

CITY of CARPINTERIA, CALIFORNIA



April 21, 2016

Re: Request for Proposals for Development Impact Fee Program Update / Nexus Study

Dear Prospective Bidder:

The City of Carpinteria is soliciting Requests for Proposals (RFP) from qualified firms to prepare the required analysis and studies necessary to comprehensively update its Development Impact Fee (DIF) Program. The City has prepared a Draft Capital Improvement Plan (CIP) and the firm will also assist the City in finalizing its CIP Plan in conjunction with the DIF Program Update.

The City is a California general law city providing local government services to a population of approximately 14,000 on the South Coast of Santa Barbara County. The City currently has eleven development impact fees, including Quimby fees. The requirements for the preparation of such studies imposed by applicable law, include but are not limited to Government Code section 66000 et seq. and Government Code section 65477.

If you are interested in this opportunity, please submit three identical proposals and one pdf copy in a sealed envelope clearly marked "Development Impact Fee Study Program Update / Nexus Study Proposal" to the address below. The format and content requirements of the proposal are described in the enclosed RFP.

Questions pertaining to the RFP can be directed to Brian C. Barrett, Management Analyst at brianb@ci.carpinteria.ca.us. All questions related to this RFP are due by Tuesday, May 24, 2016 by 5:00 pm.

For more information and to obtain the required documents, please visit the City of Carpinteria, Department of Public Works web page at www.carpinteria.ca.us. Request for Proposals will be received until 2:00 pm on Tuesday, May 31, 2016 when the RFPs will be publicly opened in the Council Chambers at 5775 Carpinteria Avenue, Carpinteria, CA.

Thank you for your time, effort, and interest in our DIF Program Update and Nexus Study.

Sincerely,

Brian C. Barrett,
Management Analyst

Encl. RFP for Development Impact Fee Program Update / Nexus Study



City of Carpinteria

Request for Proposals (RFP) for Consulting Services

For

Development Impact Fee Program Update / Nexus Study

RFP Release Date: Thursday, April 21, 2016

RFP Due Date: Tuesday, May 31, 2016, 2:00 pm

Contact:

Brian C. Barrett, Management Analyst

5775 Carpinteria Avenue

Carpinteria, CA 93013

Phone: (805) 755-4446

Fax: (805) 684-5304

brianb@ci.carpinteria.ca.us

www.carpinteria.ca.us

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GENERAL INFORMATION

The City of Carpinteria is located on California's central coast south of Santa Barbara and has a population of approximately 14,000. The City is a General Law city, operating under the City Council/City Manager form of government. The City's menu of services includes municipal administration, law enforcement, solid waste disposal and recycling, planning and building, business licensing, code compliance and animal control, public works engineering and street maintenance, and parks and recreation. Services are provided through a variety of methods including: direct service by City employees, contracts with other public agencies (e.g. the City contracts with Santa Barbara County Sheriff's Department for law enforcement services) and with private providers, agreements with franchise operators and with non-profits, and by volunteers. Sanitary sewer, water and fire protection services are provided in the City and the greater unincorporated Carpinteria Valley by independent special districts.

The City is seeking a consultant who can assist the City in preparing the required analysis and studies necessary to comprehensively update its Development Impact Fee (DIF) Program and finalize its Capital Improvement Plan (CIP). The City has prepared a list of existing fees and a draft CIP Plan will be available prior to work beginning to use in the analysis. The last formal impact fee study was completed in 2003. The study must meet the requirements of Government Code section 66000 et seq., commonly known as AB 1600, as well as Government Code section 65477. Proposals will be accepted until 2:00 pm on Tuesday, May 31, 2016 at Carpinteria City Hall, 5775 Carpinteria Avenue, Carpinteria, CA.

The City currently has eleven (11) impact fees in place. Those impact fees and their average total fees generated annually and balances are:

	DIF Name	Annual Average of Fees Generated	DIF Balance (as of 6/30/15)
1	Streets & Thoroughfares	\$26,250.04	\$133,524.19
2	Highway Interchanges & Bridges	\$101,129.35	\$745,456.23
3	Traffic Control	\$24,389.42	\$282,693.17
4	General Facilities and Equipment	\$33,994.04	\$135,516.13
5	Storm Drainage	\$35,581.38	\$262,919.44
6	Parks and Recreational Land Acquisition	\$160,074.00	\$111,044.09
7	Parks and Recreational Facilities Development	\$113,745.89	\$327,508.51
8	Aquatics Facilities	\$10,199.88	\$45,029.85
9	Open Space Land Acquisition	\$2,237.33	\$4,091.24
10	Parking Facilities	\$3,790.88	\$71,772.72
11	Quimby	\$2,115.51	\$20,008.03
	Total	\$513,507.71	\$2,139,563.60

