

Request for Proposals
RFP #MCSC 10008

MEDIATOR – CHILD CUSTODY AND VISITATION	
Issue Date:	May 18, 2010
Re:	REQUEST FOR PROPOSALS for child custody and visitation mediation services as required by the Superior Court of California, County of Monterey (“Court”)
Action:	You are invited to review and respond to the attached Request for Proposal (“RFP”)
Questions Deadline:	Questions must be in writing and received no later than 4:00 P.M., Friday, May 28, 2010. No postmarks will be accepted.
Response to Questions:	All questions and the court’s responses will be posted on the Court’s web site no later than noon Friday, June 4, 2010
Proposal Deadline:	Proposals must be received no later than 4:00 P.M., Friday, June 18, 2010. No postmarks will be accepted.
Submission of Proposal:	Proposals should be sent or delivered to: Superior Court of California, County of Monterey Attn: Lenor R. McLaughlin, Director - Court Operations 1200 Aguajito Road Monterey, CA 93940
Contact for further information:	Lenor R. McLaughlin, Director - Court Operations Phone: (831) 647-5830 Lenor.Mclaughlin@monterey.courts.ca.gov

A. Intent

It is the intent of the RFP to solicit proposals from qualified mediators (“bidders”) to support the Court process by conducting mediations of child custody and visitation disputes.

B. Background

In any contested proceeding involving child custody or visitation rights, the court shall refer the parties to a family law mediator whenever the court determines it is in the best interests of the child(ren). The Court is seeking a contract Mediator(s) to conduct mediation pursuant to Family Code section 3160 et seq. The minimum qualifications for this position are found in California Family Code sections 1815 and 1816 and the 2010 California Rules of Court, rule 5.210 and 5.215. Fluency in the Spanish language is highly desirable.

During the term of the contract, if awarded, or any extension thereto, the Court may modify the Superior Court of California, County of Monterey Local Rules of Court, rule 10.06, MEDIATION OF CHILD CUSTODY AND VISITATION DISPUTES. A modification may be made, but not limited to, the Tiers of Mediation as described in the local rules and the Terms and Conditions of Sections I (Nature of Services Provided) and Section III (Payments by the Court) of any contract awarded under this RFP.

C. Workload

The number of child custody/visitations mediations which can be assigned in the future cannot be accurately projected although there are currently no modifications planned in court operations which would suggest a significant change in the number of mediations. Information as to the actual amount of time spent by mediators and the number of sessions held for each mediation is not available.

Completed reports data, as derived from the court contract mediator’s monthly reporting of mediations assigned and reports completed is approximate. There is no guarantee of maximum or minimum assignments. The data was derived from the reports of four (4) part time mediators. No further breakdown is available.

Fiscal Year	Mediations Assigned (approximate)
Calendar Year 2009	681
2006 – 2007	591
2005 – 2006	712

D. Scope of Services

The contract mediator will support the Court process by conducting mediations of child custody and visitation disputes.

Services may include:

- Conduct all mediations of child custody and/or visitation disputes as assigned by the Court.
- Review case files and extract data pertinent to initiating mediation.
- Manner of conducting mediations and number of sessions held for each mediation shall be left to the professional discretion of the mediator according to his or her professional training and ethics and statutory requirements.
- Maintain the confidentiality of mediation proceedings as required by state law and the Court's local rules and policies governing mediations.
- If relevant, obtain, review and analyze medical and mental health records, law enforcement records, school records and relevant information from public and private agencies.
- Prepare reports and recommendations for the court, and maintain necessary files, records and statistics.
- Testify in court on findings of mediation sessions if required to do so.

E. Specifics of Responsive Proposal

The following information shall be included in the response:

Name, address, telephone & fax numbers, email address, if available, and social security number or tax identification number.

One original signed by the bidder and five copies.

A narrative overview describing the background and experience of the bidder, including, but not limited to:

Knowledge of:

1. State laws and regulations, and court procedures regarding mediation.
2. Principles of adult psychopathology, child and family psychology and child development.
3. Effects of marriage dissolution and domestic violence on children.
4. Principles and techniques of interviewing, case review and critical evaluation.

Skill to:

1. Conduct mediations, and gather and analyze facts regarding family circumstances and relationships.

2. Communicate effectively with court officials, minors, parents, school officials and others involved in mediation.
3. Type clear and concise reports, correspondence, evaluations and recommendations.
4. Work effectively under pressure in emotionally charged situations.
5. Maintain records including sensitive and confidential material.
6. Prepare statistical reports.

Education, Experience, and Training:

The contract mediator must meet the education, experience, and training requirements adopted under the authority of Article VI, Section 6 of the California Constitution and California Family Code sections 1815 and 1816 and the 2010 California Rules of Court, rule 5.210 and rule 5.215. (Exhibit A.) In addition to listing qualifying education, experience, and training, the bidder, if requested, must be able to demonstrate to the court how he/she will meet on-going requirements during the term of the contract. The proposal should include copies of any relevant certificates and/or licenses held by the bidder.

The proposal should also include the names, addresses, and telephone numbers of clients for whom the bidder provided similar services. The Court may contact any references listed by the bidder.

Responsive proposals should provide clear, concise and complete information that satisfies the requirements noted above. Emphasis should be placed on skills and experience that respond to the needs of the Court, and the requirements of this RFP.

F. Fee Proposal

The proposal should include the bidder's proposed fee schedule.

G. Submission of Proposals

The Court reserves the right to reject any and all proposals, and to issue similar RFPs in the future. All responses to this RFP become the property of the Court. This RFP is not an agreement, obligation, contract or offer of employment. Neither the Court, the Administrative Offices of the Courts (AOC), nor the State of California is responsible for the cost of proposal preparation. Proposals must be signed by the bidder or by a duly authorized officer of the proposing organization, delivered along with all required documents, and plainly addressed to the Court as specified in the RFP. One copy of each submitted proposal will be retained for official files as a public record.

Proposals will be accepted until the date and time specified on the RFP. Use of U.S. Mail or other delivery service will be at the bidder's risk. Proposals received after this date will not be considered. Facsimile transmission of proposals is not acceptable. Postmarks are not accepted. The original and five copies must be completed and submitted as outlined herein.

All responses, inquiries, and correspondence related to this RFP and all reports, charts, displays, schedules, exhibits, and other documentation produced by the bidder that are submitted as part of the proposal will become the property of the Court when received by the Court and may be considered public information under applicable law. Any proprietary information in the proposal should be identified as such. The Court will not disclose propriety information to the public, unless required by law; however, the Court cannot guarantee that such information will be held confidential.

H. Errors in RFP; Requests for Clarification and Modification.

If a bidder submitting a proposal discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, it shall immediately provide the Court with written notice of the problem and request that the Court clarify or modify this RFP. Without disclosing the source of the request, the Court may modify the RFP by posting an addendum on the Court's web site. It is the bidder's responsibility to review addendums on the web site.

If a bidder submitting a proposal believes that one or more of the RFP's requirements is onerous or unfair, or that it unnecessarily precludes less costly or alternative solutions, the bidder may submit a written request that the Court change the RFP. The request must set forth the recommended change and bidder's reasons for proposing the change.

If prior to the date fixed for submission of proposals a bidder submitting a proposal knows of or should have known of an error in the RFP, but fails to notify the Court of the error, the bidder shall respond at its own risk. If the bidder is awarded a contract, he/she shall not be entitled to additional compensation or time by reason of the error or its later correction.

I. Questions

If a bidder's question relates to a proprietary aspect of its proposal and the question would expose proprietary information if disclosed to other bidders, the bidder may submit the question in writing, conspicuously marking it as "CONFIDENTIAL." With the question, the bidder must submit a statement explaining why the question is sensitive. If the Court concurs that the disclosure of the question or answer would expose proprietary information, the question will be answered, and both the question and answer will be kept in confidence. If the Court does not concur regarding the proprietary nature of the question, the question will not be answered in this manner and the bidder will be so notified.

If a prospective bidder has any questions relating to this Request for Proposals, the questions, in writing, must be received by the Court representative by **4 P.M., May 28, 2010**. Questions will not be accepted by FAX, telephone or orally. All questions and responses thereto will be posted on the Court's web site by **noon June, 4, 2010**. It is the bidder's responsibility to review questions and responses on the web site. The Superior Court of California, County of Monterey reserves its rights to decline to respond to any questions if, in the Court's assessment, the information cannot be obtained and shared with all potential persons in a timely manner.

J. Addenda

The Court may modify the RFP by posting an addendum on the Court's web site. It is the bidder's responsibility to review addendums on the web site. If any bidder determines that an addendum unnecessarily restricts their ability to submit a proposal, he/she must notify Lenor R. McLaughlin, Director - Court Operations, no later than **Noon, June 4, 2010**.

K. Withdrawal and Resubmission/Modification of Proposal

A bidder may withdraw its proposal at any time by notifying the Court in writing of its withdrawal. The bidder must sign the notice. The bidder may thereafter submit a new or modified proposal by the deadline date and time specified on the RFP. Modification offered in any other manner, oral or written, will not be considered.

L. Evaluation of Proposal

The Court reserves the right to award a contract to the bidder(s) that presents the proposal that, in the sole judgment of the Court, best accomplishes the desired results. The Court also reserves the right to reject any or all proposals, to waive minor irregularities, or to negotiate minor deviations with the successful bidder. Proposals that contain false or misleading statements may be rejected if in the Court's opinion the information was intended to mislead the Court regarding a requirement of the RFP.

During the evaluation process, the Court may require a bidder to answer questions with regard to the bidder's proposal. It may be necessary to interview one or more bidders to clarify aspects of their proposals. Interviews, if any, may be conducted in person or by telephone call. Failure of a bidder to demonstrate that the claims made in its proposal are in fact true may be sufficient cause for deeming a proposal non-responsive. The Court will evaluate the proposal using the following criteria:

- Responsiveness of the proposal;
- Qualifications pursuant California Rules of Court, rule 5.210 and rule 5.215 and Family Code section 3160, et seq.;
- Experience on similar engagements;
- Experience and expertise of bidder;
- Fee proposal; and
- Responses to client reference inquiries.

M. Selection

Award of a contract shall not be based on cost alone, but on the strength of qualifications of the bidder and the bidder's capability of providing the services outlined in the RFP. The Court will rank the proposals in descending order of preference. The Court will then elect the preferred proposals. All bidders shall be notified of the proposals which are ranked highest. No other information will be released.

The Court and the highest ranked bidders shall negotiate terms of a contract consistent with the RFP and the proposals. If agreement is not reached within a reasonable time, the Court reserves its right to terminate negotiations, suspend the process entirely or request new proposals. There shall be no appeal of any decision of the Court, or any Court representative.

