

# AGENDA REPORT

## City Council

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June 24, 2015

### MEMORANDUM

TO: MAYOR AND CITY COUNCIL

FROM: MEDIATION SUBCOMMITTEE  
DEPUTY MAYOR BLAKESPEAR  
COUNCIL MEMBER KRANZ

RE: CONSIDERATION AND POSSIBLE ACTION REGARDING ADOPTING A  
MEDIATION PROGRAM FOR LAND USE/DEVELOPMENT AND GENERAL  
DISPUTES

After conducting several meetings with the public and City staff, the Subcommittee recommends that the Council direct the City Manager, in consultation with the Subcommittee, to move forward in bringing back a voluntary mediation program, regarding land use/development and general disputes, for Council consideration and possible adoption based on the concepts identified in this report.

#### Land Use and Development Disputes.

For your consideration, attached is a draft ordinance intended to add a new chapter to the Encinitas Municipal Code (EMC) entitled, "Voluntary Mediation for Land Use and Development Disputes" (Attachment "A").

"Land use and development disputes," as distinct from "general disputes," generally involve an appeal of project approval (legally required) by either the Planning Director or Planning Commission. Consequently, any mediation results from such disputes must be consistent with project approval or project approval must be modified. The mediation process for general disputes, not involving an appeal of project approval, may be more streamline. Consequently, the Mediation Subcommittee has discussed and recommended a separate (but related in procedure) process for general disputes, as summarized below.

As such, regarding land use and development disputes, prior to implementation of any mediation results, Section 050 of the draft ordinance entitled, "MEDIATION RESULTS—REMAND TO DECISION MAKING AUTHORITY—DIRECTOR DETERMINATION," requires the Planning Director to determine if the mediation results are: a) consistent with project approval; b) inconsistent with project approval and will be remanded back to the approving authority for further review; or c) violates the General Plan, Municipal Code or other applicable rules or regulations, and must be disregarded.

The following further summarizes the draft ordinance:

- sets forth purpose of maintaining and fostering good will and cooperation among community members when faced with potentially divisive land use and development proposals (Section 010);
- defines mediation as a (non-binding) voluntary confidential meeting between disputing parties, conducted within a 3 day timeframe between or among disputing parties and stakeholders (Section 020(B));
- provides that disputing parties are entitled to mediation, based upon the Chapter provisions and general mediation procedures adopted by the Council (Resolution X), upon proper application with all costs to be paid by the project applicant (Section 030);
- stays hearings, related processing, and applicable timelines related to project pending mediation process (Section 040);
- requires Planning Director determination regarding whether mediation results are consistent with project approval or (if inconsistent) the application remanded back to the decision making authority (Section 050) (see discussion above);
- provides for return of appeal fees if mediation is conducted and the appeal withdraw or if party ultimately prevails on appeal (Section 060);
- provides that nothing prohibits the Planning Director, Planning Commission or City Council from referring parties to mediation at any time, in any manner and by whatever means (Section 070).

b. General Disputes.

Also, for your consideration, attached is information from the City of Carlsbad regarding a general mediation program that is in place and functioning in that City (Attachment "B"). Essentially, Carlsbad's program provides for non-binding mediation for general disputes at no cost for all residents of Carlsbad. Similar to other cities we have surveyed, Carlsbad does not have a formal mediation process in place specifically for land use and development disputes. Although the program information is available on their website, we have found no Carlsbad ordinance or resolution establishing the details of a mediation program.

Instead, Carlsbad executed an agreement with the National Conflict Resolution Center (NCRC), a California Corporation, to establish its mediation program (Attachment "C"). The scope of services, entitled, "City of Carlsbad Mediation Program," includes the following:

- program development
- training
- case coordination and evaluation

For Carlsbad, the total costs for a 12 month program is \$25,000, with options for year 2 and 3 at various additional costs. Based on preliminary discussions with NCRC officials, we believe NCRC is capable of designing a similar program for Encinitas (also a 12 month program) at an approximate range between \$10,000 and \$12,000. The costs difference is generally due to consolidating training sessions and utilizing existing staff to assist in facilitating the program. Additional discussions with NCRC officials and City staff would be necessary to bring back to Council a precise dollar amount for total costs of such a program.

