

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

HD229063

PURCHASING AUTHORITY NUMBER (If Applicable)

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

Department of Developmental Services

CONTRACTOR NAME

City of Costa Mesa

2. The term of this Agreement is:

START DATE

October 31, 2022 or whenever fully executed, whichever is later

THROUGH END DATE

October 30, 2025

3. The maximum amount of this Agreement is:

\$3,500,000.00

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibits	Title	Pages
Exhibit A	Scope of Work	4
Exhibit B	Budget Detail and Payment Provisions	2
Exhibit B Attachment 1	Gantt Chart	1
+ - Exhibit C *	Modified Terms and Conditions	3
+ - Exhibit D	Special Terms and Conditions	6
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Items shown with an asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

City of Costa Mesa

CONTRACTOR BUSINESS ADDRESS

77 Fair Drive

CITY

Costa Mesa

STATE

CA

ZIP

92626

PRINTED NAME OF PERSON SIGNING

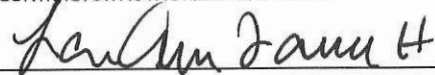
Lori Ann Farrell Harrison

TITLE

City Manager

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED



12/14/22

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

HD229063

PURCHASING AUTHORITY NUMBER (If Applicable)

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

Department of Developmental Services

CONTRACTING AGENCY ADDRESS

1215 O Street, MS 10-10

CITY

Sacramento

STATE

CA

ZIP

95814

PRINTED NAME OF PERSON SIGNING

~~XXXXXX~~ Cynthia Robinson

TITLE

Manager, Contracts and Procurement

CONTRACTING AGENCY AUTHORIZED SIGNATURE

Cynthia Robinson

DATE SIGNED

12/29/2022

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

Exempt from DGS approval by statute, SB188
Chapter 49(1) and Section 17 (d)(2) by reference of
W & I Code 4571

EXHIBIT A SCOPE OF WORK

In accordance with the provisions of Government Code section 14670.31, the Department of Developmental Services (hereinafter "Department") and the City of Costa Mesa (hereinafter "City") do agree as follows:

1. In June 2022, the State Legislature passed, and the Governor approved, Government Code section 14670.31, outlining the general terms under which the State of California, through the Department, will partner with the City to determine the future of the state-owned real property known as the Fairview Developmental Center, located in Costa Mesa, California (the "property"). Government Code section 14670.31 became effective on June 30, 2022, and sets forth the state's goals and requirements for the disposition of the property by the Department and a land use planning process to be conducted by the City for the future use of the property.
2. The Department will pay the City for costs associated with land use planning services and management of the land use planning process related to the property to determine the appropriate future land uses and development potential of the property. Eligible costs are specified in section A.4 of Exhibit B.
3. The planning services shall include completing an Environmental Impact Report, which may be at a project- or programmatic- level (EIR), completing a report on the economic feasibility of future development, and developing a Specific Plan and related documents to facilitate the disposition of the property, as contemplated by Government Code section 14670.31. The Specific Plan and related documents shall be consistent with Government Code section 65450, et seq., and the City General Plan, as may be amended. The final draft Specific Plan shall identify the allowable land uses for the property, including allowable locations, densities and/or intensities for development, the infrastructure necessary to support the buildout of the Specific Plan and Specific Plan implementation measures. The final draft Specific Plan may include design guidelines to clarify the desired form of development on the property. An EIR will analyze Plan buildout. The final draft Specific Plan may be accompanied by associated draft amendments to the City's General Plan and Zoning Code to ensure consistency among these regulatory documents. Subject to section 5 of this agreement, the land use planning process, final draft Specific Plan and related documents shall meet all provisions of Government Code section 14670.31 including, but not limited to:
 - A. Housing shall be a priority in the planning process;
 - B. Any housing that is determined to be appropriate for the property shall include affordable housing;
 - C. Any housing opportunities on the property shall give priority to projects that include deed restricted housing for individuals with developmental disabilities; and
 - D. Options shall be considered for the appropriate protection of any historic resources on the property.

