city, resulting in policies and implementation actions that are incorporated into the land use regulations and permitting requirements, aligning with the Land Use (page 15-49) and Economic Development (page 86-98) Elements of the [City's General Plan 2040](#), which is currently in development.

The City seeks to promote economic health as an essential component of maintaining a balanced community, providing goods, services, employment and housing opportunities, which, in turn, help attract and retain commercial, service, and industrial businesses. The Economic Development Element seeks to sustain and diversify the city's economy, recognizing the importance of supporting local businesses while broadening and expanding the property employment base and economic opportunities within the city. By building partnerships with owners, business owners, and various agencies, the city will strive to achieve a cooperative and responsive government that helps business prosper.

The Land Use Element's Goals

- Maintain a well-balanced land use plan that provides for a diverse, self-sufficient community that offers a variety of housing types, job opportunities, community facilities, and commercial services
- Ensure new development is compatible with existing development in order to maintain a high quality of life for Campbell residents.
- Employ creative approaches to provide a range of affordable housing options in Campbell while protecting the character of established neighborhoods.
- Provide for a diversified mix of strong retail centers, service commercial activities, manufacturing enterprises, and high-paying employment opportunities that contribute to Campbell's economic well-being
- Maintain and enhance Downtown Campbell as a vibrant, community-oriented district that serves as the retail, entertainment, civic, and cultural hub of the city
- Promote effective coordination with regional and local agencies on planning issues.
- Special Planning Areas that warrant transformation to meet future needs and the community's

vision or special considerations to preserve and protect unique and special characteristics of an area.

The Economic Development Element's Goals

- Foster strong economic growth and local employment opportunities
- Facilitate business retention and expansion to serve residents and create jobs
- Attract and retain companies and industries that diversify the City's economic base and jobs to reduce out-commenting
- Strengthen economic base via installation of capital improvements to help make Campbell a competitive business location
- Encourage new development in key areas that provide high quality work locations for existing and new businesses
- Establish Downtown as the heart of Campbell's cultural and civic life and a place where residents, workers and victors share in Campbell's heritage, vibrancy and vitality

The scope of work outlined below illustrates the specific services requested.

Scope of Services

Project tasks shall include, but are not necessarily limited to, the following described below. If the firm feels that additional tasks are warranted, they must be clearly identified in the firm's proposal. Firms responding to this RFP shall be prepared to begin services no later than TBD, 2022. The project consists of furnishing all labor, materials, supervision, and travel necessary to complete the tasks outlined below.

The update to the Economic Development Plan will be a comprehensive effort that includes ongoing stakeholder engagement, a SWOT (Strengths, Weaknesses, Opportunities, Threats) analysis, and creates a cohesive vision and branding document for Campbell that defines the vision of the City, resulting in policies and implementation actions that are incorporated into the land use regulations and permitting requirements.

The Economic Development Plan Update would include the following steps:

The consultant selected would perform the following services under the direction of the City Manager/Community Development Director:

1. Scoping Economic Development Plan Update

- Evaluation of Existing Plan for Relevance
- Identify targeted outcomes of new Economic Development Plan
- Evaluation of Data, Metrics, Considerations in Plan update
- Consultant and Cost Options

2. Creation of Advisory Committees

- Internal Stakeholders – (EDAC / Campbell Chamber, business owners)
- Outside Advisory Board - Experts in the economic development field
- Additional Stakeholders

3. Existing Conditions Evaluation

- Economic Composition and Demographics / Labor Market
- Market Conditions
- Regional Setting
- Other Factors

4. SWOT Analysis - Strengths, Weaknesses, Opportunities, Threats

5. Visioning and Branding

- Stakeholder Engagement
- Council Review and Direction

6. Plan Development

- Future Economic State
- Implementation Actions
- Land Use Modifications
- Economic Development Tools and Programs
- Metrics

7. Stakeholder and Public Review

8. Council Adoption

General

The Consultant may recommend other tasks that it deems appropriate to achieve the objectives set forth in this RFP.

Public Records

All proposals submitted in response to this RFP become the property of the City. Information in the proposal, unless specified as trade protected, may be subject to public review. Any information contained in the proposal that is proprietary must be clearly designated. Marking the entire proposal as proprietary will be neither accepted nor honored. Proprietary information submitted in response to this RFP will be handled in accordance with the California Public

Records Act.