VOLUNTARY MEDIATION FOR LAND USE AND DEVELOPMENT DISPUTES

**.010 DECLARATION OF PURPOSE.**

The City Council finds there is a need for mediation as a form of alternative dispute resolution for purposes of maintaining and fostering good will and cooperation among community members when faced with potentially divisive land use and development proposals. The City Council recognizes and acknowledges that mediation may not be appropriate for all land use and development proposals in dispute and, in fact, may prove unsuccessful at times. However, the City Council believes that mediation can be an effective tool between willing parties to resolve land use and development disputes consistent with the City's General Plan and Municipal Code, pursuant to this chapter.

**.020 DEFINITIONS.**

For purposes of this chapter, the following definitions shall apply:

- (A) 'Disputing Parties' means any person that has received approval for a permit or other entitlement for a land use or development project from either the Director or Planning Commission, and any person who has appealed such approval.
- (B) 'Mediation' means a voluntary confidential meeting, conducted within a 3 day timeframe, between or among Disputing Parties and stakeholders with an impartial mediator to clarify their differences and discuss the possibility of a mutually acceptable outcome to resolve their differences. Mediation in this context is not intended to result in a decision or to be legally binding upon the disputing parties and stakeholders; instead, it is intended to facilitate dialogue regarding a dispute in a respectful, positive and productive manner.
- (C) 'Mediator' means...(see definition to be adopted for general mediation)
- (D) 'Stakeholder' means any person, organization or association that is affected by and maintains an interest in the approval of a permit or other entitlement for a land use or development that is the subject of mediation between Disputing Parties. Stakeholders shall be identified by the Disputing Parties in the application for mediation pursuant to section X.
- (E) 'Director' means the Director of the Planning and Building Department of the City of Encinitas, or his or her designee.
- (F) 'Days' means consecutive calendar days and not business days.

**.030 MEDIATION—REQUEST FOR—APPLICATION—COST PAID BY PROJECT APPLICANT**

Upon request to the Director, by application, on a form provided by the Planning and Building Department, executed and signed by the Disputing Parties, the Disputing Parties shall be entitled to mediation pursuant to this chapter and City Council Resolution No. X. The project applicant shall pay all costs related to mediation pursuant to this Chapter. The Director shall maintain a schedule of said costs in the Planning and Building Department.

**.040 COMPLETED APPLICATION—HEARINGS/PROCESSING AND RELATED TIME LINES—STAYED**

Upon receipt of a completed application for mediation pursuant to this chapter, any further hearings, related processing, and applicable time lines shall be stayed pending written notice of the Director, which in no case shall exceed 30 days subsequent to the completion of mediation.

**.050 MEDIATION RESULTS—REMAND TO DECISION MAKING AUTHORITY—DIRECTOR DETERMINATION**

Within 10 days of completion of mediation pursuant to this chapter, the Disputing Parties shall provide the written results of the mediation (e.g., agreement) to the Director. Within 10 days of the receipt of the same, the Director shall notify the Disputing Parties as to the consequences of the results on the project application; such as, the compromises reached are: a) consistent with the current approval and may be implemented; b) inconsistent with the current approval and the project application will be remanded to the approving authority for further review and consideration; or c) violates the General Plan, Municipal Code or other applicable rules or regulations, and must be disregarded.

**.060 REFUND OF APPEAL FEES—COMPLETION TO MEDIATION—PREVAIL ON APPEAL**

The City shall refund any appeal fees paid by any person, organization or association that: 1) appealed an approval of a permit or other entitlement for a land use or development project, completed mediation pursuant to this Chapter and withdrew the subject appeal or 2) appealed an approval of a permit or other entitlement for a land use or development project, completed mediation pursuant to this Chapter, and ultimately prevailed on the subject appeal.