**EXHIBIT A
SCOPE OF WORK**

4. The City shall provide land use planning services necessary for the development of a Specific Plan for the property as specified in Government Code section 14670.31 including , but not limited to, the following deliverables (collectively, the "Specific Plan project"):
 - A. Robust Community Engagement Strategy (and implementation thereof)
 - B. Comprehensive Conditions Report on the property and its setting
 - C. Economic Market Demand Report
 - D. Water Supply Assessment and coordination among Water Agencies
 - E. Project Conceptual Alternatives & a Preferred Plan Framework
 - F. Draft Specific Plan with Implementation Strategies
 - G. Public Draft Initial Study and Notice of Preparation, if required
 - H. Public Draft Environmental Impact Report
 - I. Draft Final Environmental Impact Report and Mitigation Monitoring and Reporting Program
 - J. Final Draft Specific Plan and Environmental Impact Report
 - K. Public hearings for EIR certification and Specific Plan adoption, including any General Plan and zoning amendments identified as necessary for consistency.
5. This agreement does not prescribe the contents of the specific plan and related planning documents, and does not constitute a commitment to any definite course of action beyond the land use planning process and services set forth in this agreement and in accordance with Government Code section 14670.31. The City will conduct the environmental review process to inform the contents of the specific plan and related planning documents, in compliance with the California Environmental Quality Act ("CEQA"), and will consider community input and the plan objectives identified in Government Code section 14670.31. This agreement shall not commit the City Council to a particular legislative act. The City retains full discretion as the planning agency and lead agency to (i) develop, revise, and determine the contents of the specific plan considering community input and the environmental review process; (ii) select and consider a reasonable range of alternatives in compliance with CEQA; (iii) consider the benefits of adopting a specific plan against any unavoidable significant environmental impacts, if any, prior to taking final action; and/or (iv) adopt an alternative or revised specific plan or determine not to proceed with adoption of a specific plan.
6. The Specific Plan and the associated EIR shall be developed, with any related General Plan Amendments and Zoning Amendments as necessary, in final form for consideration by the City Council, within three years of the City's acceptance of this agreement. Exhibit B-2 provides a schedule for Specific Plan completion including major deliverables. Modifications to the proposed schedule that may impact the final deadline must be approved by both Parties in writing. This agreement shall not commit the City Council to a particular legislative act.
7. The City shall provide the Department with quarterly reports as follows:
 - a. The City shall provide the Department with quarterly reports by the last day of each calendar quarter, starting with the end of quarter following the execution of this agreement and each quarter thereafter. Reports shall include the following:

**EXHIBIT A
SCOPE OF WORK**

- i. City's costs for land use planning services including copies of itemized consultant invoices received and paid during the previous quarter, receipts for other authorized expenses paid during the preceding quarter, and an accounting of all City staff time billed against the project.
 - ii. A progress report that compares the current status with the project schedule and includes a list of deliverables completed and the estimated dates for completion of the remaining deliverables.
 - b. Reports shall be submitted to:
 - i. Frances.Chacon@dds.ca.gov
8. The City shall submit information required by Government Code section 14670.31 and this agreement in a timely manner to include an accounting of the City's expenditures and progress toward a final specific plan among the disclosed information.
9. Preparation for or attendance by City staff or consultants at meetings outside of the scope of work identified for the preparation of the Specific Plan project and costs in excess of \$3.5 million shall be the responsibility of the City.
10. The Authorized Representatives during the term of this agreement will be:
- City of Costa Mesa Jennifer Le
Director of Economic and Development Services
City of Costa Mesa
77 Fair Drive, Costa Mesa, CA 92626
(714) 754-5617
jennifer.le@costamesaca.gov
- Department of Developmental Services
Carla Castañeda
1215 O St, 9th Floor
Sacramento, CA 95814
(916) 654-1897
Carla.castaneda@dds.ca.gov
11. The City will manage the land use planning process, and the Department of General Services (DGS) will carry out the disposition process in accordance with Government Code section 14670.31. To facilitate the expeditious land use planning and disposition process, it is expected that DGS will issue an RFP and solicit proposals to develop the property during the land use planning process, subject to consistency with any final, approved Specific Plan.
12. At the DGS's request, the City shall review and provide comment on the DGS's RFP to dispose of and/or develop the property at such time that the RFP is prepared and prior to its issuance. The City shall review the RFP to provide comments on its consistency with the land use planning process for the Specific Plan.

