

STAFF REPORT
COUNCIL MEETING DATE
August 8, 2011

ITEM FOR COUNCIL CONSIDERATION

Continued review of a request for adjustments and waiver of Development Impact Fees for the Carpinteria Arts Center located at 855 Linden Avenue.

Report prepared by: Nick Bobroff, Associate Planner
Community Development Department


Signature

Reviewed by: Jackie Campbell, Director
Community Development Department


Signature

Reviewed by: Dave Durlinger, City Manager


Signature

STAFF RECOMMENDATION

Action Item ; Non-Action Item

Recommendation:

- Open the public hearing and take public comment; and
- Grant an adjustment to the three applicable Transportation-related DIFs, pursuant to CMC §15.80.100.

Motion: I move to adjust the Development Impact Fees for the new Carpinteria Arts Center located at 855 Linden Avenue per the staff recommendation.

I. BACKGROUND

At the July 25, 2011 City Council hearing, the Council considered a request from the Carpinteria Valley Arts Council (CVAC) for a series of fee adjustments and waivers to the Development Impact Fees (DIFs) calculated for the new Carpinteria Arts Center located at 855 Linden Avenue. The current estimated fees for the new Arts Center total \$217,860.12 and are comprised of the following fee categories: Streets and Thoroughfares, Highway Interchanges

and Bridges, Traffic Control Facilities, General Facilities and Equipment, Storm Drainage Facilities, Open Space Acquisition, and Parking Facilities. A breakdown of the applicable Development Impact Fees is provided here and also attached as Exhibit A to this staff report:

- Streets and Thoroughfares: \$10,764.00;
- Highway Interchanges and Bridges: \$120,413.28;
- Traffic Control Facilities: \$17,078.88;
- General Facilities and Equipment: \$1,865.76;
- Storm Drainage Facilities: \$453.80;
- Open Space Acquisition: \$15,787.20; and
- Parking Facilities: \$51,497.20

The Arts Council requested that the City Council grant a 60% reduction to the calculated fees for the three transportation-related DIFs and a total waiver of the fees for the Open Space Acquisition and Parking Facilities categories. All told, the CVAC's requested adjustments and waivers would reduce their total DIF payment by approximately 58% to \$91,273.26. A copy of the applicant's fee adjustment letter, which includes more detail on the requested reductions and waivers, is attached as Exhibit B.

Staff presented several options for addressing the fee adjustment requests to the Council. These included requiring the applicant to pay the fees in their entirety (staff's recommendation at the time), waiving or reducing one or more of the fees, or helping the applicant pay the applicable fees through a contribution of City funds towards the DIF amounts.

The Councilmembers shared mixed reactions to the requested fee adjustments. On the one hand concern was expressed that the City should not be waiving or dramatically reducing fees at a time when the City faces budget challenges of its own. Similarly, there was apprehension about potentially setting a precedent whereby future not-for-profit uses or developers of projects providing other community benefit would ask for similar fee adjustments. On the other hand, it was acknowledged that the new Arts Center would be a community benefit and would provide additional recreational, educational and art programs for residents and visitors to the City. To that end, there was some discussion that the Arts Center would function like a public facility and potentially provide an equivalent recreational facility. There was also some discussion that some of the fees, like the Highway Interchanges and Bridges fee in particular, may be too high for how little increased demand for service is anticipated from the new Arts Center.

The Arts Council had also requested a waiver of the Parking Facilities DIF; however, the City Council did not determine that further reductions or waivers to the parking fees beyond that already granted as part of the Planning Commission's approval of the project is warranted. Ultimately, the Council directed staff to return to the next meeting with further analysis of more specific options for waivers and/or adjustments to the three transportation-related DIFs and the Open Space Acquisition DIF. The draft minutes from the July 25, 2011 City Council hearing are attached as Exhibit C.

II. DISCUSSION

In response to the Council's direction, staff provides the following options and additional analysis for its consideration:

Option 1a; Transportation Fees Reductions

In the Arts Council's letter to the City Council, they asked the Council to grant 60% reductions to the three transportation-related DIFs: Streets and Thoroughfares (current fee: \$10,764.00); Highway Interchanges and Bridges (current fee: \$120,413.28); and Traffic Control Facilities (current fee: \$17,078.20). The Arts Council sought the reductions based on a perceived lack of nexus between the fees and the new Arts Center given the lack of significant traffic impacts anticipated to result from the project.

In the analysis provided at the July 25th hearing, staff noted that the project's potential to impact the environment, as determined through the CEQA process, was not a basis for the adjustment of DIFs. Because the project would still create additional demands on public transportation infrastructure irrespective of its lack of significant unmitigable environmental impacts, there would be an adequate nexus between the project and the transportation-related fees and therefore the fees would apply. While the City Councilmembers generally agreed that the transportation-related DIFs should apply to this project, there was concern that the fees being imposed under the transportation fee categories, in particular the Highway Interchanges and Bridges fee, were inordinately high compared to the actual additional transportation demands expected to be generated by the project. The Council therefore asked staff to look more closely at how the transportation fees were calculated and whether the new Arts Center might qualify for a lower fee rate based on its traffic generation rates.

The City's current DIF rates are based on a fee study prepared in 2003 by MuniFinancial (2003 Development Impact Fee Report, City of Carpinteria, December 8, 2003). The report analyzes the potential growth in the City from 2003 to 2023 (assumed buildout) and the associated increases in demand for public infrastructure such as transportation facilities and roads, recreational amenities and general facilities that would result from that new development.

The study utilizes information provided by the City on anticipated capital projects needed to accommodate the increased user demands and their associated costs to calculate a "per unit" cost for these improvements. This "per unit" cost effectively becomes the fee amount for the various DIF categories. This calculation is done by first determining what percentage of these future improvements should be borne by existing development and what percentage of the costs is attributable to future development (which is done by calculating the existing square footage of land in the various land use categories, and the available vacant or underdeveloped land available for future development under the various land use categories and then determining what percentage of the total square footage under the build-out scenario is attributable to existing development and future development).

Of the share attributable to future development, the amount is then adjusted for administration costs and any positive net balance in the applicable fund category, and then divided by the total number of anticipated peak hour trips (in the case of the transportation-related fees) expected to result from all new development under the assumed build-out scenario. This provides a cost per peak hour trip, which is then multiplied by an average peak hour trip rate for the applicable land use category to give a final "per unit" fee. In the case of the commercial land use category, the peak hour trip rate is 2.92 p.m. peak hour trips per 1,000 square feet of leasable space. For the purposes of assessing the fees on new development, the City staff then breaks the fee amount down to a per square foot unit and adjusts the fee amounts annually to account for inflation and/or changes in construction costs.

The average peak hour trip rate of 2.92 p.m. peak hour vehicle trips per 1,000 square feet of leasable space for commercial uses reflects both the Institute of Transportation Engineer's most

current edition (at the time) of its *Trip Generation Manual* and the results of trip surveys conducted in the San Diego region at the time of the 2003 report. It is assumed that some new commercial uses would generate more p.m. peak hour trips per 1,000 square feet of building area than the 2.92 trip average (such as a high turnover restaurant), and some uses would generate less (such as a low traffic office or niche retail store use). Using this average peak hour trip rate, it is assumed that the new Arts Center building at 7,911 square feet would generate approximately 23 p.m. peak hour trips, whereas the project-specific Phase I Traffic and Parking Study prepared by Associated Transportation Engineers calculated an anticipated four p.m. peak hour trips for the same building using trip generation rates more specific to the intended use of the building and project-specific operational data provided by the Arts Council. As specific hours of operation and approximate employee staffing levels were established as part of the Planning Commission's approval of the project, the City has reasonable assurances in place to expect the number of p.m. peak hour trips to not fluctuate greatly from the figure provided in the project-specific traffic study.