Right to Cancel and Amend

The City reserves the right to cancel, for any or no reason, in part or in its entirety, this RFP, including but not limited to selection schedule, submittal date, and submittal requirements. If the City cancels or revises the RFP, all Consultants will be notified in writing.

Additional Information

The City reserves the right to request additional information and/or clarification from any or all Consultants.

Conflict of Interest

Selected consultant covenants that the company, its officers, employees and/or agents presently have no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services requested herein by the City. Consultant further covenants that, in the performance of any contract or agreement resulting from this RFP, no subcontractor or person having such an interest shall be employed. Consultant certifies that to the best of Consultant's knowledge, no one who has or will have any financial interest under any contract or agreement resulting from this RFP is an officer or employee of the City.

Release of Public Information

Consultants who respond to this RFP who wish to release information to the public regarding selection, contract award or data provided by the City must receive prior written approval from the City before disclosing such information to the public.

Non-Assignment

If a contract is awarded, the selected Consultant shall neither assign, nor delegate, in part or in whole, any duties without the prior written consent of the City which shall not be unreasonably withheld.

Collusion

Each Consultant certifies that the company, its officers, employees and/or agents are not a party to any collusive action, fraud, or any action that may be in violation of the Sherman Antitrust Act. The Consultant certifies that the company, its officers, employees and/or agents have not offered or received any kickbacks or inducements from any other bidding Consultant, supplier, manufacturer, or subcontractor in connection with the proposal and that the company, its officers, employees and/or agents have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value. Any or all bids shall be rejected if there is any reason to believe collusion exists among the bidding Consultants.

Debarment

By submitting a proposal, the Consultant certifies that the company is not currently debarred

from submitting proposals and/or bids for contracts issued by any City or political subdivision or agency of the State of California, and that it is not an agent of a person or entity that is currently debarred from submitting proposals and/or bids for contracts issued by any City or political subdivision or agency of the State of California.

Equal Employment Opportunity Compliance

The selected Consultant shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Consultant shall ensure that all employees and applicants for employment shall be treated with equality in all aspects of employment processes including, but not limited to, hiring, transfer, promotion, training, compensation and termination, regardless of their race, creed, color, sex, national origin, age, or physical handicap.

Right to Audit

The selected Consultant shall maintain such financial records and other records as may be prescribed by the City or by applicable federal and state laws, rules, and regulations. The selected Consultant shall retain these records for a period of three years after final payment, or until they are audited by the City, whichever event occurs first. These records shall be made available during the term of the contract or service agreement and the subsequent three-year period for examination, transcription, and audit by the City or its designees.

Deliverables

The Consultant shall be responsible for preparing an effective, clear, and concise proposal. The City is requesting six (6) hard copies and an electronic copy in PDF format on a USB stick of the proposal and it shall be organized with clearly labeled tabs separating each section. Proposals must contain at a minimum the following information:

1. **Format for Proposal:** To facilitate the review of responses, all responses are required to adhere to the following requirements with regard to their proposal. The City strongly encourages respondents to ensure that RFP submissions are succinct and clearly organized. If the proposal is not in this format or does not include all of the listed items, it may be deemed nonresponsive. For ease of handling, all responses are to be provided in a standard 8 ½” x 11” portrait format with binding on the left-hand edge.
 - a. **Title Page** showing the request for proposals subject; the firm’s name; the name, address and telephone number of the contact person; and the date of the proposal.
 - b. **Table of Contents** identifying the materials submitted by section and page number.
 - c. **Detailed Proposal** following the order as set forth below and clearly tab each section.
2. **Letter of Interest:** Please include a letter expressing the Consultant’s interest which

includes:

- a. A statement describing why your firm is qualified to provide the services and perform the work required in a responsive manner.
 - b. A description of the anticipated interaction between the Consultant and City staff.
 - c. Identification of the Project Manager and main point of contact.
3. Project Understanding and Approach: Please include a statement demonstrating your understanding of the proposed scope of services. Architectural design plans are time sensitive and plan checks are expected to be completed in a timely and thorough manner. Describe your approach to meeting these requirements while also containing costs. What processes, methodologies and technologies do you employ? Describe what information you would expect the City to supply.
 4. Relevant Experience: Please describe your firm's past performance in providing similar services to other municipalities. Provide references from at least three (3) California municipalities that your firm is currently providing, or has provided within the last three (3) years, similar parklet design services. Address your firm's record of meeting schedules and controlling costs.
 5. Project Manager / Key Staff: Please include information about the specific relevant experience for the proposed Project Manager and all other applicable staff. Please submit resumes only for those individuals that will be assigned to the City of Campbell.
 6. Conflict of Interest Statement: The firm shall disclose any financial, business, or other relationship with the City that may have an impact upon the outcome of this contract. Particular attention should be paid to compliance with [Government Code section 1090](#).
 7. Comments on or Requested Changes to Contract: The City's standard Consultant Services Agreement is included as Attachment 2 to this Request for Proposals. The proposing firm shall identify any objections to and/or request changes to the standard contract language in this section.
 8. Fee Schedule: In a **separate envelope** marked "Fee Proposal", provide a fee schedule for all personnel assigned for this project.

Term of Contract

The initial contract term shall commence upon execution of the contract by the City and shall be for a twelve (12) month period. The contract includes the option for two additional (6) six month renewal periods in the event additional consulting services are requested by the City, for a total potential contract term of up to two (2) years.

Extension of Contract

At the end of the initial twelve (12) month term, the City of Campbell, at its sole discretion may elect to extend the contract for two (2) additional six-month terms. The City may extend the contract for a total of one year, pending additional services are requested by the City and satisfactory performance under the original contract. Contractual costs shall be equal to the June-to-June San Francisco-Oakland-San Jose Consumer Price Index-All Urban (CPI) in an amount not to exceed five percent (5%) but not lower than three percent (3%), upon execution of each contract renewal.

Evaluation of Proposals and Selection Process

Evaluation of the proposals will be made by City Council Members, the City Manager, Community Development Director, Finance Director and Economic Development Specialist and other City staff as deemed appropriate by the Community Development Director. This evaluation team, in accordance with the criteria listed below, will evaluate all proposals received as specified. The City team members, in applying the major criteria to the proposals, may consider additional criteria beyond those listed. During the evaluation period, the team may elect to interview some or all of the proposing firms. The final selection will be the firm which, in the City's opinion, is the most responsive and responsible, meets the City's requirements in providing this service, and is in the City's best interest. The City maintains the sole and exclusive right to evaluate the merits of the proposals received. Consultants will be objectively evaluated based on their responses to the project scope outlined in the RFP. The written proposal should clearly demonstrate how the firm could best satisfy the requirements of City. Proposals will be evaluated on the following criteria:

No.	Written Evaluation Criteria	Point Value
1	Completeness of Response	Pass/Fail
2	Qualifications & Experience	30
3	Organization & Approach	20
4	Scope of Services to be Provided	20
5	References	25
6	Local Presence	5
7	Conflict of Interest Statement	Pass/Fail
Subtotal:		100

ATTACHMENT 1

CITY OF CAMPBELL

CONSULTANT SERVICES AGREEMENT

This Agreement is entered into at Campbell, California on the _____ day of _____, 2022, by and between the **CITY OF CAMPBELL** (hereinafter referred to as "City") and _____(hereinafter referred to as "Consultant").

WHEREAS, City desires to obtain a consultant to prepare a long-term Economic Development Plan for a cost not to exceed \$130,000; and

WHEREAS, Consultant represents that it has the expertise, means, and ability to prepare and revise and make recommendations throughout the entire Plan preparation process;

NOW, THEREFORE, in consideration of each other's mutual promises, Consultant and City agree as follows:

1. DUTIES OF CONSULTANT

1.1 Consultant agrees to perform services as set forth in Exhibit A - Scope of Services, attached hereto and incorporated herein by reference, and which shall be interpreted together and in harmony with this Agreement. In the event of any conflict between Exhibit A and this Agreement, this Agreement shall govern, control, and take precedence.

1.2 Consultant's project manager will meet with the City's project coordinator prior to commencement of the project to establish a clear understanding of the working relationships, authorities, and management philosophy of City as it relates to this Agreement.

1.3 Consultant, working with the City, will gather available existing information concerning the project, and shall review documents as necessary for compliance with the project's objectives.

1.4 In performance of this Agreement by Consultant, time will be of the essence.

1.5 Notwithstanding Section 1.4, Consultant shall not be responsible for delay caused by activities or factors beyond Consultant's reasonable control, including delays or by reason of strikes, work slow-downs or stoppages, or acts of God.

