



**COUNTY OF SANTA CLARA  
SERVICE AGREEMENT**

**SECTION I: GENERAL INFORMATION**

Contractor Name: (As Displayed in SAP)	Project Sentinel		
Purchase Order Number:			
Agency/Department Name:	Office of the District Attorney	Department Number:	0202
Brief Description of Services	Provide Alternative Dispute Resolution Services pursuant to the California Dispute Resolution Programs Act Statutes and Regulations.		

**Maximum Financial Obligation**

The maximum amount payable to this Contractor under this agreement shall not exceed:	\$210,000
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**Term of Agreement**

10/6/2021	
Start Date: upon execution	End Date: 6/30/2024
Note: When left blank, start date will be the date executed by Authorized County Representative.	

**For County Use Only**

	Account Assignment	Plant Number	General Ledger (Expense Code)	Cost Center (Dept. Code)	Amount	WBS (Capital Project Code)	Internal Order ("PCA" code - optional)
<b>Line 1</b>	H	0202	5255500	9821	\$70,000		
<b>Line 2</b>	Select	0202	5255500	9821	.01		
<b>Line 3</b>	Select	0202	5255500	9821	.01		
<b>Line 4</b>	Select						
<b>Line 5</b>	Select						

REQ# 40032054



**COUNTY OF SANTA CLARA  
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**SECTION II: PARTIES TO AGREEMENT**

Legal notices and invoices pertaining to this Agreement shall be sent to the appropriate contact person listed below, except as otherwise specifically provided for herein. Notices shall be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows. Notice shall be deemed effective on the date that the notice is personally delivered or, if mailed, three (3) days after deposit in the mail. Either party may designate a different person and/or address for the receipt of notices by sending written notice to the other party, which shall not require an amendment to this Agreement.

**CONTRACTOR**

Contractor Name: (As Displayed in SAP)	Project Sentinel				
Contact Person:	Ann Marquart				
Street Address*:	1490 El Camino Real				
City*:	Santa Clara	State:	CA	Zip:	95050
Telephone Number*:	(408) 720-9888				
Email Address*:	AMarquart@housing.org				
SCC Vendor Number: (As Assigned in SAP)	1008409				

\*To be completed for Independent Contractors Only – DO NOT COMPLETE FOR DEPENDENT CONTRACTORS

**COUNTY OF SANTA CLARA**

Agency/Department:	Office of the District Attorney				
Program Manager/Contract Monitor Name:	Peter Jensen				
Street Address:	70 W. Hedding, West Wing, 5th Floor				
City:	San Jose	State:	CA	Zip:	95110
Telephone Number:	408-792-2704				
Fiscal Contact: (Accounts Payable Contact)	Mei-Ching Hsiao				
Contract Preparer:	Sarah Scavio				



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**SECTION III: CONTRACT AUTHORIZATION**

It is agreed between County and Contractor that Contractor will, for the compensation described in this Agreement, perform the work described in Section V in accordance with all terms and conditions of this Agreement including all exhibits and attachments. In addition, County and Contractor assert that the tax withholding status and benefit documentation (Section IV) accurately reflect the anticipated working relationship between County and Contractor. Further, Independent Contractors shall comply with the County's insurance and indemnification requirements. Contractor certifies that any applicable insurance waiver information (Section VII, B) is true and correct. This Agreement may be executed in one or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

**SIGNATURES**

*Contract is not valid until signed by Contractor, County Counsel and County's Authorized Representative.*

County Agency/Department Manager:	DocuSigned by: <i>Jeff Rosen</i> F707F5FC08004AB...	Date:	9/21/2021
County Agency/Department Fiscal Officer:	DocuSigned by: <i>Mei-Ching Hsiao</i> 04B390D139AC423...	Date:	9/8/2021
County Counsel Approval as to Form and Legality	DocuSigned by: <i>Karun Tilak</i> B35AE471989D482...	Date:	9/20/2021
<i>(Signature required on <u>all</u> contracts before execution by Contractor and County Authorized Representative)</i>			
Contractor:	DocuSigned by: <i>Aun Marquart</i> F9143E5F48C1468...	Date:	9/8/2021
County Authorized Representative:	DocuSigned by: <i>Marlon Paulo</i> B6C24B6275434D4...	Date:	10/6/2021
<i>(Procurement Department; President, Board of Supervisors; or Delegated Authority)</i>			
Office of the County Executive:		Date:	
<i>(Signature required when Board approved contract by a delegation of authority)</i>			
Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.	Attest:  Tiffany Lennear Assistant Clerk of the Board of Supervisors <i>(Signature required when Board approved contract)</i>	Date:	



## COUNTY OF SANTA CLARA SERVICE AGREEMENT

### SECTION IV: DETERMINATION OF RELATIONSHIP STATUS

Dependent/Independent status is an important relationship distinction. It determines the contractor's eligibility for Medicare and Social Security, Public Employees' Retirement System benefits, and other benefits and affects how the contractor files tax returns and the contractor's responsibility for various federal and state taxes.

Questionnaire to be Completed by Contracting Department to Determine Relationship Status of Contractor

Supervision: Will the County have the right to tell the contractor how to do the work, when to arrive or leave work, or when to take breaks? Do you have other employees performing similar work with a similar degree of supervision? <b>If the answer to any of these questions is YES, select YES from the dropdown.</b>	No
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Training: Will the County instruct the contractor on how to do the job or pay for external training?	No
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Incomplete Work: Will the Contractor be able to resign or terminate the contract without being held either financially or legally liable for unfinished work?	Yes
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Place of Work/Tools: Will the County provide the Contractor with a place to work at a County location and tools to do the job, i.e. computers, telephones, etc.?	No
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Length of Relationship: When the Contractor is hired to complete ongoing departmental duties or functions— <b>answer YES</b> . When the contractor is hired to complete a specific project that was not the regular tasks performed by County employees before— <b>answer NO</b> .	No
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Other Customers: Does the County prevent the Contractor from performing similar services for other customers, either due to the amount of work (full-time), or by contractual provision?	No
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Designation as Business Entity: If the Contractor has a business license or business certificate, or is a corporation, nonprofit organization, or school district, select "No" from the dropdown. (This does not pertain to professional licenses or certificates such as a license for a physician or architect.) <b>Enter below the business license number and the city/entity where issued.</b>	No
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<b>Bus. License #:</b>		<b>Issued by:</b>	
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Payment Schedule: Will payments be made either as an hourly wage or as weekly/monthly salary? If payment is by commission or based on project milestones or deliverables, answer "NO" to this question. Be sure this answer matches the contract payment schedule in Section V.	Select...
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Support Services: Will County employees or other independent contractors provide assistance to this Contractor? Assistance is defined as clerical, technical or professional support.	Yes
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If <u>at least 5</u> of the above questions were answered " <b>NO</b> ", Contractor is an <b>Independent Contractor</b> .	<input checked="" type="checkbox"/>
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If <u>5 or more</u> of the above questions were answered " <b>YES</b> ", Contractor is a <b>Dependent Contractor</b> , where the relationship resembles that of employer/employee. Tax withholding is <u>required</u> , and benefits are provided. Complete and attach the following forms: Employee's Withholding Allowance Certificate—Federal Form W-4, State Withholding, Form DE-4, Determining PERS Eligibility and PERS Member Action Request. Visit <a href="http://www.ceo">www.ceo</a> for more information regarding Dependent Contractors. County insurance requirements <u>do not apply</u> to Dependent Contractors.	<input type="checkbox"/>
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Contractor understands and agrees that the tax withholding and benefit status checked above is correct. Any changes to the contractor's tax withholding and benefit status require a new contract. Contractor is responsible for any penalties and liabilities assessed by any taxing authority, based on a change of tax withholding and benefit status.

<b>Contractor's Initials:</b>		<b>Dept. Fiscal Officer's Signature:</b>	
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**COUNTY OF SANTA CLARA  
SERVICE AGREEMENT**

**SECTION V: CONTRACT SPECIFICS**

**A. SERVICE DESCRIPTION AND EXPECTED OUTCOME (SCOPE OF SERVICE)**

[Empty space for service description and expected outcome]

Or  See Attachment: A incorporated by this reference.

**B. DELIVERABLES, MILESTONES & TIMELINE FOR PERFORMANCE**

[Empty space for deliverables, milestones & timeline for performance]

Or  See Attachment: B Incorporated by this reference.



**COUNTY OF SANTA CLARA  
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**C. PERFORMANCE STANDARDS**

[Empty space for performance standards]

Or  See Attachment: C Incorporated by this reference.

**D. PAYMENT SCHEDULE**

Note: Dependent contractors are not permitted to work in excess of 40 hours per week

**Is contractor a Community Based Organization (CBO)?**

Yes   
No

[Empty space for payment schedule details]

Or  See Attachment: D Incorporated by this reference.



**COUNTY OF SANTA CLARA  
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**SECTION VI: STANDARD PROVISIONS**

Changes to the terms and conditions in this section require approval of County Counsel

**A. ENTIRE AGREEMENT**

This Agreement and its Appendices (if any) constitutes the final, complete and exclusive statement of the terms of the agreement between the parties. It incorporates and supersedes all the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this Agreement. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**B. AMENDMENTS**

This agreement may only be amended by a written instrument signed by the Parties.

**C. CONFLICTS OF INTEREST**

Contractor shall comply, and require its subcontractors to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by the County.

In accepting this Agreement, Contractor covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Contractor further covenants that, in the performance of this Agreement, it will not employ any contractor or person having such an interest. Contractor, including but not limited to contractor's employees and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, Contractor shall, upon execution of this Agreement, provide the County with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to Contractor's employees, agents and subcontractors, who could be substantively involved in "mak[ing] a governmental decision" or "serv[ing] in a staff capacity" and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position, (2 CCR 18700.3), as part of Contractor's service to the County under this Agreement. Contractor shall immediately notify the County of the names and email addresses of any additional individuals later assigned to provide such service to the County under this Agreement in such a capacity. Contractor shall immediately notify the County of the names of individuals working in such a capacity who, during the course of the Agreement, end their service to the County.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, Contractor shall ensure that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other applicable laws and regulations, including but not limited to those listed in subpart (ii) of the first sentence of this Section VI,C including, as required, filing of Statements of Economic Interests within 30 days of commencing service pursuant to this Agreement, annually by April 1, and within 30 days of their termination of service pursuant to this Agreement.

**D. GOVERNING LAW, VENUE**

This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this Agreement shall be in the County of Santa Clara.