Minor or moderate disparities between the average peak hour trip generation ratio used for the overall DIF calculation and a particular project's projected peak hour trip generation rate do not necessarily require a DIF reduction. However, the extreme disparity in this case between the average peak hour trip generation rate used as the basis for the DIF and the project-specific peak hour trip generation figures can provide a basis for the City Council to adjust these fees. Comparing the actual number of peak hour trips anticipated for the Arts Center to the number of expected peak hour trips calculated with the averaged peak hour trip rate from the DIF study, the new Arts Center is estimated to generate approximately 17% of the number of peak hour trips that would otherwise be anticipated under the DIF program.

Based on this analysis, it may be determined by the City Council that a nexus exists that is only sufficient to assess the transportation DIFs to the new Arts Center at rates equivalent to 17% of the standard rates. The resulting 83% reduction of the current estimated transportation-related fees would therefore result in the Arts Council paying DIF amounts adjusted to reflect their estimated share of the transportation-related demands for the new Arts Center.

Should the Council elect to grant the 83% reductions to the three transportation-related DIFs, the total fee amounts for the three fee categories would be adjusted accordingly:

- Streets and Thoroughfares
 - Current fee: \$10,764.00
 - Reduced fee: \$1,829.88
- Highway Interchanges and Bridges
 - Current fee: \$120,413.28¹
 - Reduced fee: \$20,470.26
- Traffic Control Facilities
 - Current fee: \$17,078.88
 - Reduced fee: \$2,903.41

All told, an 83% reduction to the three transportation DIFs for the Arts Council's project would result in a savings of \$123,051.61, or approximately a 56.5% reduction to their total DIF payment (using the FY11-12 fee rates and accounting for the temporary discounts currently in

¹ This fee amount reflects the temporary 50% reduction to the Highway Interchanges and Bridges fee as approved by the City Council under Resolution No. 5178. The temporary reduction is in place until March 10, 2012 at which time the temporary fee reduction would expire unless the Council chooses to extend the reduction for a longer period of time.

effect). The resultant revised current total fee estimate due for the new Arts Center would be \$94,808.51, which is comparable to the savings that would have resulted from the original suite of reductions and waivers requested by the Arts Council (as noted above under the Background discussion).

As there is a reasonable nexus argument for reducing the transportation fees for the new Arts Center project due to the disparity between the average peak hour trip rate used for calculating the City's DIFs and the actual anticipated peak hour trips for the project, and the resultant savings on the fees would be within approximately \$3,500 of the Arts Council's original request to the City Council, staff recommends the Council select this option.

Option 1b; Transportation Fees Reductions & Open Space Acquisition Fee Waiver

As part of their fee adjustment request, the Arts Council asked the City Council to waive the \$15,787.20 Open Space Acquisition fee in light of a lack of a connection between the impact of their project and the types of amenities/services funded by the fee. The Arts Council believed their use for the site would not directly impact park and recreation facilities; instead, the new Arts Center would serve as a complement to the City's existing recreational facilities. At the hearing, Gary Campopiano speaking on behalf of the Arts Council, expanded upon this concept, sharing examples of the types of artistic, educational and recreational programs and activities that would be offered to the public by the Arts Council at the new Arts Center.

As noted in the previous City Council staff report prepared for the fee adjustment requests, the arts are not considered recreation in the typical sense of the programs and services offered by the City's Parks and Recreation Department; however, the variety of programs and activities that would be offered by the Arts Council to the community would serve as a community benefit by providing a place for the pursuit of arts-related interests. Existing opportunities for arts programs and activities in the City are limited and there is likely demand for a greater variety, and number, of programs to be made available to the public. In this case, the new Arts Center could therefore be found to be complementary to the City's more traditional recreational facilities by providing a venue for a range of recreational/education/entertainment activities, not covered by City parks and recreation.

In recognition of the Arts Center's contribution to the artistic, educational and recreational opportunities that would be made available to the public, the Council could find, as a matter of policy, that the Arts Council's provision of arts-related activities over a given amount of time is equivalent in value to the Open Space Acquisition fee and therefore have cause to waive said fee. To that end, the Council could consider entering into an agreement with the Arts Council to waive the Open Space Acquisition fee in exchange for the Arts Council agreeing to operate arts-related programs and activities that would be made available to the general public for a fixed minimum number of years. For example, the City and CVAC could enter into a contract for a 30-year period, whereby the City waives the Open Space Acquisition fee in its entirety in return for the Arts Council promising to continue to offer arts-related programming to the public for the contract term. Another option for the Council to consider is requiring the Arts Council to offer a certain amount of free arts-related programming to the community each year in exchange for a waiver of the fees. If the Arts Council were to cease offering public arts activities or the building changed to another use prior to the end of the agreed upon contract term, then the Arts Council (or the new user) would have to pay the applicable fee at that time.

A similar, but somewhat simpler, arrangement was entered into between the City and the Arts Council in 2005 when the City gifted \$45,000 to the CVAC to aid in the purchase of the land at

855 Linden Avenue for the future Arts Center. A copy of the 2005 agreement is attached to this staff report as Exhibit D as an example for the Council's review.

Should the Council choose to pursue this option and the Arts Council agrees to it as well, the Council would have to direct the City Manager to negotiate and enter into an agreement with the Arts Council. Staff would then have to return to the City Council at a later date once the formal contract language has been prepared.

A waiver of the Open Space Acquisition fee would reduce the Arts Council's DIFs by \$15,787.20 which would amount to an approximately seven percent reduction to the current estimated DIFs. If the Council chose to waive the Open Space Acquisition fee *in addition* to reducing the transportation-related fees by 83% (as discussed above), the resultant adjustments to the Arts Council's total DIF amount would be equal to a 63.5% reduction (\$138,838.81 dollar value). The resultant current DIF estimate under this alternative would total \$79,020.31.

If this option were selected by the Council, it would go beyond the targeted savings originally requested by the Arts Council in their June 14, 2011 letter by approximately an additional \$12,250.00. As stated above, it would also require the City to enter into a binding legal agreement with the Arts Council, and would postpone the consummation of the Council's DIF waiver/reduction action until the contract is finalized. On the other hand, it would have the benefit of effectively creating a legal commitment by the Arts Council, which would be recorded against the title of the property, to require the Arts Center to function as a quasi-public facility providing arts-related programs and activities to the public for an agreed upon minimum timeframe in exchange for the fee adjustments.

Option 2; General Reserve Fund Contribution

As a separate option, the City Council could consider a contribution of City funds from the General Reserve Fund *instead* of waiving or reducing any of the applicable individual fees. At the last City Council hearing, Councilmember Reddington expressed interest in considering a cash contribution from the General Reserve Fund to the Arts Council to help cover some of the applicable Development Impact Fees. She noted that she was willing to consider a contribution equivalent to 10-20% of the total current estimated DIF amount.

The City's current General Reserve Fund has a positive balance of approximately \$1,149,957.00. Traditionally, the Council has opted to maintain a minimum balance of \$1,000,000.00 in the General Reserve Fund and only utilize the remaining balance resulting from interest revenue for discretionary spending. The Council has already committed some of the interest revenue from the Fund to other projects (e.g., Tomol Park: \$75,000; Community Services Support Program: \$17,780), which means that there is a balance of approximately \$57,177.00 currently available in the General Reserve Fund.