**EXHIBIT A
SCOPE OF WORK**

13. At DGS's request and in a manner prescribed by the Department, the City shall review any proposals submitted in response to the DGS's RFP to develop the property and provide comment on the potential inconsistencies with the final Specific Plan.
14. Under an at-cost agreement or other cost reimbursement mechanism between the selected developer(s) or buyer(s) and the City of Costa Mesa, the City shall promptly process all applications for project specific entitlements upon application by the selected buyer(s) or developer(s), to ensure the integration of the land use planning process with the disposition process for the property in accordance with Government Code section 14670.31. While the Department and the City recognize that complete processing of project-specific entitlements may not occur within the period of this agreement, both parties commit to using reasonable efforts to carry out the land use planning and disposition process in a cooperative manner and to the expeditious planning of future land uses for the property. The Department and the City contemplate that certain processing activity may occur concurrently with the Specific Plan process or thereafter, including for example the following:
 - a. A developer or buyer may submit entitlements concurrent with the Specific Plan process to reduce timeframe or phase entitlements with Master Plan/Preliminary Plan.
 - b. A developer or buyer may submit entitlement applications for subdivision and concurrent tentative maps/precise development plans or phase these.
15. The Department and the City each recognize that time is of the essence necessitating prompt review and processing of the items subject to this agreement.
16. In the event the City does not adopt a specific plan, the State of California reserves its right to pursue, through the Department, other disposition alternatives as permitted by law.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

BUDGET DETAIL PROVISIONS

A. Reporting

1. The City shall provide the Department with quarterly reports that include the City's costs for land use planning services, and including consultant costs, under this agreement and a progress report that compares the current status with the project schedule and includes a list of deliverables completed and the estimated dates for completion of the remaining deliverables. The cost report shall include copies of: 1) itemized consultant invoices received and paid during the previous quarter, 2) receipts for other authorized expenses paid during the previous quarter, and 3) an accounting of all City staff time billed against the project.
2. Quarterly reports will be submitted quarterly in arrears to:

Frances Chacon
Department of Developmental Services
1215 O St, 9th Floor
Sacramento, CA 95814

Gerald G. McLaughlin
Asset Management Branch
Department of General Services
State of California
707 3rd Street, 5th Floor
West Sacramento, CA 95605

3. The total amount paid by the Department under this agreement shall not exceed \$3.5 million. The Department will advance \$3.5 million to the City within 30 days of execution of this agreement to be credited to a dedicated trust account at the City. In the event the City's cost for land use planning services and consultant costs is less than \$3.5 million, or the agreement is canceled for any reason, or no reason at all, the City shall reimburse the Department any unspent funds.
4. Costs incurred by the City to carry out the land use planning activities provided in this agreement and in Government Code section 14670.31 for disposition of the property, may be paid for under this agreement, include but are not limited to:

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

- a. City staff and consultant costs specifically related to the development and possible approval of a Specific Plan, General Plan amendment, related draft ordinances, and rezone of Fairview Developmental Center. City costs include planning services, project management and oversight of staff and consultants, contract management, legal services, analyst services, clerical services, GIS mapping, as well as software, time, and materials prorated accordingly as needed to fulfill the scope of services for the Specific Plan and associated documents. Such costs may include those for: preparation of agendas, meeting notices, minutes; public notice, mailers, web postings, site signs; GIS services (maps); studies review; preparation and attendance at internal, stakeholder and community meetings; public affairs and communications; creating presentations; reviewing all Consultant-generated materials associated with the preparation of a draft Specific Plan, its associated EIR, and any draft General Plan or Zoning Amendments; preparation and review of quarterly reports and invoices; reviewing State Request for Proposal and developer proposal(s); reviewing Developer Agreements; and processing developer entitlements subject to reimbursement of developer's entitlement processing fees on an at-cost basis under a signed agreement or other cost reimbursement mechanism between the developer(s) and the City of Costa Mesa. The consultant costs include the Deliverables in Exhibit A; and
- b. Other reasonable and necessary costs determined by the Department to be incurred for the purpose of the City's preparation of a draft Specific Plan and its related management of the land use planning process for the property, including but not limited to costs associated with securing a consultant to support the City's preparation of a Specific Plan through a competitive Request for Proposals (RFP) and any preparatory work related to the RFP process in accordance with Government Code section 14670.31.

TASKS	2022	2023	2024	2025
FDC Agreement Executed	ON			
Project Initiation/City RFP		ON		
Community Engagement		ON		
Conditions/Economic Market Demand Report		ON		
Develop Plan Alternatives		ON		
Draft Specific Plan			ON	
NOP/Draft EIR/Water Supply Assessment			ON	
Public Review of Draft Specific Plan/Draft EIR			ON	
Final Specific Plan/EIR			ON	
Public Hearings			ON	
State Prepare RFP			ON	
State Release RFP and Solicit Proposals			ON	
State Evaluate Proposals and Select Developer			ON	
State Purchase and Sale Agreement			ON	
Escrow			ON	

EXHIBIT C
MODIFIED TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. Any portion of the advance payment to the City which is unspent at such time shall be returned to the State.
8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

**EXHIBIT C
MODIFIED TERMS AND CONDITIONS**

9. **NON-DISCRIMINATION CLAUSE:** During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