**E. ASSIGNMENT**

No assignment of this Agreement or of the rights and obligations hereunder shall be valid without the prior written consent of the other party.



## COUNTY OF SANTA CLARA SERVICE AGREEMENT

### F. ASSIGNMENT OF CLAYTON ACT, CARTWRIGHT ACT CLAIMS

Contractor assigns to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the County pursuant to this Agreement.

### G. WAIVER

No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party shall be in writing and shall apply to the specific instance expressly stated.

### H. COMPLIANCE WITH ALL LAWS, INCLUDING NONDISCRIMINATION, EQUAL OPPORTUNITY, AND WAGE THEFT PREVENTION

- (1) **Compliance with All Laws.** Contractor shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, "Laws"), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.
- (2) **Compliance with Non-Discrimination and Equal Opportunity Laws:** Contractor shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County's policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Gov. Code § 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, Contractor shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.
- (3) **Compliance with Wage and Hour Laws:** Contractor shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.
- (4) **Definitions:** For purposes of this Subsection H, the following definitions shall apply. A "Final Judgment" shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual's sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City of San Jose's Office of Equality Assurance.
- (5) **Prior Judgments, Decisions or Orders against Contractor:** By signing this Agreement, Contractor affirms that it has disclosed any final judgments that (A) were issued in the five years prior to executing this Agreement by a court, an investigatory government agency, arbiter, or arbitration panel and (B) found that Contractor violated an applicable wage and hour law or pay equity law. Contractor further affirms that it has satisfied and complied with – or has reached Agreement with the County regarding the manner in which it will satisfy – any such final judgments.





## COUNTY OF SANTA CLARA SERVICE AGREEMENT

- (6) **Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract:** If at any time during the term of this Agreement, Contractor receives a Final Judgment rendered against it for violation of an applicable wage and hour Law or pay equity Law, then Contractor shall promptly satisfy and comply with any such Final Judgment. Contractor shall inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment against it within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. Contractor shall also provide any documentary evidence of compliance with the Final Judgment within 5 days of satisfying the Final Judgment. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.
- (7) **Access to Records Concerning Compliance with Pay Equity Laws:** In addition to and notwithstanding any other provision of this Agreement concerning access to Contractor's records, Contractor shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County's request, Contractor shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records, that are related to the purpose of this Subsection H, except where prohibited by federal or state laws, regulations or rules. County's access to such records and facilities shall be permitted at any time during Contractor's normal business hours upon no less than 10 business days' advance notice.
- (8) **Pay Equity Notification:** Contractor shall (1) at least once in the first year of this Agreement and annually thereafter, provide each of its employees working in California and each person applying to Contractor for a job in California (collectively, "Employees and Job Applicants") with an electronic or paper copy of all applicable pay equity Laws or (2) throughout the term of this Agreement, continuously post an electronic copy of all applicable pay equity Laws in conspicuous places accessible to all of Contractor's Employees and Job Applicants.
- (9) **Material Breach:** Failure to comply with any part of this Subsection H shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion, exercise any or all remedies available under this Agreement and at law. County may, among other things, take any or all of the following actions:
- (i) Suspend or terminate any or all parts of this Agreement.
  - (ii) Withhold payment to Contractor until full satisfaction of a Final Judgment concerning violation of an applicable wage and hour Law or pay equity Law.
  - (iii) Offer Contractor an opportunity to cure the breach.
- (10) **Subcontractors:** Contractor shall impose all of the requirements set forth in this Subsection H on any subcontractors permitted to perform work under this Agreement. This includes ensuring that any subcontractor receiving a Final Judgment for violation of an applicable Law promptly satisfies and complies with such Final Judgment.

### I. TERMINATION

Standard Termination Language

The County may, by written notice to Contractor, terminate all or part of this Agreement at any time for the convenience of the County. The notice shall specify the effective date and the scope of the termination. In the event of termination, Contractor shall deliver to County all documents prepared pursuant to the Agreement, whether complete or incomplete. Contractor may retain a copy for its records. Upon receipt of the documents, Contractor shall be compensated based on the completion of services provided, as solely and reasonably determined by County.

-OR-

Alternate Termination Language Attached as Exhibit \_\_\_\_\_, incorporated by this reference.  
(Requires County Counsel Approval)

### J. BUDGET CONTINGENCY

This Agreement is contingent upon the appropriation of sufficient funding by the County for the services covered by this Agreement. If funding is reduced or deleted by the County for the services covered by this Agreement, the County has the option to either terminate this Agreement with no liability occurring to the County or to offer an amendment to this Agreement indicating the reduced amount.





## COUNTY OF SANTA CLARA SERVICE AGREEMENT

### **K. COUNTY NO-SMOKING POLICY**

Contractor and its employees, agents and subcontractors, shall comply with the County's No-Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

### **L. FOOD AND BEVERAGES STANDARDS**

Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by Contractor with County funds for County-sponsored meetings or events.

If food is to be provided, healthier food options shall be offered. "Healthier food options" include (1) fruits, vegetables, whole grains, and low fat and low calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans fat per serving. Whenever possible, Contractor shall (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high calorie desserts; (3) attempt to accommodate special, dietary and cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and the Contractor should consider providing a vegan option.

If pre-packaged snack foods are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans-fat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving.

If beverages are to be provided, beverages that meet the County's nutritional criteria are (1) water with no caloric sweeteners; (2) unsweetened coffee or tea, provided that sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored, reduced fat (either nonfat or 1% low fat) dairy milk; (4) plant-derived milk (*e.g.*, soy milk, rice milk, and almond milk) with no more than 130 calories per 8 ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8 ounce serving. Sugar-sweetened beverages shall not be provided.

### **M. CONTRACTING PRINCIPLES**

All entities that contract with the County to provide services where the contract value is \$100,000 or more per budget unit per fiscal year and/or as otherwise directed by the Board, shall be fiscally responsible entities and shall treat their employees fairly. To ensure compliance with these contracting principles, all contractors shall: (1) comply with all applicable federal, state and local rules, regulations and laws; (2) maintain financial records, and make those records available upon request; (3) provide to the County copies of any financial audits that have been completed during the term of the contract; (4) upon the County's request, provide the County reasonable access, through representatives of the Contractor, to facilities, financial and employee records that are related to the purpose of the contract, except where prohibited by federal or state laws, regulations or rules.

### **N. CALIFORNIA PUBLIC RECORDS ACT**

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

Contractor further agrees that it shall defend, indemnify and hold County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorney's fees) that may result from denial by County of a CPRA request for information arising from any representation, or any action (or inaction), by the Contractor.



## COUNTY OF SANTA CLARA SERVICE AGREEMENT

### **O. THIRD PARTY BENEFICIARIES**

This agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the parties.

### **P. INTELLECTUAL PROPERTY RIGHTS**

**Ownership:** County shall own all right, title and interest in and to the Deliverables. For purposes of this Agreement, the term "Deliverables" shall mean any documentation and deliverables created by Contractor during the performance of services that are identified in this Agreement. Contractor hereby assigns to the County all rights, title and interest in and to any and all intellectual property whether or not patentable or registrable under patent, copyright, trademark or similar statutes, made or conceived or reduced to practice or learned by Contractor, either alone or jointly with others, during the period of Contractor's agreement with the County or result from the use of premises leased, owned or contracted for by the County.

Contractor acknowledges that all original works of authorship which are made by Contractor (either solely or jointly with others) within the scope of this Agreement and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C. Section 101), and shall belong solely to County. Contractor agrees that the County will be the copyright owner in all copyrightable works of every kind and description created or delivered by Contractor, either solely or jointly with others, in connection with any agreement with the County.

### **Q. INTELLECTUAL PROPERTY INDEMNITY**

Contractor represents and warrants for the benefit of the County and its users that, to its knowledge, as of the effective date of this Agreement, Contractor is the exclusive owner of all rights, title and interest in the Deliverables and/or services provided pursuant to this Agreement. Contractor shall defend, indemnify and hold the County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and reasonable attorney's fees) by a third party alleging the Deliverables and/or services provided pursuant to this Agreement infringe upon any intellectual property rights of third parties. This indemnity and duty to defend is in addition to and does not supersede the requirements stated in VII of this agreement.

### **R. OWNERSHIP RIGHTS TO MATERIALS/RESTRICTIONS ON USE**

All materials obtained, developed or prepared by Contractor in the course of performing services hereunder, including but not limited to videotapes, audio recordings, still photographs, ads or brochures, and the derivative works, patent, copyright, trademark, trade secret or other proprietary rights associated therewith (collectively "Deliverables"), shall be the sole and exclusive property of the County. To the extent Contractor owns or claims ownership rights to said Deliverables, Contractor hereby expressly assigns all said rights, title, and interest in and to the Deliverables to the County pursuant to the terms and conditions of this Agreement and at no additional cost. The County has the exclusive royalty-free irrevocable right to duplicate, publish or otherwise use for any purpose, all materials prepared under this Agreement. If Contractor wishes to use the materials prepared hereunder for any purpose including but not limited to promotional, educational or commercial purposes, the Contractor shall obtain prior written authorization from the County, which consent may be withheld by the County in its sole discretion. Contractor acknowledges that all original works of authorship which are made by Contractor (solely or jointly with others) within the scope of this Agreement and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C., Section 101), and shall belong solely to County. Contractor agrees that the County will be the copyright owner in all copyrightable works of every kind and description created or developed by Contractor, solely or jointly with others, in connection with any agreement with the County. If requested to, and at no further expense to the County, Contractor will execute in writing any acknowledgments or assignments of copyright ownership of such copyrightable works as may be appropriate for preservation of the worldwide ownership in the County and its nominees of such copyrights. This section shall apply to the extent not otherwise provided under this agreement.





## COUNTY OF SANTA CLARA SERVICE AGREEMENT

### S. COUNTY DATA

(1) **Definitions:** "County Data" shall mean data and information received by Contractor from County. County Data includes any information or data that is transported across a County network, or that resides in a County-owned information system, or on a network or system under the control and management of a contractor for use by County. "County Confidential Information" shall include all material, non-public information (including material, non-public County Data) appearing in any form (including, without limitation, written, oral or displayed), that is disclosed, directly or indirectly, through any means of communication by County, its agents or employees, to Contractor, its agents or employees, or any of its affiliates or representatives.