If the Council elected to pursue this option instead of Options 1a or 1b (above), a contribution equivalent to 10 or 20% of the total current estimated DIF fees would reduce the Arts Council's applicable DIF amounts to the following:

- 10% Contribution; resultant fee: \$196,074.11; or
- 20% Contribution; resultant fee: \$174,288.10.

At these contribution levels, the City's contribution would have a dollar value ranging from \$21,786.01 (at a 10% contribution level) to \$43,572.02 (at a 20% contribution level) from the General Reserve Fund.

As a variation on Option 2, the Council could also decide to make a contribution to the Arts Council from the General Reserve Fund on top of, or in addition to, selecting Options 1a or 1b (above). In either of these scenarios, the resultant reduction to the Arts Council's total DIF amount from a financial contribution by the City Council would be less than noted above, as any agreed-upon contribution percentage would be applied to the remaining DIF amount after the other reductions and/or waivers are applied.

Option 3

The Council could find that an adequate nexus exists to impose the fees at their calculated amount of \$217,860.12. Under this option, the Arts Council would receive no waivers or reductions to their Development Impact Fees nor any contributions from the City's reserve funds.

Based on the information provided, the Council would have sufficient evidence available to waive or reduce some of the applicable Development Impact Fees for the new Carpinteria Arts Center. In addition to the discussed waivers and reductions, the Council could also elect to contribute funds from the City's reserve funds towards covering the calculated fee amounts. Depending upon the option(s) selected by the City Council, the Arts Council's total required fee amounts due could be reduced by anywhere from 10 to 63.5%.

III. OPTIONS

The City Council may consider the following four options to respond to the request for DIF adjustments:

- 1a. The Council could grant an 83% reduction to the Transportation-related DIFs, thereby reducing the Arts Council's applicable fees by 56.5% to \$94,808.51. (staff's recommendation)
- 1b. The Council could grant an 83% reduction to the Transportation-related DIFs and waive the Open Space Acquisition fee, thereby reducing the Arts Council's applicable fees by 63.5% to \$79,020.31.
2. The Council could agree to donate funds to the CVAC to cover all or part of the calculated DIFs from the General Reserve Fund, instead of, or in addition to, either of the options noted above.
3. The City Council could determine that there is an adequate nexus between the proposed development and its impacts to City services that are addressed by the DIFs, as currently calculated. In this case, the Council would deny the fee reduction and waiver requests and require the applicant to pay the full calculated DIF amount. Currently those fees are set at \$217,860.12.

IV. FINANCIAL CONSIDERATIONS

Depending on the option chosen by the Council, the City would receive full or partial payment of Development Impact Fees that would assist in funding identified capital improvement projects in the City.

If the Council chooses to make a contribution towards the Arts Councils DIFs from the General Reserve Fund, the remaining balance available for discretionary spending out of said fund would be reduced accordingly.

Please note that all options discussed above utilize for their calculation the level of DIFs currently charged under the City's ordinance. These baseline DIF amounts will continue to be adjusted annually, which in turn would affect the final calculations provided above. As a result, while the Councils direction will provide the proportionate amount of fee reductions, this proportionate reduction will be applied to the DIFs in effect at the time that the applicant chooses to pay the DIFs.

V. LEGAL ISSUES

In order for the Council to consider any of the options that involve contributing monies from the General Reserve Fund towards the Arts Councils DIFs, the action would require at least three votes of the Council. Granting the Open Space Acquisition fee waiver and/or a reduction to the Transportation-related DIFs or upholding the original calculated DIF amounts would require a simple majority vote of the Council quorum.

Should the Council opt for the waiver of the Open Space Acquisition fee as described earlier in the staff report, staff would need to draft a legal contract that would be entered into between the City and the Carpinteria Valley Arts Council to ensure that in exchange for the waiver of the Open Space Acquisition fee, the Arts Council would operate the Arts Center as a facility open to the general public and make programming and activities available to the general public for an agreed upon minimum time period. Staff would return with the draft agreement language at a later date for the Councils review and approval.

Lastly, at the last City Council hearing on the fee adjustment requests, Gary Campopiano requested on behalf of the Arts Council, that the City Council also consider a 60% reduction to the Fire District Mitigation fee of \$15,787.20. The City is responsible for administering this fee on behalf of the Carpinteria-Summerland Fire Protection District pursuant to CMC §8.26. Section 8.26.090 of Chapter 8.26 outlines a process by which applicants can request an adjustment or waiver of the Fire District's Mitigation Fee, however, because the timeline within which an appeal of the fees would have had to have been filed has passed, the Arts Council is no longer able to request an adjustment to this fee. No action on this matter is required.

VI. ATTACHMENTS

- Exhibit A Carpinteria Arts Center Development Impact Fees Worksheet
- Exhibit B CVAC DIF Adjustment/Waiver Request Letter, dated June 14, 2011
- Exhibit C Draft City Council Hearing Minutes, July 25, 2011
- Exhibit D Copy of the 2005 Agreement Between the City and the CVAC

Exhibit A

Carpinteria Arts Center Development Impact Fees Worksheet

City Council Hearing
August 8, 2011

Project Fee Estimate	
Date:	7/6/2011
Project #:	Carpinteria Arts Council
Address:	855 Linden Avenue
Description	New Multi-purpose Buidling : Art/Office/Classes
Total Streets and Throughfare fees	\$10,764.00
Total Highway Interchanges and Bridges Fees	\$120,413.28
Total Traffic Control Fees	\$17,078.88
Total General Facilities and Equipment Fees	\$1,865.76
Total Storm Drainage Facilities Fees	\$453.80
Total Parkland Acquisition Fees	\$0.00
Total Quimby Fees	\$0.00
Total Parkland Improvement Fees	\$0.00
Total Aquatic Facilities Fees	\$0.00
Total New Construction tax Fees	\$322.92
Total Open Space Acquisition Fees	\$15,787.20
Total City DIF Fees.	\$166,685.84
Other Fees:	
Landscape Bond	\$500.00
FIRE Permit/Review Deposit	\$205.00
Parking Facilities (\$5,149.72 per space)	\$51,497.20
School District	
Total Fees	\$218,888.04

Tran Code (office use only)

- 6414
- 6409
- 6413
- 6408
- 6411
- 6417
- 6416
- 6418
- 6419
- 6140
- 6421

6401

COMMERCIAL/RETAIL

Development Impact Fees Worksheet

Proposed Land Use	Streets & Thoroughfares	Highway Interchanges & Bridges	Traffic Control	General Facilities	Storm Drainage (per acre)	7/1/2011	
						TOTAL	TOTAL
Retail Commercial	1.50	16.78	2.38	0.26	11345.03		
Sq. ft.	7,176	7,176	7,176	7,176	0.040		
DIF Due	\$10,764.00	\$120,413.28	\$17,078.88	\$1,865.76	\$453.80		\$150,575.72
	6414	6409	6413	6408	6411		

City Of Carpinteria Parks and Recreation Fees For Open Space (Only)

Land Use	DIF Fee	Fee
Retail Commercial	\$2.20	x sq. ft.
		= Total
		\$2.20
		7,176
		\$15,787.20

City of Carpinteria - New Construction Tax

CMC 3.08.080	Retail Commercial	eff. 1/9/99
	\$0.0450 per sq. ft.	Fee
		x sq. ft.
		= Total
		\$0.0450
		7,176
		\$322.92

If unit is part of a subdivision paying Park and Recreation Fees, the unit is exempt from New Construction Tax

DIF Fee	\$150,575.72
Open Space DIF Fee	\$15,787.20
New Construction Fee	\$322.92
	\$166,685.84

Landscape Bond (to be held for three years to ensure maintenance of landscaping) \$0.00

FIRE Dist Deposit \$205.00 1000 sq ft and above 0 x building \$0.00

GRAND TOTAL DUE \$166,685.84

Exhibit B

CVAC DIF Adjustment/Waiver Request Letter
Dated June 14, 2011

City Council Hearing
August 8, 2011

To: City of Carpinteria Planning Department

From: Carpinteria Valley Arts Council

Re: Revised Request for Reductions and Waivers of
Development Impact Fees (DIFs) for the Proposed
Carpinteria Arts Center

Date: June 14, 2011

The Carpinteria Valley Arts Council (CVAC) requests modifications to the development impact fees (DIFs) required by the City of Carpinteria for the proposed Carpinteria Valley Arts Center at 855 Linden Avenue.