1.6 Consultant agrees to perform this Agreement in accordance with the highest degree of skill and expertise exercised by members of Consultant's profession working on similar projects under similar circumstances.

1.7 Consultant shall cooperate in good faith with City in all aspects of the performance of this Agreement.

1.8 In the course of the performance of this Agreement, Consultant shall act in the City's best interest as it relates to the project.

1.9 All activities of Consultant, its employees, subcontractors and/or agents will be carried out in compliance with all applicable federal, state, and local laws and regulations.

1.10 The designated project manager for Consultant shall be _____. The Consultant's project manager shall have all the necessary authority to direct technical and professional work within the scope of the Agreement and shall serve as the principal point of contact with the City and the City's project coordinator. The authorized principal of Consultant executing this Agreement for the Consultant shall have authority to make decisions regarding changes in services, termination and other matters related to the performance of this agreement on behalf of Consultant.

1.11 The Consultant (and its employees, agents, representatives, and subconsultants), in the performance of this Agreement, shall act in an independent capacity and not as officers or officials or employees or agents of the City. The City shall not direct the work and means for accomplishment of the services and work to be performed hereunder. The City, however, retains the right to require that work performed by Consultant meet specific standards consistent with the requirements of this Agreement without regard to the manner and means of accomplishment thereof. Subcontractors shall assume all of the rights, obligations and liabilities, applicable to it as an independent contractor hereunder. Consultant represents and warrants that it (i) is fully experienced and properly qualified to perform the class of work and services provided for herein, (ii) has the financial capability and shall finance its own operations required for the performance of the work and services and (iii) is properly equipped and organized to perform the work and services in a competent, timely and proper manner in accordance with the requirements of this Agreement. Consultant agrees to comply with AB5, codified at Labor Code section 2750.3, and shall indemnify, defend and hold harmless the City, its officers, officials, directors, agents representatives, volunteers, and employees against any claim or liability, including attorneys' fees and costs, arising in any manner related to this Agreement that an employee, agent or others under Consultant's supervision or control was misclassified.

1.12 This Agreement contains provisions that permit mutually acceptable changes in the scope, character or complexity of the work if such changes become desirable or necessary as the work progresses. Adjustments to the basis of payment and to the time for performance of the work, if any, shall be established by a written contract amendment (approved and executed by the City) to accommodate the changes in work.

2. DUTIES OF CITY

2.1 City shall furnish to Consultant all available and pertinent data and information requested by Consultant to facilitate the preparation of the documents called for in this Agreement. Consultant shall be entitled to reasonably rely on accuracy and completeness of such

information, provided that Consultant shall provide City prompt written notice of any known defects in such data and information.

2.2 City shall provide contract administration services. City shall notify Consultant of required administrative procedures and shall name representatives, if any, authorized to act in its behalf.

2.3 City shall review documents submitted by Consultant and shall render decisions pertaining thereto as promptly as reasonably possible.

3. **COMPENSATION**

3.1 For the full performance of the services described herein by Consultant, City agrees to compensate Consultant for all services and direct costs associated with the performance of the project in an amount not to exceed \$130,000, as follows:

a. Once each month, Consultant shall submit for payment by City, an itemized invoice for services performed during the previous billing period. The invoice shall describe the services rendered and the title of the item of work, and shall list labor hours by personnel classification. Said invoice shall be based on all labor and direct expense charges made for work performed on the project. Labor charges shall be in accordance with the fee schedule found in Exhibit A of this Agreement. City shall pay Consultant for services rendered and approved by the City within 30 days from the date the itemized invoice is received by the City, subject to the maximum not to exceed amount specified above and the City's right to object.

b. Direct costs are those outside costs incurred on or directly for the project, and substantiated with invoices for the charges. Direct expenses include printing, reproduction, and delivery charges.

3.2 If Consultant incurs other costs which are not specifically covered by the terms of this Agreement, but which are necessary for performance of Consultant's duties, City may approve payment for said costs if authorized in writing by the City in advance.