**.070 CITY COUNCIL—REFERAL TO MEDIATION**

Nothing in this Chapter is intended to prevent or restrict the Director, Planning Commission or City Council from referring parties to mediation at any time, in any manner and by whatever means the Director, Planning Commission or City Council and parties deem appropriate or necessary.



## Mediation Program

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The City of Carlsbad provides a mediation program free to residents. Mediation is a confidential meeting between people who have a disagreement and a trained, neutral mediator who guides a discussion of issues toward a mutually acceptable agreement.

How does a dispute or a case reach mediation?

Cases may be self-referred by any Carlsbad resident who is involved in the dispute by calling 760-434-2868.

What types of cases are suitable for mediation?

Some of the types of cases referred involve neighbor-to-neighbor issues, animal nuisances and property maintenance disputes.

What are the benefits of Mediation?

It works - a majority of cases reach an agreement

It's free - to Carlsbad residents

It's fast - can be scheduled quickly

It's convenient - located in Carlsbad

It's confidential - solutions are private and within your control

It's professional - volunteer mediators are highly trained

When should I consider mediation?

Mediation is always an option if:

The dispute has been ongoing

You want to preserve a relationship being affected by conflict

The dispute is upsetting and affecting your daily life

You cannot afford the time and cost involved with litigation

You are thinking about taking your dispute to court

You would like to speak to the other party so they may hear your concerns

You would like to resolve the dispute yourself without a third party judgment

To learn more about the process, go to [Mediation Q & A](#).

Is mediation confidential?

Mediation is governed by California Evidence Code sections 1115-1128, which provides that statements made during mediation are confidential and inadmissible against another party in any subsequent non-criminal proceeding. Further, the mediators do not report back to the courts on the content of the mediation, nor are they available to testify as to what was said during mediation.



## Mediation Q & A

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### Mediation Q & A

- What is mediation?
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- 
- Mediation is a confidential meeting between people who have a disagreement and a trained, impartial mediator who guides a discussion of issues toward a mutually acceptable agreement. In addition, it does not involve a decision by a mediator as they are not a judge, but rather a facilitator of dialogue. To contact Mediation, call 760-434-2868.
- 
- Is mediation legally binding?
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- No. Mediators are not judges; it is their role to work with both parties to help determine a long term solution. The decision/agreement created is one that both parties have devised together. The final, signed written agreement is for your use and cannot be used in court.
- 
- Are the mediations confidential?
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- 
- Yes. Mediation is governed by California Evidence Code sections 1115-1128, which provides that statements made during mediation are confidential and inadmissible against another party in any subsequent non-criminal proceeding. Further, the mediators do not report back to the courts on the content of the mediation, nor are they available to testify as to what was said during mediation.
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- Why is mediation a better route than going through prosecution?
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- Mediation is generally a good option when trying to resolve matters peacefully with a neighbor or other party. In most circumstances you are living next door to this person and this is one of the most amicable ways to resolve it. In addition, by using the mediation process, the issue can be resolved quickly, as opposed to a longer process through the court system.
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- Once a case is initiated with the program and the respondent is notified of the situation, do we need to go to formal mediation?
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- Not always. Many times the respondent is not aware that the situation exists and will make the necessary steps to address the problem on their own. We will give them a grace period to resolve the matter. We ask the initiator to follow up with us if it is not resolved. At that time, we will then touch base once again with the respondent and request formal mediation so that both parties can resolve the matter together.
- ✓ • What if the other party simply declines mediation? Then what?
- 
- 
- We will send a letter to the initiator, with a copy to the respondent, advising them the case is closed because the respondent chose not to participate.
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- What can I expect when I attend mediation?
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- When you arrive at the mediation location, which is noted on your confirmation email, you will be in a room with one or two mediators, the other party, and yourself. After introductions, the mediators will review the ground rules and explain the basics of the mediation process.
  - The mediators will begin by asking one of the parties to explain the situation from their side without interruption. Then, the other side will be given this same opportunity.
  - Through this process the mediators will work with both parties to hopefully find common ground. If it can be found, then the mediators will write up an agreement for both parties to sign.