A series of ordinances and resolutions adopted by the City Council require the payment of various DIFs. The current estimated fees for the Arts Center are as follows:

Development Impact Fee Type	Fee Amount
Streets and Thoroughfares	\$ 12,702
Highway Interchanges & Bridges	\$141,511
Traffic Control Facilities	\$ 20,093
General Facilities & Equipment	\$ 2,225
Storm Drainage & Facilities	\$ 533
Parks and Recreation	\$ 15,608
Parking	\$ 60,513
Fire District	\$ 15,992
Sanitary District	\$ 6,414
Water District	\$ 41,960
New Construction Tax	\$ 323
Landscape Bond	\$ 500

According to the City, a DIF may be reduced, adjusted, or waived if the applicant believes that there is no relationship between the impacts of the development and either the amount of the fee charged or the type of facilities to be constructed with the fee.

Therefore, CVAC is requesting a reduction of some fees and waiver of some others.

1. Reductions Requested:

CVAC requests a 60 percent reduction in the following DIFs:

- Streets and Thoroughfares
- Highway Interchanges and Bridges
- Traffic Control Facilities

CVAC requests these reductions because the new building will have minimal impact in these categories.

Justification for Reduction Request

The December 2008 Associated Transportation Engineers (ATE) Traffic and Parking Study commissioned by CVAC to assess the expected impact on traffic and parking concluded that the proposed site “would not generate significant impacts to the surrounding street network.” More specifically:

- The Arts Center is not expected to generate traffic during the a.m. peak hour period since the center would not open until 10:00 a.m.
- The Arts Center would generate four trips during the p.m. peak hour period, but this minor amount of traffic would not significantly degrade operations on the surrounding street network. Since the City’s threshold requires a minimum of five peak hour trips be added to critical intersections to generate a potentially significant traffic impact, there is insufficient impact during these time periods to assess a DIF.
- The Arts Center studios would not be used on Sundays.
- CVAC will hold large gallery and special events 4 p.m. and later when there is less traffic from other businesses.
- CVAC will actively encourage staff, volunteers, activity participants, and visitors to use alternative means of transportation, thereby decreasing traffic impact. To this end, CVAC will provide shuttle service when a large special event occurs, thereby reducing traffic on the streets and encourage staff, visitors and volunteers to walk, bike ride, carpool, and use the electric shuttle.

Given this data, it seems reasonable and appropriate to request reductions in the DIFs for Streets and Thoroughfares, Highway Interchanges and Bridges, and Traffic Control Facilities.

2. Requested Waivers:

a. Parking and Recreation

CVAC requests a waiver of the Parking and Recreation DIF based on there being no connection between the impact of the development and the use of the fee.

Justification for the Waiver Request

The Arts Center is a not-for-profit charitable organization with the mission to facilitate the arts for the enjoyment of Carpinteria residents. It will not directly impact Park and Recreation sites.

The new facility will serve as a complement to the existing recreational facilities in the community. With its two exhibit galleries and working studios, the proposed building will provide adults and children with additional recreational, educational, and entertainment alternatives.

b. Parking

Since the submission of our original plan, the Planning Commission has granted a 30% reduction to the required amount of parking, thereby reducing the total number of required spaces from 20 to 14.

Of these 14 spaces, four are already provided onsite. Therefore, CVAC is now requesting a waiver of the requirement to pay DIFs for 10 spaces.

Justification for the Waiver Request

This request is based on an alternative plan to adding additional spaces; instead, CVAC is committed to decreasing the demand for parking spaces by implementing a comprehensive parking management plan.

This Parking Management Plan, much of which has already been implemented, includes but is not limited to, the following measures:

1. Holding large gallery openings and other special events at 4 PM or later when there is less parking demand from other businesses.

2. Encouraging staff, volunteers, activity participants, and visitors to use alternative means of transportation, thereby decreasing demand for parking. To accomplish this, CVAC will perform the following actions:

- Issue event and gallery invitations encouraging visitors and studio participants to utilize alternative means of transportation (i.e., walk, bike ride, carpool, public transit, electric shuttle);
- Attempt to hire staff and recruit volunteers that live within walking or cycling distance from the Arts Center;

Please note that CVAC's recently hired Director and Associate Director of our Art-by-the-Sea Summer Camp both live in Carpinteria and will be biking to work.

- Emphasize the use of alternative means of transportation in volunteer and staff meetings and training sessions;
- Provide shuttle and/or valet services during large events;
- Participate in events promoting alternative transportation for Arts Center staff, such as those organized by Traffic Solutions.

3. Additional Recommendation/Request

To further alleviate any changes in traffic on Linden Avenue, CVAC requests that the new parking space being created in front of the new Arts Center be used as a loading/unloading zone.

Conclusion:

CVAC thanks you for consideration of these requests for fee reduction and waivers.

Raising the funds for the building will be a challenge, but the Arts Council is confident that the community will support fundraising efforts. The reduction and waiver of the required DIFs will help make the new Arts Center a reality.

Exhibit C

Draft July 25th, 2011 City Council Minutes

City Council Hearing
August 8, 2011

DRAFT

5. Request for Waiver or Adjustment of Development Impact Fees for the Carpinteria Arts Center Located at 855 Linden Avenue

Recommendation: Open public hearing, take public comment and continue the matter to August 8, 2011 City Council hearing; and uphold the assessment of the Development Impact Fees for the Carpinteria Arts Center in the amount of \$217,860.12.

Mayor Clark stated that he would recuse himself from this item because he was a member of Carpinteria Arts Council and although he was a nonvoting member there was a perceived conflict of interest.

Vice Mayor Stein stated the he would recuse himself from this item because he had a perceived conflict of interest because his wife, Carla, was the Chairperson of the Endowment Committee for the Carpinteria Arts Council.

Mayor Clark appointed Councilmember Carty as the Acting Mayor to run this portion of the meeting.

Mayor Clark and Vice Mayor Stein stepped down from the dais and exited the Council Chambers.

There were no disclosures of ex parte communications.

Nick Bobroff, Associate Planner, presented the staff report.

Gary Campopiano, Board Member of Carpinteria Valley Arts Council, read from a brochure developed by the Arts Council regarding development of an arts center and the Arts Council's vision for the community's Arts Center. He stated that the Arts Center would be an asset and would be placed equal to the Boys and Girls Club, Girls Inc., Carpinteria Bluffs, Salt Marsh, library, Sheriff's Substation, Fire Station, and church. He also stated that the Arts Council believed that because of the benefits that the Arts Center would provide that the development impact fees could be reduced or waived for the reasons stated in their June 14 request. He noted that at the time of the request the Arts Council was unaware that the City Council could grant a reduction or waiver of the \$16,000 Fire District fee. He stated that the Arts Council would request a 60 percent reduction of the fee and he asked the City Council to consider the request for a reduction in the development impact fees.