N. Protest Procedures

1. General

The failure of a bidder to comply with the protest procedures set forth in this Section will render a protest inadequate and untimely, and will result in rejection of the protest. In no event shall a protest be considered if all submittals are rejected or after a contract has been executed.

2. Protest Prior To or After Submission of Proposal

An interested party that is an actual or prospective bidder with a direct economic interest in the procurement may file a protest based on allegedly restrictive or defective specifications or other improprieties in the solicitation process that are apparent, or should have been reasonably discovered prior to the submission of a proposal. Such protest must be received prior to the Proposal Closing Time.

The protestor will have exhausted all administrative remedies such as Errors in RFP, Request for Clarification and Modification, Questions, and this Section as applicable, prior to submitting the protest. Failure to do so may be grounds for denying the protest.

3. Protest After Award

A bidder submitting a proposal may protest the award based on allegations of improprieties occurring during the proposal evaluation or award period if the bidder meets all of the following conditions:

- a. The bidder has submitted a proposal that he/she believes to be responsive to the solicitation document.
- b. The bidder believes that its proposal meets the administrative and technical requirements of the solicitation, proposes items and/or services of proven quality and performance, and offers a competitive cost; and
- c. The bidder believes that the Court has incorrectly selected another vendor submitting a proposal for an award.

Such protests must be received no later than five (5) business days after the protesting party receives a no-award notification.

4. Form of Protest

A bidder who is qualified to protest should submit the protest to:
Superior Court of California, County of Monterey
Finance Department - Contracts & Procurement
Attn: Christine Ace, Interim Finance Director
240 Church Street
Salinas, CA 93901

The Finance Department will forward the matter to the appropriate Contracting Officer.

- a. The protest must be in writing and sent by certified or registered mail or delivered personally to the address noted above. If the protest is hand-delivered, a receipt must be requested.
- b. The protest shall include the name, address, telephone and facsimile numbers, and email address of the party protesting or their representative.
- c. The title of the solicitation document under which the protest is submitted shall be included.
- d. A detailed description of the specific legal and factual grounds of protest and all supporting documentation must be included.
- e. The specific ruling or relief requested must be stated.

The Court, at its discretion, may make a decision regarding the protest without requesting further information or documents from the protestor. Therefore, the initial protest submittal must include all grounds for the protest and all evidence available at the time the protest is submitted. If the protestor later raises new grounds or evidence that was not included in the initial protest, but which could have been raised at that time, the Court will not consider such new grounds or new evidence.

5. Determination of Protest Submitted Prior To or After Submission of Proposal

Upon receipt of a timely and proper protest based on allegedly restrictive or defective specifications or other improprieties in the solicitation process that are apparent, or should have been reasonably discovered prior to the submission of a proposal, the Court will provide a written determination to the protestor prior to the Proposal Closing Time. If required, the Court may extend the Proposal Closing Time to allow for a reasonable time to review the protest. If the protesting party elects to appeal the decision, the protesting party must follow the appeals process outlined below and the Court, at its sole discretion, may elect to withhold the contract award until the protest is resolved or denied or proceed with the award and implementation of the contract.

6. Determination of Protest Submitted After Award

Upon receipt of a timely and proper protest, the Court will investigate the protest and will provide a written response to the bidder. If the Court requires additional time to review the protest and is not able to provide a response within ten (10) business days, the Court will notify the vendor. If the protesting party elects to appeal the decision, the protesting party must follow

the appeals process outlined below and the Court, at its sole discretion, may elect to withhold the contract award until the protest is resolved or denied or proceed with the award and implementation of the contract.

7. Appeals Process

The Contracting Officer's decision shall be considered the final action by the Court, unless the protesting party thereafter seeks an appeal of the decision by filing a request for appeal with the Court Executive Officer, within five (5) calendar days of the issuance of the Contracting Officer's decision.

The justification for appeal is limited to:

- A. Facts and/or information related to the protest, as previously submitted, that were not available at the time the protest was originally submitted; or
- B. The Contracting Officer's decision contained errors of fact, and that such errors of fact were significant and material factors in the Contracting Officer's decision; or
- C. The decision of the Contracting Officer was in error of law or regulation.

The request for appeal shall include:

- (1.) The name, address, telephone and facsimile numbers, and email address of the bidder filing the appeal or their representative;
- (2.) A copy of the Contracting Officer's decision;
- (3.) The legal and factual basis for the appeal; and
- (4.) The ruling or relief requested. Issues that could have been raised earlier will not be considered on appeal.

Upon receipt of a request for appeal, the Court Executive Officer will review the request and the decision of the Contracting Officer and shall issue a final determination. The decision of the Court Executive Officer shall constitute the Court's final action.

8. Protest Remedies

If the protest is upheld, the Court will consider all circumstances surrounding the procurement in its decision for a fair and reasonable remedy, including the seriousness of the procurement deficiency, the degree of prejudice to the protesting party or to the integrity of the competitive procurement system, the good faith efforts of the parties, the extent of performance, the cost to the Court, the urgency of the procurement, and the impact of the recommendation(s). The Court may recommend any combination of the following remedies:

- a. Terminate an awarded contract for convenience;
- b. Re-compete the contract;
- c. Issue a new solicitation;
- d. Refrain from exercising options to extend the term under the contract, if applicable;
- e. Award a contract consistent with statute or regulation; or
- f. Other such remedies as may be required to promote compliance.

O. Contract Terms

A contract, if awarded, will include at a minimum the following provisions:

I. NATURE OF SERVICES PROVIDED

1.01. **Mediator.** The Mediator shall provide the services set forth in this Agreement, as assigned by the Court in compliance with this Agreement.

1.02. **1st Tier Mediation.** The Mediator shall conduct all mediations of child custody and/or visitation disputes as assigned by the Court. The manner of conducting the mediations and number of sessions held for each mediation shall be left to the professional discretion of the Mediator according to his or her professional training and ethics and statutory requirements.

The Mediator agrees to maintain the confidentiality of mediation proceedings as required by state law and the Court's local rules and policies governing mediations.

1.03. **2nd Tier Mediation with Recommendation to the Court (Non-Confidential).** The Mediator shall, consistent with Local Rules and the California Family Code, render a custody or visitation recommendation to the Court when a mediation does not result in a voluntary agreement between parents. The session may be scheduled for up to 2 1/2 hours in length at the discretion of the Mediator. A session shall not exceed 2 1/2 hours without the Court's written consent.

1.04. **Separate 2nd Tier Mediation with Recommendation to the Court (Non-Confidential):** The Mediator shall, consistent with Local Rules and the California Family Code, when it is necessary to conduct a 2nd Tier mediation with each party separately due to legal and/or safety requirements, render a custody or visitation recommendation to the Court when a mediation does not result in a voluntary agreement between parents. The session may be scheduled for up to 2 1/2 hours in length at the discretion of the Mediator. A session shall not exceed 2 1/2 hours without the Court's written consent.

1.05. **Qualifications.** You possess at least the minimum professional and training qualifications set forth in California Family Code sections 1815 and 1816, and in California Rules of Court, rule 5.210 and rule 5.215, and will continue to maintain such qualifications throughout the term of this Agreement. You further agree to maintain all certifications, registrations, permits and licenses required to perform the Services.

1.06. **Expert Professional Services.** It is expressly understood by the parties to this Agreement that the Court is purchasing the expert professional services of the Mediator for the Court. Neither the rights nor the duties of Mediator under this Agreement shall be assigned or delegated to, or performed by any other person or agency without the express prior written approval of the Court.

1.07. **Monthly Reports.** Not later than the tenth day of each month, the Mediator shall submit monthly reports to the Court detailing the number of mediations accepted, conducted, and

completed during the previous month, in such a manner and form as may be required by the Court.

- 1.08. **Days of Contracted Service.** Scheduling of days and hours will be the responsibility of the Mediator.
- 1.09. **Facilities and Supplies.** The Mediator shall provide all necessary supplies, equipment, and support staff for the performance of his/her duties under this Agreement except as provided herein. The Mediator may, as needed, arrange with the Court to use a room, with mutually agreeable security provisions, at the courthouse in Salinas or Monterey to conduct mediation sessions. No room in a courthouse is exclusively and permanently dedicated for the use by the Mediator. The Mediator must execute a License Agreement for the use of Court premises with the Administrative Office of the Courts (AOC) within 45 days of the execution of the Agreement between the Court and the Mediator. It is the responsibility of the Mediator to contact the AOC. (See Exhibit B for contact information.) The Mediator may use a Court telephone during mediation sessions conducted at the courthouse. The Court will provide clerical support for the limited purposes of scheduling mediation sessions and filing agreements, status forms, and 2nd Tier mediation reports. Other than as stated herein, the Mediator may not use any Court facilities, Court letterhead, supplies, or resources for any purposes without the written consent of the Court.
- 1.10. **Access to Court Facilities.** The investigator is allowed access to Court facilities based on the approved access control policy. “All contractors are permitted access to the Court during regular working hours from 7:30 AM to 5:00 PM, Monday through Friday, unless otherwise authorized by the Court’s Executive Management or designee. Contractors will have access only through Express Lanes, Public Exterior Building Entrances and pre-approved general internal entrances.
- 1.11. **Maintenance of Credential.** The Mediator agrees to perform those acts necessary to maintain the credentials required by statute for the conduct of mediation sessions pursuant to this Agreement. The Mediator must immediately notify the Court if Mediators’ credentials become compromised. The Court will not compensate the Mediator for costs associated with the maintenance of his/her credential.
- 1.12. **Continuing Education.** The Court will not reimburse or compensate the Mediator for the costs of continuing education related to mediation of child custody and/or visitation disputes. This includes, but is not limited to, travel, lodging, meals and other expenses for conferences, training sessions, classes, seminars, and reference materials.

II. PERFORMANCE

- 2.01. **Level of Service.** The Mediator shall meet the contracted level of service and the performance standards as specified in this contract, unless prevented from doing so by circumstances beyond the Mediator's control, including natural disasters, fire, theft, and shortages of necessary supplies or materials due to labor disputes.