10. **CERTIFICATION CLAUSES:** The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.
11. **TIMELINESS:** Time is of the essence in this Agreement.
12. **COMPENSATION:** The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.
13. **GOVERNING LAW:** This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
14. **CHILD SUPPORT COMPLIANCE ACT:** For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:
- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

**EXHIBIT C
MODIFIED TERMS AND CONDITIONS**

- b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 15. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
- 16. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.
- 17. LOSS LEADER: If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

**EXHIBIT D
SPECIAL TERMS AND CONDITIONS**

1. Termination for Convenience

The State may terminate performance of work under this Agreement for any reason the State determines that such termination is in the best interests of the State. A written notice will be provided to Contractor at least thirty (30) days prior to the termination.

2. Contractor Overpayments

If it is determined that an overpayment has been made to the Contractor, the State will seek recovery immediately upon discovery of the overpayment by: (a) requesting in writing that Contractor refund the overpayment amount within thirty (30) days after receipt of notice; or (b) offsetting subsequent Contractor payments by the amount of the overpayment if Contractor repayment is not received within thirty (30) days from the date of notice.

3. Accounting Requirements

Contractor shall establish an accounting system using generally accepted accounting principles that will provide information for reports to the State and which will provide documentation for the fiscal activities of the organization related to this Agreement. The accounting system must include adequate cost accounting procedures that will provide accurate costing for contractual amendments, and for any other costs incurred which relate to payment claimed by Contractor.

4. Service Standards

Contractor agrees to comply with all state and federal laws and regulations which are applicable to the services to be provided under this Agreement. In the course of providing such services, Contractor agrees to treat all people with developmental disabilities in a manner that assures their safety, health, rights, dignity, and privacy as specified in, Welfare and Institutions Code, Section 4500; California Code of Regulations, Title 17, Subchapters 5 and 8 and Title 22, Code of Regulations, Sections 70707, 72527, and 76525.

5. Agreement Titles Statement

The clause headings appearing in this agreement have been inserted for the purpose of convenience and ready reference. They do not purport to and shall not be deemed to define, limit, or extend the scope of intent of the clauses to which they pertain.

6. Limitation of State Liability

The liability of the State under this Agreement shall not exceed the amount of funds appropriated for this Agreement by the California Legislature.

**EXHIBIT D
SPECIAL TERMS AND CONDITIONS**

7. Licenses

Contractor shall be responsible for obtaining and maintaining all applicable federal, state and local licenses, registrations, permits, and certifications during the entire term of this Agreement.

8. Additional Non-Discrimination Clause (Supplements Article 10, Exhibit C, General Terms and Conditions)

In accordance with and in addition to Article 10 of the Standard Terms and Conditions, Exhibit C, the Department requires all contractors to comply with DDS' policy on sexual harassment. This policy is attached. The contractor is responsible for reviewing it with all applicable employees and requiring their strict adherence to this policy.

9. Resolution of Agreement Disputes

- a. Should any question or conflict arise regarding the interpretation or performance of the Agreement, an attempt shall be made by the Contractor and the Project Representative, responsible for the Agreement, to discuss and resolve the matter.
- b. If resolution is not reached, the Contractor shall notify the Deputy Director of Administration (DDA) or the Administrative Services Director (ASD), whichever is appropriate, in writing of the dispute within fifteen (15) days of the discussion between the Contractor and the Project Representative.
- c. Any dispute concerning interpretation or performance of this Agreement shall be decided by the Officer who shall state the factual basis for his/her decision in writing and shall serve a copy of the decision on the Contractor. The DDA/ASD decision shall be rendered within thirty (30) days of receipt of a dispute submitted by the Contractor.
- d. In the event the State terminates this Agreement the State may procure, upon such terms and such manner as the Project Representative may deem appropriate, supplies or services similar to those terminated, the Contractor shall be liable to the State for any excess costs reasonably incurred for such supplies or services similar to those terminated. In the event of a termination for default, Contractor shall be paid at the rate specified in the Agreement for the period of satisfactory performance prior to the effective date of cessation of work as provided in the notice of termination.

10. Notice of Termination of Agreement

- a. If the State terminates this Agreement for any reason, it may fix a date for the cessation of Contractor's performance under the terms of this Agreement. The State shall notify Contractor in writing of its decision to terminate the Agreement. The termination notice shall contain the date upon which the Contractor shall cease performance under the terms of this Agreement. During the period between the Notice of Termination and the date fixed

**EXHIBIT D
SPECIAL TERMS AND CONDITIONS**

for cessation of performance, Contractor agrees to continue to satisfactorily perform all of the terms and provisions of this Agreement. In addition, Contractor agrees to cooperate with the State and any successor Contractor during this "transition" period.