3.3 City may order changes in the scope or character of services in writing, including decreasing the amount of Consultant's services. In the event that the work is decreased, Consultant is entitled to full compensation for all services performed and expenses incurred prior to receipt of notice of change. Under no conditions shall Consultant make any changes to the work, either as additions or deductions, without the prior written order of the City. In the event, that the City determines that a change to the work or services from that specified in this Agreement is required, the contract time and/or actual costs reimbursable by the City for the project may be adjusted by contract amendment or change order to accommodate the changed work. The maximum not to exceed total amount specified in this Article 3 (Compensation) shall not be exceeded, unless authorized by written contract amendment or change order, approved and executed by the City. Consultant shall obtain prior written approval for a revised fee schedule from the City before exceeding such fee schedule. Only City's authorized representative(s) is authorized to approve changes to this Agreement on behalf of City.

3.4 In no event, will the Consultant be reimbursed for any costs or expenses at any

rates that exceed the rates for set forth in the fee schedule found in Exhibit A.

DRAFT

3.5 Consultant agrees that the payments to Consultant specified in this Article 3 (Compensation) will constitute full and complete compensation for all obligations assumed by Consultant under this Agreement. Where conflicts regarding compensation may occur, the provisions of this section apply.

4. SUBCONSULTANTS

4.1 Consultant may not subcontract any services required under this Agreement without the prior written consent of the City.

4.2 Consultant shall be responsible to City for the performance of any and all subconsultants who perform work under this contract, and any acts of negligence or misconduct on their part. Consultant is solely responsible for all payments due to subconsultants.

4.3 Consultant shall require and verify that all subcontractors maintain insurance meeting all of the requirements stated herein, including naming the City of Campbell, its officers, officials, directors, agents representatives, volunteers, and employees as additional insureds. Any modification to the insurance requirements for subcontractors must be agreed to by the City in writing.

4.4 If at any time, the City determines any subcontractor is incompetent or unqualified, Consultant will be notified and will be expected to immediately cancel the subcontract.

5. OWNERSHIP OF DOCUMENTS AND MATERIALS

All original drawings, documents, papers, data, materials, photographs, negatives and other work products prepared by the Consultant and/or its subconsultants in the performance of the services encompassed in this Agreement (whether in printed or electronic format) (“project-related documents and materials”) shall be the property of the City and may be used on this project without the consent of the Consultant or its subcontractors. City acknowledges that such drawings, documents, and other items are instruments of professional services intended for use only on the subject project. Consultant agrees that all copyrights which arise from creation of the Project-related documents and materials pursuant to this Agreement shall be vested in the City and waives and relinquishes all claims to copyright or other intellectual property rights in favor of the City. Any project-related documents and materials related to this Agreement shall be confidential, not to be used by the Consultant on other projects or disclosed to any third party, except by agreement in writing by the City, or except as otherwise provided herein. Upon the completion or termination of this Agreement for any reason, the City shall be entitled to receive, and Consultant shall promptly provide to the City upon request, all finished and unfinished project-related documents and materials, produced or gathered by or on behalf of Consultant that

are in Consultant's possession, custody or control. Consultant may retain copies of said documents and materials for its files. In the event of termination, any dispute regarding compensation or damages shall not hinder, prevent, or otherwise impact the City's right to promptly receive and use such documents and materials which are the sole and exclusive property of the City.

6. TERMINATION

6.1 Notwithstanding any other provision of this Agreement, City may terminate this Agreement at any time, with or without cause, in its sole discretion, by giving notice in writing to Consultant not less than 14 calendar days prior to an effective termination date. In the event of such termination, Consultant shall have the right and obligation to immediately assemble the work then in progress for the purpose of completing the work and turning over all materials and documents to City.

6.2 In the event of such termination, Consultant shall be compensated for all work and services performed to the point of termination in accordance with the payment provisions set forth in Section 3.1, unless the termination is for cause, in which event Consultant need be compensated only to the extent required by law.

6.3 Upon notice of termination by City, the Consultant will immediately act to not incur any additional obligations, costs or expenses, except as may be reasonably necessary to terminate its activities. All finished or unfinished work or documents procured or produced under the Agreement will become property of the City upon the termination date. In the event of Consultant's failure to perform pursuant to the Agreement, the City reserves the right to obtain services elsewhere and Consultant will be liable for the difference between the prices set forth in the terminated Agreement and the actual cost to the City. Termination of the Agreement pursuant to this paragraph shall not relieve the Consultant of any liability to City for additional costs, expenses, or damages sustained by City due to failure of the Consultant to perform pursuant to the Agreement. City may withhold any payments to Consultant for the purpose of set off until such time as the exact amount of damages due City from Consultant is determined. After the effective date of termination, Consultant will have no further claims against the City under the Agreement. No other compensation will be payable for anticipated profit on unperformed services.