SCHEDULE OF PROPOSED ACTIVITIES

Activity	Date
RFP Issued	April 21, 2016
Proposal Submittal Deadline	May 31, 2016
Selection of Top Firm	June 9, 2016
City Council Approves Contract	June 27, 2016
Commence Work	July 2016
Draft DIF & CIP Report to City for Review	October/November 2016
City Council Adoption of Final DIF and CIP Programs	December 2016 / January 2017

The City has made every effort to include sufficient information within this Request for Proposal for a consultant to prepare a responsive, comprehensive proposal. The timing of the proposal process is subject to change, depending on the needs of the City, but is anticipated as follows:

a) **RFP Issued:** April 21, 2016

b) **Proposal Submittal Deadline:** Proposals must be clearly marked and submitted in a sealed envelope plainly marked on the outside: “**Development Impact Fee Program Update / Nexus Study Proposal**” no later than **2:00 pm, May 31, 2016**. Late submissions after the deadline or proposals delivered via fax will not be accepted. A total of **three (3)** identical proposals and one pdf copy must be submitted and labeled as follows:

City of Carpinteria
Attention: Brian C. Barrett, Management Analyst
Development Impact Fee Program Update / Nexus Study Proposal
5775 Carpinteria Avenue
Carpinteria, CA 93013

c) **Proposal Review:** The City will evaluate each proposal submitted. It is anticipated that the review process will be completed by June 9, 2016.

d) **Results:** No notification will be sent to unsuccessful bidders.

No letters or correspondence will be sent notifying prospective bidders of any modifications or clarifications to this RFP. It is the responsibility of the bidder to carefully examine this RFP and any addenda, which, if issued, will be posted on the City’s website.

FORMAT OF PROPOSAL

The City is requesting one pdf copy and three bound paper copies of the proposal, which must contain the following information:

Letter of Interest: Please include a letter expressing the Consultant's interest in being considered for the project. Include a statement regarding the Consultant's availability to dedicate time, personnel, and resources to this effort during the period of July to January 2017. The letter of interest must include a commitment to the availability of the Consultant and all key project staff during the planning period and a proposed schedule designed to meet the City's deadline for the report. Describe your approach to completing the project successfully and within the proposed budget and schedule.

Relevant Experience: Please include information describing the Consultant's experience, demonstrating competence and professional qualifications for the satisfactory performance of the services outlined in the Proposed Scope of Work (Attachment B) of this RFP. At a minimum, the Consultant should provide a list of the most recent projects for which the Consultant has performed similar services of similar size, scope, and complexity. This list should focus on fee studies performed by the Consultant that comply with the requirements for preparation of such studies imposed by applicable law, including but not limited to Government Code section 66000 et seq. and Government Code section 65477. This list shall include the name, contact person, address, phone number and/or e-mail of each party for whom the service was provided, as well as a description of the service performed, the dollar amount of the contract, and the date of performance.

Project Manager/Key Staff: Please include information about the specific relevant experience and billing rates for the proposed Project Manager and the Principal-in-Charge (if that person is different from the Project Manager) and all other applicable staff. A project manager must be designated and must be the principal contact for the City. Information on the experience of the Project Manager (on similar projects) and at least three references for the Project Manager and Principal-in-Charge (should that be a different person) are required.

Proposed Scope of Work: Provide a Proposed Scope of Work, which is based on the scope of work contained in Attachment B of this RFP, and discuss any ideas for modifying, clarifying, or improving the City's proposed scope of work.

Budget and Schedule: Based on the Proposed Scope of Work (Attachment B), please provide a detailed budget and schedule that meets the seven month timeframe proposed by the City. If your proposed schedule exceeds the proposed seven month timeframe, please indicate the reasons why you believe additional time will be needed to complete the project.

SELECTION PROCESS

The City will evaluate proposals and select the Consultant who possesses the best combination of demonstrated competence and the necessary qualifications to complete the services in a satisfactory manner at a fair and reasonable price. In making this determination, the City may consider the following criteria:

- The Consultant's demonstrated understanding of the proposed project and the Carpinteria community, and its demonstrated ability to successfully complete the project in a timely manner.
- The Consultant's proposed approach to the work and work plan.
- The Consultant's past experience completing projects of a similar type, size, and complexity.
- The quality and experience of the Project Manager and key staff persons who will be working on the project on a regular basis.
- The Consultant's proposed costs for the engagement and ability to deliver the proposed Scope of Work within their proposed schedule.
- The Consultant's ability to meet the City's standard contract and insurance requirements.

Upon completion of the evaluation of proposals, the City will notify the selected Consultant and send a Consultant Services Agreement (sample copy included in Attachment C of this RFP) to that firm. No proposal shall be binding on the City until after the Consultant Services Agreement is signed by a duly authorized representative of both the Consultant and the City.

The City will not discriminate against any interested firm or individual on the grounds of race, creed, color, sex, age, disability or national origin in the contract award.

CONDITIONS OF REQUEST

General Conditions:

The City reserves the right to exercise discretion and apply its judgment with respect to all proposals submitted.