Ginnie Brush, Director of the County Arts Commission, spoke regarding the economic impacts that arts centers bring. She noted that arts centers bring in income, affect quality of life, and engage the community. She also noted that arts centers provide a resource for people who may not have access to the arts, provides opportunities for cross generational learning, and gives people a taste of something that might one day be a future career. She encouraged the City Council to consider the request to waive or adjust the development impacts fees for this project.

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Andy Neuman, architect for the project, thanked the City Council for providing the seed money to help purchase the land for this project. He thanked staff for their professionalism and for working with the Arts Center during this process. He suggested that the City Council should consider the community benefit as the main consideration, and he stated that he would appreciate the City Council's support in reducing the fees.

Acting Mayor Carty stated that the Arts Center would be a benefit, asset, and treasure for Carpinteria.

Councilmember Armendariz expressed concern with the methodology used in quantifying development impacts and commented that he believed the cost of construction for these types of infrastructure projects were too high. He stated that he agreed this project could be a valuable community resource. He noted that one year ago the City Council reduced the interchange and bridges fee by 50 percent and extended the reduction an additional 18 months in hopes of having a uniform benefit for all developers in the City.

City Attorney Peter Brown stated that the City wanted to have uniform applicability of the development impact fee ordinance. He noted that the staff report raised questions regarding policy direction that the City Council could provide if the Council felt there were reasons to make changes to the recommended fees. He also noted that the City Council could decide that for reasons particular only to the Arts Center project that some change in the fees is appropriate or the City Council could take a broader approach by looking at the fee program and create exceptions for some broad class of projects. He stated that if the City Council were to decide a different option that staff would need to ensure there is evidence in the record that is appropriate to support alternate action.

Councilmember Armendariz inquired whether the applicants could be allowed to pay the development impacts fees in installments. City Manager Dave Durflinger responded that this could be an option as long as there is a proper formal arrangement. He noted that the City Council would need to consider whether to give this consideration to other future projects. Councilmember Armendariz inquired whether this project could be addressed as a categorical issue and whether the City Council could create a special category of projects for non-profit organizations. City Manager Dave Durflinger responded that this was included as Option 4, Part B to amend the program which would require an amendment to the Municipal Code to establish an exemption category for non-profits or projects that the City Council determines have certain public benefit. He stated that the City Council could direct staff to meet with representatives from the Arts Council to discuss the specific public benefits that would warrant reduction in fees. He noted that this was the approach taken when the City Council made the \$45,000 contribution for the property purchase. Councilmember Armendariz inquired regarding the funding source for the acquisition of the property. City Manager Dave Durflinger responded that the funds were from the Open Space Acquisition Fund.

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Councilmember Reddington stated that development impact fees are collected because the City has a need for them. She expressed concern with waiving the fees at this time because it would create a categorical exemption that the City cannot afford. She stated that she would support the option to give the Arts Center a donation towards these fees but not to waive the fees as the City had maintenance needs for parks, streets, playing fields, and the pool.

Councilmember Armendariz inquired whether the development impact fees were calculated for current or future development. City Manager Dave Durflinger responded that the Development Impact Fee program was created to ensure adequate capacity for infrastructure for the long term and was an estimate of capital improvement needs based on a theoretical build-out of the community. He noted that development impact fees do not pay for needs that have not been met in the past and that they make payment for the capacity needs created only by new development. City Attorney Peter Brown added that when calculating development impact fees new development cannot be charged to pay for pre-existing defects and it could only be charged for its proportionate share. He noted that when the fee ordinance was adopted a fee study was prepared that considered the build-out in the General Plan, existing development, and deficiencies, and determined what proportion to assess new development.

Councilmember Armendariz stated that he believed the \$120,000 fee for highway interchanges and bridges was excessive and that he agreed that the open space acquisition fee should be eliminated as it was unnecessary in this situation. He suggested that rather than looking at a 60 percent across the board reduction that the City Council consider some of the fees individually and determine whether or not they are applicable in this situation and help this project go forward.

Acting Mayor Carty stated that there would be impacts based on this development; however, he agreed that the City Council should consider creating a non-profit category. He also stated that he agreed with eliminating the open space acquisition fee.

City Manager Dave Durflinger noted that Councilmember Reddington suggested upholding the fee, which suggests that there is a legal nexus between the fees and they could be supported under the existing program. He also noted that Councilmember Armendariz suggested he did not believe there was any nexus to some of the fees, in particular the interchanges and bridges fee. He stated that under this suggestion staff would need to ask the City Council for specific basis for the determination that there is no link between the project's impacts and the development impact fees. He noted that Acting Mayor Carty suggested amending the Municipal Code to create a specific exempt category. He stated that it would take staff time to initiate a Municipal Code amendment to create the exemption and studies may need to be done in order to support an exemption. He noted that other cities have made exemptions and findings on a case-by-case basis to determine whether a nexus exists based on current projects.

City Attorney Peter Brown stated that the City Attorney's Office would recommend having an ordinance that is interpreted uniformly and if there is to be an exception there

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would need to be good evidence in the record. He noted that under the law if there is a development impact fee program that has been adopted by Council that the courts would defer to that and would not substitute their judgment for the City's judgment.

Acting Mayor Carty expressed support for elimination of the open space acquisition fee, reduction of interchange and bridges fee, and creation of a non-profit category exemption. Councilmember Armendariz stated that he believed that \$120,000 in development impact fees for interchanges and bridges to the Arts Center was not justifiable.

City Manager Dave Durflinger stated that in terms of direction that Councilmember Armendariz and Acting Mayor Carty suggested that there was no nexus on the proportional share to interchanges and bridges fee. He suggested that one option would be for the City Council to formally recognize a public benefit and staff could meet with the Arts Council to seek options for an agreement of guaranteeing these public benefits. He stated that this would allow for a policy to reduce the fees for the Arts Center and it would avoid the complexities of the nexus relationships and the potential precedence, and would avoid time and cost for amendment to the Municipal Code.

Councilmember Reddington expressed concern that anyone could argue the public benefit and the City Council would need to spend time, staff time, attorney time, and public time for other projects. City Manager Dave Durflinger responded that it was important to consider precedence; however, procedurally anyone would have access to this process, could ask for waivers, and could argue a lack of nexus.

Community Development Director Jackie Campbell stated that when looking at how the fee structure is set up there were three land use categories: residential, commercial, and industrial. She noted that this project falls under the commercial category which is the most intense. She also noted that when the original fee study was done it was calculated that a certain number of trips are generated per square foot based on the land use type. She stated that the nexus argument that the project would create some impact to highway interchanges and bridges was possible and perhaps not at the \$120,000 value contribution because an arts center would generate less traffic per square foot than the square footage dedicated to a grocery store. She suggested that the City Council could direct staff to review the land use categories to find a nexus for lower traffic generation rate per square foot for this particular type of use because activities occur outside the peak hours and on weekends, and it would not cause the City to expand its intersections because they are not generating peak hour traffic

City Manager Dave Durflinger suggested that the City Council could amend the program to create exemption or create a unique category in terms of transportation impacts. Acting Mayor Carty expressed his support. Councilmember Reddington expressed that she was not interested in creating a special category for non-profits and that she wanted to consider allowing the Arts Center a 10 or 20 percent reduction in the fees. Councilmember Armendariz expressed that he wanted staff to bring back options for the City Council's consideration.