- 2.02. **Standard of Performance and Compliance with Law.** You shall perform the Services in a professional manner using no less than ordinary skill and diligence normally provided by family law mediators. In performing the Services, you agree to comply with all laws, rules, and regulations pertaining to the Services including, without limitation, the following:
- California Family Code section 1800 et seq. (Division 5, Conciliation Proceedings);
 - California Family Code section 3000 et seq. (Division 8, Custody of Children).
 - California Rules of Court, rule 5.1 et seq. (Title Five, Family and Juvenile Rules) including, without limitation, rules 5.210 and 5.215;
 - Court Administrative Reference Manual section 7.50 (Child Custody and Visitation Mediation);
 - California Penal Code section 11164 et seq. (Child Abuse and Neglect Reporting Act); and
 - Any applicable local rules.
- 2.03. **Material Defects in Performance.** If the Mediator fails to perform a material requirement of this Agreement, the Court shall notify the Mediator in writing of Mediator's defective performance. If requested by the Mediator or by the Court, the Mediator and designee of the Court may meet to discuss any such defects in performance and to discuss potential corrective actions. Regardless of whether such meeting occurs, the Mediator shall promptly take action to correct any material defects in Mediator's performance of this Agreement.
- 2.04. **Conflict of Interest.** The Mediator agrees to abide by the Court's conflict of interest policy, a copy of which is attached as Exhibit A and incorporated herein by reference.

III. PAYMENTS BY THE COURT

- 3.01. **1st Tier Compensation.** The Court shall compensate Mediator at the rate of **[to be determined]** for each scheduled mediation for fiscal year **July 1, 2010 – June 30, 2011**. For purposes of payment under this section a mediation consists of a session or sessions with those individuals involved in a dispute about custody or visitation which culminates in either an agreement filed with the Court, or a "no agreement" status report and where no further mediation sessions are scheduled or contemplated. It is agreed that there may be more than one session for each mediation and that the above compensation covers all sessions, regardless of the number held.
- 3.02. **2nd Tier Mediation with Recommendation to the Court (Non-Confidential).** The Court agrees to compensate the Mediator **[to be determined]** or up to 2 hours of session time, plus **[to be determined]** for up to an additional 1/2 hour of session time; the maximum fee to be paid per mediation shall be **[to be determined]** for the fiscal year **2010-2011 (July 1, 2010–June 30, 2011)**.
- 3.03. **Separate 2nd Tier Mediation with Recommendation to the Court (Non-Confidential:** Maximum fee of **[to be determined]** when it is necessary to conduct a 2nd Tier mediation with each party separately due to legal and/or safety requirements.

- 3.04. **No Shows.** The Mediator shall be paid the agreed compensation if the Mediator is present and one or both parties fail to appear for the scheduled mediation session, or mediation is not canceled by one or both of the parties with at least 24 hours notice.
- 3.05. **Translation.** A [to be determined] fee for each written report, recommendation, or agreement.
- 3.06. **Temporary Agreements.** If a temporary agreement is reached between all parties, with further mediation sessions scheduled in the future, the Mediator shall be paid the agreed compensation upon execution of the temporary agreement with the understanding that there shall be no further compensation for sessions regarding modification of the agreement held within three months from the date of the first mediation.
- 3.07. **Re-Referrals.** The Mediator shall be paid the agreed compensation if the Mediator is re-referred a party for the same issues in which no agreement was previously met.
- 3.08. **New Issues.** The Mediator shall be paid the agreed compensation if a new mediation agreement involving new issues between parties is required subsequent to a prior agreement.
- 3.09. **Monthly Claims by the Mediator.** Not later than the tenth day of each month, or as soon as possible after that date if there are extenuating circumstances, the Mediator shall prepare and submit to the Court a claim, or such other form as the Court may prescribe, setting forth in detail the number of cases the Mediator was assigned, the number of cases pending, the number of cases completed, and the number of cases in which the Mediator filed a conflict of interest during the previous month, for which payment is sought, and setting forth such other information pertinent to the claim as the Court may require. If the Mediator does not submit a timely claim, the Court shall have no obligation to pay the claim.
- 3.08. **Payment of Claim by the Court.** The Court's contract administrator shall certify the Mediator's claim, either in the requested amount or in such other amount as the Court approves in conformity with this Agreement, and shall promptly submit such certified claim to the Superior Court Finance Unit. Finance shall pay the claim in the amount certified by the Court not later than 30 days after the date of certification with payment in the name of [to be determined].

IV. INDEMNIFICATION AND INSURANCE

- 4.01 **Indemnification.** Mediator will defend (with counsel satisfactory to the AOC), hold harmless and indemnify Judicial Branch Entities and Judicial Branch Personnel from all claims and expenses, including attorney fees and costs, resulting from (A) a matter or event related to the Mediator's Services under this Agreement, or (B) the Mediator's default under this Agreement, or (C) both, except to the extent a claim or loss is due to the active negligence or willful misconduct of an indemnified party.
- 4.02. **Insurance Limits.** Without limiting Mediator's duty to indemnify, Mediator shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the

following minimum limits of liability.

- (a) Business/commercial/general or malpractice supplemental liability, including but not limited to bodily injury, personal injury, and property damage, with a combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence; and
- (b) Comprehensive automobile liability covering all motor vehicles, including owned, lease non-owned and hired vehicles, used in providing services under this Agreement, with a combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence; and
- (c) If Mediator employs others in the performance of this Agreement, Mediator shall maintain workers' compensation insurance in accordance with California Labor Code section 3700 and with a minimum of One Hundred Thousand Dollars (\$100,000.00) per occurrence for employer's liability.

4.03. **General Insurance Requirements.** All insurance required by this Agreement shall be with a company authorized by law to transact insurance business in the State of California. Liability insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of two years following the date Mediator completes her/his performance of services under this Agreement.

Each liability policy shall provide that the Court shall be given notice in writing at least ten (10) days in advance of any reduction in coverage, cancellation, or non-renewal thereof. Each policy shall provide identical coverage for each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance showing each subcontractor has identical insurance coverage.

Commercial general liability and automobile liability policies shall provide an endorsement naming the Judicial Branch Entities and Judicial Branch Personnel as Additional Insureds and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the Court and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Contractor's insurance.

Prior to the execution of this Agreement by the Court, Mediator must file properly endorsed certificates of insurance with the Court's Contract Administrator, showing that the Mediator has in effect the insurance required by this Agreement. **The Court will not execute this Agreement, and no payment will be made for any work commenced by Mediator, unless the certificates of insurance are on file.** Any commencement of performance prior to execution of this Agreement shall be done at the Mediator's own risk. The Mediator must file a new or amended certificate of insurance promptly after any change is made in any insurance policy which would alter the information of the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

- 4.04. For the purposes of this Agreement “Judicial Branch Entity” means any superior court, court of appeal, the Supreme Court, the Judicial Council, or the Administrative Office of Courts, and “Judicial Branch Personnel” means members, judges, judicial officers, subordinate judicial officers, directors, officers, employees, agents, consultants, and volunteers of a Judicial Branch Entity.

V. RECORDS AND CONFIDENTIALITY

- 5.01. **Confidentiality.** The Mediator and his/her employees and subcontractors shall comply with any and all applicable federal, state, or local laws which provide for the confidentiality of records and prohibit their being opened for examination for any purpose without proper court or client authorization. Confidential medical or personal records and the identities of parties shall not be disclosed unless there is proper consent to such disclosure or a court order requiring disclosure. Confidential information gained by the Mediator from access to any such records and from personal contact shall be used by the Mediator only in connection with her conduct under this Agreement.
- 5.02. **Maintenance and Availability of Records.** The Mediator shall prepare and maintain all reports and records that may be required by federal, state, or county rules and regulations and the Court's contract administrator and shall furnish such reports and records to the Court, the County of Monterey, and to the state and federal governments, upon request in compliance with applicable rules of confidentiality.

Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject to the examination and audit of the State Auditor, at the request of the Court or as part of any audit of the Court, for a period of three years after final payment under the Agreement. The audit will be confined to those matters connected with the performance of this Agreement, including but not limited to the costs of administering the Agreement.

- 5.03. **Court Case Files.** Mediator shall not remove a Court case file from the Court offices.

VI. TERM/TERMINATION OF AGREEMENT

6.01. **Term.** Commencing upon the Effective Date of July 1, 2010, the Agreement shall continue in full force and effect for a further period of one calendar year, unless earlier terminated in accordance with the termination provisions. At the Court's option and in its sole discretion, the Agreement may be renewed for up to two (2) additional consecutive one (1) year terms, contingent upon certification by the Court Executive Officer or designee that services provided by the contractor have been satisfactory. Each succeeding Agreement shall be renewed subject to the availability of approved funding. If the Court elects to extend the term of this Agreement, the Court may negotiate price adjustments applicable during an option period, and any agreed-upon price adjustments will be set forth in a written amendment to this Agreement.

6.02. **Termination for Convenience.** The Court or Mediator may terminate this Agreement, in whole or in part, without cause and for convenience by providing the other party with sixty (60)

days prior written notice specifying the extent of termination and the effective date thereof. If necessary, the parties will discuss payment and performance of any services outstanding at the proposed date of termination.

6.03. Termination for Cause. The Court may, by written notice to Mediator, terminate this Agreement in whole or in part immediately upon occurrence of either of the following events (Default): 1) any of the representations or warranties set forth in the Agreement become untrue at any time during the term of this Agreement; or 2) Mediator fails or is unable to meet or perform any of its duties under this Agreement, and such failure is not cured within ten (10) days of written notice, or is not capable of cure. Mediator will notify Court immediately of events constituting a Default, or events which if left uncured would constitute a Default, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a Default. Whether or not any failure by Mediator is capable of cure, or is cured, is within the sole discretion of the Court. If necessary, the parties will discuss performance of any services outstanding at the date of termination.

6.04. Either party hereto may terminate this Agreement at any time by giving notice in writing to the other party, which notice will be effective upon dispatch, should the other party file a petition of any type as to its bankruptcy, be declared bankrupt, become insolvent, make an assignment for the benefit of creditors, go into liquidation or receivership, or otherwise lose legal control of its business.

6.05. Material Breach. The Court may cancel and terminate this Agreement for material breach effective immediately upon written notice to Mediator. “Material breach” includes but is not limited to the failure of Mediator to perform an essential requirement of this Agreement that: (1) causes substantial harm to the interests of the Court; or (2) substantially deprives the Court of a substantial benefit it reasonably expected under the Agreement. A breach of contract may be deemed “material” if cumulative effect of nonmaterial breaches is material. Upon termination, for material breach, the Court agrees to pay Mediator for all services performed prior to termination that meet the requirements of this Agreement.

6.06. Change in Funding or Conditions. Notwithstanding any other provision of this Agreement, in the event the state does not appropriate sufficient funds for the services that are to be provided under this Agreement, the Court may, at its sole option and upon thirty (30) days' prior written notice to the Mediator, take any of the following actions: (1) terminate this Agreement; (2) amend this Agreement to reduce the level of compensation and reduce the scope of services accordingly; or (3) amend this Agreement to include any additional restrictions, limitations, or conditions enacted by the state legislature and contained in a budget bill or statute enacted by the legislature which affect the terms and conditions of this Agreement. In the event that sufficient funds are not appropriated by the state, the Court Administrator will notify the mediators within 48 hours of receiving notice from the State. It is anticipated that there will be a minimum of 90 days before the mediators would be affected by this insufficiency of funds.