The City reserves the right to reject all proposals, either in part or in its entirety, or to request and obtain, from one or more of the consulting firms submitting proposals, supplementary information as may be necessary for City staff to analyze the proposals.

The City may elect to award a contract in multiple phases, as is deemed to be in the City's best interest. Should the City award projects in phases, the City reserves the right to award the phases to the same firm.

The Consultant, by submitting a response to this RFP, waives all right to protest or seek any legal remedies whatsoever regarding any aspect of this RFP.

The City reserves the right to cancel, in part or in its entirety, this RFP including, but not limited to: selection procedures, submittal date, and submittal requirements. No letters or correspondence will be sent notifying prospective bidders of any modifications or clarifications to this RFP. It is the responsibility of the bidder to carefully examine this RFP and any addenda, which if issued, will be posted on the City's website.

The City reserves the right to reject any and all proposals, cancel all or part of this RFP, waive any minor irregularities and to request additional information from proposing firms. By requesting proposals, the City is in no way obligated to award a contract or pay expenses of the proposing consultant in connection with the preparation or submission of a proposal.

The City's decision to award a contract will be based on many factors including but not limited to service, cost, experience and quality. No single factor, such as cost, will determine the final decision to award.

Liability of Costs and Responsibility:

The City shall not be liable for any costs incurred in response to this Request for Proposals. All costs shall be borne by the person or organization responding to the request. The person or organization responding to the request shall hold the City harmless from any and all liability, claim or expense whatsoever incurred by or on behalf of that person or organization. All submitted material becomes the property of the City of Carpinteria and public records and, as such, may be subject to public review.

The selected organization will be required to assume responsibility for all services offered in the Proposal whether or not they possess them within their organization. The

selected organization will be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

Standard Consultant Agreement:

A sample consultant agreement has been provided in Attachment C of this RFP. The agreement will not be executed by the City without first being signed by the bidder.

Permits and Licenses:

Bidder, and all of bidder's subcontractor's, at its and/or their sole expense, shall obtain and maintain during the term of any agreement, all appropriate permits, certificates and licenses including, but not limited to, a City Business License which will be required in connection with the performance of services hereunder.

Insurance:

Prior to the beginning of and throughout the duration of Work, Consultant will maintain insurance in conformance with the requirements set forth in Exhibit C of the Standard Consultant Agreement (Attachment B of this RFP).

Bidder's Representative:

The person signing the Proposal must be a legal representative of the firm authorized to bind the firm to an agreement in the event of the award.

ATTACHMENT A – LIST OF KEY DOCUMENTS

Click to go to the following weblinks:

[General Plan](#)

http://www.ci.carpinteria.ca.us/PDFs/cd_General%20Plan.pdf

[FY 2015-16 Adopted Budget](#)

http://www.ci.carpinteria.ca.us/PDFs/admin%20services_Adopted%20Budget.pdf

[Current DIF Fees](#)

<http://www.ci.carpinteria.ca.us/PDFs/Exhibits%20DIF%202015-2016%20updated%20022416.pdf>

ATTACHMENT B – PROPOSED SCOPE OF WORK

The City has identified the following tasks for this project. These tasks are suggestive and intended as a general guideline. The consultant is encouraged to recommend alternative tasks, scopes, and services that may be appropriate. The City plans to bring the updated Development Impact Fee and Capital Improvement Plan to the City Council for its action by December 2016 / January 2017.

Task 1: Develop Project Strategy

July 2016

Task 1.1 The Consultant will review and consider the documents in Attachment A of this RFP and/or others supplied by the City.

Task 1.2 The Consultant will develop a list of development impact fees charged by surrounding and similar cities in California. This comparison should highlight what is included in these fees and, to the extent practicable, make comparisons of similar types of fees. The City is also interested in having the Consultant suggest new fee areas that other similar cities have adopted and implemented.

Task 1.3 The Consultant will convene two strategy sessions with the City to determine the project's direction, including fee categories (new, existing, and/or whether to include other City impact fees); perform a special analysis of other items of strategic importance identified by the City and/or Consultant.

Task 2: Hold Project Kickoff and Project Management Meetings July - Jan. 2017

With a strategy in place, the Consultant and the City will hold a kick-off meeting to discuss the project, deliverables, timetables, and tasks.

The Consultant will participate in bi-weekly (every other week) conference calls and/or meetings with City staff to report on progress and/or problems, and identify potential solutions and courses of action. Two days before these meetings and/or calls, the Consultant will provide an agenda of items to be discussed. Following each meeting/call, the Consultant will provide a summary of the discussion highlights and actions to be taken by the Consultant and City. The Consultant will provide the summary to the City staff team to ensure all are in agreement and understand tasks to be completed to avoid unnecessary delays in the project schedule.