Most importantly, know that virtually all mediations require some level of compromise on behalf of each party and that a cooperative nature on both sides is the cornerstone of success.

- If an agreement has been made, but not being adhered to, then what?

- When both parties design a written agreement, a timeframe for correction should be written into the agreement. If the timeframe has passed and the issue has not been resolved, then the parties may treat the issue the same as if an agreement had not been made during the actual mediation session.

- Can't you just tell my neighbor he/she is wrong and that they just need to do what we want?

- No. It is not the role of the mediator to place judgment on either party member. In mediation, the mediator is always a neutral party.

- Who can I bring with me to the mediation process?

- Because mediations are confidential, the integrity of the process is protected. It is preferred that only the initiator and the respondent participate in the mediation process. However, either party may bring one additional person who resides in their household, for a total of 2 per side, with them.

- Do I bring evidence to the mediation?

- Please keep in mind that this is not a court proceeding and is not set up for a hearing or for seeing evidence. It is meant for both sides to work together to find a solution to the established issue. However, you may bring items that can help to further explain the issue such as a call log, a picture, etc.

- How were the mediators trained?

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- The mediators were trained by National Conflict Resolution Center instructors. After attending a rigorous training, the volunteer mediators then shadowed other mediators during actual cases. Currently, these well-trained mediators usually co-mediate with two mediators working on a case together.

- Where do the mediations take place?

- ✓ • All mediations are scheduled at a City of Carlsbad facility near to your home. When both parties have agreed to the mediation, the location will be sent to them.

- How long do mediations take?

- We always ask the parties to schedule at least two hours but it depends on the complexity of the issue(s).

- Can I leave in the middle of the mediation if I want to?

- You are encouraged to stay throughout the mediation. If you leave early, the process will be voided. It will also be noted that you were the party that left the mediation.

- What do the mediation services cost?

- ✓ • This service is provided free of charge to all residents of Carlsbad.

- Who can request mediation?

- ✓ • Anyone can request mediation; however, you and the respondent must both be residents of Carlsbad.

**AGREEMENT FOR MEDIATOR TRAINING AND COORDINATION SERVICES  
(NATIONAL CONFLICT RESOLUTION CENTER)**

THIS AGREEMENT is made and entered into as of the 5<sup>th</sup> day of April, 2011, by and between the CITY OF CARLSBAD, a municipal corporation, ("City"), and NATIONAL CONFLICT RESOLUTION CENTER, a California Corporation, ("Contractor").

**RECITALS**

- A. City requires the professional services of a consultant and program coordinator that is experienced in program development, training and case coordination and evaluation for a mediation program to assist the citizens of Carlsbad in conflict-resolution and/or neighbor to neighbor disputes.
- B. Contractor has the necessary experience in providing professional services and advice related to training for mediators and program development and case coordination.
- C. Selection of Contractor is expected to achieve the desired results in an expedited fashion.
- D. Contractor has submitted a proposal to City and has affirmed its willingness and ability to perform such work.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, City and Contractor agree as follows:

**1. SCOPE OF WORK**

City retains Contractor to perform, and Contractor agrees to render, those services (the "Services") that are defined in attached Exhibit "A", which is incorporated by this reference in accordance with this Agreement's terms and conditions.

**2. STANDARD OF PERFORMANCE**

While performing the Services, Contractor will exercise the reasonable professional care and skill customarily exercised by reputable members of Contractor's profession practicing in the Metropolitan Southern California Area, and will use reasonable diligence and best judgment while exercising its professional skill and expertise.

**3. TERM**

The term of this Agreement will be effective for a period of one (1) year from the date first above written. The City Manager may amend the Agreement to extend it for two (2) additional one (1) year periods or parts thereof in an amount not to exceed twenty-five thousand dollars (\$25,000) per Agreement year. Extensions will be at the discretion of the City and based upon a satisfactory review of Contractor's performance, City needs, and appropriation of funds by the City Council. The parties will prepare a written amendment indicating the effective date and length of the extended Agreement.

**4. TIME IS OF THE ESSENCE**

Time is of the essence for each and every provision of this Agreement.