6.07. Gratuities. The Court may, by written notice to the Mediator, terminate this Agreement upon one (1) calendar day's notice, if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Mediator, or any agent or representative of the

Mediator, to any officer or employee of the Court with a view toward securing an Agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such Agreement; provided, that the existence of the facts upon which the Court makes such findings shall be in issue and may be reviewed in any competent Court. In the event of such termination, the Court shall be entitled to pursue the same remedies against the Mediator as it could pursue in the event of default by the Mediator.

VII. LIMITATION OF LIABILITY

7.01. In no event will the Court or any Judicial Branch Entity or Judicial Branch Personnel be liable for any exemplary or punitive damages whether in an action in contract or tort (including negligence and strict liability), including without limitation lost data, profits, and revenues, even if advised of the possibility of such damages.

7.02. In no event will the Court's or any Judicial Branch Entity's or Judicial Branch Personnel's aggregate liability for direct damages to Mediator arising out of or related to this Agreement for any cause whatsoever, and regardless of the form of action, whether in contract or in tort (including negligence and strict liability), exceed the amounts payable hereunder in the twenty-four (24) months prior to the date the cause of action arose.

7.03. The limitations of liability contained in this section reflect a deliberate and bargained for allocation of risks between the parties and are intended to be independent of any exclusive remedies available under this Agreement, including any failure of such remedies to achieve their essential purpose.

VIII. DISPUTE RESOLUTION

8.01. The parties will attempt in good faith to resolve potential disputes informally and promptly. If a dispute persists, either party may submit a written demand to the other party at the earliest practicable time that the dispute is identified but no later than ten (10) days after the dispute is identified (the "Demand"). The Demand will: (i) be fully supported by detailed factual information; (ii) state the specific Agreement provisions on which the Demand is based; and (iii) if the Demand involves a cost adjustment, state the exact amount of the cost adjustment accompanied by all records supporting the Demand. The Demand will include a written statement signed by an authorized person indicating that the Demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the adjustment for which the submitting party believes the other party is responsible. The receiving party will provide a written response within ten (10) days of receiving the Demand stating whether the receiving party accepts or rejects the Demand. Failure by the receiving party to provide such a response will be deemed a rejection of the Demand.

8.02. Each party will comply with reasonable requests for additional information. Any additional information will be provided within fifteen (15) days after receipt of a written request, unless otherwise agreed.

8.03. All dispute resolution negotiations are considered confidential, and will be treated as compromise and settlement negotiations, to which California Evidence Code section 1152 applies.

8.04. Pending final resolution of any dispute, Mediator agrees to proceed diligently with the performance of the services with respect to mediations scheduled prior to the resolution of any dispute, including services associated with the dispute, unless otherwise directed by Court. Mediator's failure to diligently proceed in accordance with Court's instructions will be considered a material breach of the Agreement.

IX. DEFAULT AND REMEDIES

9.01. **Default.** A default exists under this Agreement if Mediator (A) makes a material misrepresentation in writing; or (B) fails or is unable to meet or perform any material promise in this Agreement and (1) are incapable of curing this failure, or (2) do not cure this failure within thirty (30) days following notice.

9.02. **Notice.** Mediator will notify Court immediately if Mediator defaults or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a default under this Agreement.

9.03. **Remedies.** (A.) Available Remedies. In the event of a default, Court may do any of the following: (1) require Mediator to enter into non-binding mediation; (2) terminate this Agreement in accordance with this Agreement, and seek any other available remedy at law or in equity; (3) reduce or suspend your Services; (4) reduce or withhold payment to Mediator; and/or (5) seek any other available remedy under this Agreement or at law or in equity. (B.) Remedies Cumulative. All remedies provided in this Agreement may be exercised individually or in combination with any other available remedy.

X. WARRANTIES AND REPRESENTATIONS

10.01. **Performance Warranty.** Mediator will perform all services with the requisite skill and diligence consistent with professional standards for the industry and type of work performed under the Agreement, and pursuant to the governing rules and regulations of the industry. Mediator understands that Court relies on the accuracy, competence, and completeness of Mediator's services.

10.02. **Joint Representations and Warranties.** Each party warrants it has the authority to enter into this Agreement, and to perform the obligations provided for in this Agreement, and that its representative who signs this Agreement has the authority to do so. Each party represents and warrants that this Agreement constitutes a valid and binding obligation of the party, enforceable in accordance with its terms.

XI. NON-DISCRIMINATION AND HARRASEMENT PREVENTION POLICY

11.01. **Non-Discrimination.** During the performance of this contract, the Mediator shall not unlawfully discriminate against any employee or applicant for employment because of race, color,

religion, sex, national origin, citizenship, ancestry, physical disability, mental disability, medical condition, veteran status, marital status, age, sexual orientation, or other unlawful basis, perceived or otherwise, either in Contractor's employment practices or in the furnishing of service to recipients. The Mediator shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination. The Mediator shall comply with the provisions of the Fair Employment and Housing Act (Government Code, § 12900, et seq.) and the applicable regulations promulgated thereunder (California Administrative Code, Title 2, § 7285.0, et seq.).

11.02. Harassment Prevention Policy. During the performance of this Agreement, the Mediator shall not tolerate harassment in the workplace or in a work-related situation based on an individual's race, color, religion, gender, national origin, ancestry, age, marital status, physical disability, mental disability, medical condition, sexual orientation, or any basis protected by law, or based on a perception that an individual has any of these characteristics, or based on a perception that an individual is associated with a person who has, or is perceived to have, any of these characteristics. Such harassment may include, but is not limited to, slurs; epithets; derogatory jokes; degrading comments; gestures or physical conduct; or threats that an employee's job, advancement, compensation, assignment, or other benefit is dependent on submission to sexual demands or on toleration of harassment. The Mediator shall insure that its employees and all persons receiving and requesting services are free of such harassment.

11.03. Compliance with Laws. During the performance of this Agreement, the Mediator shall comply with all applicable federal, state, and local laws and regulations which prohibit discrimination, all as periodically amended, including but not limited to the following:

- California Fair Employment and Housing Act, Gov. Code section 12900 et seq., and the administrative regulations issued thereunder, 2 CA Code of Regulations sections 7285.0 et seq. (Division 4 Fair Employment and Housing Commission);
- Gov. Code sections 11135-11139.5 (Title 2, Div. 3, Part 1, Chap. 1, Art. 9.5) and any applicable administrative rules and regulations issued under these sections;
- Federal Civil Rights Act of 1964 (see especially Title VI, 42 USC § 2000d et seq.), as amended, and all administrative rules and regulations issued thereunder (see especially 45 CFR Part 80);
- The Rehabilitation Act of 1973, sections 503 and 504 (29 USC §§ 793 and 794), as amended; all requirements imposed by the applicable HHS regulations (45 CFR, Part 84); and all guidelines and interpretations issued pursuant thereto;
- Unruh Civil Rights, Act, Calif. Civil Code section 51 et seq. Mediator may satisfy the requirements of equal access to facilities through the use of Court facilities by arrangement with the Contract Administrator.
- The Americans with Disabilities Act, 42 U.S.C. section 12101 et seq.

11.04. **Binding on Subcontractors.** The provisions of paragraphs 11.01-11.03 shall also apply to all of the Mediator's subcontractors. The Mediator shall include the nondiscrimination and harassment prevention and compliance provisions of these paragraphs in all subcontracts to perform work or provide services under this Agreement.

XII. GENERAL PROVISIONS

12.01. **Contract Administrator.** The Court Executive Officer is designated by the Court as the contract administrator for this contract. All matters concerning this contract which are within the responsibility of the Court shall be under the direction of or shall be submitted to the Court Executive Officer or such other court employee as the Court Executive Officer may appoint. The Court may, in their sole discretion, change its designation of the contract administrator and shall promptly give written notice to the Mediator of any such change.

12.02. **Independent Contractor.** Mediator and his/her officers, employees, agents and subcontractors in the performance of this Agreement, are independent contractors in relation to the Court, and not employees of the Court. The Mediator shall be solely liable for all applicable taxes, including, but not limited to, federal and state income taxes, Social Security taxes, arising out of Mediator's performance of this Agreement. The Mediator shall not be entitled to receive from the Court under this Agreement any compensation in the form of sick leave, vacation leave, or retirement benefits or any other kind or type of employee benefits such as workers' compensation, unemployment compensation or insurance, Social Security benefits, or disability insurance benefits.

The Mediator has no authority to bind or incur any obligation on behalf of the Court. It is understood by both the Mediator and the Court that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture. The Mediator at all times during the term of this Agreement shall represent and conduct her- or his- self as an Independent Contractor and not as an employee of the Court.

The Mediator shall determine the method, details, and means of performing the work and services to be provided by the Mediator under this Agreement. The Mediator shall be responsible to the Court for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to the Court's control with respect to the physical action or activities of the Mediator in fulfillment of the Agreement. The Mediator is permitted to provide services to others during the same period that services are provided the Court under this Agreement, provided there is no conflict of interest.

If the Internal Revenue Service or any other federal or state governmental agency should inquire about, question, or challenge the independent contractor status of Mediator with respect to the Court, the parties hereto mutually agree that: (1) each shall inform the other party hereto of such inquiry or challenge; and (2) the Court shall have the right to participate in any discussion or negotiation occurring with the federal or state agency, without regard to who initiated such discussions or negotiations. In the event the federal or state agency concludes that an independent contractor relationship does not exist, the Court or the Mediator may terminate this Agreement effective immediately upon written notice.

12.03. **Conflict of Interest.** Mediator covenants that she/he presently has no interest and shall not acquire any interest which would directly or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement. Mediator further agrees to submit full disclosure statements, if such be legally required, pursuant to the requirements of the California Fair Political Practices Commission or any other applicable federal, state or county provision of law or regulation. Mediator shall not refer a person or couple to one specific agency or individual for further mediation, counseling, therapy, etc. The Mediator may provide information on how to select an appropriate therapist or service agency and provide people with a list of names of individuals or groups and the names of agencies where the individuals can go for help.

Mediator may not refer individuals or couples to her/himself in private practice without prior approval by the Court Executive Officer and a signed informed consent by the person or couple indicating: a) that the services provided in the Mediator's capacity as a therapist/counselor in private practice are not under the auspices of the Court; b) that the clients will be charged for the services and the Court will not pay for the services; and c) that the person or couple is not required to obtain these additional services, and that they are seeking further help of their own free will without suggestion, threat or coercion from the Mediator or Court.