Task 3: Data Collection

July - August 2016

Working closely with City staff, the Consultant will collect all data required to fully support the project, including existing and anticipated future development projections, a list of prioritized public improvements and other relevant information. The City intends for the Consultant to review the City's existing DIF fees, including Quimby fees, as shown on page 3 of this RFP as well as review the administrative fee used to fund administration of the DIF

program as set in the City's 2003 Nexus Study. The City is currently working on a draft CIP Plan which will be available to the Consultant prior to work beginning to use in the analysis. The Consultant will review and comment on the Draft CIP Plan and assist the City in finalizing its CIP Plan in conjunction with the preparation of the Nexus Study. The Consultant's review shall be based on their professional judgment and experience and, if needed, develop high-level cost estimates for improvements based on comparable projects.

Task 4: Fee Calculation and Analysis

Aug. - Sept. 2016

The Consultant will develop a fee model and calculate the supportable fees for each fee category based on the City's existing fees, including Quimby fees, as shown on page 3 of this RFP, including updating the administrative fee to fund administration of the DIF Program, if warranted, and the City's draft CIP Plan. The addition/deletion of new/existing fees will be consistent with the City's project strategy, as determined in Task 1. The Consultant and City will need to maintain a productive dialogue throughout the process to ensure methodologies applied to the various fees are appropriate while ensuring the methodologies conform to the requirements of the applicable State law(s). This dialogue may result in adjusted or wholly new fee methodologies. The analysis will also consider the existing Citywide Development Impact Fees and the comparison of these impact fees to both surrounding and similar cities in California to ensure reasonableness, consistency, and feasibility of the fees and projects proposed to be funded as part of the study, as prepared in Task 1.

Task 5: Prepare Administrative DIF Program/Nexus Study and CIP Plan Updates

Sept. - Oct. 2016

The Consultant will prepare and provide a comprehensive administrative draft, as well as technical reports for each fee category, including but not limited to, methodology, findings, supporting justification, recommended impact fees, recommendation for the elimination/consolidation of existing fees based on the creation of new fees, and calculations that provide the legal nexus between the fee recommendations and new development as required by law.

The Consultant will document all work assumptions, analysis procedures, findings, graphics, impacts, and recommendations, with technical documentation in appendices. The administrative draft and individual technical reports will include an executive summary and conclusion.

In general, the administrative draft will consist of a discussion of the framework, description of the project, applicable statutory/legal framework, methodologies used, analysis, fee methodology recommendations, in addition to finalizing the CIP Plan.

The administrative draft will include strategies and options for policymakers to set fees both at and below full cost recovery, and an analysis of how these options would result in the elimination of specific projects or types of projects from the proposed project list for each fee category.

The Consultant also will revise the administrative draft according to one set of consolidated comments on the draft reports from the City.

6. Prepare Public Review Draft DIF Program/Nexus Study and CIP Plan Updates
Oct. - Nov. 2016

Based on Tasks 1 through 5, the Consultant will develop and then present a Public Review Draft in two outreach meetings to key stakeholders, such as members of the business community and developers, and one public hearing before the City Council. The purpose of these meetings is to solicit community and stakeholder input. The proposed budget should include a cost per meeting in case additional public meetings are necessary. The Consultant shall develop handouts for these meetings that summarize the findings and analysis from the Public Review Draft.

7. Final DIF Program / Nexus Study and CIP Plan and Adoption by City Council
Nov. – Jan. 2017

After incorporating input from the community on the Public Review Draft, the Consultant shall prepare a final draft of the report. The Consultant shall make revisions based on one set of consolidated comments on the final draft from the City and shall review a draft of a proposed ordinance prepared by the City.

The Consultant will present the Final Update and Study to the City Council during a public hearing, and make revisions, if any, requested by the City Council. The Consultant will assist staff and participate in the presentation to Council if any additional follow-up Council meetings are needed to complete the City Council's adoption of the updated DIF and CIP Programs.

ATTACHMENT C – STANDARD CONSULTANT AGREEMENT

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT FOR CONSULTANT SERVICES (“Agreement”) is made and effective as of the Dayday of Month , Year by and between the City of Carpinteria, a municipal corporation (“**City**”), and Consultant Firm's Name (“**Consultant**”) (collectively, the “**Parties**”) at Carpinteria, California, with reference to the following facts:

- A. City has determined that it is necessary and appropriate to engage a design professional to carry out the services described herein; and
- B. Consultant has represented itself as being fully qualified and available to perform the consultant services necessary to complete the work in a timely manner; and
- C. City desires to contract with Consultant and Consultant is willing to perform the consultant services, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **SERVICES.**

1.1 **Basic Services.** City hereby retains Consultant to perform the services described and set forth in the attached Exhibit A (“**Basic Services**”), which is incorporated by this reference as though set forth in full. Consultant hereby agrees to perform said services within the designated time frames and accepts this retention. Consultant shall complete the Basic Services according to a schedule of performance which is also set forth in Exhibit A. The Parties agree and acknowledge that time is of the essence in performance of this Agreement.