(2) Contractor shall not acquire any ownership interest in County Data (including County Confidential Information). As between Contractor and County, all County Confidential Information and/or County Data shall remain the property of the County. Contractor shall not, without County's written permission, use or disclose County Data (including County Confidential Information) other than in the performance of its obligations under this Agreement.

(3) Contractor shall be responsible for establishing and maintaining an information security program that is designed to ensure the security and confidentiality of County Data, protect against any anticipated threats or hazards to the security or integrity of County Data, and protect against unauthorized access to or use of County Data that could result in substantial harm or inconvenience to County or any end users. Upon termination or expiration of this Agreement, Contractor shall seek and follow County's direction regarding the proper disposition of County Data.

(4) Contractor shall take appropriate action to address any incident of unauthorized access to County Data, including addressing and/or remedying the issue that resulted in such unauthorized access, and notifying County by phone or in writing within 24 hours of any incident of unauthorized access to County Data, or any other breach in Contractor's security that materially affects County or end users. If the initial notification is by phone, Contractor shall provide a written notice within 5 days of the incident. Contractor shall be responsible for ensuring compliance by its officers, employees, agents, and subcontractors with the confidentiality, privacy, and information security requirements of this Agreement. Should County Confidential Information and/or legally protected County Data be divulged to unauthorized third parties, Contractor shall comply with all applicable federal and state laws and regulations, including but not limited to California Civil Code sections 1798.29 and 1798.82 at Contractor's sole expense. Contractor shall not charge County for any expenses associated with Contractor's compliance with these obligations.

(5) Contractor shall defend, indemnify and hold County harmless against any claim, liability, loss, injury or damage arising out of, or in connection with, the unauthorized use, access, and/or disclosure of information by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County.

### T. PAYMENT TERM [NOT APPLICABLE TO COMMUNITY BASED ORGANIZATIONS – Describe payment terms for CBO's in Section V. (D) PAYMENT SCHEDULE]

The parties agree that the payment term shall be the term selected below and payment shall be due in accordance with the selected payment term. For example, if Contractor selects 2.25% 10 Net 45 as the payment term, payment shall be due 10 days from the date the County approves the invoice, instead of 45 days, and the County shall take a discount of 2.25% of the total amount of the invoice. Payment is deemed to have been made on the date the County mails the warrant or initiates the electronic fund transfer.

<input type="checkbox"/>	2.25% 10 Net 45 (provides 35 days of cash acceleration)
<input type="checkbox"/>	2.00% 15 Net 45 (provides 30 days of cash acceleration)
<input type="checkbox"/>	1.75% 20 Net 45 (provides 25 days of cash acceleration)
<input type="checkbox"/>	1.33% 25 Net 45 (provides 20 days of cash acceleration)
<input type="checkbox"/>	1.00% 30 Net 45 (provides 15 days of cash acceleration)
<input type="checkbox"/>	Net 45 (full payment)

**Note:** Payment term will default to "Net 45 (full payment)", if no other term was selected.

Notwithstanding the option selected above, the parties agree that at any time during the contract term, either party may initiate an early payment discount on an invoice-by-invoice basis utilizing the Dynamic Discounting functionality of the Ariba Network. Contractor must have a registered account on the Ariba Network to utilize this functionality.



## COUNTY OF SANTA CLARA SERVICE AGREEMENT

### U. CONTRACT EXECUTION

Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the County.

### V. LIVING WAGE (IF APPLICABLE)

Unless otherwise exempted or prohibited by law or County policy, where applicable, Contractors that contract with the County to provide Direct Services developed pursuant to a formal Request for Proposals process, as defined in County of Santa Clara Ordinance Code Division B36 ("Division B36") and Board Policy section 5.5.5.5 ("Living Wage Policy"), and their subcontractors, where the contract value is \$100,000 or more ("Direct Services Contract"), must comply with Division B36 and the Living Wage Policy and compensate their employees in accordance with Division B36 and the Living Wage Policy. Compliance and compensation for purposes of this provision includes, but is not limited to, components relating to fair compensation, earned sick leave, paid jury duty, fair workweek, worker retention, fair chance hiring, targeted hiring, local hiring, protection from retaliation, and labor peace. If Contractor and/or a subcontractor violates this provision, the Board of Supervisors or its designee may, at its sole discretion, take responsive actions including, but not limited to, the following:

- (a) Suspend, modify, or terminate the Direct Services Contract.
- (b) Require the Contractor and/or Subcontractor to comply with an appropriate remediation plan developed by the County.
- (c) Waive all or part of Division B36 or the Living Wage Policy.

This provision shall not be construed to limit an employee's rights to bring any legal action for violation of the employee's rights under Division B36 or any other applicable law. Further, this provision does not confer any rights upon any person or entity other than the Board of Supervisors or its designee to bring any action seeking the cancellation or suspension of a County contract. By entering into this contract, Contractor certifies that it is currently complying with Division B36 and the Living Wage Policy with respect to applicable contracts and warrants that it will continue to comply with Division B36 and the Living Wage Policy with respect to applicable contracts.

## SECTION VII: INSURANCE/INDEMNIFICATION

Independent Contractors shall comply with the County's insurance and indemnification requirements as indicated below. These requirements do not apply to Dependent Contractors.

### A. TYPE OF INSURANCE LANGUAGE

<input checked="" type="checkbox"/>	The following standard insurance and indemnification language is attached and incorporated into this agreement:
<input type="checkbox"/>	Modification or Waiver Attached (if appropriate)
<b>Insurance Exhibit Name:</b>	B-2 Insurance Requirements for Standard Contracts Above \$100,000



## COUNTY OF SANTA CLARA SERVICE AGREEMENT

### B. DETERMINATION OF INSURANCE REQUIREMENTS AND WAIVER DECLARATION

<p><b>Workers Compensation:</b> Does the contractor have employees?</p> <p>If "YES", then, WORKER'S COMPENSATION/EMPLOYER'S LIABILITY INSURANCE IS REQUIRED.</p>	Yes
<p><b>Owned Auto Insurance:</b> Will the contractor use any owned autos in the provision of direct services, such as transporting clients in autos or operating autos in performance of the work itself?</p> <p>If "YES", then INSURANCE FOR OWNED AUTOS IS REQUIRED.</p>	No
<p><b>Hired Auto Insurance:</b> Will the contractor use any hired autos in the provision of direct services, such as transporting clients in autos or operating autos in performance of the work itself?</p> <p>If "YES", then INSURANCE FOR HIRED AUTOS IS REQUIRED.</p>	No
<p><b>Non-owned Auto Insurance</b> Will the contractor be using any non-owned autos in the provision of direct services, such as transporting clients in non-owned autos or operating non-owned autos in performance of the work itself?</p> <p>If "YES" then, INSURANCE FOR NON-OWNED AUTOS IS REQUIRED.</p>	No

**When "NO" is checked, this declaration will serve as a waiver for the specified type of insurance.**

### SECTION VIII: FEDERAL/STATE REQUIRED PROVISIONS

(Examples include Drug-free Workplace Activity, Health Insurance Portability and Accountability Act (HIPAA), Business Associate Language, etc.)

**A. Federal Required Language Attached**

Only add special language if services included in the contract require language different from or in addition to that in Section VI.

**Exhibit Name:**

**B. State Required Language Attached**

Only add special language if services included in the contract require language different from or in addition to that in Section VI.

**Exhibit Name:** Exhibit A - California Dispute Resolution Programs Act Statutes and Regulations

**The Exhibits named above are attached and incorporated by this reference.**

### SECTION IX: ADDITIONAL ATTACHED EXHIBIT(S)

Attachments and exhibits that conflict with County standard provisions or require risk assessment must be approved by County Counsel. Examples of attachments that require County Counsel approval are:

- 1) Contractor's terms and conditions that are different than, or add to the standard provisions' language,
- 2) Any changes to the language in Section VI—Standard Provisions.

Exceptions to County Counsel review include attachments that further explain the Contract Specifics as outlined in Section V, and insurance exhibits.

**Exhibit Name (s)**

**The Exhibits named above are attached and incorporated by this reference.**



**Attachment A**  
**Service Description and Expected Outcome**  
**(Scope of Services)**

Project Sentinel will provide the following services:

**I. Compliance with California Dispute Resolutions Act Statutes and Regulations:**

Follow all California Dispute Resolution Programs Act Statutes and Regulations which are attached and incorporated herein as Exhibit A. Project Sentinel will be responsible to stay knowledgeable on any changes or revisions to these Statutes and Regulations and will comply accordingly with those changes.

**II. Community Training and Promotion of ADR Services:**

Project Sentinel will encourage the use of alternative dispute resolution services (ADR) during the term of this agreement to all persons residing or working in Santa Clara County who request such services. Each year, to further the goals to enhance the use of ADR, Project Sentinel shall:

- 1) Provide services in English and Spanish in-person, by telephone and email.
- 2) Maintain an active presence on social media channels to promote dispute resolution services, advertise events and recruit community mediators.
- 3) Utilizes media resources and opportunities by providing interviews to local news outlets and participate in public panels.
- 4) Distribute 4,000 brochures describing Project Sentinel's services to public locations throughout Santa Clara County, including but not limited to city halls, public libraries, community centers and police departments.
- 5) Participate in a minimum of 40 in-person outreach or educational events in communities throughout the county.
- 6) Maintain a website at [www.housing.org](http://www.housing.org), which includes descriptions of the agency's dispute resolution programs and instructional materials.
- 7) Collaborate with other community partners, including but not limited to government agencies, school districts and other non-profits, to provide outreach and host educational events.

**III. Day of Court Mediations**

Upon referrals from Santa Clara County Superior Court, Project Sentinel shall provide day of Court Mediations in the following areas of law:

- Unlawful Detainers

- Small Claims, and
- Civil Harassment

In-person and online services to support these cases shall include, but not be limited to, the following:

- 1) Initiate contact with parties to determine their interest in dispute resolution services.
- 2) Provide information to litigants including pre-court dispute resolution services as well as day-of-court mediation options.
- 3) Determine referral criteria of cases and monitor use of such criteria.
- 4) Provide experienced, trained mediators, to perform free, on-site, day-of-court mediation services.
- 5) Use only court pre-approved formats of forms, including, but not limited to Stipulated Judgment, Mediated Agreement, Request for Continuance, and Dismissal.
- 6) Meet regularly with the Court ADR Administrator and/or judges sitting in the three courts to discuss how the process is working and any suggestions for improving the service.
- 7) Make appropriate referrals to other resources and programs that may benefit the litigants as determined by program staff discretion.
- 8) Present each litigant who participates in the program an evaluation form on the services provided and collect the evaluations. The program supervisor will review the comments and feedback to improve or modify program procedures.
- 9) Maintain accurate records for this program and provide the ADR Administrator with quarterly reports summarizing data while maintaining the confidentiality of the litigants' identities (no names or personal identifying information). Evaluation forms returned by litigants will be provided with the reports.