Mediator may accept referrals from attorneys who appear in the Family Law Department in the County of Monterey, but the Mediator may not accept a mediation referral from the Court if the Mediator has seen in private practice one or more of the parties involved.

In her or his private practice, Mediator may provide child custody and mediation services similar to those provided to the Court after informing the participants that such services are available free of charge through the Court.

12.04. **Non-Assignability.** None of the rights, privileges, interest, immunities, duties or obligations created by this Agreement is assignable or delegable; upon disability or inability to accept assigned mediation assignments or to continue as a Mediator in cases previously assigned, this Agreement shall terminate. The Mediator's refusal to accept assigned case mediations on grounds of conflict of interest does not constitute "disability" or "inability" as used in this Agreement. The Mediator shall not assign any monies due or to become due under this Agreement without the prior written consent of the Court.

12.05. **Negotiated Agreement.** This Agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this Agreement within the meaning of Civil Code section 1654.

12.06. **Headings.** The section and paragraph headings are for convenience only and shall not be used to interpret the terms of this Agreement.

12.07. **Time of Essence.** Time is of the essence in each and all of the provisions of this Agreement.

12.08. **Amendment.** No alteration, variation or amendment to the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

12.09. **Survival.** Termination or expiration of this Agreement will not affect the rights and/or obligations of the parties that arose prior to any such termination or expiration. Terms which shall survive any termination or expiration of this Agreement include, but are not limited to, Indemnity, Warranties, Confidentiality, Non-Assignability, and Maintenance and Availability of Records.

12.10. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same agreement.

12.11. **Severability.** In the event any provision of this Agreement is held by a court of competent jurisdiction or arbitration to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way.

12.12. **Waiver of Rights.** Any action or inaction by either party or the failure of either party on any occasion, to enforce any right or provision of this Agreement, will not be construed to be a waiver by such party of its rights under this Agreement and will not prevent such party from enforcing such provision or right on any future occasion. Except as set forth herein, the rights and remedies of each party under this Agreement will be cumulative and in addition to any other rights or remedies that such party may have at law or in equity.

12.13. **Governing Law and Venue.** The Agreement and performance under it will be exclusively governed by the laws of the State of California without regard to its conflict of law provisions and Mediator hereby irrevocably submits to the exclusive jurisdiction of the state and federal district courts located in San Francisco, California in any legal action concerning or relating to this Agreement.

12.14. **Force Majeure.** Force Majeure events include, but are not limited to: (1) catastrophic acts of nature, or public enemy; (2) civil disorder; (3) fire or other casualty for which a party is not responsible; and (4) quarantine or epidemic. The party asserting a Force Majeure event will immediately provide written notice to the other party of the occurrence and nature of the Force Majeure event, and its expected impact on schedule. The party claiming Force Majeure will use commercially reasonable efforts to continue or resume performance, including alternate sources or means. If Mediator will incur significant additional require costs to resume performance following a Force Majeure event, Court and Mediator will negotiate terms for additional payment, if any. Any assertion of a Force Majeure event by Subcontractors will be attributed to Mediator.

12.15. **Notices.** Notices to the parties in connection with this Agreement shall be given personally or by regular mail addressed as follows:

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONTEREY**

MEDIATOR

Connie Mazzei ,
Court Executive Officer
240 Church Street
Salinas, CA 93901

To be determined.

12.16. **Public Records Act.** Courts are exempt from the California Public Records Act. (Gov. Code, § 6252 (a)). However, California Rule of Court, rule 10.500, requires CA Superior Courts to provide public access to documents pertaining to nondeliberative and nonadjudicative court records and budget and management information. The Mediator is on notice that any material that the Mediator submits to the Court may be made available to the public under Rule 10.500.

12.17. **Exhibits.** The following Exhibit are attached hereto and incorporated by reference.

- A. Mediator Conflict of Interest Policy.
- B. AOC License Agreement.

12.18. **Integration.** This Agreement, including the exhibits hereto, shall represent the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the parties as of the effective date hereof.

EXHIBIT A [Contract Terms]

MEDIATOR CONFLICT OF INTEREST POLICY

1. Mediator shall declare a conflict of interest and shall not accept a referral from the Court where the Mediator has seen in private practice one or more of the parties involved, unless a written stipulation as to the referral is filed by all of the parties involved.
2. Mediator shall declare a conflict of interest and shall not accept a referral from the Court where the Mediator personally knows one or more of the parties involved, unless a written stipulation as to the referral is filed by all of the parties involved.
3. Mediator shall not accept any type of mediation referrals in private practice that could conflict with any mediations being conducted pursuant to this Agreement.
4. Mediator shall not directly refer a person or couple to one specific agency or individual for further mediation, counseling, therapy, etc. The Mediator may provide information on how to select an appropriate mediator, therapist or service agency and provide people with a list of names of individuals or groups and the names of agencies where the individuals can go for help.

5. Mediator may not refer individuals or couples to himself in private practice.

End of Exhibit A [Contract Terms]

EXHIBIT B [Contract Terms]

AOC License Agreement

Judicial Council of California
Administrative Office of the Courts
Office of Court Construction and Management
455 Golden Gate Avenue, San Francisco, CA 94102-3688

REVOCABLE, non-exclusive LICENSE FOR THE USE OF REAL PROPERTY

In consideration of the mutual promises and covenants set forth herein, the Administrative Office of the Courts (“AOC”), an entity of the Judicial Branch of the Government of the State of California, in its capacity as the staff agency to the Judicial Council of California (“Council”), hereby grants to [fill in Legal Name of Licensee,] a _____, [EIN# _____] (“Licensee”), a revocable, non-exclusive license (“License”) for use of the premises described below (the “Premises”), for the purpose described in this License and on the terms and conditions set forth below. In this License, the AOC and Licensee are sometimes individually referred to as a “Party” and together referred to as the “Parties”. For reference purposes only, the date of this License shall be [fill in date].

Description of Premises Licensed. The Premises consist of a portion of _____, consisting of approximately ____ square feet, located at 1200 Aguajito Road, Monterey, California (the “Property”), as shown on **Exhibit “A”** attached hereto.

1. Commencement Date. This License shall commence on _____, 2010 (“Commencement Date”) and shall continue until it is terminated as provided in section 2, below.
2. Termination. From and after the Commencement Date, each Party shall have the right and option to terminate this License, with or without cause, at any time by giving 30 days’ prior written notice of the termination of this License to the other Party. In addition to the foregoing, (i) the AOC shall have the right to terminate this License immediately in the event of an emergency that results in damage to, loss of, or an unsafe condition of the Premises or the Property, as determined in the AOC’s sole discretion, and (ii) this License shall immediately and automatically terminate upon: (i) the sale or other conveyance of the Property to a party other than the State of California; or (ii) relocation of the Court’s operations at the Property to an alternate location.

Name of Licensee:

Address:

3. Tax ID #: [_____]

4. Purpose of License. The purpose of this License is to allow the Licensee to enter, occupy, and use the Premises for the sole purpose of providing mediation/investigation services (as depicted on Exhibit “A”), and other purposes related thereto, and for no other purpose whatsoever, subject to the terms, conditions, and restrictions set forth in this License. This License is personal to Licensee and does not grant the Licensee any ownership, leasehold, easement, or other real property interest or estate in the Premises or the Property. In no event shall the Licensee represent itself or its operations in the Premises as being a part of, affiliated with, or an agent or partner of, or in a joint venture with, any of the Council, the AOC, the Superior Court of California, County of Monterey (“Court”) or any of their respective programs or operations.

5. Consideration. Consideration for this License is the Licensee’s full and timely compliance with the terms, conditions, and restrictions set forth in this License.

6. Conditions.
 - a. Compliance. Any use made of the Premises and any construction, maintenance, repair, or other work performed thereon by the Licensee, including the installation and removal of any article or thing, shall be accomplished in a manner satisfactory to the AOC. Licensee’s use of the Premises shall at all times be subject and subordinate to those necessary uses of the Court. Licensee shall ensure its activities do not interfere with the carrying on of the business of the Court.

 - b. Improvements. The Licensee will not make any improvements or alterations of any kind to the Premises or the Property, including the placement or construction on, over, or under any part of the Property of any permanent structure, fixture, or installation of any kind, size, or character whatsoever, without the prior written approval of the AOC, which approval will be given or withheld in the sole discretion of the AOC. Licensee shall make any improvements or alterations to the Premises that are approved by the AOC in compliance with law and at the Licensee’s sole cost and expense. Unless otherwise agreed in writing by Licensee and the AOC, all improvements or alterations to the Premises that are approved by the AOC and made by the Licensee will be the property of the AOC and will remain in and a part of the Premises when Licensee vacates the Premises. If Licensee and the AOC agree that Licensee shall or may at any time remove any AOC-approved improvements or alterations from the Premises, all costs and expenses associated with the removal of those improvements or alterations will be the sole responsibility of Licensee, including the cost to repair any damage done to the Premises or the Property in removing those improvements and alterations. Improvements or alterations to the Premises or the Property that are not approved by the AOC, but that are nevertheless installed by or on behalf of the Licensee, may be removed by the AOC at the

Licensee's sole expense, including any costs associated with repair of any damage done to the Premises or the Property in removing those improvements or alterations. Unless previously approved in writing by the AOC, Licensee shall not (i) post signs or banners on any part of the Premises or the Property, or (ii) alter any existing structures or improvements in or on the Premises or the Property, or (iii) install stakes, poles, or other materials of any kind into any hardscape or landscape on the Property.

- c. "AS-IS". The Premises are licensed to Licensee in their "AS-IS" condition and the AOC has no obligation to Licensee for maintenance, repair, improvement, or alteration of or to the Premises or the Property during the period of Licensee's occupancy of the Premises.
- d. Laws and Regulations. In the exercise of any privilege granted by this License, the Licensee shall comply with all applicable federal, state, and local laws, and the rules, orders, regulations and requirements of governmental departments and bureaus, and shall maintain an alcoholic beverage service permit if and as required by the California Department of Alcoholic Beverage Control. The Licensee must also comply with all AOC rules and regulations relating to the use of the Premises and the Property that are provided to Licensee.
- e. Operation. The Licensee shall confine its activities on the Premises strictly to those necessary for the enjoyment of the privilege hereby licensed, and shall refrain from (i) marring or impairing the appearance of the Property, (ii) obstructing access to the Premises or Property or any area or space within the Premises or Property, (iii) interfering with the transaction of Court or County business in, or the convenience of the public in accessing and using, the Premises or Property, (iv) jeopardizing the safety or security of persons or property on or in the Property, or (v) causing justifiable public criticism of Licensee's activities conducted in the Premises or on the Property. Licensee shall at all times maintain the Premises in a clean, sanitary, and orderly condition satisfactory to the AOC.
- f. Security/Access. The Licensee will at all times comply with all security access and screening requirements in effect at the Property. The Licensee will have no access to any area within the Property that is either connected to or contains confidential records or information including, but not limited to, Court files, the California Law Enforcement Telecommunications System, the Criminal Offender Records Information, and the Department of Motor Vehicles computer database.