1.2 **Additional Services.** In addition to the Basic Services, City may elect to have Consultant perform additional services that are beyond the current scope of the Basic Services, but within the expertise of Consultant (“**Additional Services**”). Such Additional Services shall be mutually agreed to in advance and specified in a writing, which shall also specify the basis for the Consultant’s fee for such additional services. Basic Services and Additional Services are referenced collectively as “**Services.**”

2. **PERFORMANCE.**

2.1 **Standard of Performance.** Consultant shall faithfully, competently and diligently perform the obligations and responsibilities required by this Agreement, applying best management practices and the same standards of care utilized by persons commonly engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement. Consultant shall not engage the assistance of subcontractors for performance of the Services unless previously agreed to in writing by the City.

- 2.2 **Labor and Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, tools, transportation and services necessary for the successful completion of the Services. Consultant shall give its attention and supervision to the fulfillment of the provisions of this Agreement by its employees and subcontractors and shall be responsible for the timely performance of the Services required by this Agreement.
- 2.3 **Review of Service.** Consultant shall furnish City with reasonable opportunities from time to time to ascertain whether the Services of Consultant are being performed in accordance with this Agreement. All work done and materials furnished shall be subject to final review and approval by City; Consultant is not providing final approval or review, which is solely City's function and role. City review and approval of such work and Services shall not, however, relieve Consultant of any of its obligations under this Agreement.
- 2.4 **Contract Administration.** The City Manager or his/her designee shall represent the City in all matters relating to the administration of this Agreement. The City Manager or his/her designee shall have the authority to act on the City's behalf to review and approve all products submitted by Consultant and may execute all necessary documents to authorize Consultant to perform Additional Services as provided for herein.
- 2.5 **Representations and Warranties.** Consultant represents and warrants to City that: (i) its fulfillment of its obligations and, as applicable, performance the Services under this Agreement, will not violate any applicable or breach any contracts with third parties and (ii) it has the right, power and authority to fulfill its obligations, and, as applicable perform the Services, and enter into this Agreement; (iii) the Services contemplated hereunder will be performed by adequately trained, competent personnel, in a professional manner, with such personnel having the requisite skill and expertise necessary to perform and complete the Services in accordance with industry standards and in accordance with the terms and conditions of this Agreement; and (iv) the Services and all deliverables provided hereunder will conform to the specifications agreed-to by the parties.
3. **TERM.** This Agreement shall be effective as of the date first above written and shall continue until all Services to be provided by Consultant are completed to the satisfaction of the City, but in no event later than the Day day of Month, Year; unless terminated earlier as provided for herein.
4. **COMPENSATION.**
- 4.1 **Basic Services.** For Basic Services, City shall pay Consultant on a time and materials basis, not to exceed amount of Insert Amount in Text Format (\$Insert Amount in Numerical Format) as full compensation for all labor, materials, equipment, tools, transportation, and Services. This compensation shall be paid in accordance with the payment rates and schedule as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based on the actual time spent on the tasks and the actual price of the necessary materials.

- 4.2 **Additional Services.** Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to the Basic Services, unless such Additional Services are authorized in advance and in writing in the method provided for herein. Consultant will submit fee estimates for such Additional Services upon request of City.
- 4.3 **Invoices.** Each and every payment by City shall be subject to City's receipt of an invoice outlining the items for which payment is requested. Payment to Consultant as to any undisputed fees shall be made, after verification of Consultant's performance, within 30 (thirty) days of receipt of invoice. If City disputes any of Consultant's fees, it shall give written notice to Consultant within 30 (thirty) days of receipt of an invoice of such disputed fees.
- 4.4 **Withholding.** City reserves the right to withhold future payment to Consultant if any aspect of the Consultant's work is found to be substantially inadequate. City shall notify Consultant in writing of deficiencies believed to be substantially inadequate within thirty (30) days after receipt of product.
- 4.5 **Taxes/Insurance/Licenses.** Consultant shall be solely responsible for the payment of any federal, state, or local income tax, social security tax, workers' compensation insurance, state disability insurance, and any other taxes or insurance which Consultant is responsible for paying as an independent contractor under federal, state or local law. At all times during the term of this Agreement, Consultant and any approved subcontractors performing Services under this Agreement shall have in full force and effect all licenses necessary for the performance of Services hereunder, including without limitation, business licensing from City, all at the sole cost of Consultant.

5. **RECORDS.**

- 5.1 **Financial Records.** Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of Services under this Agreement. Consultant shall also maintain adequate records of Services provided in sufficient detail to permit an evaluation of Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible.
- 5.2 **Access to Records.** Consultant shall provide free access to the representatives of City or its designees at reasonable times to books and records as set forth in section 5.1; shall give City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of four (4) years after receipt of final payment.
- 5.3 **Original Records.** Upon completion of, or in the event of termination or suspension of this Agreement, all completed and incomplete original agreements, data, documents, designs, drawings, exhibits, maps, models, computer files, reports, studies, surveys,

notes, and other work, materials or documents prepared or used to prepare Consultant's work product in the course of providing the Services pursuant to this Agreement ("**Consultant Work Product**") shall become the sole property of City once the Consultant has received payment. City may duplicate, disclose, disseminate, use, reuse or otherwise dispose of Consultant Work Product in whole or in part in any manner it deems appropriate, without the permission of Consultant. With respect to computer files, Consultant shall make available to the City, at Consultant's office and upon reasonable written request by City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files. Consultant may retain copies of such Consultant Work Product as a part of its record of professional activity.