- b. The State may extend the date specified in any notice of termination or any subsequent extension thereof to any date in the future and Contractor agrees to continue to satisfactorily perform the terms and conditions of this Agreement until the new date. Contractor shall be paid at the same rate provided in the Agreement for the extension period for all services which are satisfactorily performed.

11. Procedures for Termination of Agreement

Upon receipt of a notice of termination Contractor shall take such steps as are reasonably necessary to prepare to terminate its operations on the date specified in the notice of termination or any extension thereof.

12. Waiver of Breach

No waiver of any breach of this Agreement shall be held as a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative; that is, in addition to every other remedy provided therein or by law. The failure of the State to enforce at any time any of the provisions of this agreement or to require at any time performance by Contractor of any of the provisions thereof, shall in no way be construed to be a waiver of such provisions nor in any way affect the validity of this agreement or any part thereof or the right of the State to thereafter enforce each and every provision.

13. Cooperation with the State, Other Contractors

- a. Services provided under this contract shall be performed by Contractor in a manner that will not disrupt the operational needs of the State.
- b. Contractor shall cooperate and coordinate with the Department of Developmental Services and the developmental center administration in performing all work.
- c. Contractor shall cooperate with other state contractors who may be engaged in the same or related contracts. Contractor shall also cooperate with a successor Contractor.

14. Loss Liability

The State is not responsible for Contractor's losses on State property, or otherwise, caused by any reason.

**EXHIBIT D
SPECIAL TERMS AND CONDITIONS**

15. Protection of State Property

- a. All buildings, appurtenances, and furnishings shall be protected by Contractor from damage caused by work performed under this Agreement.
- b. Such damages to the foregoing, upon approval by the State, shall be repaired and/or replaced at Contractor's expense by State approved methods, so as to restore the damaged areas to their original condition.
- c. Contractor shall ensure that its employees will exercise all necessary caution to avoid any injury to persons or any damage to property.
- d. Contractor shall adhere to the Department's policies, i.e., policy on identification badges and policy regarding keys.

16. Contractor Responsibilities for Employees

- a. Except for approved subcontractors, all personnel shall be direct employees of Contractor. Contractor shall pay all salaries, taxes, and fringe benefits of its personnel, including, but not limited to, Workers' Compensation and Unemployment Insurance, as well as costs incurred for physical examinations and fingerprinting required by the terms of this Agreement. Contractor expressly agrees that it is responsible for the acts or omissions of its employees or their agents. Contractor, at its own expense, shall immediately upon notification by the State, remove any of its employees from providing any services under the terms of this Agreement and shall not return said employee to work until notified in writing by the State. Contractor shall assure that said employee is not physically present at this facility or any other facility covered by the terms of this Agreement until notified in writing by the State that said employee may return to work. The State shall not be the employer of any such personnel.
- b. Should the State or Contractor discover that any employee of Contractor does not meet the standards as set forth above, Contractor agrees at its own expense to immediately relieve the individual of further duties and involvement with the Agreement and assure that they are not physically present at any developmental center.
- c. Should any Contractor employee engage in any act detrimental to the Department's mission of providing care and protection to its residents, any act of injury or abuse to persons or property, or any act of theft or drug abuse, Contractor agrees that it shall be liable for the acts or omissions of its employees or their agents. Contractor agrees to immediately relieve the individual of further duties and involvement with the Agreement and assure that they are not physically present at any developmental center.

**EXHIBIT D
SPECIAL TERMS AND CONDITIONS**

17. Management Responsibilities

- a. During the course of this Agreement, the Department reserves the right to approve, in advance, in writing any changes to be made by Contractor as to the individuals identified as managers and supervisors. The Department's review and approval will be made by the Project Representative to ensure that individuals replacing key personnel shall have comparable technical knowledge, experience, and qualifications in scope, breadth, and depth to those originally accepted as part of Contractor's bid proposal.
- b. The review and approval will also be made to better ensure that individuals replacing staff in these key positions shall have the ability to develop cooperative and constructive working relationships with staff and clients in the performance of their duties. Departmental approval shall not be unreasonably withheld.
- c. Contractor shall make every effort to assure continuity of management staff.

18. Ownership of Products

Notwithstanding whether or not it may be the subject of a patent or a copyright and or whether or not it is tangible or intangible or intellectual, all products, deliverables, or any like items that are produced, created, developed, or the like, during the term of this Agreement shall immediately become the sole and complete property of the State upon their creation.