Contractors are allowed access to Court facilities based on the approved access control policy. All contractors are permitted access to the Court during regular working hours from 7:30 AM to 5:00 PM, Monday through Friday, unless otherwise authorized by the Court's Executive Management or designee. Contractors will have access only through Express Lanes, Public Exterior Building Entrances and pre-approved general internal entrances.

- g. Insurance. The Licensee will, at all times during the period of Licensee's occupancy of the Premises, provide and maintain, at its sole expense, insurance of the type and with coverage amounts set forth in Exhibit "B", which is attached to and made a part of this License.
- h. Damage. Licensee shall not damage, destroy, or displace any part of the Property or any personal property for which the Council, the AOC, or the Court is responsible in the exercise of the privilege granted by this License without the prior written consent of the AOC and the express agreement of the Licensee to promptly replace, return, repair, and restore the Property or any such personal property to a condition satisfactory to the AOC.
- i. Indemnification. The Licensee shall and hereby does indemnify, defend (with counsel satisfactory to the AOC), and save harmless the Council, the AOC, and the Court, and their respective judicial officers, employees, and agents, from and against any and all liability, damages, attorney fees, costs, expenses, or losses of any kind whatsoever, including without limitation, damages related to decreases in the value of the Property and claims for damages or decreases in the value of any adjoining property. ("Indemnified Loss"). Indemnified Loss will include, without limitation, court costs, penalties, fines, liens, judgments, consultants' fees, investigation and remediation costs, and other expenses of every kind asserted against or incurred by the Council, the AOC, and/or the Court, directly or indirectly arising from or related to the exercise by the Licensee, its officers, employees, agents, or invitees, of the privilege granted by this License, its or their use of the Premises or the Property, or any other act or omission of the Licensee, including from any failure by Licensee to comply with the terms of this License. The Licensee's obligation to defend will commence immediately upon the assertion of any claim or demand for an Indemnified Loss by or against the Council, the AOC, or the Court that is tendered to Licensee, shall apply to any claim that actually or potentially falls within the coverage of this indemnity provision, even if such allegation is or may be groundless, fraudulent, or false, and will continue at all times after such tender until each such claim is fully and finally resolved. Notwithstanding the foregoing, this indemnity shall not apply to those losses solely and directly caused by the gross negligence or willful misconduct of the Council, the AOC, or the Court, or their respective officers, employees or agents. Licensee's indemnification and defense obligations under this section 6.i. shall survive the termination or expiration of this License.
- j. Storage. Any property of the Court, the Council, the AOC, or their respective judicial officers, employees, or agents, that must be removed to permit exercise of the privilege granted by this License shall be stored, relocated, or removed from the Premises, and returned to their original location upon termination of the Term of this License, at the sole cost and expense of the Licensee, as directed by the AOC.
- k. Licensee's Personal Property. The Licensee will be solely responsible for any risk of loss, damage to, or destruction of the Licensee's personal property located within the Premises or otherwise on the Property. AOC shall not be responsible for any

damage to or destruction of any personal property of Licensee, its employees or invitees, or for any compensation or claim for inconvenience, loss of business, or annoyance arising from the Licensee's loss of use of the Premises or any such personal property. Any property of the Licensee installed or located on the Premises must be removed promptly upon expiration, termination, or abandonment of this License. Any property of the Licensee not removed within that time may be removed, stored, or disposed of by the AOC at the expense of the Licensee.

- l. Expense. Any cost, expense, or liability connected with or in any manner incident to the granting, exercise, enjoyment, or relinquishment of this License shall be assumed and discharged by Licensee.
- m. Future Requirements. In addition to the terms of this License, the AOC shall have the right to impose reasonable rules and requirements for use of the Premises and/or the Property from time to time, and the Licensee shall promptly and continuously comply with any such further rules and requirements as the AOC may hereafter impose and deliver to Licensee.
- n. Attempted Variations. There shall be no variation or departure from the terms of this License without the prior written consent of the AOC.
- o. Surrender. Upon the expiration or termination of this License, the Licensee shall surrender the Premises to the AOC in the same condition as the Premises were in when received by Licensee on the Commencement Date (ordinary wear and tear excepted), free from hazards, and clear of all debris. At such time, the Licensee shall remove all of its property from the Property, except as otherwise provided in section 6.b. of this License or as otherwise agreed in writing by the AOC and the Licensee.
- p. Notices. Any notices required or permitted to be given under the terms of this License must be in writing and may be: (a) personally delivered; (b) mailed by depositing such notice in the United States mail, first class postage prepaid; or (c) sent by reputable overnight delivery service, addressed as follows or to such other place as each Party hereto may designate by subsequent written notice to the other Party:

If to the AOC: Administrative Office of the Courts
Office of Court Construction and Management
Attention: Portfolio Administration Analyst
455 Golden Gate Avenue, 8th Floor
San Francisco, CA 94102
Voice: 415-865-5334
Fax: 415-865-8885

With a copy to: Administrative Office of the Courts
Office of Court Construction and Management
Attention: Manager, Real Estate
455 Golden Gate Avenue
San Francisco, CA 94102
Voice: 415-865-4048
Fax: 415-865-8885

In addition, all notices by the Licensee relating to termination of this Agreement or an alleged breach or default by the Council or the AOC of this License must also be sent to:

Administrative Office of the Courts
Attention: Senior Manager, Business Services
455 Golden Gate Avenue
San Francisco, CA 94102
Voice: 415-865-4090
Fax: 415-865-4326

If to the Licensee: Fill in name of company
Street address
city, state, zip
Attention:
Voice:
Fax: [_____]

7. Rules of Conduct on the Property.

- a. No Disturbances. The Licensee, its employees and invitees, shall refrain from disorderly conduct, or conduct that creates loud and unusual noises or unpleasant odors, or that obstructs the customary use of the common areas of the Property, including entrances, exits, foyers, corridors, offices, elevators, stairways, and parking lots, or that otherwise impedes or disturbs (i) Court judges, staff, or jurors in the performance of their duties, or (ii) members of the public in transacting business or obtaining services provided on the Property, or (iii) other occupants of the Property, their employees and invitees, from accessing or using the Property.
- b. No Gambling. The Licensee, its employees and invitees, shall refrain from conducting or participating in games for money or other personal property, the operation of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of lottery tickets at, on, or in the Property.
- c. Drug Free Environment. The Licensee will not knowingly permit any person under the influence of any non-prescribed drug that has been defined by the state or federal government as a "controlled substance" (excluding alcohol) to enter upon the

Property. The possession, sale, or use of any "controlled substance" (except when permitted by law) on the Property is prohibited.

- d. No Weapons and Explosives. The Licensee, its employees and invitees, while on the Property shall refrain from carrying firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, and from storing any such weapons or explosives on or within the Property, except for permitted official purposes.
- e. No Smoking. Smoking shall not be permitted on the Premises at any time, and Licensee, its employees and invitees shall additionally comply with all applicable laws and ordinances regarding smoking in the vicinity of all entrances to the Property.

8. General Provisions.

- a. No Assignment. This License is personal to Licensee. Licensee shall not assign or otherwise transfer this License or any rights, privileges, or obligations hereunder to any other person or entity, nor shall the Licensee permit the use of any portion of the Premises by others without the prior written consent of the AOC, which consent will be given or withheld by the AOC in its sole discretion.
- b. Anti-Discrimination. The Licensee shall comply with all applicable federal and California laws relating to discrimination against employees or members of the public because of race, color, ancestry, national origin, religious creed, disability, or sexual orientation, including, but not limited to, the California Unruh Civil Rights Act, the Civil Rights Act of 1964, and the Americans With Disabilities Act of 1990.
- c. Governing Law. This License is governed by and will be construed in accordance with the laws of the State of California without regard to its conflict of law provisions.
- d. License Temporary in Nature. The Licensee agrees that the rights herein are of a temporary, non-exclusive, non-possessory nature and in no event will this License or any memorandum of this License be recorded with the County Recorder's Office, nor will the Licensee have a claim to any right or interest in the Premises or the Property other than as specifically provided for in this License.
- e. Relationship of the Parties. The Licensee and the AOC hereby confirm and agree that, in performing their respective obligations and exercising their respective rights under this License, each Party is at all times an independent contractor with respect to the other Party, and that no relationship of employer-employee, partnership, or joint venture is created by this License between Licensee and any of the State, the Council, the AOC, or the Court. Neither Licensee nor the AOC, nor any other person or entity performing services on behalf of either Party pursuant to this License, will have any right or claim against the other Party under this License for social security benefits, workers' compensation benefits, health benefits, vacation pay, sick leave, or any other employee benefits of any kind or nature whatsoever. Each Party is responsible

to provide and maintain its own workers' compensation insurance covering its own employees, and neither Party will have any liability or responsibility for workers' compensation insurance coverage for employees of the other Party.

- f. Certification of Authority to Execute this License. The Licensee and the AOC each certifies that the individual(s) signing this License on its behalf has authority to execute this License on its behalf and may legally bind it to the terms and conditions of this License and Exhibit "A" hereto.
 - g. No Relocation Assistance. The Licensee acknowledges that upon any termination of this License, Licensee is not entitled to any relocation payment or advisory assistance of any type from the State of California, the Council, the AOC, or the Court.
 - h. Counterparts. This License may be executed in multiple counterparts (each of which will be deemed an original for all purposes).
 - i. Severability. If any term, provision, covenant, or restriction in this License is determined to be invalid, void, unenforceable, or otherwise inconsistent with applicable law, the remainder of the terms, provisions, covenants and restrictions of this License will remain in full force and effect and will in no way be affected, impaired, or invalidated. It is hereby stipulated and declared to be the intention of the Licensee and the AOC that they would have executed the remaining terms, provisions, covenants, and restrictions set forth in this License without including any of such terms, provisions, covenants, or restrictions that may be hereafter declared invalid, void, or unenforceable.
9. Expiration of Existing License Term. By executing below, Licensee hereby acknowledges and agrees that the term of the License Agreement dated as of [fill in date] between Licensee, as the licensee thereunder, and Licensor's predecessor-in-interest, [fill in name of prior licensor] as the licensor thereunder, shall expire concurrently with the commencement of this License.