6. **TERMINATION.**

- 6.1 **Termination Without Cause.** This Agreement may be terminated by either party for any reason upon ten (10) days prior written notice by the terminating party to the other party. In the event of a termination, the date of termination shall be deemed to be the first business day occurring after the expiration of the notice period. Upon receipt of said notice, Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise.
- 6.2 **Termination With Cause.** Either party may terminate this Agreement with cause, effective immediately upon written notice of such termination to the other party and failure of the breaching party to correct within five (5) days of receiving such notice, based upon the occurrence of any of the following events:
- Material breach of this Agreement;
 - Cessation of Consultant to be licensed, as required;
 - Failure to substantially comply with any applicable federal, state or local law or regulation;
 - Filing by or against Consultant of any petition under any law for the relief of debtors; and,
 - Filing of a criminal complaint against Consultant for any crime, other than minor traffic offenses.
- 6.3 **Performance Upon Termination.** In the event this Agreement is terminated pursuant to this Section, City shall pay Consultant for the outstanding balance owed for work performed up to the time of termination. Upon termination of the Agreement, Consultant shall submit an invoice to City as provided for herein and shall submit to the City all of its files for any billable or non-billable matters in which the Consultant is involved under the scope of this Agreement.
- 6.4 **Termination Upon Mutual Consent.** This agreement may also be terminated by mutual consent of the parties and in accordance with the terms and conditions of any plan of termination established by the parties. In the event of a termination by mutual consent, the date of termination shall be such date as is agreed upon by the parties. The parties may agree to suspend or terminate a portion of this Agreement and such suspension or termination shall not make void or invalidate the remainder of this Agreement.

7. **DISPUTE RESOLUTION.** Except as explicitly provided in Exhibit E relating to claims by Consultant, if any dispute, claim or disagreement shall arise relative to the interpretation or enforcement of this Agreement, the parties shall use commercially reasonable efforts to settle the dispute, claim or disagreement. To this end, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such a solution within a period of thirty (30) days, then, upon notice by either party to the other, the dispute, claim or disagreement shall be submitted to final, binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitrator shall have the authority to assess arbitration costs and expenses against either or both parties. The decision in the arbitration shall be binding on all parties, and judgment on any arbitration award may be entered in any court of competent jurisdiction.
8. **INSURANCE.** Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in the attached Exhibit C, which is incorporated by this reference as though set forth in full.
9. **INDEMNIFICATION.** To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City and any of its officials, employees and agents (“Indemnified Parties”) from and against any Claims, where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for whom Consultant is legally liable, including but not limited to, officers, agents, employees, subcontractors or consultants of Consultant.
10. **RELEASE OF INFORMATION.**
 - 10.1 **Confidentiality.** All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released except to the City, directly or indirectly, by Consultant without City's prior written authorization. Consultant, its officers, employees, subcontractors or sub-consultants shall not voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the Services performed under this Agreement unless requested by the City Attorney or authorized in writing by the City Manager. Response to a subpoena or court order shall not be considered "voluntary" provided that Consultant shall give City prompt written notice of any such court order or subpoena. The provisions of this Paragraph shall survive the termination of this Agreement.
 - 10.2 **Notice and Cooperation.** Consultant shall promptly notify the City Manager and City Attorney in writing if Consultant, its officers, employees, agents, subcontractors or subconsultants are served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any person or party related to this Agreement and/or Consultant's related Services. City has no obligation to, but may exercise discretion to represent Consultant and/or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide the City an opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not grant or imply a right of City to control, direct, dictate or rewrite said response.

11. **RELATIONSHIP TO CITY.**

- 11.1 **Independent Contractor.** Consultant is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of City. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.
- 11.2 **No Employee Privileges.** No City employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages or other compensation to Consultant for performing Services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing Services hereunder.
- 11.3 **Consultant Duty to City.** Consultant understands and agrees that its responsibility to provide complete and accurate Services is owed solely to City and that its accountability under this contract shall likewise be solely to City and not to any City applicants or any other third person or entity.
- 11.4 **Interest of Consultant.** Consultant represents and warrants to City that it presently has no interests, and covenants that it shall not acquire any interests, direct or indirect, financial or otherwise, which would conflict with the performance of the services to be provided by Consultant under this Agreement. Consultant further covenants that, in the performance of this Agreement, no subcontractor or employee having such an interest shall be employed by Consultant. Consultant certifies that no one who has or will have any financial interest under this Agreement is: (a) an officer or employee of City, or (b). an officer or employee of the applicant and any of its consultants. Consultant agrees to comply with any applicable conflict of interest code.
- 11.5 **Undue Influence.** Consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement or financial inducement. No officer or employee of City will receive compensation, directly or indirectly, from Consultant or any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling City to any and all remedies at law or in equity.
- 11.6 **Third Party Beneficiaries.** This Agreement is entered into solely for the benefit of the City and the Consultant and will not confer any rights upon any person not expressly a party to this Agreement.