19. Weapons

Contractor expressly agrees that it will not permit any of its employees or subcontractors to carry any weapons onto state property. Contractor further expressly agrees that it will be solely responsible for any acts of its employees while on state property. Contractor also states that it has read Penal Code, Section 171b and understands that it prohibits the carrying of weapons on state property.

20. Software Certification

Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of Copyright laws.

**EXHIBIT D
SPECIAL TERMS AND CONDITIONS**

21. Confidentiality of Data

All financial, statistical, personal, technical, and other data and information relating to the State's operations, that is designated confidential by the State and made available to Contractor in order to carry out this contract, or which become available to Contractor in carrying out this contract, shall be protected by Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in Contractor's possession, is independently developed by Contractor outside the scope of this Agreement or is rightfully obtained from third parties.

22. Executive Order N-6-22 – Russia Sanctions

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The State shall provide Contractor advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.

23. Media Coordination

Contractor agrees they will not conduct any independent media outreach related to this contract and the work conducted under this contract without first coordinating with DDS' Office of Public Affairs for review and approval of any proposed print, broadcast, and/or social media content.

EXHIBIT E**I. SEXUAL HARASSMENT PREVENTION POLICY DIRECTIVE****Policy**

The Department of Developmental Services (DDS) is committed to providing a workplace in which all individuals are treated with respect and professionalism. Consistent with this commitment, it is the policy of DDS to provide a workplace that is free from all forms of discrimination and harassment, including sexual harassment for all employees and applicants. A DDS employee is defined to include volunteers, interns, and other DDS representatives. This Sexual Harassment Policy ("Policy") prohibits not only behavior that rises to the level of sexual harassment in violation of Title VII of the Civil Rights Act of 1964 and the Fair Employment and Housing Act, but also unprofessional and disrespectful behavior that, while not unlawful, may contribute to a hostile working environment.

Departmental Standard

To avoid unlawful sexual harassment from occurring, it is the expectation that all DDS employees comply with the above policy which prohibits sexual harassment in the workplace and is more inclusive than federal and state law. A DDS employee may violate this Policy by engaging in a single act of unprofessional or disrespectful sexual conduct, even if the conduct would not constitute sexual harassment under state or federal law. Because all forms of sexual harassment are unprofessional and disrespectful, and may damage an individual's career and well-being, DDS will strictly enforce this Policy. This Policy applies to all work-related conduct, and may include conduct that occurs off-duty, if such conduct negatively affects the working environment. This Policy also applies to conduct that occurs in any location that can reasonably be regarded as an extension of the workplace, such as any off-site social or business function, or any other non-DDS facility where DDS business is being conducted. This Policy is intended to apply to behavior by non-DDS employees, including, but not limited to, contractors, volunteers, interns, and other third parties.

Consequences of Violations

Any individual who violates this Policy, even if such conduct does not violate state or federal law, will be subject to appropriate corrective and/or disciplinary action, up to and including termination from state service, regardless of job level or classification. In addition, the possibility of civil liability exists.

Retaliation Prohibited

This Policy prohibits DDS employees from engaging in any act of retaliation or reprisal against individuals who claim a violation of this Policy, pursuing such a claim, or cooperating in any way in the investigation of such claims, regardless of the outcome of any investigation. Any individual who engages in acts of retaliation or reprisal in violation of this Policy will be subject to appropriate corrective and/or disciplinary action, up to and including termination from state service, regardless of job level or classification.

II. EXAMPLES OF CONDUCT THAT MAY VIOLATE THIS POLICY

Sexual harassment generally is defined under state and federal law as unsolicited and unwelcome sexual advances, requests for sexual favors, and other verbal, physical, or visual conduct of a sexual nature that interferes with work performance by creating an intimidating, hostile, or offensive working environment.

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Such conduct may constitute sexual harassment if:

- submission to the conduct or communication is made either explicitly or implicitly a term or condition of employment; or
- submission to or rejection of the conduct or communication is used as a basis for employment or service decisions affecting the individual; or
- the conduct or communication has the potential to affect an individual's work performance negatively and/or create an intimidating, hostile, or offensive work environment.