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City Manager Dave Durlinger stated that this item would be brought back at the next meeting for formal action. He also stated that he wanted to make a correction to an earlier response that the \$45,000 actually came from the general reserve fund that was set aside for recreation projects.

The City Council recessed to a break at 7:36 p.m. and reconvened at 7:40 p.m. Vice Mayor Stein and Mayor Clark took their seats at the dais.

Exhibit D

2005 Agreement re: Carpinteria Arts Center Land Purchase

City Council Hearing
August 8, 2011

GRANT CONTRACT

This Grant Contract (**Contract**) is made and effective as of April 13, 2005 (**Effective Date**), between the City of Carpinteria, California (**City or Grantor**), as one party, and the Carpinteria Valley Arts Council (**Arts Council or Grantee**), as the other party, with reference to the recitals listed below:

RECITALS

A. WHEREAS, the Arts Council's mission is to provide programs, activities, and educational exercises designed to promote and enhance the arts and to foster the appreciation of and participation in artistic endeavors within the community;

B. WHEREAS, the City finds that the public would be beneficially served through the increased availability of facilities, programs, activities and events designed to promote education, appreciation and participation in the arts;

C. WHEREAS, the Arts Council currently has an agreement with the owner of that certain real property known as 855 Linden Avenue in the City of Carpinteria (**Property**) to purchase said Property for the purpose of establishing and operating a community arts center (**Center**), where the Arts Council will provide classes, exhibits, live performances, and other programs and activities to be made available to all members of the community and that will be designed to promote and enhance the arts within the City of Carpinteria;

D. WHEREAS, the Arts Council has requested that the City provide funds to assist in the purchase of said Property to be used as the Center; and

E. WHEREAS, the City is willing to provide the sum of forty-five thousand dollars (\$45,000) for the specific purpose of contributing to the purchase of the Property in order to assist the Arts Council's acquisition thereof for the purpose of establishing and operating the Center, subject to the terms and conditions set forth in this Contract;

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into the operative provisions of this Contract, as well as the covenants, conditions and obligations of the parties contained herein, THE PARTIES AGREE as follows:

1. **Community Arts Center.** The funds granted herein are to be used by Grantee for the acquisition of the Property to be operated as the Center. The Center will be owned and operated by the Grantee for the purpose of providing facilities for programs, activities, functions, and events designed to promote and enhance the arts within the City of Carpinteria. Grantee will offer and conduct programs, activities,

functions and events designed to benefit and to be made available to members of the public, such programs and events to include, but not be limited to, art and dance classes (e.g., painting, ceramics, etc.), drama/theatre classes, music classes, art exhibits, live art and dance performances, dramatic performances, live musical performances, lectures, and poetry readings. Grantee shall provide for public access to the programs, activities, functions and events conducted at the Center in accordance with the intent and provisions of this Contract and in a manner designed to promote the participation and enjoyment of the Center by the citizens of the City of Carpinteria. Provided, however, that this Contract shall not to be construed in any fashion as controlling and/or restricting the content of any arts programs, activities, functions, or events offered or conducted by the Arts Council at the Center in furtherance of the provisions of this Contract.

2. **Purpose of Grant.** Grantee acknowledges that the funds granted by this Contract are to be used by Grantee for the sole purpose of acquiring the Property to be operated by Grantee as the Center. Grantee further acknowledges that such funds, or any amount thereof, may not be used by Grantee for any other purpose absent prior written consent of the City. Any use of the funds granted by this Contract for any purpose or in any manner inconsistent with the purpose set forth herein, as reasonably determined by the City, shall constitute grounds for termination of this Contract and, upon Grantor's election to terminate this Contract, shall obligate Grantee to repay Grantor the full amount of the Grant Funds, plus interest, as provided in Paragraph 7 below.

2.1 **Grantee Responsible for Necessary Additional Funding.** Grantee assumes the obligation and agrees to expend from its own resources, or through funds acquired from other funding sources, such additional funds that may be necessary to complete the acquisition of the Property and to support the maintenance, operation and use of the Center in a manner consistent with this Contract. Grantee further agrees to comply with all applicable state and local laws or ordinances affecting real property acquisition.

2.2 **Grantee Responsible for Necessary Permitting and Approvals.** Grantee assumes the obligation and agrees to pursue such additional funding, licenses, permits and approvals required to prepare and maintain the Property as necessary to open and operate the Center and to support the programs and activities set forth in Paragraph 1 above. This Contract does not constitute a waiver of the City's authority to regulate Grantee's future use of the Property pursuant to applicable provisions of law, including, but not limited to, building, health, zoning, fire and safety requirements and standards, and laws and codes pertaining to individuals with disabilities.

2.3 **Grantee Responsible for ADA Compliance.** Grantee assumes the obligation and agrees to design, manage and operate the Property and all facilities

located thereon in compliance with any applicable provisions of and regulations adopted pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. (ADA). Provided, however, that the parties agree that this Contract is not intended to expand or increase Grantee's obligations under the ADA beyond such obligations that would apply to Grantee's ownership and operation of the Property in the absence of this Contract. The services, programs, and activities to be provided or made available at the Center in furtherance of this Contract will be provided or made available by Grantee, not Grantor.

3. **Grant Funds and Method of Disbursement.** Grantor hereby agrees to grant to the Grantee the sum of forty-five thousand dollars (\$45,000) (**Grant Funds**), in consideration of, and on condition that, the Grant Funds be expended by Grantee in carrying out the purpose set forth in Paragraph 2 above, and under the terms and conditions set forth in this Contract. Until released to Grantee pursuant to the terms provided herein, the Grant Funds shall be advanced by Grantor and held in the escrow account created for Grantee's purchase of the Property. Grantor shall provide instructions to the escrow holder to release the Grant Funds to Grantee only upon Grantee's showing, to the satisfaction of Grantor, (i) that Grantee has successfully secured such additional funding needed to finalize the purchase of the Property, and (ii) that all other contingencies upon the purchase of the Property have been satisfied. Upon Grantee's satisfaction of the preceding conditions and within ten (10) business days of Grantor's receipt of Grantee's written request thereafter for release of the Grant Funds to Grantee, Grantor shall instruct the escrow holder to release the Grant Funds to Grantee. Grantee shall indemnify and hold Grantor harmless from any liability or damage resulting from any failure to make or delay in making such payments.

Grantor acknowledges that Grantee has relied on the grant provided herein, and will continue to rely on the grant provided herein, in soliciting other funding for the purchase of the Property. Therefore, except as otherwise provided herein, this Contract is irrevocable and is a binding obligation of the parties in accordance with the terms of this Contract. Grantor shall not withhold the Grant Funds, or any portion thereof, upon Grantee's reasonable showing that all conditions for the release of the Grant Funds to Grantee have been satisfied.

4. **Term of Availability of Grant Funds.** Grantee shall utilize its best efforts to ensure that Grantee's purchase of the Property shall be finalized within two (2) months of the Effective Date of this Contract, and that the Center shall be open to the public no later than four (4) months after the Effective Date of this Contract. Subject to extensions for any delays, which shall not be unreasonably withheld by Grantor, if Grantee is unable to complete the purchase of the Property within two (2) months of the Effective Date, this Contract shall terminate and the Grant Funds shall revert to Grantor. Notwithstanding any extensions that may be provided by Grantor pursuant to this section, this Contract shall terminate and the Grant Funds shall revert to Grantor if

Grantee has not completed the purchase of the Property within four (4) months of the Effective Date.