7. AUDIT AND INSPECTION

Consultant shall permit authorized representatives of City to inspect and audit all data and records relating to its performance under this Agreement for a period of three years following acceptance of the final study.

8. EQUAL EMPLOYMENT OPPORTUNITY

Consultant agrees to refrain from discriminatory employment practices on the basis of race, religious creed, color, sex, national origin, handicap, sexual orientation, marital status, medical condition, disability, ancestry, organizational affiliation, military or veteran status, or

any other consideration made unlawful by local, State or Federal law, of any employee of, or applicant for employment with, such Consultant or subcontractor. City requires Consultant to comply with all applicable Federal and State and local equal employment opportunity laws and regulations.

9. INSURANCE AND INDEMNIFICATION

9.1 With respect to any design professional services provided by Consultant, the Consultant agrees to indemnify, and hold harmless the City, its officers, and employees to the fullest extent allowed by law from any and all claims, actions, causes of action, damages, liabilities and losses, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, except for any claims, actions, causes of action, losses, damages or liabilities proximately caused by the sole negligence or willful misconduct of City. City shall not be liable for acts of Consultant in performing services described herein. Notwithstanding anything in this paragraph to the contrary, any defense costs charged to the design professional under this paragraph shall not exceed the design professional's proportionate percentage of fault, except:

a. That in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the design professional shall meet and confer with the other parties regarding unpaid defense costs in good faith effort to agree on the allocation of those costs amongst the parties; and

b. Where a project-specific general liability policy insures all project participants for general liability exposures on a primary basis and also covers all design professionals for their legal liability arising out of their professional services on a primary basis, then there shall be no limitation on the design professional's duty to provide a defense and cover the City's cost of defense.

With respect to all matters other than those covered by the foregoing paragraph, Consultant agrees to indemnify, defend (with counsel reasonably satisfactory to the City) and hold harmless the City, its officers, officials, directors, agents representatives, volunteers, and employees to the fullest extent allowed by law from and against any and all claims, actions, causes of action, losses, damages, liabilities and costs of every nature, including attorneys' fees and costs (collectively, "Losses") including but not limited to all claims, actions, causes of action, losses, damages, liabilities for property damage, bodily injury, or death, and all costs of defending any claim, caused by or arising out of, or alleged to have been caused by or arise out of, in whole or in part, Consultant's performance under this Agreement, except for any claims, actions, causes of action, losses, damages, costs or liabilities proximately caused by the sole negligence or willful misconduct of City. City shall not be liable for acts of Consultant in performing services described herein.

In no event shall this section be construed to require indemnification by the Consultant to a greater extent than permitted under the public policy of the State of California; and in the event that this contract is subject to California Civil Code section 2782(b), the foregoing indemnity provisions shall not apply to any liability for the active negligence of the City.

The defense and indemnity provisions obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by the insurance obligations contained in this Agreement. The foregoing indemnity provisions are intended to fully allocate the parties' risk of liability to third-parties; and there shall be no rights to indemnity or contribution, in law or equity or otherwise between the parties that are not set forth in this section. Consultant waives all rights to subrogation for any matters covered by the provisions of this section. Consultant's responsibility for such defense and indemnity obligations as set forth in this section shall survive the termination or completion of this Agreement for the full period of time allowed by law.

9.2 Consultant shall maintain insurance conforming to the following specifications to the fullest amount allowed by law for a minimum of three (3) years following the termination or completion of this Agreement:

A. Types of Coverage

The policies shall afford the following types of coverage:

1. Commercial General Liability;
2. Automotive;
3. Workers' Compensation and Employer Liability; and
4. Professional Liability and/or Errors and Omissions

B. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. For Commercial General Liability: Insurance Services Office (ISO) CGL Form 00 01 11 85; and
2. For Automotive Liability: ISO CA 00 01 06 92 including symbol 1(any auto); and
3. For Workers' Compensation: insurance as required by the Labor Code of the State of California and Employer's Liability insurance; and
4. For Professional Liability and/or Errors and Omissions: insurance covering negligence committed by or on behalf of Consultant in rendering services to City.

C. Minimum Limits of Insurance

Consultant shall maintain limits no less than:

1. General Liability: \$1,000,000 combined single limit per occurrence for

bodily, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

3. Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employer's Liability limits of \$1,000,000 per accident. The Worker's Compensation policy must be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant and its employees.