**IV. Other Mediation, Facilitation and Arbitration Services:**

Outside of the Court, Project Sentinel will provide conciliation, mediation, arbitration, facilitation and collateral services throughout Santa Clara County, with particular focus on underserved communities and racially diverse communities. To support this, Project Sentinel shall:

- 1) Provide community mediation services, including but not limited to, responding to requests for services from a party or interested persons. Project Sentinel shall understand the parties involved, the issues and listen to the parties as a dispute resolution professional.
- 2) Educate the parties on ADR practices, policies and options moving forward.

- 3) Schedule a mediation session at a convenient time and place, assign a mediator(s) and provide the appropriate forms to the assigned mediator(s).
- 4) Make appropriate referrals to other resources and programs that may benefit the litigants as determined by program staff discretion.
- 5) Receive the mediator's report and keep statistics on outcomes.
- 6) Receive evaluations from parties to improve services and gauge the need for further outreach.
- 7) Recruit diverse community mediators, especially seeking bilingual persons with good communication skills.
- 8) Partner with mediation training providers to provide trainings and orientations pursuant to Section 3662 of the Regulations on an annual basis.
- 9) Provide Periodic trainings and meetings to volunteer mediators through the year.
- 10) Assist agency staff and volunteers to provide planning for community forums and large group conflict resolution.
- 11) Assist agency staff and volunteers to conduct multi-party mediations to resolve complex disputes.
- 12) Recruit qualified mediators and arbitrators to be available to county jurisdictions with ordinances requiring such services.
- 13) Provides specialized training of paid and volunteer mediators and arbitrators on the relevant laws, including but not limited to:
  - A) Conduct two (2) follow up sessions to the basic mediation training,
  - B) Conduct two (2) evening advanced skills seminars, and
  - C) Provide ethics and cultural diversity training for the mediators and arbitrators.
- 14) Maintain accurate records for this program and provide the Dispute Resolution Program Coordinator with quarterly reports summarizing data while maintaining the confidentiality of the litigants' identities (no names or personal identifying information). Evaluation forms returned by litigants will be provided with the reports.

## **Attachment B**

### **Deliverables, Milestones, & Timeline for Performance**

As outlined in the California Dispute Resolution Programs Act Statute 471.5, which is attached and incorporated herein as Exhibit A, Project Sentinel shall:

- i) Annually provide the County with statistical data regarding its operating budget; the number of referrals, categories, or types of cases referred to the program; the number of persons served by the program; the number of disputes resolved; the nature of the disputes resolved; rates of compliance; the number of persons utilizing the process more than once; the duration of the estimated costs of the hearings conducted by the programs; and any other information that the county may require. The data shall maintain the confidentiality and anonymity of the persons employing the dispute resolution process.

As outlined in the California Dispute Resolution Programs Act Regulations, which are attached and incorporated herein as Exhibit A, Project Sentinel shall:

- i) Pursuant to Section 3635. Follow-up Surveys
  - (a) Yearly or on a more frequent basis, Grantees shall conduct follow-up surveys of disputants who have used their services.
  - (b) The surveys shall request the disputants' evaluations of:
    - (1) The dispute resolution services provided by the Grantee;
    - (2) The fairness or adequacy of the settlement agreement or award;
    - (3) Any particular difficulties experienced by the disputant in carrying out and obtaining compliance with the settlement agreement or award;
    - (4) The disputant's willingness to use the Grantee's service in the future;
    - (5) The disputant's willingness to recommend the Grantee's services to others who are involved in disputes.
  - (c) The survey results shall be submitted as part of the yearly statistical report to the Board of Supervisors or its designee in compliance with section 471.5 of the Act. Copies of the survey results shall also be forwarded by the Grantees to the Department of Consumer Affairs at the time of submission to the Board of Supervisors or its designee.
- ii) Pursuant to Section 3642. Yearly Fiscal Reports
  - (a) The Grantee shall submit a yearly report prepared by an independent accountant that describes and assesses the Grantee's fiscal practices and status. The report shall be delivered to the Board of Supervisors or its designee and to the Department of Consumer Affairs no later than 90 days from the close of the grant period.
  - (b) Annually or within ninety days of the close of the grant period, the Grantee shall submit to the Board of Supervisors or its designee and to the Department of Consumer Affairs a final reconciliation of actual reviews and expenses compared to the estimated budget for the grant period.

**Attachment C**  
**Performance**  
**Standards**

On an annual basis, Project Sentinel shall provide a minimum of the following services:

From Court referrals:

- 1) Initiate contact with a minimum of 1,100 potential participants to determine their interest in dispute resolution services.
- 2) Mediate a minimum of 82 Unlawful Detainers cases.
- 3) Mediate a minimum of 82 Small Claims cases.
- 4) Mediate a minimum of 60 Civil Harassment cases.

From non-Court referrals:

1. Engage in contact with a minimum of 2,600 potential participants to determine their interest and eligibility in dispute resolution services.
2. Provide collateral services of community outreach and education on the benefits and availability of alternative dispute resolution.
3. Successfully resolve a minimum of 260 community disputes through mediation, conciliation, counseling or arbitration.



## **Attachment D**

### **Payment**

#### **Schedule**

Funding for the agreement consists entirely of the DRPA fund dollars collected from a fee imposed by the Superior Court, County of Santa Clara, on specified court filings. The fund is administered by the Office of the District Attorney.

The anticipated funding level is \$230,000 per fiscal year, which will be apportioned among three different grantees, including Project Sentinel. This funding level is provided solely for information purposes and should be treated as only a guideline. Actual funding levels will be dependent on revenue collection levels. If during the term of the award, the level of funds collected falls below the payment levels set forth in the agreement the Santa Clara County District Attorney's Office may immediately terminate or reduce the award by written notice to the grantee.

Because there are three grantees who receive a portion of this funding, any necessary reductions based on the preceding paragraph will be applied using each grantee's percentage of total funding, so that those percentages will be identical at the new reduced overall funding level.

All provisions of this Service Agreement are subject to the continued appropriation and availability of funds to both agencies for the services and resources outlined.

DA shall pay to Project Sentinel a maximum of \$70,000 each fiscal year, for services in performance of this Service Agreement. DA shall have the authority to adjust the funding allocation consistent with the general intent of DRPA, the established goals, and the availability of funding in the Alternative Dispute Resolution Trust account.

The accounting section of Project Sentinel shall provide to the DA Financial Management Services payroll interface documentation of the cost of providing ADR Services.

Activity logs must support invoices and charges and be provided to DA Financial Management Services. Activity logs must be kept in accordance with the California Dispute Resolution Programs Act Statutes and Regulations. Payments shall be transferred through the County's SAP system concurrent with the presentation of each invoice.

#### **A. Billing Cycle**

Project Sentinel shall send quarterly invoices to the DA via [DAOAccountsPayable@dao.sccgov.org](mailto:DAOAccountsPayable@dao.sccgov.org). Invoices shall be sent by the 15<sup>th</sup> day following the respective quarter, with the exception of quarter 4 where invoices shall be submitted on July 1<sup>st</sup> (or the next business day when July 1 falls outside of normal County business hours).

The quarterly periods are outlined below:

#### **Fiscal Year 22**

July 1, 2021 - September 30, 2021

October 1, 2021 - December 31, 2021  
January 1, 2022 - March 31, 2022  
April 1, 2022 - June 30, 2022  
**Fiscal Year 23**

July 1, 2022 - September 30, 2022  
October 1, 2022 - December 31, 2022  
January 1, 2023 - March 31, 2023  
April 1, 2023 - June 30, 2023

**Fiscal Year 24**

July 1, 2023 - September 30, 2023  
October 1, 2023 - December 31, 2023  
January 1, 2024 - March 31, 2024  
April 1, 2024 - June 30, 2024

## **EXHIBIT A**



# California Dispute Resolution Programs Act - Statutes

The Dispute Resolution Programs Act of 1986 (Stats 1986, ch. 1313, SB 2064-Garamendi and Stats 1987, ch. 28, SB 123-Garamendi) provides for the local establishment and funding of informal dispute resolution programs. The goal of the Act is the creation of a state-wide system of locally-funded programs which will provide dispute resolution services (primarily conciliation and mediation) to county residents. These services assist in resolving problems informally and function as alternatives to more formal court proceedings.

Counties which choose to offer these services to their residents are authorized to allocate up to up to \$8 from filing fees in superior, municipal, and justice court actions to generate new revenues for these local programs.

The Act provides the framework for the statewide system. In addition, it specified that a limited-term Dispute Resolution Advisory Council adopt temporary guidelines and propose regulations which would supplement the provisions of the Act. The Council completed its responsibilities and terminated, as required, on January 1, 1989. Its proposed regulations were subsequently approved by the California Office of Administrative Law, effective October 1, 1989. The Regulations supersede the "Temporary Funding and Operating Guidelines" which were adopted by the Council in 1988.

The state oversight agency designated by the Act is the California Department of Consumer Affairs. The department's responsibilities include reviewing and modifying the rules and regulations, providing technical assistance to counties and programs, monitoring local government and program compliance with the Act and the Regulations, and evaluating the services of the programs and their impact on the state justice system.

The Act's statutory provisions (codified at California Business and Professions Code " 465-471.5), and its Regulations (contained at California Code of Regulations, Title 16, Chapter 36) now operate in tandem to govern the implementation activities by counties and the services provided by local dispute resolution programs.

## II. Dispute Resolution Programs Act

Business and Professions Code Sections 465-471.5

Contents of Act

# I. Community Dispute Resolution In California

## Article 1. Legislative Purpose

Section 465.

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Legislative intent.

## Article 2. Definitions

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Dispute resolution: program, advisory council.

## Article 3. Establishment and Administration of Programs

Section 467.

Dispute resolution advisory council; membership; compensation.

Section 467.1.

Funded programs; county grants to establish and continue programs; intercounty regional programs.

Section 467.2.

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## Article 4. Application Procedures

Section 468.



Funds to be utilized for projects proposed by eligible programs.

Section 468.1.

Selection of programs.

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## **Article 5. Payment Procedures**

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## **Article 6. Funding**

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Acceptance and disbursement of funds from any public or private source.