ACCEPTED AND AGREED TO:

NAME OF LICENSEE, _____,
a _____

JUDICIAL COUNCIL OF CALIFORNIA,
ADMINISTRATIVE OFFICE OF THE
COURTS

By: _____

Name:

Its: _____

Date: _____

By: _____

Grant S. Walker

Senior Manager, Business Services

Date: _____

APPROVED AS TO FORM:
Administrative Office of the Courts
Office of the General Counsel

By: _____

Name: _____

Attorney

Date: _____

EXHIBIT "A"

DEPICTION OF PREMISES

[To be provided]

EXHIBIT "B"

INSURANCE REQUIREMENTS

1. General Requirements

- A.** During the period of time the Licensee occupies or uses space at or in the Property, Licensee will maintain, or cause to be maintained, insurance issued by an insurance company or companies that are rated "A-VII" or higher by A. M. Best's key rating guide, and are approved to do business in the State of California.
- B.** Before commencement of its use, Licensee will provide the AOC with certificates of insurance, on forms acceptable to the AOC, as evidence that all required insurance is in full force and effect. The certificates of insurance clearly indicate the following:
- C.** That the State of California (State), Judicial Council of California (Judicial Council), AOC, Superior Court of California - County of Monterey (Court) including their respective elected and appointed officials, judges, subordinate judicial officers, officers, employees, and agents, if any, have been added as additional insureds on the insurance policy being referenced; but only with respect to liability assumed by Licensee under the terms of this Agreement.
- D.** That the insurance policy being referenced will not be materially changed or cancelled without 30 days notice to the AOC; and
- E.** That the insurance policy being referenced is primary and non-contributing with any insurance, self-insurance, or other risk management program maintained by the State, Judicial Council, AOC, Court or County, including their respective elected and appointed officials, judges, subordinate judicial officers, officers, employees, and agents, if any.
- F.** The Certificates of Insurance shall be addressed as follows:

If to the AOC: Administrative Office of the Courts
Office of Court Construction and Management
455 Golden Gate Avenue, 8th Floor
San Francisco CA 94102
Attn: Risk Management Unit
Fax: (415) 865-8885

- G.** That the Licensee and its insurers providing the insurance contracts being referenced waive any right of subrogation or recovery they may have against any of the State,

Judicial Council, AOC, County, or Court, including their respective elected and appointed officials, judges, subordinate judicial officers, officers, employees, and agents for loss or damage to the Premises.

2. Insurance Requirements

Before the commencement of the use of the Property authorized by the terms of this License, Licensee will furnish to the AOC verification that the following insurance is in force:

- A. **Commercial General Liability.** Commercial General Liability Insurance written on an occurrence form with limits of not less than \$1 Million per occurrence, and a \$1 Million per location annual aggregate. Each policy must include coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. This insurance must apply separately to each insured against whom a claim is made or lawsuit is brought, subject only to the insurance policy's limit of liability.

End of Exhibit B [Contract Terms]

RFP EXHIBIT A

CA Rules of Court, rule 5.210. Court-connected child custody mediation

(a) Authority This rule of court is adopted under [article VI, section 6 of the California Constitution](#) and [Family Code sections 211, 3160, and 3162\(a\)](#).

(b) Purpose This rule sets forth standards of practice and administration for court-connected child custody mediation services that are consistent with the requirements of [Family Code section 3161](#).

(c) Definitions

(1) "Best interest of the child" is defined in [Family Code section 3011](#).

(2) "Parenting plan" is a plan describing how parents or other appropriate parties will share and divide their decision making and caretaking responsibilities to protect the health, safety, welfare, and best interest of each child who is a subject of the proceedings.

(d) Responsibility for mediation services

(1) Each court must ensure that:

(A) Mediators are impartial, competent, and uphold the standards of practice contained in this rule of court.

(B) Mediation services and case management procedures implement state law and allow sufficient time for parties to receive orientation, participate fully in mediation, and develop a comprehensive parenting plan without unduly compromising each party's right to due process and a timely resolution of the issues.

(C) Mediation services demonstrate accountability by:

(i) Providing for acceptance of and response to complaints about a mediator's performance;

(ii) Participating in statewide data collection efforts; and

(iii) Disclosing the use of interns to provide mediation services.

(D) The mediation program uses a detailed intake process that screens for, and informs the mediator about, any restraining orders or safety-related issues affecting any party or child named in the proceedings to allow compliance with relevant law or court rules before mediation begins.

(E) Whenever possible, mediation is available from bilingual mediators or other interpreter services that meet the requirements of [Evidence Code sections 754\(f\)](#) and [755\(a\)](#) and section 18 of the California Standards of Judicial Administration.

(F) Mediation services protect, in accordance with existing law, party confidentiality in:

(i) Storage and disposal of records and any personal information accumulated during the mediation process;

(ii) Interagency coordination or cooperation regarding a particular family or case; and

(iii) Management of child abuse reports and related documents.

(G) Mediation services provide a written description of limitations on the confidentiality of the process.

(H) Within one year of the adoption of this rule, the court adopts a local court rule regarding ex parte communications.

(2) Each court-connected mediator must:

(A) Maintain an overriding concern to integrate the child's best interest within the family context;

(B) Inform the parties and any counsel for a minor child if the mediator will make a recommendation to the court as provided under

(C) Use reasonable efforts and consider safety issues to:

(i) Facilitate the family's transition and reduce acrimony by helping the parties improve their communication skills, focus on the child's needs and areas of stability, identify the family's strengths, and locate counseling or other services;

(ii) Develop a comprehensive parenting agreement that addresses each child's current and future developmental needs; and

(iii) Control for potential power imbalances between the parties during mediation.

(Subd (d) amended effective January 1, 2007; previously amended effective January 1, 2002, and January 1, 2003.)

(e) **Mediation process** All court-connected mediation processes must be conducted in accordance with state law and include:

(1) Review of the intake form and court file, if available, before the start of mediation;

(2) Oral or written orientation or parent education that facilitates the parties' informed and self-determined decision making about:

(A) The types of disputed issues generally discussed in mediation and the range of possible outcomes from the mediation process;

(B) The mediation process, including the mediator's role; the circumstances that may lead the mediator to make a particular recommendation to the court; limitations on the confidentiality of the process; and access to information communicated by the parties or included in the mediation file;

(C) How to make best use of information drawn from current research and professional experience to facilitate the mediation process, parties' communication, and co-parenting relationship; and

(D) How to address each child's current and future developmental needs;

(3) Interviews with children at the mediator's discretion and consistent with [Family Code section 3180\(a\)](#). The mediator may interview the child alone or together with other interested parties, including stepparents, siblings, new or step-siblings, or other family members significant to the child. If interviewing a child, the mediator must:

(A) Inform the child in an age-appropriate way of the mediator's obligation to disclose suspected child abuse and neglect and the local policies concerning disclosure of the child's statements to the court; and

(B) With parental consent, coordinate interview and information exchange among agency or private professionals to reduce the number of interviews a child might experience;

(4) Assistance to the parties, without undue influence or personal bias, in developing a parenting plan that protects the health, safety, welfare, and best interest of the child and that optimizes the child's relationship with each party by including, as appropriate, provisions for supervised visitation in high-risk cases; designations for legal and physical custody; a description of each party's authority to make decisions that affect the child; language that minimizes legal, mental health, or other jargon; and a detailed schedule of the time a child is to spend with each party, including vacations, holidays, and special occasions, and times when the child's contact with a party may be interrupted;

(5) Extension of time to allow the parties to gather additional information if the mediator determines that such information will help the discussion proceed in a fair and orderly manner or facilitate an agreement;

(6) Suspension or discontinuance of mediation if allegations of child abuse or neglect are made until a designated agency performs an investigation and reports a case determination to the mediator;

(7) Termination of mediation if the mediator believes that he or she is unable to achieve a balanced discussion between the parties;

(8) Conclusion of mediation with:

(A) A written parenting plan summarizing the parties' agreement or mediator's recommendation that is given to counsel or the parties before the recommendation is presented to the court; and

(B) A written or oral description of any subsequent case management or court procedures for resolving one or more outstanding custody or visitation issues, including instructions for obtaining temporary orders;

(9) Return to mediation to resolve future custody or visitation disputes.

(Subd (e) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(f) Training, continuing education, and experience requirements for mediator, mediation supervisor, and family court services director As specified in [Family Code sections 1815](#) and [1816](#):

(1) All mediators, mediation supervisors, and family court service directors must:

(A) Complete a minimum of 40 hours of custody and visitation mediation training within the first six months of initial employment as a court-connected mediator;

(B) Annually complete 8 hours of related continuing education programs, conferences, and workshops. This requirement is in addition to the annual 4-hour domestic violence update training described in rule 5.215; and

(C) Participate in performance supervision and peer review.

(2) Each mediation supervisor and family court services director must complete at least 24 hours of additional training each calendar year. This requirement may be satisfied in part by the domestic violence training required by [Family Code section 1816](#).

(Subd (f) amended effective January 1, 2005; previously amended effective January 1, 2003.)

(g) Education and training providers Only education and training acquired from eligible providers meet the requirements of this rule. "Eligible providers" includes the Administrative Office of the Courts and may include educational institutions, professional associations, professional continuing education groups, public or private for-profit or not-for-profit groups, and court-connected groups.

(1) Eligible providers must:

(A) Ensure that the training instructors or consultants delivering the education and training programs either meet the requirements of this rule or are experts in the subject matter;

(B) Monitor and evaluate the quality of courses, curricula, training, instructors, and consultants;

(C) Emphasize the importance of focusing child custody mediations on the health, safety, welfare, and best interest of the child;

(D) Develop a procedure to verify that participants complete the education and training program; and

(E) Distribute a certificate of completion to each person who has completed the training. The certificate must document the number of hours of training offered, the number of hours the person completed, the dates of the training, and the name of the training provider.

(2) Effective July 1, 2005, all education and training programs must be approved by the Administrative Office of the Courts.

(Subd (g) adopted effective January 1, 2005.)