4. Professional Liability and/or Errors and Omissions: \$1,000,000 per claim and \$2,000,000 in the annual aggregate.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (as agreed to in this Agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

D. Deductible and Self-Insured Retention

Any deductibles or self-insured retention must be declared to and approved by the City, and shall not reduce the limits of liability. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City, its agents, officers, attorneys, employees, officials and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses related to investigations, claim administration, and defense expenses. Policies containing any self-insured retention provision shall provide or be endorsed to provide that the self-insured retention may be satisfied by either the named insured or the City.

E. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverage:

a. The City, its agents, officers, attorneys, employees, officials and volunteers are to be covered as additional insureds as respects: liability arising out of this Agreement performed by or on behalf of the Consultant, products and completed operations of the Consultant, premises owned, occupied or used by the Consultant, or automobiles owned, leased, hired or borrowed by the Consultant. It is a requirement of this Agreement that any available insurance proceeds broader

than or in excess of the specified minimum insurance coverage requirements and/or limits set forth in this Agreement shall be available to the City as an additional insured. Furthermore, the requirements for coverage and limits shall be

(1) the minimum coverage limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is affords greater coverage.

b. The Consultant's insurance coverage shall be primary insurance as respects the City, its agents, officers, attorneys, employees, officials and volunteers. Any insurance or self-insurance maintained by the City, its agents, officers, attorneys, employees, officials and volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its agents, officers, attorneys, employees, officials, and volunteers.

d. 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.

2. Workers' Compensation and Employer's Liability Coverage: The insurer shall agree to waive all rights of subrogation against the City, its agents, officers, attorneys, employees, officials, and volunteers for losses arising from work performed by the Consultant for the City.

3. All Coverages: Any unintentional failure to comply with reporting provisions of the policies shall not affect coverage provided to the City; and unless otherwise approved by the City, each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice by regular mail has been given to the City, or ten (10) days for cancellation for non-payment of premium.

F. Suspension or Cancellation

If any of the coverages required by this Agreement should be suspended, voided, cancelled or reduced in coverage during the term of this Agreement, Consultant shall immediately notify City and replace such coverage with another policy meeting the requirements of this Agreement.

G. Subcontractors

Consultant agrees that any and all contracts with subcontractors for performance of any matter under this Agreement shall require the subcontractors to comply with the same indemnity and insurance requirements set forth in this Agreement to the extent that they apply to the scope of the subcontractors' work. Subcontractors are to be bound to contractor and to City in the same

manner and to the same extent as the Consultant is bound to City under this Agreement. Subcontractors shall further agree to include these same provisions with any sub-subcontractor. A copy of this Agreement will be furnished to the subcontractor on request. The Consultant shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the Agreement prior to commencing any work, and will provide proof of compliance to the City.

H. Acceptability of Insurers

Without limiting Consultant's indemnification provided hereunder, the policies of insurance listed in Article 9.2 of this Agreement are to be issued by an issuer with a current A.M. Best Rating of A:V and who is authorized to transact business in the State of California, unless otherwise approved by the City.

I. Verification of Coverage

Consultant shall furnish the City with endorsements and certificates of insurance evidencing coverage required by this clause. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms acceptable to the City. Where required by statute, forms approved by the Insurance Commissioner are to be submitted. All certificates are to be received and approved by the City before work commences.

J. Special Risks/Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances and provide notice to Consultant.

10. MISCELLANEOUS

10.1 This Agreement shall be binding on the heirs, executors, assigns and successors of Consultant.

10.2 Neither party may assign this Agreement, or any portion hereof, without the prior written consent of the other.

10.3 This Agreement shall not be construed to alter, affect, or waive any lien or stop notice rights, which Consultant may have for the performance of services pursuant to this Agreement.

10.4 Neither party's waiver of any term, condition or covenant, or breach of any term, condition or covenant shall be construed as the waiver of any other term, condition or covenant or waiver of the breach of any other term, condition or covenant.

10.5 This Agreement contains the entire Agreement between City and Consultant relating to the project and the provision of services to the project. Any prior agreements,

promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect. Subsequent modifications to this Agreement shall be in writing and signed by both City and Consultant.