12. **GENERAL PROVISIONS.**

12.1 **Assignment of Rights.** Contractor agrees to assign City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act or under the Cartwright Act arising from purchases of goods, services, or materials pursuant to this Agreement.

12.2 **Further Assurances.** City and Consultant each agree to cooperate with one another, to use their best efforts, to act in good faith, and to promptly perform such acts and execute such documents or instruments as are reasonably necessary and proper to consummate the transactions contemplated by this Agreement.

12.3 **Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if personally served or on the second day after mailing if mailed by first-class mail, registered or certified, return receipt requested, postage prepaid and properly addressed as follows:

To City:
Dave Durflinger, City Manager
City of Carpinteria
5775 Carpinteria Avenue
Carpinteria, CA 93013-2698
P: (805) 684-5405
F: (805) 684-5304

To Consultant:
Contact Person's Name
Consultant Firm's Name
Address
City, State, ZIP
P:Phone Number
P:Fax Number

Any party may change their address for the purpose of this paragraph by giving the other party written notice of the new address in the above manner.

12.4 **Legal Responsibilities.** Consultant shall keep itself informed of state, federal and laws and regulations which in any manner affect those employed by it or in any way affect the performance of its Service pursuant to this Agreement. The Consultant shall reasonably observe and comply with such laws and regulations. The City and its officers and employees shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

12.5 **Licenses.** At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required by law for the performance of services described in this Agreement.

12.6 **Labor Conditions.** City is a public entity in the state of California, and therefore, City and Consultant are subject to the provisions of the Government Code and the Labor Code of the state of California. All provisions of law applicable to public contracts and/or this Agreement are incorporated herein by this reference and are made a part of this Agreement to the same extent as if they were fully stated in the Agreement and shall be complied with by Consultant.

- 12.7 **Labor Requirements.** Consultant shall abide by all federal and California laws and regulations regarding wages, including, without limitation, the Fair Labor Standards Act and the California Labor Code, which, in part, mandate that 8 hours' labor constitutes a legal days' work, and require Consultant to pay the general prevailing wage rates. The California statutory provisions for penalties for failure to pay prevailing wages will be enforced and the statutory provisions for penalties for failure to comply with California's wage and hour laws will be enforced. In addition, Consultant is required to comply with the statutory requirements relating to employment of apprentices. Consultant also must secure the payment of workers' compensation to its employees as provided by California law. Consultant acknowledges its obligation to secure payment of Workers' Compensation before beginning work as set forth in the attached Exhibit D ("Acknowledgement of Workers' Compensation Obligation") which is incorporated by this reference as through set forth in full. Additionally, Consultant is required to comply with all statutory requirements relating to certified payroll records, including the maintenance of the records, their certification, and their availability for inspection.
- 12.8 **Discrimination.** No person shall be excluded from employment in the performance of this Agreement on the grounds of race, creed, color, sex, age, marital status, sexual orientation or place of national origin. Consultant shall comply with all local, state, and federal laws relating to equal employment opportunity rights.
- 12.9 **Assignment.** Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of City, which shall have the sole discretion to consent to any proposed assignment. Because of the personal nature of the Services to be rendered pursuant to this Agreement, only Consultant shall perform the services described in this Agreement.
- 12.10 **Waiver.** No waiver of a provision of this Agreement shall constitute a waiver of any other provision, whether or not similar. No waiver shall constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
- 12.11 **Force Majeure.** Neither Consultant nor City shall be liable for any delays resulting from circumstances or causes beyond its reasonable control, including, without limitation, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority.
- 12.12 **Construction of Terms.** All parts of this Agreement shall in all cases be construed according to their plain meaning and shall not be construed in favor or against either of the parties. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, in whole or in part, the remainder of this Agreement shall remain in full force and effect and shall not be affected, impaired or invalidated thereby. In the event of any provision shall be adjudged invalid, void or unenforceable, the parties hereto agree to enter into a supplemental agreement to effectuate the intent of the parties and the purposes of this Agreement.
- 12.13 **Controlling Law.** The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties

to this Agreement and also govern the interpretation of this Agreement, with venue proper only in the County of Santa Barbara, State of California.

12.14 **Authorization.** All officers and individuals executing this and other documents on behalf of the respective parties hereby certify and warrant that they have the capacity and have been duly authorized to execute said documents on behalf of the entities indicated.