(h) Ethics Mediation must be conducted in an atmosphere that encourages trust in the process and a perception of fairness. To that end, mediators must:

(1) Meet the practice and ethical standards of the Code of Ethics for the Court Employees of California and of related law;

(2) Maintain objectivity, provide and gather balanced information for both parties, and control for bias;

(3) Protect the confidentiality of the parties and the child in making any collateral contacts and not release information about the case to any individual except as authorized by the court or statute;

(4) Not offer any recommendations about a party unless that party has been evaluated directly or in consultation with another qualified neutral professional;

(5) Consider the health, safety, welfare, and best interest of the child in all phases of the process, including interviews with parents, extended family members, counsel for the child, and other interested parties or collateral contacts;

(6) Strive to maintain the confidential relationship between the child who is the subject of an evaluation and his or her treating psychotherapist;

(7) Operate within the limits of his or her training and experience and disclose any limitations or bias that would affect his or her ability to conduct the mediation;

(8) Not require children to state a custodial preference;

(9) Not disclose any recommendations to the parties, their attorneys, or the attorney for the child before having gathered the information necessary to support the conclusion;

(10) Disclose to the court, parties, attorneys for the parties, and attorney for the child conflicts of interest or dual relationships and not accept any appointment except by court order or the parties' stipulation;

(11) Be sensitive to the parties' socioeconomic status, gender, race, ethnicity, cultural values, religion, family structures, and developmental characteristics; and

(12) Disclose any actual or potential conflicts of interest. In the event of a conflict of interest, the mediator must suspend mediation and meet and confer in an effort to resolve the conflict of interest to the satisfaction of all parties or according to local court rules. The court may order mediation to continue with another mediator or offer the parties alternatives. The mediator cannot continue unless the parties agree in writing to continue mediation despite the disclosed conflict of interest.

CA Rules of Court, rule 5.215. Domestic violence protocol for Family Court Services

(a) Authority This rule of court is adopted under [Family Code sections 211, 1850\(a\), and 3170\(b\)](#).

(Subd (a) amended effective January 1, 2007.)

(b) Purpose This rule sets forth the protocol for Family Court Services' handling of domestic violence cases consistent with the requirement of [Family Code section 3170\(b\)](#).

(c) Definitions

- (1) "Domestic violence" is used as defined in [Family Code sections 6203](#) and [6211](#).
- (2) "Protective order" is used as defined in [Family Code section 6215](#), "Emergency protective order"; [Family Code section 6218](#), "Protective order"; and [Penal Code section 136.2](#) (orders by court). "Domestic violence restraining order" is synonymous with "protective order."
- (3) "Mediation" refers to proceedings described in [Family Code section 3161](#).
- (4) "Evaluation" and "investigation" are synonymous terms.
- (5) "Family Court Services" refers to court-connected child custody services and child custody mediation made available by superior courts under [Family Code section 3160](#).
- (6) "Family Court Services staff" refers to contract and employee mediators, evaluators, investigators, and counselors who provide services on behalf of Family Court Services.
- (7) "Differential domestic violence assessment" is a process used to assess the nature of any domestic violence issues in the family so that Family Court Services may provide services in such a way as to protect any victim of domestic violence from intimidation, provide services for perpetrators, and correct for power imbalances created by past and prospective violence.

(Subd (c) amended effective January 1, 2003.)

(d) Family Court Services: Description and duties

(1) Local protocols Family Court Services must handle domestic violence cases in accordance with pertinent state laws and all applicable rules of court and must develop local protocols in accordance with this rule.

(2) Family Court Services duties relative to domestic violence cases Family Court Services is a court-connected service that must:

(A) Identify cases in Family Court Services that involve domestic violence, and code Family Court Services files to identify such cases;

(B) Make reasonable efforts to ensure the safety of victims, children, and other parties when they are participating in services provided by Family Court Services;

(C) Make appropriate referrals; and

(D) Conduct a differential domestic violence assessment in domestic violence cases and offer appropriate services as available, such as child custody evaluation, parent education, parent orientation, supervised visitation, child custody mediation, relevant education programs for children, and other services as determined by each superior court.

(3) No negotiation of violence Family Court Services staff must not negotiate with the parties about using violence with each other, whether either party should or should not obtain or dismiss a restraining order, or whether either party should cooperate with criminal prosecution.

(4) Domestic violence restraining orders Notwithstanding the above, to the extent permitted under [Family Code section 3183\(c\)](#), in appropriate cases, Family Court Services staff may recommend that restraining orders be issued, pending determination of the controversy, to protect the well-being of the child involved in the controversy.

(5) Providing information Family Court Services staff must provide information to families accessing their services about the effects of domestic violence on adults and children. Family Court Services programs, including but not limited to orientation programs, must provide information and materials that describe Family Court Services policy and procedures with respect to domestic violence. Where possible, the videotapes provided should be closed-captioned.

(6) Separate sessions In a Family Court Services case in which there has been a history of domestic violence between the parties or in which a protective order as defined in [Family Code section 6218](#) is in effect, at the request of the party who is alleging domestic violence in a written declaration under penalty of perjury or who is protected by the order, the Family Court Services mediator, counselor, evaluator, or investigator must meet with the parties separately and at separate times. When appropriate, arrangements for separate sessions must protect the confidentiality of each party's times of arrival, departure, and meeting with Family Court Services. Family Court Services must provide information to the parties regarding their options for separate sessions under [Family Code sections 3113](#) and [3181](#). If domestic violence is discovered after mediation or evaluation has begun, the Family Court Services staff member assigned to the case must confer with the parties separately regarding safety-related issues and the option of continuing in separate sessions at separate times. Family Court Services staff, including support staff, must not respond to a party's request for separate sessions as though it were evidence of his or her lack of cooperation with the Family Court Services process.

(7) Referrals Family Court Services staff, where applicable, must refer family members to appropriate services. Such services may include but are not limited to programs for perpetrators, counseling and education for children, parent education, services for victims, and legal resources, such as family law facilitators.

(8) Community resources Family Court Services should maintain a liaison with community-based services offering domestic violence prevention assistance and support so that referrals can be made based on an understanding of available services and service providers.

(Subd (d) amended effective January 1, 2003.)

(e) Intake

(1) Court responsibility Each court must ensure that Family Court Services programs use a detailed intake process that screens for, and informs staff about, any restraining orders, dependency petitions under [Welfare and Institutions Code section 300](#), and other safety-related issues affecting any party or child named in the proceedings.

(2) Intake form Any intake form that an agency charged with providing family court services requires the parties to complete before the commencement of mediation or evaluation must state that, if a party alleging domestic violence in a written declaration under penalty of perjury or a party protected by a protective order so requests, the Family Court Services staff must meet with the parties separately and at separate times.

(3) Review of intake form and case file All Family Court Services procedures must be conducted in accordance with state law and must include review of intake forms and court files, when available, by appropriate staff.

(f) Screening

(1) Identification of domestic violence Screening for a history of domestic violence incidents must be done throughout the Family Court Services process. As early in the case as possible, Family Court Services staff should make every effort to identify cases in which incidents of domestic violence are present. The means by which Family Court Services elicits screening information may be determined by each program. Screening techniques may include but are not limited to questionnaires, telephone interviews, standardized screening devices, and face-to-face interviews.

(2) Procedures for identification Procedures for identifying domestic violence may include, but are not limited to: (a) determination of an existing emergency protective order or domestic violence restraining order concerning the parties or minor; (b) review of court papers and declarations; (c) telephone interviews; (d) use of an intake form; (e) orientation; (f) information from attorneys, shelters, hospital reports, Child Protective Services, police reports, and criminal background checks; and (g) other collateral sources. Questions specific to incidents of domestic violence should request the following information: date of the parties' separation, frequency of domestic violence, most recent as well as past incidents of domestic violence, concerns about future domestic violence, identities of children and other individuals present at domestic violence incidents or otherwise exposed to the domestic violence, and severity of domestic violence.

(3) Context for screening In domestic violence cases in which neither party has requested separate sessions at separate times, Family Court Services staff must confer with the parties separately and privately to determine whether joint or separate sessions are appropriate.

(g) Safety issues

(1) Developing a safety plan When domestic violence is identified or alleged in a case, Family

Court Services staff must consult with the party alleging domestic violence away from the presence of the party against whom such allegations are made and discuss the existence of or need for a safety plan. Safety planning may include but is not limited to discussion of safe housing, workplace safety, safety for other family members and children, access to financial resources, and information about local domestic violence agencies.

(2) Safety procedures Each Family Court Services office should develop safety procedures for handling domestic violence cases.

(3) Confidential addresses Where appropriate, Family Court Services staff must make reasonable efforts to keep residential addresses, work addresses, and contact information--including but not limited to telephone numbers and e-mail addresses--confidential in all cases and on all Family Court Services documents.

(Subd (g) amended effective January 1, 2007.)

(h) Support persons

(1) Support person Family Court Services staff must advise the party protected by a protective order of the right to have a support person attend any mediation orientation or mediation sessions, including separate mediation sessions, under [Family Code section 6303](#).

(2) Excluding support person A Family Court Services staff person may exclude a domestic violence support person from a mediation session if the support person participates in the mediation session or acts as an advocate or the presence of a particular support person disrupts the process of mediation. The presence of the support person does not waive the confidentiality of the process, and the support person is bound by the confidentiality of the process.

(Subd (h) amended effective January 1, 2003.)

(i) Accessibility of services To effectively address domestic violence cases, the court must make reasonable efforts to ensure the availability of safe and accessible services that include, but are not limited to:

(1) Language accessibility Whenever possible, Family Court Services programs should be conducted in the languages of all participants, including those who are deaf. When the participants use only a language other than spoken English and the Family Court Services staff person does not speak their language, an interpreter--certified whenever possible--should be assigned to interpret at the session. A minor child of the parties must not be used as an interpreter. An adult family member may act as an interpreter only when appropriate interpreters are not available. When a family member is acting as an interpreter, Family Court Services staff should attempt to establish, away from the presence of the potential interpreter and the other party, whether the person alleging domestic violence is comfortable with having that family member interpret for the parties.

(2) Facilities design To minimize contact between the parties and promote safety in domestic

violence cases, courts must give consideration to the design of facilities. Such considerations must include but are not limited to the following: separate and secure waiting areas, separate conference rooms for parent education and mediation, signs providing directions to Family Court Services, and secure parking for users of Family Court Services.

(j) Training and education

(1) Training, continuing education, and experience requirements for Family Court Services staff All Family Court Services staff must participate in programs of continuing instruction in issues related to domestic violence, including child abuse, as may be arranged for and provided to them, under [Family Code section 1816\(a\)](#).

(2) Advanced domestic violence training Family Court Services staff must complete 16 hours of advanced domestic violence training within the first 12 months of employment and 4 hours of domestic violence update training each year thereafter. The content of the 16 hours of advanced domestic violence training and 4 hours of domestic violence update training must be the same as that required for court-appointed child custody investigators and evaluators as stated in rule 5.230. Those staff members employed by Family Court Services on January 1, 2002, who have not already fulfilled the requirements of rule 5.230 must participate in the 16-hour training within one year of the rule's effective date.

(3) Support staff Family Court Services programs should, where possible, enable support staff, including but not limited to clerical staff, to participate in training on domestic violence and in handling domestic violence cases appropriately.