5. **COMPENSATION**

The total fee payable for the Services to be performed during the initial Agreement term will be twenty-five thousand dollars (\$25,000). No other compensation for the Services will be allowed except for items covered by subsequent amendments to this Agreement. The City reserves the right to withhold a ten percent (10%) retention until City has accepted the work and/or Services specified in Exhibit "A".

Incremental payments, if applicable, should be made as outlined in attached Exhibit "A".

6. **STATUS OF CONTRACTOR**

Contractor will perform the Services in Contractor's own way as an independent contractor and in pursuit of Contractor's independent calling, and not as an employee of City. Contractor will be under control of City only as to the result to be accomplished, but will consult with City as necessary. The persons used by Contractor to provide services under this Agreement will not be considered employees of City for any purposes.

The payment made to Contractor pursuant to the Agreement will be the full and complete compensation to which Contractor is entitled. City will not make any federal or state tax withholdings on behalf of Contractor or its agents, employees or subcontractors. City will not be required to pay any workers' compensation insurance or unemployment contributions on behalf of Contractor or its employees or subcontractors. Contractor agrees to indemnify City within thirty (30) days for any tax, retirement contribution, social security, overtime payment, unemployment payment or workers' compensation payment which City may be required to make on behalf of Contractor or any agent, employee, or subcontractor of Contractor for work done under this Agreement. At the City's election, City may deduct the indemnification amount from any balance owing to Contractor.

7. **SUBCONTRACTING**

Contractor will not subcontract any portion of the Services without prior written approval of City. If Contractor subcontracts any of the Services, Contractor will be fully responsible to City for the acts and omissions of Contractor's subcontractor and of the persons either directly or indirectly employed by the subcontractor, as Contractor is for the acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement will create any contractual relationship between any subcontractor of Contractor and City. Contractor will be responsible for payment of subcontractors. Contractor will bind every subcontractor and every subcontractor of a subcontractor by the terms of this Agreement applicable to Contractor's work unless specifically noted to the contrary in the subcontract and approved in writing by City.

8. **OTHER CONTRACTORS**

The City reserves the right to employ other Contractors in connection with the Services.

9. **INDEMNIFICATION**

Contractor agrees to indemnify and hold harmless the City and its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses including attorneys fees arising out of the performance of the work described herein caused by any negligence, recklessness, or willful misconduct of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

The parties expressly agree that any payment, attorney's fee, costs or expense City incurs or makes to or on behalf of an injured employee under the City's self-administered workers'

compensation is included as a loss, expense or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

**10. INSURANCE**

Contractor will obtain and maintain for the duration of the Agreement and any and all amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the services by Contractor or Contractor's agents, representatives, employees or subcontractors. The insurance will be obtained from an insurance carrier admitted and authorized to do business in the State of California. The insurance carrier is required to have a current Best's Key Rating of not less than "A-:VII". OR with a surplus line insurer on the State of California's List of Eligible Surplus Line Insurers (LESLI) with a rating in the latest Best's Key Rating Guide of at least "A:X".

**10.1 Coverages and Limits.**

Contractor will maintain the types of coverages and minimum limits indicated below, unless City Attorney or City Manager approves a lower amount. These minimum amounts of coverage will not constitute any limitations or cap on Contractor's indemnification obligations under this Agreement. City, its officers, agents and employees make no representation that the limits of the insurance specified to be carried by Contractor pursuant to this Agreement are adequate to protect Contractor. If Contractor believes that any required insurance coverage is inadequate, Contractor will obtain such additional insurance coverage, as Contractor deems adequate, at Contractor's sole expense.

**10.1.1 Commercial General Liability Insurance.** \$1,000,000 combined single-limit per occurrence for bodily injury, personal injury and property damage. If the submitted policies contain aggregate limits, general aggregate limits will apply separately to the work under this Agreement or the general aggregate will be twice the required per occurrence limit.

**10.1.2 Automobile Liability** (if the use of an automobile is involved for Contractor's work for City). \$1,000,000 combined single-limit per accident for bodily injury and property damage.

