

**PROGRAM FUNDING AGREEMENT
CALIFORNIA DEPARTMENT OF STATE HOSPITALS
INCOMPETENT TO STAND TRIAL DIVERSION AND COMMUNITY-BASED
RESTORATION INFRASTRUCTURE PROJECTS**

SUMMARY COVER SHEET

Program Funding
Agreement ID

Program Agreement
Effective Date:

Program Funding Agreement Manager: **ADVOCATES FOR HUMAN POTENTIAL, INC.**, a Massachusetts corporation (“AHP”)
490-B Boston Post Road, Sudbury, MA 01776-3365
Tel: (978) 443-0055 ♦ Fax: (978) 261-1467
AHP Contracting Officer: Charles Galland, General Counsel
Tel: 978-261-1425 (o) | cgalland@ahpnet.com
AHP Designated Representative: Steve Thronson, Program Director
Tel: 760-333-6337 (c) | sthronson@ahpnet.com

County: **xxx (“XXX”)**
Contracting Officer:
Address
Tel: () - (o) | Email address
Designated Representative:
Address
Tel: () - (o) | Email address

Prime Contract Identification: **California Department of State Hospitals**
Agreement No.: 21-79017-00
Contract Title: *Incompetent to Stand Trial, Diversion and Community-Based Restoration Infrastructure*

Contract Type: Deliverable Based Type Contract

Period of Performance: Effective Date through June 30, 2028

Consideration/Budget: Infrastructure Acquisition, Down Payment, Rehabilitation, New Ground-up Construction, and/or furniture, fixtures, and equipment **Not to Exceed \$XXXX**

Program Funding Agreement Cover Sheet

(This Page is not part of the Program Funding Agreement and is for Summary/Reference Purposes Only)

This Program Funding Agreement (the “**Agreement**”) is entered into [REDACTED], 2023 (the “**Effective Date**”), by and between **ADVOCATES FOR HUMAN POTENTIAL, INC.**, a Massachusetts corporation, with offices located at **490-B Boston Post Road, Sudbury, MA 01776** (“**AHP**”), and **XXX (“X”)**, a political subdivision of the State of California acting through its **Department of [REDACTED] (Designated Department for Administration of Program)** with offices at **ADDRESS (“XXX” or “County”)**. AHP and the County may be referred to separately as a “**Party**” or collectively as “**Parties.**”

RECITALS

A. AHP entered into an agreement with the State of California (the “**State**”) through the California Department State Hospitals (“**DSH**”) to facilitate project funding awards and provide services to DSH as the third-party administrator of the DSH Incompetent to Stand Trial (“**IST**”) Diversion and Community-Based Restoration Infrastructure Program (“**Program**”). The agreement between DSH and AHP shall hereinafter be referred to as the “**Prime Contract**” or “**DSH Contract**”;

B. The purpose of the Program is to expand the State’s access to residential housing infrastructure for individuals found in judicial proceeding to be incompetent to stand trial and eligible for participation in a DSH-funded diversion or community-based restoration program;

C. Subject to the requirements of the Program, DSH guidelines, and this Agreement, counties may use their allocation of program funds for acquisition, or down payment for acquisition, construction or renovation of real property, furnishings, and minor equipment to address the increasing number of patient referrals to DSH;

D. On or about [REDACTED], 2023, DSH issued that certain Request for Proposals (the “**RFP**”), attached to this Agreement and incorporated herein by this reference as **Attachment A**. In response to the RFP, the County submitted that certain proposal to provide [REDACTED] beds for IST individuals (“**County Proposal**”), attached to this Agreement and incorporated herein by this reference as **Attachment B**;

E. The County and AHP, each, desire the County to submit to AHP for approval by AHP and DSH, the County’s Project Application (defined in Section 3.3.1). Each project to be described in the Project Application is referred to herein as the “**Infrastructure Project**”;

F. DSH issued to the County that certain letter dated _____, (“**Award Letter**”), attached to this Agreement and incorporated herein by this reference as **Attachment C**, approving the County Proposal and awarding to the County program funds for the County Proposal in an amount not to exceed _____ (\$ _____ .00) (“**Program Funds**”); and

G. This Agreement sets forth the terms and conditions of AHP’s administration and management of the Program Funds and the County’s duties and obligations related to its receipt of Program Funds. Capitalized terms not defined herein shall have the meanings ascribed thereto in the California Welfare and Institutions Code section 4361.6.

NOW, THEREFORE, based upon the foregoing, and in consideration of the mutual covenants and agreements herein set forth, the Parties agree as follows:

ARTICLE 1.
AUTHORITY

Welfare and Institutions Code section 4361.6, provides the statutory basis for the Program and California Senate Bill 154 (Chapter 43, Statutes of 2022), the Budget Act of 2022, provides the funding for the Program. AHP provides technical assistance, general training, and support to counties on administration, disbursement and monitoring of the Program Funds, and administration and fund management to DSH. This Agreement is entered under the authority of and in furtherance of the Program and is the result of the County Proposal.