Examples of conduct that may constitute sexual harassment under the law, contribute to a hostile working environment, or violate this Policy include, but are not limited to:

- unwelcome sexual advances or sexual pressure;
- demands for sexual favors in exchange for employment benefits, whether express or implied;
- making or threatening reprisals after a negative response to sexual advances;
- verbal conduct such as derogatory or demeaning comments, slurs, sexually explicit jokes, comments about an individual's body or physical appearance, suggestive or obscene remarks, or practical jokes;
- physical conduct such as leering, sexual gestures, impeding or blocking movements, pinching, grabbing, patting, intentionally brushing up against another individual, rape, or assault;
- visual conduct such as displaying sexually-suggestive objects, cartoons, pictures, or posters; and/or,
- posting, sending, or downloading derogatory, demeaning, or sexually suggestive or explicit materials in any form via electronic mail or the internet.

Conduct in violation of this Policy may be directed against a particular individual or individuals of the opposite or same sex as the individual(s) engaging in the conduct.

III. RESPONSIBILITIES OF SUPERVISORS AND MANAGERS

Supervisors and managers are responsible for setting the tone to promote a working environment that is free from discrimination, harassment, retaliation, and unprofessional or disrespectful conduct. Managers and supervisors are expected to:

- adhere to and enforce this Policy;
- communicate this Policy to the employees under their supervision and management;
- refrain from engaging in, condoning, tolerating, or leaving uncorrected conduct that violates this Policy;
- take pro-active steps to prevent unprofessional or disrespectful conduct, including, but not limited to, review and discuss this Policy with staff on a regular basis and maintaining appropriate documentation of such discussions;
- attend required training on this Policy and ensure employees under their supervision and management attend required training and sign and date a training copy of this Policy after each training session; and,
- take immediate and appropriate corrective action to stop conduct that violates this Policy and document measures taken.

When a supervisor or manager becomes aware of conduct that may violate this Policy, the supervisor or manager is required to notify his/her immediate supervisor and the worksite EEO Coordinator.

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The failure by a supervisor or manager to take immediate and appropriate action to correct violations of this Policy will result in appropriate corrective and/or disciplinary action, up to and including termination from state service, regardless of job level or classification.

Management Inquiries

The Director, Deputy Directors, and Executive Directors at the developmental centers (DC) and community facilities (CF) or their designees may initiate an investigation if they are made aware of behavior which appears to be discriminatory in nature, even though a complaint has to been filed. This does not preclude an employee from filing a formal complaint while an inquiry is being conducted. If the employee is not satisfied with the outcome of the management inquiry, he or she may file a formal complaint as described below in section V.

IV. RESPONSIBILITIES OF EMPLOYEES

All DDS employees are expected to behave in a respectful and professional manner, adhere to this Policy, and attend required training on this Policy.

Employees are strongly encouraged to report any alleged violations of this Policy so DDS may take appropriate corrective action to remedy the situation. Employees who believe they have witnessed or been the victim of conduct that violates this Policy should report the incident immediately, pursuant to the complaint process described below. All applicants/employees involved in the investigation of a complaint are expected to cooperate fully with the DDS's efforts to resolve the complaint.

V. THE COMPLAINT PROCESS

DDS strongly encourages individuals to report alleged violations of this Policy as soon as possible after an alleged incident(s) occurs. Any delays in reporting alleged violations may make the complaint more difficult to investigate, potentially adversely affecting the outcome of the investigation. Delays in reporting violations also may have negative consequences with respect to filing a complaint, and/or an appeal, with the State Personnel Board (SPB), the State Department of Fair Employment and Housing (DFEH), or the U.S. Equal Employment Opportunity Commission (EEOC). Failure to utilize the DDS's internal procedures to report violations of this Policy may negatively impact subsequent claims. Any DDS employee or applicant for employment who believes this Policy has been violated is encouraged to report any such alleged violations to any of the following:

- the employee's immediate supervisor;
- any DDS supervisor or manager;
- one of the designated EEO Counselors; and/or,
- the worksite EEO/Human Rights Office.

No individual is required to contact his/her immediate supervisor first to report conduct believed to be in violation of this Policy. Any of the above listed options may be utilized by an individual seeking to report a violation of this Policy. In an effort to resolve the workplace issue(s) without filing a formal complaint, an individual may, but is not required to, inform the person engaged in the conduct believed to be in violation of this Policy that their conduct is unwelcome. Often individuals are unaware that their conduct is offensive and may be receptive to this approach and stop the offensive conduct.

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While discretion is used in addressing complaints, complete confidentiality cannot be guaranteed due to the need to take immediate and appropriate action when allegations of discrimination are brought to management's attention, whether or not a formal complaint is filed.