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Section 471.

Rules and regulations; temporary guidelines; county grants; evaluations.

Section 471.3.

Rules and regulations; statewide uniformity.

Section 471.5.

Statistical data; confidentiality and anonymity of persons employing process.

# **DISPUTE RESOLUTION PROGRAMS ACT Business and Professions Code "465-471.5."**

## Article 1. Legislative Purpose

### 465. Legislative finding and declaration

The Legislature hereby finds and declares all of the following:

- (a) The resolution of many disputes can be unnecessarily costly, time-consuming, and complex when achieved through formal court proceedings where the parties are adversaries and are subjected to formalized procedures.
- (b) To achieve more effective and efficient dispute resolution in a complex society, greater use of alternatives to the courts, such as mediation, conciliation, and arbitration should be encouraged. Community dispute resolution programs and increased use of other alternatives to the formal judicial system may offer less threatening and more flexible forums for persons of all ethnic, racial, and socioeconomic backgrounds. These alternatives, among other things, can assist in the resolution of disputes between neighbors, some domestic disputes, consumer-merchant disputes, and other kinds of disputes in which the parties have continuing relationships. A noncoercive dispute resolution forum in the community may also provide a valuable prevention and early intervention problem-solving resource to the community.
- (c) Local resources, including volunteers reflective of the diversity of the community and available public buildings should be utilized to achieve more accessible, cost-effective resolutions of disputes. Additional financial resources are needed to expand, stabilize, and improve existing programs and entities which sponsor alternative dispute resolution.
- (d) Courts, prosecuting authorities, law enforcement agencies, and administrative agencies should encourage greater use of alternative dispute resolution techniques whenever the administration of justice will be improved.
- (e) Counties should consider increasing the use of alternative dispute resolution in their operations as plans for court reform are developed and implemented.
- (f) The Judicial Council should consider, in redrafting or updating any of the official pleading forms used in the trial courts of this state, the inclusion of information on options for alternative dispute resolution.

### 465.5. Legislative intent

It is the intent of the Legislature to permit counties to accomplish all of the following:

- (a) Encouragement and support of the development and use of alternative dispute resolution techniques.
- (b) Encouragement and support of community participation in the development, administration, and oversight of local programs designed to facilitate the informal resolution of disputes among members of the community.
- (c) Development of structures for dispute resolution that may serve as models for resolution programs in other communities.
- (d) Education of communities with regard to the availability and benefits of alternative dispute resolution techniques.

(e) Encouragement of courts, prosecuting authorities, public defenders, law enforcement agencies, and administrative agencies to work in cooperation with, and to make referrals to, dispute resolution programs.

At the time that the state assumes the responsibility for the funding of California trial courts, consideration shall be given to the Dispute Resolution Advisory Council's evaluation of the effectiveness of alternative dispute resolution programs and the feasibility of the operation of a statewide program of grants, with the intention of funding alternative dispute resolution programs on a statewide basis.

## Article 2. Definitions

### 466. Dispute resolution; program; advisory council

As used in this chapter:

- (a) "Dispute resolution" includes, but is not limited to, mediation, conciliation, and arbitration.
- (b) "Program" means an entity that provides dispute resolution.
- (c) "Advisory Council" means the Dispute Resolution Advisory Council.

## Article 3. Establishment and Administration of Programs

### 467. Dispute resolution advisory council; membership; compensation

- (a) There is in the Division of Consumer Services of the Department of Consumer Affairs a Dispute Resolution Advisory Council. The advisory council shall complete the duties required by the chapter no later than January 1, 1989.
- (b) The advisory council shall consist of seven persons, five of whom shall be appointed by the Governor. One member shall be appointed by the Senate Rules Committee, and one member shall be appointed by the Speaker of the Assembly. At least four of the persons appointed to the advisory council shall be active members of the State Bar of California, and at least four persons appointed to the advisory council shall have a minimum of two years of direct experience in utilizing dispute resolution techniques. The members of the advisory council shall reflect the racial, ethnic, sexual, and geographical diversity of the State of California.
- (c) The members of the advisory council shall not receive a salary for their services but shall be reimbursed for their actual and necessary travel and other expenses incurred in the performance of their duties.

### 467.1. Funded programs; county grants to establish and continue programs; intercounty regional programs

- (a) A program funded pursuant to this chapter shall be operated pursuant to contract with the county and shall comply with all of the requirements of this chapter and the rules and regulations of the advisory council.
- (b) Counties may establish a program of grants to public entities and nonpartisan, nonprofit corporations for the establishment and continuance of programs to be operated under the requirements of this chapter and the standards developed by the advisory council. The board of supervisors of a county in which, because of the county's size, the fee increase authorized by Section

470.3 is insufficient to establish a county program may enter into an agreement with the board of supervisors of one or more other such counties to establish a program authorized by this chapter on a regional basis.

#### 467.2. Funded program; eligibility requirements

A program shall not be eligible for funding under this chapter unless it meets all of the following requirements:

- (a) Compliance with this chapter and the applicable rules and regulations of the advisory council.
- (b) Provision of neutral persons adequately trained in conflict resolution techniques as required by the rules and regulations promulgated by the advisory council pursuant to Section 471.
- (c) Provision of dispute resolution, on a sliding scale basis, and without cost to indigent.
- (d) Provision that, upon consent of the parties, a written agreement or an award resolving a dispute will be issued setting out a settlement of the issues involved in the dispute and the future responsibilities of each party.
- (e) Provision of neutral procedures applicable equally to all participants without any special benefit or consideration given to persons or entities providing funding for the programs.
- (f) Provision that participation in the program is voluntary and that the parties are not coerced to enter dispute resolution.
- (g) Provision of alternative dispute resolution is the primary purpose of the program.
- (h) Programs operated by counties that receive funding under this chapter shall be operated primarily for the purposes of dispute resolution, consistent with the purposes of this chapter.

#### 467.3. Funded program; written statement relating to proceeding; contents

Programs funded pursuant to this chapter shall provide persons indicating an intention to utilize the dispute resolution process with a written statement prior to the dispute resolution proceeding, in language easy to read and understand, stating all of the following:

- (a) The nature of the dispute.
- (b) The nature of the dispute resolution process.
- (c) The rights and obligations of the parties, including, but not limited to, all of the following:
  - (1) The right to call and examine witnesses.
  - (2) The right of the parties to be accompanied by counsel, who may participate as permitted under the rules and procedures of the program.
- (d) The procedures under which the dispute resolution will be conducted.
- (e) If the parties enter into arbitration, whether the dispute resolution process will be binding.

#### 467.4. Agreement resolving dispute; enforceability and admissibility as evidence; statute of limitations

- (a) An agreement resolving a dispute entered into with the assistance of a program shall not be enforceable in a court nor shall it be admissible as evidence in any judicial or administrative proceeding, unless the consent of the parties or the agreement includes a provision that clearly states the intention of the parties that the agreement or any resulting award shall be so enforceable or admissible as evidence.
- (b) The parties may agree in writing to toll the applicable statute of limitations during the pendency of the dispute resolution process.



#### 467.5. Proceedings subject to Chapter 2 (commencing with section 1115) of Division 9 of the Evidence Code

Notwithstanding the express application of Chapter 2 (commencing with section 1115) of Division 9 of the Evidence Code to mediations, all proceedings conducted by a program funded pursuant to this chapter, including, but not limited to, arbitrations and conciliations, are subject to Chapter 2 (commencing with section 1115) of Division 9 of the Evidence Code.

Note: Evidence Code section 1152.5 was repealed and replaced by Chapter 2 (commencing with section 1115) of Division 9 of the Evidence Code.

#### 467.6. Statistical records; maintenance; confidentiality and anonymity of parties

Each program shall maintain those statistical records required by Section 471.5, and as may be required by the county. The records shall maintain the confidentiality and anonymity of the parties.

#### 467.7. Revocation of consent, withdrawal from dispute resolution, and judicial redress; criminal complaint, advice of counsel, waiver of right to counsel

(a) Unless the parties have agreed to a binding award, nothing in this chapter shall be construed to prohibit any person who voluntarily enters the dispute resolution process from revoking his or her consent, withdrawing from dispute resolution, and seeking judicial or administrative redress.

(b) In cases in which a criminal complaint has been filed by a prosecutor, other than for an infraction, the advice of counsel shall be obtained before any dispute resolution process is initiated. Nothing in this subdivision shall be construed to preclude a defendant from knowingly and voluntarily waiving the right to counsel. A defendant who indicates a desire to waive the right to counsel shall be encouraged to consult with the public defender or private counsel before waiving that right.

## Article 4. Application Procedures

#### 468. Funds to be utilized for projects proposed by eligible programs

All funds available to a county for the purposes of this chapter shall be utilized for projects proposed by eligible programs.

##### 468.1. Selection of programs

Programs shall be selected for funding by a county from the applications submitted therefore.

##### 468.2. Applications for funding; contents

Applications submitted for funding shall include, but need not be limited to, all of the following information:

(a) Evidence of compliance with Sections 467.2, 467.3, and 467.4.

(b) A description of the proposed community area of service, cost of the principal components of operation, and any other characteristics, as determined by rules of the advisory council.

(c) A description of available dispute resolution services and facilities within the defined geographical area.

(d) A description of the applicant's proposed program, by type and purpose, including evidence of community support, the present availability of resources, and the applicant's administrative



capability.

(e) A description of existing or planned cooperation between the applicant and local human service and justice system agencies.

(f) A demonstrated effort on the part of the applicant to show the manner in which funds that may be awarded under this program may be coordinated or consolidated with other local, state, or federal funds available for the activities described in Sections 467.2, 467.3, and 467.4.

(g) An explanation of the methods to be used for selecting and training mediators and other facilitators used in the dispute resolution process.

(h) Such additional information as may be required by the county.

#### 468.3. Relative funding priority; basis of criteria

Data supplied by each applicant shall be used to assign relative funding priority on the basis of criteria developed by the advisory council. The criteria may include, but shall not be limited to, all of the following, in addition to the criteria set forth in Section 468.2

(a) Unit cost, according to the type and scope of the proposed program.

(b) Quality and validity of the program.

(c) Number of participants who may be served.

(d) Administrative capability.

(e) Community support factors.