**10.1.3 Workers' Compensation and Employer's Liability.** Workers' Compensation limits as required by the California Labor Code. Workers' Compensation will not be required if Contractor has no employees and provides, to City's satisfaction, a declaration stating this.

**10.1.4 Professional Liability.** Errors and omissions liability appropriate to Contractor's profession with limits of not less than \$1,000,000 per claim. Coverage must be maintained for a period of five years following the date of completion of the work.

  
City's Initials

  
Contractor's Initials

If box is checked, Professional Liability Insurance requirement is waived.

**10.2. Additional Provisions.** Contractor will ensure that the policies of insurance required under this Agreement contain, or are endorsed to contain, the following provisions:

**10.2.1** The City will be named as an additional insured on General Liability.

**10.2.2** Contractor will obtain occurrence coverage, excluding Professional Liability, which will be written as claims-made coverage.

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**10.2.3** This insurance will be in force during the life of the Agreement and any extensions of it and will not be canceled without thirty (30) days prior written notice to City sent by certified mail pursuant to the Notice provisions of this Agreement.

**10.3** Providing Certificates of Insurance and Endorsements. Prior to City's execution of this Agreement, Contractor will furnish certificates of insurance and endorsements to City.

**10.4** Failure to Maintain Coverage. If Contractor fails to maintain any of these insurance coverages, then City will have the option to declare Contractor in breach, or may purchase replacement insurance or pay the premiums that are due on existing policies in order to maintain the required coverages. Contractor is responsible for any payments made by City to obtain or maintain insurance and City may collect these payments from Contractor or deduct the amount paid from any sums due Contractor under this Agreement.

**10.5** Submission of Insurance Policies. City reserves the right to require, at anytime, complete and certified copies of any or all required insurance policies and endorsements.

**11. BUSINESS LICENSE**

Contractor will obtain and maintain a City of Carlsbad Business License for the term of the Agreement, as may be amended from time-to-time.

**12. ACCOUNTING RECORDS**

Contractor will maintain complete and accurate records with respect to costs incurred under this Agreement. All records will be clearly identifiable. Contractor will allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of records and any other documents created pursuant to this Agreement. Contractor will allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

**13. OWNERSHIP OF DOCUMENTS**

All work product produced by Contractor or its agents, employees, and subcontractors pursuant to this Agreement is the property of City. In the event this Agreement is terminated, all work product produced by Contractor or its agents, employees and subcontractors pursuant to this Agreement will be delivered at once to City. Contractor will have the right to make one (1) copy of the work product for Contractor's records.

**14. COPYRIGHTS**

Contractor agrees that all copyrights that arise from the services will be vested in City and Contractor relinquishes all claims to the copyrights in favor of City.

**15. NOTICES**

The name of the persons who are authorized to give written notices or to receive written notice on behalf of City and on behalf of Contractor under this Agreement.

For City

Name Debbie Fountain  
Housing & Neighborhood  
Title Services Director

For Contractor

Name Steven Dinkin  
Title President

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Department Housing & Neighborhood Services Address 625 Broadway #1221  
City of Carlsbad San Diego, Ca. 92101  
Address 2965 Roosevelt St., Suite B Phone No. (619) 238-2400 X219  
Carlsbad, Ca. 92008  
Phone No. (760) 434-2815

Each party will notify the other immediately of any changes of address that would require any notice or delivery to be directed to another address.

**16. CONFLICT OF INTEREST**

Contractor shall file a Conflict of Interest Statement with the City Clerk in accordance with the requirements of the City of Carlsbad Conflict of Interest Code. The Contractor shall report investments or interests in all four categories.

**17. GENERAL COMPLIANCE WITH LAWS**

Contractor will keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Contractor, or in any way affect the performance of the Services by Contractor. Contractor will at all times observe and comply with these laws, ordinances, and regulations and will be responsible for the compliance of Contractor's services with all applicable laws, ordinances and regulations.

Contractor will be aware of the requirements of the Immigration Reform and Control Act of 1986 and will comply with those requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors and consultants that the services required by this Agreement.