Informal Complaint Process

All DDS employees/applicants for employment may file an informal (verbal) complaint of discrimination with any of the above-designated individuals. Employees/applicants may discuss the matter (although not required) with a trained EEO Counselor. The Counselor will attempt to seek resolution of the matter on an informal basis. All alleged violations of this Policy will be assessed, and appropriate action taken whether or not the complainant wishes to pursue the complaint. Upon completion of the counselor's efforts to resolve the informal complaint, the counselor will document his or her efforts in a written Report of Inquiry which includes the results of the inquiry and attempts to resolve the matter. The completed report is provided to the EEO Office which will work with management to assure appropriate follow-up action is taken. Employees/applicants may bypass the informal process and file a formal written complaint.

Mediation Program

In addition to working with an EEO Counselor, employees/applicants may consider using the State Personnel Board (SPB) State Employee Mediation Program, which is a voluntary program designed to facilitate resolution of workplace disputes using trained mediators outside DDS. For information regarding this program, you may contact the DDS Office of Human Rights and Advocacy Services (OHRAS) at (916) 654-1888.

Formal Complaint Process

Employees/applicants may file a formal complaint within 365 days of the alleged discriminatory event. The DDS Formal Complaint of Discrimination

(DS 312) form should be used to document complaints. The DS 312 is available on DDS's intranet OASIS homepage or can be obtained by contacting the worksite EEO/Human Rights Office or OHRAS.

If an individual files a Formal Complaint of Discrimination with his/her immediate supervisor, any DDS supervisor or manager, the worksite EEO Coordinator or Counselor, or DDS's Equal Employment Opportunity Office, the following process will be followed:

- The local worksite EEO Office will review the complaint and determine whether a formal investigation is warranted.
- If the EEO Office determines an investigation should be conducted, a trained investigator will be assigned to complete a thorough and complete investigation. A Report of Findings will be prepared.
- The Chief Deputy Director/Executive Director or their designee will review the Report of Findings and determine whether a violation of this Policy has occurred and make recommendations as to appropriate corrective and/or disciplinary action that should be taken, if any, based on the findings. Both parties will be provided with a Letter of Determination upon completion of the investigation.

EXHIBIT E**Appeal Process**

If the individual who filed the complaint is not satisfied with DDS's decision, the individual may file an appeal directly with the SPB Appeals Division within 30 days after receipt of the Executive Director/Chief Deputy Director letter of determination.

Developmental Center/Community Facility (DC/CF) employees/applicants may also choose to appeal the Executive Director's (or designee's) determination to the Director of DDS within 30 days of receipt of the letter of determination. DC/CF appeals to the Director will be assigned to the OHRAS for review. The Director (or designee) will notify the complainant of the final DDS decision and appeal rights. If dissatisfied, the DC/CF employee/applicant may then appeal the Director's decision to SPB Appeals Division within 30 days of receipt of the final DDS decision from the Director.

Other Avenues for Complaints

DDS employees and applicants for employment may also file a complaint with the following entities:

Department of Fair Employment and Housing (DFEH)

<http://www.dfeh.ca.gov/>

2014 T Street, Suite 210

Sacramento, CA 95814

1-800-884-1684

916-227-0551

U.S. Equal Employment Opportunity Commission (EEOC)

<http://www.eeoc.gov/>

901 Market Street, Suite 500

San Francisco, CA 94103

415-744-6500

Some employees have provisions in their respective collective bargaining unit contracts for filing discrimination complaints within the grievance process. Individuals represented by an employee union may wish to review their contract to see if this option is available.

VI. RIGHT OF ACCESS TO PERSONAL INFORMATION

Investigations of complaints alleging a violation of this policy are protected from disclosure for the duration of the investigation, or any other related investigation. Once the investigation is completed, all individuals identified in the record have the right of access to any information which pertains to them, whether they are the complainant, the respondent, or a witness.

Requests for personal information contained in investigative files should be made on form DS 43 (Request to Inspect Public Records). At Headquarters, requests should be submitted to OHRAS; at the DCs and CFs, requests should be submitted to the EEO Coordinators.

A fee of \$.10 per page may be charged for copying personal information contained in investigative files.

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Access to requested information from investigative files will be provided as soon as possible; however, it may take up to 30 days to allow sufficient time to delete personal information about others. Access to investigative files which are stored at another location may require up to 60 days.

Responses to requests for personal information from investigative files may be made by providing a copy of the text of the material with such deletions as are necessary to protect the identity of the source or consist of a comprehensive summary of the substance of the material. The type of response is at the discretion of the Department.

Questions regarding this Policy should be directed to:

OFFICE OF HUMAN RIGHTS AND ADVOCACY SERVICES
1600 NINTH STREET, ROOM 240, MS 2-15
SACRAMENTO, CALIFORNIA 95814
(916) 654-1888