This Agreement is governed by the following (collectively, the “**Program Requirements**”), and each of the following, as amended and in effect from time to time, is hereby incorporated by this reference as if set forth herein in full:

- 1.1 California Welfare and Institutions Code section 4361.6;
- 1.2 The RFP;
- 1.3 Guidance issued by DSH regarding the Program;
- 1.4 The Award Letter; and
- 1.5 All other applicable law, including, but not limited to, California Labor Code statutes applicable to public works projects.

The County is solely responsible and liable for the County and the County’s subcontractors’ performance and compliance with this Agreement, the above-referenced Program Requirements, and all other local, state, and federal laws applicable to the Infrastructure Project.

ARTICLE 2.
TERM

2.1 This Agreement shall commence on the Effective Date and shall expire automatically on June 30, 2028 (the “**Expiration Date**”); (the period from the Effective Date through the Expiration Date shall be referred to herein as the “**Term**”), unless earlier terminated by AHP or DSH or assigned to DSH pursuant to Section 2.3 below.

2.2 Upon the expiration of the Term, there shall be no extension or renewal of the Term of this Agreement, unless the Parties and DSH otherwise agree in writing.

2.3 In the event that the Term of this Agreement is not extended, renewed, or terminated early, and either Party hereto shall have a material obligation to the other Party by the terms of this Agreement, which shall not be satisfied on or before the Expiration Date, all of AHP’s rights and obligations under this Agreement shall be assigned automatically to DSH, effective June 29, 2028, at

11:59 p.m. Each of the Parties hereto acknowledges and agrees that upon the occurrence of an assignment pursuant to this Section 2.3, such an assignment shall be effective without any further action by either Party hereto, or DSH, and from and after the date of such an assignment: (i) DSH shall be a Party to this Agreement and shall have all rights and obligations of AHP hereunder, and (ii) AHP shall cease to be a Party to this Agreement and shall be released from its obligations hereunder. Upon the occurrence of such assignment, the Term of this Agreement shall be extended automatically for a period of one (1) year and shall expire without any further action by either the County or DSH, unless the County and DSH otherwise agree in writing.

2.4 In the event that the Prime Contract expires, is terminated or amended in a manner removing AHP from responsibility as a Party to this Agreement, and either Party hereto shall have a remaining obligation to the other Party by the terms of this Agreement, which shall not be satisfied on or before the Expiration Date, all of AHP's right and obligations under this Agreement shall be assigned automatically to DSH effective upon the date of the expiration, termination or amendment.

2.5 Notwithstanding the foregoing or anything to the contrary contained herein, AHP and/or DSH shall have the termination rights as set forth in Article 7, and Article 8, of this Agreement.

ARTICLE 3. **PROGRAM FUNDS AND DISBURSEMENT**

3.1 **Purpose.** The County has been approved to receive Program Funds not to exceed the amount set forth in this Agreement to be used solely for the purposes set forth in this Agreement.

3.2 **No Other Purposes.** The County shall be responsible for administering and disbursing the Program Funds for purposes that are consistent with the Program Requirements. Program Funds, or any portion thereof, shall be disbursed to the County only upon satisfaction of the requirements of this section.

3.3 **Conditions of Disbursement.** No portion of the Program Funds shall be disbursed to the County for the costs of the Infrastructure Project until the County submits to AHP, and AHP and DSH, each, approve the documents described below, and any additional supporting information, as may be requested by AHP or DSH:

3.3.1 a complete project application packet ("**Project Application**") for each Infrastructure Project, with all supporting documents appended thereto, in the form attached to this Agreement and incorporated herein by this reference as **Attachment D**;

3.3.2 a complete disbursement request ("**Disbursement Request**") for the portion of Program Funds required to complete each Infrastructure Project, not to exceed Ninety Three Thousand Seven Hundred Fifty and 00/100 Dollars (\$93,750.00) per bed, in the form attached to this Agreement and incorporated herein by this reference as **Attachment E**;

- 3.3.3 any additional documentation requested by AHP or DSH, reasonably related to the Infrastructure Project;
- 3.3.4 the portion of the Program Funds approved for disbursement to the County in response to its Disbursement Request shall be disbursed by AHP to the County within thirty (30) days of AHP's receipt of written notice from DSH of its approval of the County's (i) Project Application and (ii) Disbursement Request, provided that the County has otherwise satisfied the requirements of this Article 3, and is not in default under the terms of this Agreement; and
- 3.3.5 in the event that the County elects to engage a third-party contractor or community-based organization to administer all or a portion of its Infrastructure Project, the County shall satisfy all of the requirements described in this Section 3.3, and submit with its Project Application, a complete compliance certification ("**Compliance Certification No. 1**"), in the form attached to this Agreement and incorporated herein by this reference as **Attachment F**, together with, a fully executed and binding Memorandum of Agreement, by and between the County and such third-party contractor or community-based organization, in a form and substance acceptable to AHP, in its sole discretion, as an attachment to a complete Compliance Certification No. 1, evidencing the third-party contractor's or community-based organization's obligations to meet the Program Requirements and the requirements of this Agreement.