**18. DISCRIMINATION AND HARASSMENT PROHIBITED**

Contractor will comply with all applicable local, state and federal laws and regulations prohibiting discrimination and harassment.

**19. DISPUTE RESOLUTION**

If a dispute should arise regarding the performance of the Services the following procedure will be used to resolve any questions of fact or interpretation not otherwise settled by agreement between the parties. Representatives of Contractor or City will reduce such questions, and their respective views, to writing. A copy of such documented dispute will be forwarded to both parties involved along with recommended methods of resolution, which would be of benefit to both parties. The representative receiving the letter will reply to the letter along with a recommended method of resolution within ten (10) business days. If the resolution thus obtained is unsatisfactory to the aggrieved party, a letter outlining the disputes will be forwarded to the City Manager. The City Manager will consider the facts and solutions recommended by each party and may then opt to direct a solution to the problem. In such cases, the action of the City Manager will be binding upon the parties involved, although nothing in this procedure will prohibit the parties from seeking remedies available to them at law.

**20. TERMINATION**

In the event of the Contractor's failure to prosecute, deliver, or perform the Services, City may terminate this Agreement for nonperformance by notifying Contractor by certified mail of the termination. If City decides to abandon or indefinitely postpone the work or services contemplated by this Agreement, City may terminate this Agreement upon written notice to Contractor. Upon notification of termination, Contractor has five (5) business days to deliver any documents owned by City and all work in progress to City address contained in this Agreement. City will make a determination of fact based upon the work product delivered to City and of the percentage of work that Contractor has performed which is usable and of worth to City in having the Agreement completed. Based upon that finding City will determine the final payment of the Agreement.

Either party upon tendering thirty (30) days written notice to the other party may terminate this Agreement. In this event and upon request of City, Contractor will assemble the work product and put it in order for proper filing and closing and deliver it to City. Contractor will be paid for work performed to the termination date; however, the total will not exceed the lump sum fee payable under this Agreement. City will make the final determination as to the portions of tasks completed and the compensation to be made.

**21. COVENANTS AGAINST CONTINGENT FEES**

Contractor warrants that Contractor has not employed or retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this Agreement, and that Contractor has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, City will have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of the fee, commission, percentage, brokerage fees, gift, or contingent fee.

**22. CLAIMS AND LAWSUITS**

By signing this Agreement, Contractor agrees that any Agreement claim submitted to City must be asserted as part of the Agreement process as set forth in this Agreement and not in anticipation of litigation or in conjunction with litigation. Contractor acknowledges that if a false claim is submitted to City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that California Government Code sections 12650 et seq., the False Claims Act applies to this Agreement and, provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of information. If City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorney's fees. Contractor acknowledges that the filing of a false claim may subject Contractor to an administrative debarment proceeding as the result of which Contractor may be prevented to act as a Contractor on any public work or improvement for a period of up to five (5) years. Contractor acknowledges debarment by another jurisdiction is grounds for City to terminate this Agreement.

**23. JURISDICTIONS AND VENUE**

Any action at law or in equity brought by either of the parties for the purpose of enforcing a right or rights provided for by this Agreement will be tried in a court of competent jurisdiction in the County of San Diego, State of California, and the parties waive all provisions of law providing for a change of venue in these proceedings to any other county.



**26. AUTHORITY**

The individuals executing this Agreement and the instruments referenced in it on behalf of Contractor each represent and warrant that they have the legal power, right and actual authority to bind Contractor to the terms and conditions of this Agreement.

CONTRACTOR

CITY OF CARLSBAD, a municipal corporation of the State of California

\*By: *SPD*  
(sign here)

STEVEN P. DINKIN / President  
(print name/title)

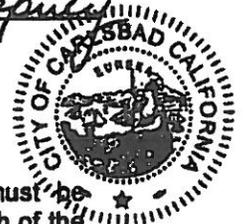
By: *D. Fountain*  
City Manager or Mayor or Director  
HNS

ATTEST:

\*\*By: *[Signature]*  
(sign here)

Indra Gardiner Bowers / Secretary  
(print name/title)

*Lorraine M. Wood*  
LORRAINE M. WOOD  
City Clerk



If required by City, proper notarial acknowledgment of execution by contractor must be attached. If a Corporation, Agreement must be signed by one corporate officer from each of the following two groups.