In addition, subject to extensions for any delays, which shall not be unreasonably withheld by Grantor, if Grantee fails to open the Center to the public within four (4) months after the Effective Date, such failure shall constitute grounds for termination of this Contract and, upon Grantor's election to terminate this Contract, shall obligate Grantee to repay Grantor the full amount of the Grant Funds, plus interest, as provided in Paragraph 7 below. Provided that, for the purposes of this Contract, any requirement that Grantee open the Center to the public by a specified date shall be satisfied if, by such date, (i) Grantee is using an existing facility on the Property as an art gallery open to the public, and (ii) Grantee is making reasonable efforts, weather permitting, to offer or conduct at the Property, from time to time, outdoor programs, activities, functions or events open to the public and consistent with the purpose described in Paragraph 1 above.

5. **Maintenance, Operation, Use and Sale of Property.** Grantee agrees that the Property and the Center, once acquired and opened to the public, will be maintained and operated by Grantee in such a manner as to serve the public purpose set forth herein, and that Grantee will not manage or operate the Center in any fashion that would diminish or hinder the programmatic utility and public use of the Center, as described by this Contract. Grantee shall use the Center for the purposes provided by this Contract and shall make no other use, sale or other disposition of the Property during the Term of this Contract, except as permitted herein or as otherwise authorized by the City, that would unreasonably interfere with the uses described in Paragraph 1 above. If the use of the Property is changed to a use that is not consistent with or would unreasonably interfere with the uses described in Paragraph 1 above, as reasonably determined by the City, absent prior authorization by the City, such use shall constitute grounds for termination of this Contract and, upon Grantor's election to terminate this Contract, shall obligate Grantee to repay Grantor the full amount of the Grant Funds, plus interest, as provided in Paragraph 7 below; provided, however, that the agreements specified in this section shall not prevent the transfer of the Property by Grantee under the circumstances permitted by Paragraph 7.1 below.

5.1 **Compatible Private Uses Permitted.** Nothing in this Contract shall prohibit Grantee from conducting or permitting private programs, activities, functions, events, fundraisers, or other private use of the Property, including the use of the Property by Grantee or Grantee's lessee for other business purposes; provided that, as reasonably determined by the City, such private use of the Property does not unreasonably interfere with or hinder the use of the Property for the purpose described in Paragraph 1 above and is not otherwise inconsistent with the public purpose described by this Contract.

6. **Audit of Arts Council Records; Review of Center Programs and Activities.** Grantee shall keep accurate written records of all costs and expenses incurred by it and of all monies and receipts received by it, and of all studies, statistics and reports made or issued by Grantee in the course of maintaining, operating and managing the Center for the purpose described by this Contract. Grantee shall also keep records related to all programs, activities, functions and events conducted or held at the Center in furtherance of the purpose described herein. Grantee shall also keep accurate written minutes of all meetings of the Board of Directors acting on behalf of the Arts Council, and shall keep accurate employment records, correspondence records, and any other records deemed necessary to enable the City to review Grantee's maintenance, operation and use of the Property. Grantee shall retain all such records for a period of at least five (5) years from the date of their creation. At Grantor's request, Grantee shall furnish Grantor with a copy of any records maintained by Grantee pursuant to the terms of this Contract relating to Grantee's maintenance, operation and use of the Property as required by this Contract.

Grantor shall have the right to audit and review all records maintained by Grantee pursuant to this provision for the purpose of determining that the Property is maintained, operated and used in a manner consistent with this Contract. Any such audit and review may be conducted at any time during regular business hours. Grantee shall also permit periodic site visits by Grantor, or its designated agents, as deemed necessary by Grantor to determine whether Grantee is maintaining, operating and using the Property in a manner consistent with the terms of this Contract. Provided, however, that nothing within this Contract shall be deemed to obligate Grantee to maintain and/or produce for Grantor's inspection any records relating to Grantee's operations and affairs other than such operations and affairs relating to Grantee's maintenance, operation and use of the Property in furtherance of the public purpose described by this Contract. Provided, further, that nothing within this Contract shall authorize the City to dictate, control, or restrict the content of any arts programs, activities, functions, or events offered or conducted by the Arts Council in furtherance of the provisions of this Contract.

7. **Termination of Contract.** Grantor shall have the right to terminate this Contract at any time during the Term thereof, with or without prior notice of Grantor's intent to terminate the Contract, for any of the following reasons:

- a. If Grantee fails to finalize the purchase of the Property as required pursuant to Paragraph 4 above;
- b. If, following acquisition of the Property by Grantee, Grantee fails to open the Center for public use as required pursuant to Paragraph 4 above;

- c. If, as reasonably determined by Grantor, Grantee has incurred obligations or made expenditures of the Grant Funds, or any amount thereof, for any purpose prohibited by or otherwise inconsistent with the provisions of this Contract;
- d. If, as reasonably determined by Grantor, Grantee is maintaining, operating or using the Center in any manner prohibited by or otherwise inconsistent with the provisions of this Contract;
- e. If Grantee sells or otherwise disposes of the Property in a manner prohibited by Paragraph 5 above or under any other circumstances resulting in the discontinued use of the Property in a manner consistent with the purpose described in Paragraph 1 above, except as expressly permitted pursuant to Paragraph 7.1 below; or
- f. For any other reason provided by the terms of this Contract.

Upon Grantor's election to terminate this Contract pursuant to this provision, Grantor shall serve notice of such termination upon Grantee. Grantor's election to terminate this Contract shall obligate Grantee to pay Grantor an amount equal to the Grant Funds, or any amount thereof theretofore received by Grantee, plus interest at the average Cost of Funds Index rate calculated from the Effective Date of this Contract to the date of termination, such interest to be accrued from the date of release of the Grant Funds, or any amount thereof, to Grantee. Such payment must be made by Grantee to Grantor within sixty (60) days of receipt of Grantor's notice of termination of the Contract.

7.1 Exceptions; Permitted Disposition of Property. Grantee is permitted to sell or otherwise dispose of the Property under either of the following circumstances, and such act shall not constitute grounds for the termination of this Contract:

a. This Contract shall not prevent the transfer or disposition of the Property by Grantee in the case that, prior to, concurrent with, or within sixty (60) following such transfer, (i) Grantee purchases comparable property within the City of Carpinteria which Grantee agrees to own, maintain, operate and use in a manner consistent with the provisions of this Contract, and (ii) Grantee executes an agreement with the City binding Grantee to such terms.

b. This Contract shall not prevent the transfer of the Property by Grantee in the case that Grantee's successor assumes, through a written agreement with and upon such terms agreeable to the City, the obligations imposed by this Contract with regard to such successor's ownership, maintenance, operation and use of the Property.

8. **Term of Contract.** The term of this Contract shall be for ten (10) years following the Effective Date (**Term**), unless sooner terminated as provided herein.

9. **Hold Harmless.** It is understood and agreed that Grantor, its officers, agents, and employees, shall not be liable or responsible for any injury or damage to persons or property resulting from the operations or activities of Grantee, its officers, agents, or employees in connection with the Center; and Grantee agrees to indemnify and hold harmless Grantor and its officers, agents and employees from and against any and all claims and liability for damage or injury to persons or property resulting from the activities or omissions of Grantee, its officers, agents, employees, or subcontractors in connection with the maintenance, operation or use of the Property or the operation, maintenance or use of any buildings, equipment and other facilities used by Grantee thereon.

10. **Insurance.** Grantee agrees to secure and deliver to Grantor, prior to disbursement of any funds pursuant to this Contract, a certificate of insurance adding the City as a co-insured and evidencing that Grantee has obtained comprehensive general liability insurance, in the amount stated below, and an endorsement to the effect that the policy shall not be cancelled or reduced unless thirty (30) days prior notice of cancellation or reduction has been served by registered mail on Grantor.