12.15 **Entire Agreement.** This Agreement, along with its attached exhibits, which are incorporated herein by this reference, constitutes the entire Agreement between the parties and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. This Agreement may be altered, amended or modified only by a supplemental writing executed by the parties to this Agreement and by no other means. Each party waives any future right to claim, contest, or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreement, course of conduct, waiver or estoppel.

12.16 **Counterparts.** This Agreement may be executed in counterparts, each of which shall remain in full force and effect as to each party.

12.17 **Severability.** In the event that any term or provision of this Agreement shall be held to be invalid, void or unenforceable, then the remainder of this Agreement shall not be affected, impaired or invalidated, and each such term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this Agreement at the place and as of the date first written above.

"CITY"
City of Carpinteria

"CONSULTANT"
Consultant Firm's Name

By: _____
David Durflinger, City Manager

By: _____
Name, Title of Signator

APPROVED AS TO FORM:
City of Carpinteria

By: _____
Peter N. Brown, on behalf of
Brownstein Hyatt Farber Schreck, LLP
Acting as City Attorney of the City of Carpinteria

EXHIBIT A

TASKS TO BE PERFORMED

EXHIBIT B

PAYMENT SCHEDULE

EXHIBIT C

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the Work, Consultant will maintain insurance in conformance with the requirements set forth below. Consultant will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Consultant agrees to amend, supplement or endorse the existing coverage to do so. Consultant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to City in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to City.

Consultant shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office “Commercial General Liability” policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Consultant or Consultant’s employees will use personal autos in any way on this project, Consultant shall provide evidence of personal auto liability coverage for each such person.

Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employer’s liability limits no less than \$1,000,000 per accident or disease.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured’s liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Consultant, subconsultants or others involved in the Work. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the consultant and “Covered Professional Services” as designated in the policy must specifically include work performed under this agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must “pay on behalf of” the insured and must include a provision establishing the insurer’s duty to defend. The policy retroactive date shall be on or before the effective date of this agreement.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the state of California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

General conditions pertaining to provision of insurance coverage by Consultant. Consultant and City agree to the following with respect to insurance provided by Consultant:

1. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds City, its officials, employees, volunteers and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Consultant also agrees to require all contractors and subcontractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
3. All insurance coverage and limits provided by Contractor and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.
6. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g., elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.
7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at City option.
8. Certificate(s) are to reflect that the insurer will provide 30 (thirty) days notice to City of any cancellation of coverage. Consultant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.

9. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Consultant or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to City.
10. Consultant agrees to ensure that subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to City for review.
11. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to City. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
12. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City will negotiate additional compensation proportional to the increased benefit to City.
13. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
14. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.
15. Consultant will renew the required coverage annually as long as City or its employees or agents face an exposure from operations of any type pursuant to this Agreement. This obligation applies whether or not the Agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.
16. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.

17. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this Agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials and agents.
18. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be limiting or all-inclusive.
19. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.
20. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
21. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Consultant for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
22. The City's failure to comply with reporting requirements should not affect coverage required under the Agreement.
23. The consultant's insurance is primary to that of any insurance claimed by the City.

Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

EXHIBIT D

WORKERS' COMPENSATION REQUIREMENTS

The Consultant is required to sign and file a statement acknowledging its obligation to secure payment of Workers' Compensation before beginning work.

ACKNOWLEDGEMENT OF WORKERS' COMPENSATION OBLIGATION

I, Name, hereby acknowledge my obligation to secure payment of Workers' Compensation before beginning work.

Consultant

By: _____
Name, Title of Signator

Dated: _____

EXHIBIT E

RESOLUTION OF CONSTRUCTION CLAIMS

The following pertains to Public Contract Code Sections 20104 through 20104.6 (Resolution of Construction Claims)

1. This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.
2. This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.
3. “Public work” means “public works contract” as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.
4. “Claim” means a separate demand by the contractor for (a) a time extension, (b) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (c) an amount the payment of which is disputed by the local agency.
5. The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.
6. This article applies only to contracts entered into on or after January 1, 1991.
7. For any claim subject to this Agreement, the following requirements apply:
 - a. The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.
 - b. (1) For claims of less than fifty thousand dollars (\$50,000), the City shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the City may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the claimant.

(3) The City's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

- c. (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the City shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the City may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the claimant.

(3) The City's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

- d. If the claimant disputes the City's written response, or the City fails to respond within the time prescribed, the claimant may so notify the City, in writing, either within 15 days of receipt of the City's response or within 15 days of the City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute.
- e. Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.
- f. This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

The following procedures are established for all civil actions filed to resolve claims subject to this article:

- 8. Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both

parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

9. (a) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(b) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(c) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

10. The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.
11. The City shall not fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.
13. In any suit filed under Section 20104.4, the City shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.
14. Pursuant to California Public Contract Code Section 7201, the City may not retain greater than five (5%) percent of contract price.