## Article 5. Payment Procedures

#### 469. Allocation of funds; considerations; methods of payment or reimbursement

Upon the approval of the county, funds available for the purposes of this chapter shall be used for the costs of operation of approved programs. Not more than 10 percent of funds available for the purposes of this chapter shall be used to finance the administration of the program by a county with a population of 500,000 or more persons, and no more than 20 percent may be so used if its population is less than that amount. All moneys allocated for the purposes of this chapter shall be apportioned and distributed to programs in the county, taking into account the relative population and needs of a community as well as the availability of existing dispute resolution facilities offering alternatives to the formal judicial system. The methods of payment or reimbursement for dispute resolution costs shall be specified by the county and may vary among programs. All such arrangements shall conform to the regulations of the advisory council.

## Article 6. Funding

#### 470. Acceptance and disbursement of funds from any public or private source

A county may accept and disburse funds from any public or private source for the purposes of this chapter.

##### 470.1. Grant recipient may accept funds from public or private source; inspection, examination and audit of fiscal affairs; use of public facilities

(a) A grant recipient may accept funds from any public or private source for the purposes of this chapter.

(b) A county and its representatives may inspect, examine, and audit the fiscal affairs of the programs and the projects funded under this chapter.

(c) Programs shall, whenever reasonably possible, make use of public facilities at free or nominal costs.

#### 470.2. County's share of funding

A county's share of the funding pursuant to this chapter shall not exceed 50 percent of the approved estimated cost of the program. A county's share of the funding pursuant to this chapter shall not exceed 50 percent of the approved estimated cost of the program.

#### 470.3. Fee for filing first paper in civil action; utilization of fee; special fund; inspection of records

(a) Except as provided in subdivision (b), a fee of not less than one dollar (\$1) and not more than eight dollars (\$8) may be added to the total fees collected and fixed pursuant to Sections 26820.4, 26826, 26827, 68090, 72055, and 72056 of the Government Code for the filing of a first paper in a civil action in superior, municipal, or justice court, other than a small claims action.

(b) A fee of not less than one dollar (\$1) and not more than three dollars (\$3) may be added to the total fees<sup>1</sup> collected and fixed pursuant to Sections 26820.4, 26826, 26827, 68090, 72055, and 72056 of the Government Code for the filing of a first paper in a civil action in superior, municipal, or justice court, for those cases where the monetary damages do not exceed the sum of two thousand five hundred dollars (\$2500). To facilitate the computation of the correct fee pursuant to this section, the complaint shall contain a declaration under penalty of perjury executed by a party requesting a reduction in fees that the case filed qualifies for the lower fee because claim for money damages will not exceed the sum of two thousand five hundred dollars (\$2,500.)<sup>2</sup>

(c) The fees described in subdivision (a) shall only be utilized for the support of the dispute resolution programs authorized by this chapter.

(d) A county may carry over moneys received from the additional fees authorized pursuant to subdivision (a) and (b), which shall be deposited in a special fund created for those purposes, until such time as the county elects to fund a dispute resolution program. Records of those fees shall be available for inspection by the public, upon request.

## Article 7. Rules and Regulations

### 471. Rules and regulations; temporary guidelines; county grants; evaluations; enforcement-Director of Consumer Affairs

(a) The advisory council shall adopt rules and regulations to effectuate the purposes of this chapter, including, but not limited to, guidelines to be used by the programs for the recruitment and training of persons conducting dispute resolution, and provisions for periodic monitoring and evaluation of the programs funded pursuant to this chapter. The advisory council shall establish guidelines to evaluate the performance of participating programs, which shall include analysis of court caseload reduction, cost savings to the state, the efficacy of the programs, and the feasibility of operation of a

statewide program of grants at the time the state assumes the responsibility for the funding of trial courts.

(b) The advisory council shall adopt temporary guidelines within six months of its initial meeting. The adoption of these temporary guidelines shall not be subject to the procedures specified in Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of Government Code.

Upon the adoption of the temporary guidelines, counties may award grants pursuant to this chapter. Programs funded pursuant to this chapter shall comply with the temporary guidelines, the requirements of this chapter and, when adopted, the formal rules and regulations.

(c) Formal rules and regulations implementing this chapter shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code and, upon adoption, shall supersede the temporary guidelines adopted pursuant to subdivision (b).

(d) On and after January 1, 1989, or such earlier date as the advisory council completes its duties pursuant to this chapter, the Division of Consumer Services of the Department of Consumer Affairs shall periodically review the effectiveness of the rules and regulations adopted pursuant to this chapter and adopt changes thereto as necessary. It also shall monitor and evaluate the programs funded pursuant to this chapter as to their compliance with those rules and regulations.

(e) The Director of Consumer Affairs shall administer and enforce this chapter and the rules and regulations adopted pursuant to this chapter, and so doing may exercise any power conferred under Chapter 4 (commencing with Section 300).

#### 471.3. Rules and regulations; statewide uniformity

The rules and regulations adopted by the advisory council pursuant to Section 471 shall be formulated to promote statewide uniformity with the guidelines contained in those rules and regulations.

#### 471.5. Statistical data; confidentiality and anonymity of persons employing process

Each program funded pursuant to this chapter shall annually provide the county with statistical data regarding its operating budget; the number of referrals, categories, or types of cases referred to the program; the number of persons served by the program; the number of disputes resolved; the nature of the disputes resolved; rates of compliance; the number of persons utilizing the process more than once; the duration of and the estimated costs of the hearings conducted by the programs; and any other information that the county may require. The data shall maintain the confidentiality and anonymity of the persons employing the dispute resolution process.

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<sup>1</sup> *Government Code section 68086, subbed.(e) (as amended by Stats. 1993, ch. 158 (AB392)) precludes a board of supervisors from changing the amounts allocated from the "total filing fees" to fund conflict resolution, and effectively preclude counties from opting into the dispute Resolution Programs Act, or increasing the amount of funds from filing fees to fund conflict resolution programs. However, in 1996, counties were allowed to increase the factually total filing fee to fund conflict resolution programs, and exclude that increase from the definition of total filing fee as defined in Government Code sections 26820.6 and 72056.1 (Stats. 1996, c.942 (AB2953))*

<sup>2</sup> *Senate Bill 1701 (1992) increased from three dollars (\$3) to eight (\$8) the maximum which a county could use from its filing fees to fund dispute resolution. Assembly Bill 1344 (1922) imposed maximum and*

*uniform court filing fees for all counties and made inoperable a litigant's option to lower filing fees for money damages not exceeding \$2500.*

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# Dispute Resolution Programs Act - Regulations

## TITLE 16, DIVISION 36. DISPUTE RESOLUTION ADVISORY COUNCIL

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## **TITLE 16, DIVISION 36. DISPUTE RESOLUTION ADVISORY COUNCIL**

## ARTICLE 1. GENERAL PROVISIONS

### Section 3600. Terms and Definitions

As used in the chapter:

(a) "Act" means the Dispute Resolution Programs Act of 1986, commencing with Section 465 of the California Business and Professions Code.

(b) "Code" means the California Business and Professions Code.

"Department of Consumer Affairs" means the California State Department of Consumer Affairs, located at 1020 N Street, Room 504, Sacramento, California 95814.

(c) "Regulations" refers to California Code of Regulations, Title 16, Chapter 36, commencing with Section 3600.

#### AUTHORITY:

Note: Authority cited: Section 471, Business and Professions Code. Reference: Section 471.3, Business and Professions Code.

#### HISTORY:

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

### Section 3601. Application of Regulations

These Regulations apply to dispute resolution services provided pursuant to the Act, to counties that fund dispute resolution programs pursuant to the Act, and to the dispute resolution programs that receive funding pursuant to the Act. These Regulations supplement the requirements of the Act, and must be read, interpreted and applied in conjunction with the Act.

#### AUTHORITY:

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 471 and 471.3, Business and Professions Code.

#### HISTORY:

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

### Section 3602. Dispute Resolution Services

(a) Dispute resolution services refers to a variety of dispute resolution processes and techniques, both proven and experimental, which are designed to assist parties in resolving disputes without the necessity of formal judicial proceedings, and include:

(1) Conciliation, which means a process of independent communications between the disputants and a neutral person.

(2) Mediation, which means a process in which a neutral person(s) facilitates communication between the disputants to assist them in reaching a reconciliation, settlement, or other understanding.

(3) Arbitration, which means a voluntary adjudicative process in which a neutral person conducts a hearing, receives spoken and/or written evidence from the disputants and their witnesses, and renders a decision that may be binding or non binding depending on the consent of the disputants.

(b) "Collateral services," refers to screening and intake of disputants, preparing for and conducting dispute resolution proceedings, drafting agreements and/or awards, providing information and/or referral services, and conducting follow-up surveys.

**AUTHORITY:**

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 467.2, 467.3, 467.7, 468.2(c) and (g), 471, 471.3 and 471.5, Business and Professions Code.

**HISTORY:**

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

## ARTICLE 2. GENERAL ELIGIBILITY AND APPLICATION REQUIREMENTS

### Section 3605. Eligibility for Funding

Every applicant for funding shall comply with all relevant provisions of the Act and shall also meet the eligibility requirements described in this section. Evidence of compliance with each of these requirements shall be submitted to the Board of Supervisors or its designee at the time of application.

(a) Organizational Status.

(1) Every applicant for funding must certify that its status is one of the following:

- (A) A distinct, definitive unit of a governmental entity with a separate and identifiable annual budget;
- (B) A nonpartisan, nonprofit corporation; or
- (C) A distinct, definitive component or project of a nonpartisan, nonprofit corporation with a separate and identifiable annual budget.

(2) A nonpartisan, nonprofit corporation or component thereof must also provide evidence that it:

- (A) is exempt from federal taxation under Internal Revenue Code Section 501(c)(3), or
- (B) has an application for section 501(c)(3) status currently pending before the Internal Revenue Service.

(b) Primary Purpose.

To satisfy the primary purpose requirement of section 407.2(g) of the Act, a minimum of 51% of the estimated budget for the grant period of any program, project or entity shall be encumbered for the provision of dispute resolution services, as defined in Section 3602 of these Regulations.

(c) Community Support.

Each applicant for funding shall submit letters of support from community organizations, judicial and legal system representatives, administrative agencies, or other appropriate public service organizations in the proposed area of service. Such letters should, if appropriate, attest to the organization's willingness to make referrals to the applicant.

**AUTHORITY:**

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 467.2, 468, 468.2, 470.2, 471 and 471.3, Business and Professions Code.