10.6 If any term, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall be valid and binding on City and Consultant.

10.7 This Agreement shall be governed and construed in accordance with the laws of the State of California.

10.8 All changes or amendments to this Agreement must be in writing and approved by all parties.

10.9 The initial contract term shall commence upon execution of the contract by the City and shall be for a two (2) month period, unless terminated sooner in accordance with the contract. The City of Campbell at its sole discretion may elect to extend the contract up to two (2) consecutive six-month periods by providing written notice to Consultant not less than thirty (30) days prior to expiration of the original or extended term. The total length of the contract shall not exceed a period of one year. Annual contractual costs shall be equal to the April - to-April San Francisco-Oakland-San Jose Consumer Price Index-All Urban (CPI-U) in an amount not to exceed five percent (5%), but not lower than three percent (3%), annually, on July 1 of each contract renewal if executed.

10.10 Consultant owes the City a duty of undivided loyalty in performing the work and services under this Agreement, including, but not limited to, the obligation to refrain from having economic interests and/or participating in activities that conflict with the City's interests in respect to the work and/or services and project. The Consultant shall list current clients who may have a financial interest in the outcome of this Agreement. The Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement. Consultant shall not make or participate in making or in any way attempt to use Consultant's position to influence a governmental decision in which Consultant knows or has reason to know Consultant has a direct or indirect financial interest other than the compensation promised by this Agreement. Consultant will immediately advise the City if Consultant learns of a financial interest of Consultant's during the term of this Agreement.

10.11 City is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Consultant's proprietary information is contained in documents or information submitted to City, and Consultant claims that such information falls within one or more CPRA exemptions, Consultant must clearly mark such information "Confidential and Proprietary," and identify the specific lines containing the information. In the event of a request for such information, City will make best efforts to provide notice to Consultant prior to such disclosure. If Consultant contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the City is required to respond to the

CPRA request. If Consultant fails to obtain such remedy within the time the City is required to respond to the CPRA request, City may disclose the requested information without any liability to Consultant. Consultant further agrees that it shall defend, indemnify and hold City harmless against any claim, action or litigation (including but not limited to all judgments, costs, and attorney's fees) that may result from denial by City of a CPRA request for information arising from any representation, or any action (or inaction), by the Consultant.

10.12 Neither party hereto shall be considered in default in the performance of its obligation hereunder to the extent that the performance of any such obligation is prevented or delayed by an act of God, natural disaster, pandemic, acts of terrorism, war, or other peril, which is beyond the reasonable control of the affected party and without the negligence of the respective Parties. Each party hereto shall give notice promptly to the other of the nature and extent of any Force Majeure claimed to delay, hinder or prevent performance of the services under this Agreement. Each Party will, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and will, upon the cessation of the cause, diligently pursue performance of its obligations in this Agreement. In the event either party is prevented or delayed in the performance of its respective obligation by reason of such Force Majeure, there may be an equitable adjustment of the schedule and Consultant compensation based on City's sole discretion.

10.13 Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

10.14 Consultant warrants that Consultant, its subcontractors and/or agents (if any) has/have complied with any and all federal, state, and local licensing requirements

10.15 Each party acknowledges that it has reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

10.16 The signatories to this Agreement warrant and represent that each is authorized to execute this Agreement and that their respective signatures serve to legally obligate their respective representatives, agents, successors and assigns to comply with the provisions of this Agreement.

10.17 This Agreement is entered into, and to be performed in Santa Clara County, California, and any action arising out of or related to this Agreement shall be maintained in a court of appropriate jurisdiction in Santa Clara County, California.

10.18 This Agreement may be executed in counterparts which shall, in the aggregate, be deemed an original but all of which, together, shall constitute one and the same instrument. A scanned, electronic, facsimile or other copy of a party's signature shall be accepted and valid as an original.

11. **NOTICES**

Notices required under this Agreement may be delivered by first class mail addressed to the appropriate party at one of the following addresses:

CITY: City of Campbell
Attention: Rob Eastwood
70 North First Street
Campbell, CA 95008

CONSULTANT:

Attention: _____

[SIGNATURES ON FOLLOWING PAGE]

DRAFT

Having read and understood the foregoing Agreement, the undersigned parties agree to be bound hereby:

CONSULTANT

CITY OF CAMPBELL

By _____

By _____

Title _____

Title _____

Approved as to Form

City Attorney

DRAFT

DRAFT