- A. Personal Injury/Accidental Death: \$1,000,000 single limit coverage;
- B. Property Damage: As to any one accident involving damage to property, \$50,000.

Said insurance policy or policies shall be procured at Grantee's expense from an insurance company or companies which are licensed to do business in the State of California and in which all respects are satisfactory to Grantor.

In case of failure to procure or renew the required insurance, Grantor may, at its discretion and in addition to other remedies provided by this Contract, procure or renew such insurance at Grantee's expense.

11. **Worker's Compensation Insurance.** Grantee shall provide, during the term of this Contract, Worker's Compensation Insurance for all of its employees for whom such insurance is required. The Grantee shall file with the City a certificate from the insurance carrier showing that Grantee and all its employees are covered by Worker's Compensation Insurance.

12. **Assignment.** Grantee shall not assign this Contract or any part thereof, or any monies payable hereunder, without the prior written approval of the City.

13. **Nondiscrimination.** Grantee shall not discriminate against any person on the basis of sex, race, color, national origin, age, religion, ancestry, sexual orientation, or disability in the use of the Center. Grantee shall not discriminate against any person on the basis of residence except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence and pursuant to law. The Center shall be open to members of the public generally.

14. **Contract Binding on Successors.** The conditions of this Contract, and the respective rights and obligations of the parties hereunder, shall be binding upon the heirs, assigns and successors-in-interest of each of the parties, unless and until this Contract is terminated, revoked or otherwise becomes ineffective. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Contract shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Contract shall be enforceable during the Term hereof as equitable servitudes and shall constitute covenants running with the land pursuant to applicable law, including but not limited to Section 1468 of the Civil Code of the State of California. Each covenant to do or refrain from doing some act on the Property hereunder, or with respect to any City-owned property or property interest: (i) is for the benefit of such properties and is a burden upon such property, (ii) runs with such properties, and (iii) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each party and its property hereunder, and each other person or entity succeeding to an interest in such properties.

15. **Severability.** If any provision of this Contract or the application of any provision of this Contract to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, then to the extent that the invalidity or unenforceability does not impair the application of this Contract as intended by the parties, the remaining provisions of this Contract, or the application of this Contract to other situations, shall continue in full force and effect.

16. **Construction.** This Contract has been reviewed and revised by legal counsel for both Grantee and Grantor, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Contract, which shall be interpreted and enforced according to the plain meaning thereof.

17. **Notices.** All notices, approvals, acceptances, demands and other communications required or permitted under this Contract shall be in writing and shall be delivered in person or by U.S. mails (postage prepaid, certified, return receipt requested) or by Federal Express or other similar overnight delivery service to the party to whom the notice is directed at the address of such party as follows:

To the City, to:

Dave Durlinger, City Manager
City of Carpinteria
5775 Carpinteria Avenue
Carpinteria, CA 93013

With a Copy to:

City Attorney
City of Carpinteria
Hatch & Parent
21 East Carrillo Street
Santa Barbara, CA 93101

To the Arts Council, to:

Board Chairman
P.O. Box 597
Carpinteria, CA 93014

Any written communication given by mail shall be deemed delivered two (2) business days after such mailing date; any written communication given by overnight delivery service shall be deemed delivered one (1) business day after the dispatch date; any delivery in person shall be deemed delivered when delivered to the party to whom it is addressed. Either party may change its address by giving the other party written notice of its new address as provided above.

18. **No Third Party Beneficiary.** This Contract is made and entered into for the sole protection and benefit of the parties hereto. No other party shall have any right of action based upon any provisions of this Contract.

19. **Waiver.** No waiver of any provision of this Contract shall be effective unless made in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. No waiver of any right or remedy in respect to any occurrence or event shall be deemed a waiver of any right or remedy in

respect to any other occurrence or event.

20. **Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Contract, with venue for any legal action lying in a court of competent jurisdiction in the County of Santa Barbara, State of California.

21. **Further Actions.** Each party shall promptly take such further actions and execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Contract in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

22. **Time of Essence.** Time is of the essence for this Contract.

23. **Recordation.** The Contract shall be recorded, at Grantee's sole cost and expense, upon close of escrow for Grantee's purchase of the Property.

24. **Entire Agreement and Amendment.** This Contract, together with all documents and exhibits referred to herein, contains all of the agreements of the parties with respect to the matters contained herein, and no other prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Contract may be amended except by an agreement in writing signed by the parties hereto or their respective successors-in-interest and by no other means. Each party waives their right to claim, contest or assert that this Contract was modified, cancelled, superceded, or changed by oral agreement, course of conduct, waiver or estoppel.

25. **Signatures.** The individuals executing this Contract represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Contract on behalf of the respective legal entities of the Arts Council and the City. This Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

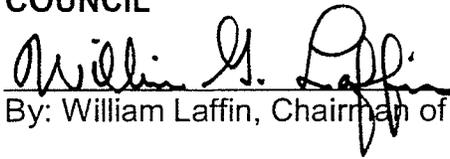
IN WITNESS WHEREOF, the Arts Council and the City have executed this Contract as of the date first hereinabove written.

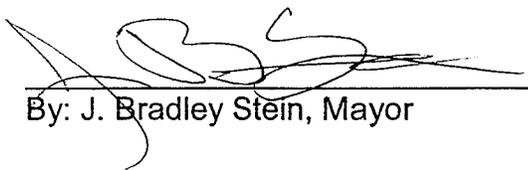
GRANTEE

GRANTOR

**CARPINTERIA VALLEY ARTS
COUNCIL**

CITY OF CARPINTERIA, a body politic


By: William Laffin, Chairman of the Board


By: J. Bradley Stein, Mayor

Richard Weinberg

By: RICHARD WEINBERG - VICE CHAIRMAN
Its: CARPINTERIA VALLEY ARTS COUNCIL

ATTEST:

Jayne Diaz

Jayne Diaz, City Clerk

APPROVED AS TO FORM

P. N. Brown

By: Peter N. Brown
City Attorney

ACKNOWLEDGMENT

State of California)
) ss
County of Santa Barbara)

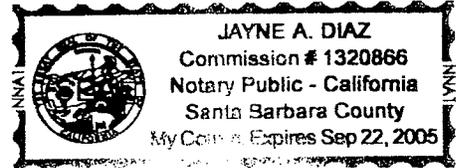
On April 13, 2005, 2005 before me, Jayne A. Diaz, a notary public in and for the State of California, personally appeared

RICHARD WEINBERG

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Jayne A. Diaz



ACKNOWLEDGMENT

State of California)
) ss
County of Santa Barbara)

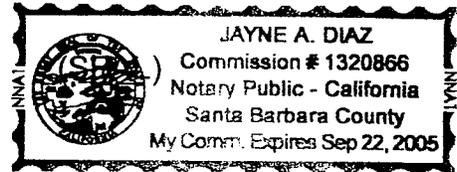
On April 13, 2005, 2005 before me, Jayne A. Diaz, a notary public in and for the State of California, personally appeared

WILLIAM G. LAFFIN

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Jayne A. Diaz



LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of Santa Barbara, City of CARPINTERIA, described as follows:

LOTS 6 AND 7 IN BLOCK 34 OF THE TOWN OF CARPINTERIA, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF, RECORDED IN RACK 2, AS MAP 4, RECORDS OF SAID COUNTY.

A.P.N. 003-262-10