**HISTORY:**

1. New Section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

**Section 3608. Grant Application Requirements**

(a) In addition to the requirements of Section 468.2 of the Act, all applicants shall also provide the following as part of their application for funding:

- (1) A description of the applicant's organizational structure, including that of any sponsoring or parent organizations;
- (2) A description of the proposed geographic area of service, the service population, and the number of persons the applicant will have the capacity to serve on an annual basis;
- (3) A description of the types of disputes to be handled, the types of dispute resolution services to be offered, and any restrictions to be imposed by the program;
- (4) A description of any fee schedule to be used;
- (5) A list of civic groups, social services agencies, governmental entities, and justice system agencies available to accept and make referrals to the applicant;
- (6) A description of the applicant's plans for publicizing its services to potential referral agencies, courts and justice system agencies, and the public;
- (7) A description of the applicant's plans for publicizing its services to potential referral agencies, courts and justice system agencies, and the public;
- (8) A statement that in hiring staff, recruiting volunteers, or rendering services, the applicant will not discriminate with regard to race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation or age.

(b) Pursuant to Section 470.2 of the Code, each applicant shall submit an estimated budget for the grant period. In-kind donations may be reported as anticipated revenue to be derived from sources other than the county revenues generated pursuant to the Act, so long as the requirements of Section 3640 of these Regulations are satisfied.

**AUTHORITY:**

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 467.1, 467.2, 468, 468.1, 468.2, 468.3, 470.2 and 471.3, Business and Professions Code.

**HISTORY:**

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

**Section 3609. Coordination with Department of Consumer Affairs**

At the time of submission of the application to the Board of Supervisors or its designee, every applicant shall forward to the Department of Consumer Affairs a copy of the application and supporting documentation for its request for funding pursuant to the Act.

**AUTHORITY:**

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 471 and 471.3, Business and Professions Code.

**HISTORY:**

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

**Section 3611. Voluntary Participation by Criminal Defendants**



For the purposes of satisfying the eligibility requirements for funding, applicants who provide dispute resolution services to accused persons or defendants in pending criminal proceedings shall not be deemed to violate Section 467.2(f) of the Code so long as Section 467.7(b) of the Code is satisfied.

**AUTHORITY:**

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 467.2(f), 467.7(b) and 471.3, Business and Professions Code.

**HISTORY:**

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

## ARTICLE 3. GRANTEE OPERATIONS, TRAINING AND SERVICE STANDARDS

### **Section 3615. Budgetary Allocations**

For the duration of the grant period, a minimum of 51% of the Grantee's budget for the grant period must be allocated and expended for dispute resolution services, as defined in these Regulations, which may include collateral services, as defined in these Regulations.

**AUTHORITY:**

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 467.1, 468, 469, 470.1(b), 470.2 and 471.5, Business and Professions Code.

**HISTORY:**

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

### **Section 3618. Fees for Service**

(a) Under the Act and these Regulations, a Grantee is not required to charge fees to disputants for dispute resolution services. However, if a Grantee charges fees for its dispute resolution services, such fees must be assessed on a sliding scale basis, according to income and financial need. The Grantee shall fully explain to all disputants, in advance of the services being furnished, the basis for and the amount of any fees and other costs that may be charged.

(b) A Grantee may not assess any fees upon disputants who are indigent. "Indigent" includes persons whose income and resources meet the financial qualifications for federal Supplemental Security Income benefits.

(c) A Grantee is prohibited from charging the following fees:

- (1) contingent fees;
- (2) fees calculated on the basis of the amount in controversy; or
- (3) fees based on the failure or success of the disputants to agree to resolution terms previously designated by one or more of the disputants.

**AUTHORITY:**

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 467.2(c), 470.1(a) and 471.3, Business and Professions Code.

**HISTORY:**

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

## **Section 3620. Services by Neutral Persons**

- (a) A Grantee shall ensure that its dispute resolution services are provided by neutral persons.
- (b) An individual shall not function as the neutral person if he or she has any personal bias regarding any particular disputant or the subject matter of the dispute.
- (c) An individual shall not function as the neutral person if he or she has a financial interest in the subject matter of the dispute or a financial relationship with any party to the dispute resolution proceeding. The existence of such interests or relationships shall be deemed a conflict of interest.
- (d) If, before or during the provision of dispute resolution services, a neutral person has or acquires an actual or apparent conflict of interest, the neutral person shall so inform all of the disputants, and shall disqualify himself or herself as the neutral person unless all of the disputants consent in writing to continue. The Grantee shall replace a disqualified neutral person at no additional cost to any disputant.

### **AUTHORITY:**

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 467.2(b) and (e) and 471.3, Business and Professions Code.

### **HISTORY:**

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

## **Section 3622. Orientation and Training of Neutral Persons**

- (a) Each Grantee shall require that all persons who provide dispute resolution services on its behalf complete a training program. The training must be completed prior to the provision of dispute resolution services by that person.
- (b) For purposes of fulfilling the requirements of section 468.2(g) of the Act, each Grantee shall provide an orientation and training program for mediators and other facilitators. The program shall consist of a minimum of 25 hours of classroom and practical training.
- (c) The classroom training shall consist of a minimum of 10 hours of lecture and discussion, and shall address the following topics:
  - (1) The history of dispute resolution as a problem solving technique and its relationship to the traditional justice system;
  - (2) The Act and these Regulations;
  - (3) An overview of the structure of the California justice system and the traditional methods of processing civil and criminal cases;
  - (4) The structure, design, practice, and theory of dispute resolution proceedings and services, as defined, including the varying roles, functions and responsibilities of neutral persons, and the distinction between binding and non binding processes;
  - (5) Communication skills and techniques, including developing opening statements, building trust, gathering facts, framing issues, taking notes, empowerment tactics, effective listening and clarifications skills. Face-to-face as well as over-the-telephone communication skills shall be addressed;
  - (6) Problem identification and disagreement management skills, including instruction in the establishment of priorities and areas of agreement and disagreement, and the management of special problems that threaten the process;

- (7) Techniques for achieving agreement or settlement, including instruction in creating a climate conducive to resolution, identifying options, reaching consensus, and working toward agreement;
- (8) General review of fact patterns present in typical disputes, including landlord-tenant, customer-merchant, and neighbor-neighbor cases;
- (9) Administrative and intake skills related to dispute resolution services, including completion of paperwork involved in handling and tracking cases, administrative and reporting forms, correspondence with disputants and referral agencies, agreements to mediate or arbitrate, and the drafting of settlement agreements and awards;
- (10) The role and participation of attorneys and witnesses in dispute resolution proceedings;
- (11) The organization and administration of dispute resolution programs, including intake procedures, follow-up procedures, and record-keeping; and
- (12) The necessity of the voluntary and consensual nature of a disputant's participation in any dispute resolution proceedings.

(d) The practical training shall consist of a minimum of 10 hours, which shall include role plays of simulated disputes and observations of actual dispute resolution services, including intake procedures as well as actual dispute resolution proceedings.

(e) The training shall provide for personal assessment and evaluation of the trainee.

(f) Grantees shall provide written verification of the dates and times at which the training was attended and completed to all trainees who satisfactorily complete the required orientation and training program.

(g) Any neutral person who has received training which complies substantially with these Regulations, or who has had at least 25 hours of dispute resolution experience prior to his or her provision of dispute resolution services, shall be deemed to have met the orientation and training requirements mandated by these Regulations. Such prior training or experience shall be verified by the program or organization through which it was rendered.

#### AUTHORITY:

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 467.2(b), 468.2(g), 468.3(b) and 471.3, Business and Professions Code.

#### HISTORY:

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

### **Section 3626. Agreements by Disputants**

(a) Oral or Written Agreements.

Agreements reached between disputants as a result of the dispute resolution services may be oral or written.

(b) Presumption of Non-Enforceability.

Under section 467.4 of the Code, such agreements are presumed not enforceable or admissible as evidence in judicial or administrative proceedings.

(c) Option to Make Agreements Enforceable.

Disputants may elect to make their agreements enforceable at law or admissible as evidence at judicial or administrative proceedings. This election may be made at any time. To be enforceable or admissible, an agreement must:

- (1) Be in writing and signed by all disputants, and

(2) Contain an Enforcement of Agreement Statement that clearly expresses that each disputant intends that the agreement will be enforceable at law and/or admissible as evidence in any judicial or administrative proceeding.

**AUTHORITY:**

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 467.3(e), 467.4(a), 467.7(a) and 471.3, Business and Professions Code.

**HISTORY:**

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

**Section 3630. Attorney Participation**

- (a) Disputants are entitled to be accompanied by an attorney at any dispute resolution session.
- (b) Participation by attorneys in dispute resolution proceedings may be restricted by the policy of the Grantee. Such policies shall be clearly explained in the Information Statement provided to disputants.

**AUTHORITY:**

Note: Authority cited: Section 471, Business and Professions Code. Reference: Section 467.3(c)(2), Business and Professions Code.

**HISTORY:**

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

**Section 3632. Information and Referral Services**

When the Grantee deems it appropriate or when disputants request it, a Grantee may provide the disputants with information about the services of other agencies. However, no commissions, rebates, or any other form of payment shall be given or received by a Grantee, its staff, or its volunteers for referring disputants to other services or agencies.

**AUTHORITY:**

Note: Authority cited: Section 471, Business and Professions Code. Reference: Section 465.5, Business and Professions Code.

**HISTORY:**

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

**Section 3635. Follow-up Surveys**

- (a) Yearly or on a more frequent basis, Grantees shall conduct follow-up surveys of disputants who have used their services.
- (b) The surveys shall request the disputants' evaluations of:
  - (1) the dispute resolution services provided by the Grantee;
  - (2) the fairness or adequacy of the settlement agreement or award;
  - (3) any particular difficulties experienced by the disputant in carrying out and obtaining compliance with the settlement agreement or award;
  - (4) the disputant's willingness to use the Grantee's services in the future;
  - (5) the disputant's willingness to recommend the Grantee's services to others who are involved in disputes.



(c) The survey results shall be submitted as part of the yearly statistical report to the Board of Supervisors or its designee in compliance with section 471.5 of the Act. Copies of the survey results shall also be forwarded by the Grantees to the Department of Consumer Affairs at the time of submission to the Board of Supervisors or its designee.

**AUTHORITY:**

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 471.3, 471.5(a) and (d), Business and Professions Code.