\*Group A.  
Chairman,  
President, or  
Vice-President

\*\*Group B.  
Secretary,  
Assistant Secretary,  
CFO or Assistant Treasurer

Otherwise, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

APPROVED AS TO FORM:

RONALD R. BALL, City Attorney

By: *[Signature]*  
Assistant City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

**CITY OF CARLSBAD MEDIATION PROGRAM**

**Year 1**

The program involves the following three components: (1) Program Development; (2) Training; and, (3) Case Coordination and Evaluation.

(1) Program Development: Define scope of services, types of cases, referral sources, set up policies and procedures.

Cost: \$1,000

(2) Training: Recruit, screen, train and mentor mediators. I suggest that we hold a two day Exchange Training for 24 individuals. From this group, NCRC will identify 7 individuals to move forward with the four day mediator training. NCRC will create a panel of 8 Carlsbad volunteer mediators and will mentor them to ensure quality control.

Cost: Two day Exchange Training: \$4,000

Four-day Mediation Training and mentoring: \$9,000 training + \$2,000 mentoring

(3) Case Coordination and Evaluation: Initial discussion with disputing parties, identify mediator, schedule mediation, maintain paperwork; collect demographic data, conduct 60 day follow-up evaluation.

Cost: \$750 per month.

Total Costs for 12 month program: \$25,000

**Years 2 and 3 (Option Years)**

The assumption in years 2 and 3 is that the City of Carlsbad will take over the management of the mediation program. NCRC will perform the following tasks:

1) Conduct two - two-day Exchange Trainings for individuals identified in the Carlsbad leadership program per year. The trainings will include up to 24 individuals per class.

Cost:  $(\$5,000 \times 2) = \$10,000$  per year

2) If the mediation program expands or significant numbers of mediators leave the program, there may be a need to train new mediators. NCRC will conduct a two-day Exchange training followed by a four-day mediation training. The mentoring would be handled by the City of Carlsbad case coordinator.

Cost: Two day Exchange Training = \$5,000

Four-day Mediation Training = \$11,000

3) Case Management

City Attorney Approved Version 2.18.11

If the City of Carlsbad ultimately decides that NCRC should manage the mediation program, NCRC would continue the activities carried out in Year 1.

Cost: \$2,083 per month

Cost Range:

Minimum cost: \$10,000 per year

Maximum cost: \$51,000 per year

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of San Diego

On March 14, 2011 before me, Trissan K. Maleskey, Notary Public  
(here insert name and title of the officer)

personally appeared Steven P. Dinkin

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

*[Signature]*  
Signature of Notary Public



## ADDITIONAL OPTIONAL INFORMATION

**DESCRIPTION OF THE ATTACHED DOCUMENT**  
Agreement for Mediator Training  
(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages 10 Document Date 3/14/11

(Additional information)

**CAPACITY CLAIMED BY THE SIGNER**

Individual(s) KJM

Corporate Officer  
President  
(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other \_\_\_\_\_

### INSTRUCTIONS FOR COMPLETING THIS FORM

*Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.*

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they- is /are ) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of San Diego

On March 21, 2011 before me, Trissan K. Maleskey, Notary Public  
(here insert name and title of the officer)

personally appeared Indra Gardiner Bowers

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

*[Signature]*  
Signature of Notary Public



## ADDITIONAL OPTIONAL INFORMATION

### INSTRUCTIONS FOR COMPLETING THIS FORM

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- Securely attach this document to the signed document

**DESCRIPTION OF THE ATTACHED DOCUMENT**

Agreement for Mediator Training  
(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages 10 Document Date 3/21/11

(Additional information)

**CAPACITY CLAIMED BY THE SIGNER**

Individual (s) Tom

Corporate Officer  
Secretary  
(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other \_\_\_\_\_