**HISTORY:**

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

## ARTICLE 4. GRANTEE MANAGEMENT, ACCOUNTING, AND REPORTING REQUIREMENTS

### **Section 3640. In-Kind Donations**

(a) In-kind donations, including services of volunteers and materials and/or property, may be reported or credited as revenue or expenditures, if such donations:

- (1) Will be received during the proposed budgetary period;
- (2) Represent necessary and ordinary expenses or services related to the operation and management of the Grantee; and
- (3) Serve a purpose consistent in nature and cost with the Grantee's operation.

(b) In-kind donations must be clearly documented with descriptions of the services or materials donated, the dates received, and the names and addresses of the donors. Volunteer personnel services shall be documented by time sheets signed by the volunteer and verified by the Program Administrator.

(c) For uniform budgeting purposes, standardized values must be used in assessing value to the in-kind donations. The following assessments shall apply:

- (1) Donations of personal property shall be reported at a fair market value, as determined by the Grantee.
- (2) Volunteer personnel services shall be valued at no more than \$25.00 per hour.
- (3) Donated facilities may be valued at no more than \$50.00 per dispute resolution proceeding.

(d) The following may not be included or credited as in-kind donations:

- (1) Volunteer time provided by members of the Grantee's board of directors while serving in the capacity as members of the board.
- (2) Fringe benefits associated with time donated by volunteers.

**AUTHORITY:**

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 468.2(b), (d) and (f), 468.3, 470.2 and 471.3, Business and Professions Code.

**HISTORY:**

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

### **Section 3642. Yearly Fiscal Reports**

(a) The Grantee shall submit a yearly report prepared by an independent accountant that describes and assesses the Grantee's fiscal practices and status. The report shall be delivered to the Board of Supervisors or its designee and to the Department of Consumer Affairs no later than 90 days from the close of the grant period.

(b) Annually or within ninety days of the close of each grant period, the Grantee shall submit to the Board of Supervisors or its designee and to the Department of Consumer Affairs a final reconciliation of actual revenues and expenses compared to the estimated budget for the grant period.

**AUTHORITY:**

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 470.1(b), 471, 471.3 and 471.5, Business and Professions Code.

**HISTORY:**

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

**Section 3644. Record-Keeping Practices**

(a) All records and files maintained pursuant to section 471.5 of the Code shall be retained as follows:

(1) All financial records shall be retained for a minimum of four years after the expiration of the grant period.

(2) Signed personnel time sheets for volunteers and employees shall be maintained for a period of two years.

(3) All other statistical data shall be retained for a period of three years.

(b) All records described in this section shall be made available to the Board of Supervisors or its designee and to the Department of Consumer Affairs upon request.

**AUTHORITY:**

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 471, 471.3 and 471.5, Business and Professions Code.

**HISTORY:**

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

**Section 3648. Personnel Policies**

(a) Each Grantee shall have an employee designated as "Program Administrator." The Program Administrator shall be responsible for overall program management.

(b) Each Grantee shall maintain written job descriptions and job qualifications for all staff and volunteer classifications.

(c) Each Grantee shall maintain a current organizational chart that reflects its organizational structure.

**AUTHORITY:**

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 465, 465.5, 471, 471.3 and 471.5, Business and Professions Code.

**HISTORY:**

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

**Section 3650. Public Education and Relations**

Each Grantee shall maintain an ongoing public relations and information effort to promote its services and resources. These public relations efforts may include newspaper, radio, television and other public media contacts as well as written brochures and handouts.

**AUTHORITY:**

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 465, 465.5, 471 and 471.3, Business and Professions Code.

**HISTORY:**

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

## ARTICLE 5. COUNTY USE OF FEES AND GRANT MANAGEMENT

### **Section 3660. Filing Fee Revenues**

(a) A county shall create a separate interest-bearing account called the Dispute Resolution Program Account for the deposit of revenues generated pursuant to the Act.

(1) All filing fees collected by the county pursuant to the Act shall be deposited into the account.

(2) All interest which accrues to the account shall be deemed part of the account.

(b) Revenues generated pursuant to the Act shall not be used to replace any preexisting allocations of county funds for the provision of dispute resolution services.

(c) Only actual administrative costs may be deducted from the Account to finance a county's administration of the grant program.

(d) Funds generated under the Act shall be used only to fund services authorized by the Act and these Regulations. Such funds shall not be used by a county to fund:

(1) family conciliation court or conciliation and mediation services pursuant to section 4607 or 4351.5 of the Civil Code<sup>1</sup>, or

(2) judicial arbitration pursuant to section 1141.10 et seq. of the Code of Civil Procedure or any other formal or mandatory judicial arbitration program<sup>2</sup>, or

(3) any other programs or services not expressly authorized by the Act or these Regulations.

**AUTHORITY:**

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 467.1, 468, 469, 470, 470.2, 470.3, 471 and 471.3, Business and Professions Code.

**HISTORY:**

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

### **Section 3662. Public Information and Coordination**

(a) Each Board of Supervisors or its designee shall appoint or designate a qualified person to function as the Dispute Resolution Program Coordinator.

(1) The Coordinator shall be the public's contact person and information resource regarding the county's grant solicitation and award procedures, the county's functions and responsibilities under the Act and these Regulations, and the dispute resolution programs and services provided by the county.

(2) The Board of Supervisors or its designee shall notify the Department of Consumer Affairs of the Coordinator's name, address, and telephone number.

(b) Each county shall maintain an ongoing public information and dispute resolution awareness program to disseminate information and materials on the purposes and benefits of dispute resolution services. Such public information shall publicize the availability of services within the county and include the name and telephone number of the Coordinator, the existence and availability of grant monies to fund local programs, and the names and services provided by Grantees in that county.

(c) To assure the neutrality and the absence of any conflict of interest, the Coordinator shall not be administratively, professionally, or financially affiliated with any applicant or Grantee.

**AUTHORITY:**

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 469, 470, 470.3(a), 471 and 471.3, Business and Professions Code.

**HISTORY:**

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

**Section 3665. Competitive Grant Proposal Process**

(a) A Board of Supervisors or its designee shall award grants to dispute resolution programs through a competitive proposal process. The process shall: provide reasonable public notice about the availability of dispute resolution program grants; actively solicit proposals from potential applicants; provide a reasonable period of time in which to respond; and, explain the reasons for selection of each Grantee.

(b) The Board of Supervisors, or its designee, shall review the estimated budget for the grant period submitted by an applicant pursuant to section 3605(b) of these Regulations to assess its accuracy. Such assessment shall include the authority to determine whether the reported estimations are substantiated and justified. In making allocations, the county shall use the facts reported in the applicant's estimated budget as assessed and verified by the county.

(c) Qualified applicants shall be screened by the county according to the following criteria:

- (1) The need for the applicant's services in the proposed geographical area and any duplication or overlap among dispute resolution programs in the proposed area of service.
- (2) The structure and scope of the services to be provided by the applicant.
- (3) The amount of the requested grant.
- (4) The reliability of the applicant's other funding sources.
- (5) The adequacy and cost of facilities and personnel.

**AUTHORITY:**

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 467.1, 467.2, 468, 468.3, 470, 470.2 and 471.3, Business and Professions Code.

**HISTORY:**

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

**Section 3670. Grant Award Time frames**

(a) A Board of Supervisors that increases its civil filing fees pursuant to the Act shall disperse the grant funds to eligible applicants within six months from the effective date of the increase or, if the



balance in the account has not yet reached \$15,000, within 90 days after the date that the balance reaches \$15,000.

(b) The Board of Supervisors or its designee shall notify the Department of Consumer Affairs of its selection of any Grantee within 30 days after the selection is made. Notification shall include the name, address, and telephone number of each Grantee, the name of the each Grantees' Program Administrator, and the amount and terms of the grant award.

**AUTHORITY:**

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 467.1, 469, 470, 470.3 and 471.3, Business and Professions Code.

**HISTORY:**

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

**Section 3675. Reporting to Department of Consumer Affairs**

Within ninety days of each calendar year, the Board of Supervisors or its designee shall provide the Department of Consumer Affairs with a report of its activities pursuant to the Act during the previous calendar year. The report shall include the following:

- (a) The amount of revenues that were collected from superior, municipal, and justice court filing fees during the year.
- (b) The amount of revenues deposited in and interest accrued on the dispute resolution program account during the year.
- (c) An accounting of all disbursements from the dispute resolution program account, including a listing of all grant amounts to Grantees, the dates of disbursements, and all deductions made pursuant to the county's administrative costs.
- (d) Any problems encountered in implementing the Act or these Regulations, and any recommendations for rectifying the problems.
- (e) Any evaluations or review processes instituted to monitor the services provided by Grantees.
- (f) Any evidence of misuse or misappropriation of revenues by Grantees.
- (g) Any rules or procedures in addition to the Act and these Regulations that have been invoked by the Board of Supervisors or its designee upon applicants for funding or Grantees.

**AUTHORITY:**

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 471 and 471.3, Business and Professions Code.

**HISTORY:**

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).

**Section 3680. Local Administrative Policies and Practices**

The Board of Supervisors or its designee shall comply with all standards set forth in the Act and these Regulations. Neither the Board of Supervisors nor its designee shall institute any policies, practices, or procedures that conflict with the Act, these Regulations, or the policies and principles expressed in the Act's statement of legislative intent.

**AUTHORITY:**

Note: Authority cited: Section 471, Business and Professions Code. Reference: Sections 471 and 471.3,

## Business and Professions Code.

### HISTORY:

1. New section filed 8-31-89; operative 9-30-89 (Register 89, No. 36).
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<sup>1</sup>*This language prohibits the funding of family law mediations of child custody and visitation disputes. Civil Code sections 4607 and 4351.5 have been repealed and reenacted in Family Code sections 3170 and 3175.*

<sup>2</sup>*This language not only prohibits the mandatory arbitration programs set forth in Code of Civil Procedure section 1141.5 but "any other formal or mandatory arbitration programs."*

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EXHIBIT B-2 (revised)

INSURANCE REQUIREMENTS FOR  
STANDARD CONTRACTS ABOVE \$100,000

Indemnity

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

EXHIBIT B-2 (revised)

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence - \$1,000,000
- b. General aggregate - \$2,000,000
- c. Products/Completed Operations aggregate - \$2,000,000
- d. Personal Injury - \$1,000,000

2. General liability coverage shall include:

- a. Premises and Operations
- b. Products/Completed
- c. Personal Injury liability
- d. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

**Additional Insured Endorsement**, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the



EXHIBIT B-2 (revised)

additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

4a. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

E. Special Provisions

The following provisions shall apply to this Agreement:

- 1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
- 2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractors obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

EXHIBIT B-2 (revised)

3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.
4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.