ARTICLE 4.
ELIGIBLE EXPENDITURES

4.1 Eligible Uses of Program Funds. The County shall be responsible for ensuring that the Program Funds are used for eligible purposes consistent with the Program Requirements and this Agreement. The Program Funds shall be used solely for the following:

- 4.1.1 Acquisition, or down payment for acquisition of real property,
- 4.1.2 construction costs, including construction of a new facility, or modification, expansion, or to retrofit an existing facility. or
- 4.1.3 one-time purchases of patient and staff furnishings and minor equipment.

ARTICLE 5.
PROGRAM IMPLEMENTATION REQUIREMENTS

5.1 The County is responsible for the administration, disbursement, and monitoring of the Program Funds in accordance with the terms of this Agreement and the Program Requirements.

- 5.1.1 Monitoring. The County is responsible for monitoring use of the Program Funds to ensure that the Program Funds are only used for eligible uses in a manner consistent with the Program Guidelines. The County procedures must include a corrective action plan for assessing the risk of activities, projects, and for monitoring the Infrastructure Project to ensure that Program Requirements are met.
- 5.1.2 Compliance with all Codes. The Infrastructure Project must be in compliance with all local, county, state and federal laws and requirements. Residential units must meet all building codes and adhere to building standards as outlined in California Code of Regulations, Title 24, Part 2.5.
- 5.1.3 Infrastructure Project Specifications. All residences funded with any Program Funds must provide bedrooms for no more than two (2) residents per bedroom, bathroom facilities, shared living space and access to outdoor spaces.
- 5.1.4 Accessibility and Nondiscrimination. The Infrastructure Project funded must be in compliance with the accessibility requirements set forth in California Building Code Chapters 11A and 11B and the Americans with Disabilities Act, Title II. In addition, the Infrastructure Project must adhere to either the Uniform Federal Accessibility Standards (UFAS), 24 CFR Part8, or the U.S. Department of Housing and Urban Development's modified version of the 2010 ADA Standards for Accessible Design (Alternative 2010 ADA), HUD-2014-0042-0001, 79 FR 29671 (5/27/14). Accessible units shall, to the extent feasible and subject to reasonable health and safety requirements, be distributed throughout the Infrastructure Project.
- 5.1.5 Prevailing Wages. Any construction work that is funded with any Program Funds is subject to state prevailing wage law, including California Labor Code section 1720 *et seq.* The County is responsible for ensuring that all subcontractors comply with prevailing wage law as well as any other applicable federal or state labor requirements.
- 5.1.6 Relocation. The County is responsible for ensuring that applicable relocation laws, including Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. section 4601 *et seq.*), the California Relocation Assistance Law (California Government Code section 7260 *et seq.*) and their implementing regulations (“**Relocation Laws**”) are complied with, if any Program Funds will be used for the

Infrastructure Project that will result in the displacement, as that term is defined in the Relocation Laws, of any persons, businesses, or farm operations. Pursuant to the Relocation Laws and guidance provided by DSH, the County is responsible for ensuring that (i) a relocation plan is prepared and approved by the County prior to proceeding with any phase of an Infrastructure Project or other activity that will result in the displacement of persons, businesses, or farm operations; and (ii) the County provides any required notices and relocation benefits.

5.2 Deed Restriction or Regulatory Agreement. The County is required to enter into a declaration of restrictions with DSH restricting use of the Infrastructure Project funded with any Program Funds to serve DSH-identified populations to be recorded on the real property upon which each Infrastructure Project is located that restricts the use of the Infrastructure Project for a term of thirty (30) years for new construction, and twenty (20) years for rehabilitation, of the Infrastructure Project. The deed restriction must be recorded on the title to the real property in the official records of the county upon which the Infrastructure Project is located before any Program Funds for the Infrastructure Project are disbursed. Notwithstanding the foregoing, in the event that the County is acquiring real property upon which the Infrastructure Project is to be constructed or operated, the deed restriction shall be recorded on the title to the real property in the official records of the county upon which the Infrastructure Project is located at the close of escrow. If the Infrastructure Project is leased, in which event the lease must be for a minimum term of thirty (30) years for new construction, and twenty (20) years for rehabilitation, of the Infrastructure Project, the deed restriction must be signed by both the lessee and the owner of the fee interest in the real property and recorded against both the fee interest in the real property and the leasehold interest. Notwithstanding the foregoing, in the event that DSH terminates the declaration of restrictions prior to the expiration of the term of such declaration of restrictions, DSH shall record a termination and release of the declaration of restrictions in the official records of the county where the Infrastructure Project is located.

ARTICLE 6. **PROJECT OVERSIGHT AND REPORTING**

6.1 The County shall provide monthly and quarterly progress reports in connection with the Infrastructure Project, in a form and substance approved by AHP, in its sole discretion, including (i) a reconciliation showing all expenditures made with any Program Funds for each Infrastructure Project, (ii) any documentation or evidence requested by AHP to support such expenditures, (iii) completion of Infrastructure Project milestones, (iv) any substantial changes to the Infrastructure Project and (v) any other information reasonably related to the Infrastructure Project. In addition, the County shall be required to satisfy State financial and administrative reporting requirements and submit data through an online database.

6.2 Upon completion of the Infrastructure Project, the County shall provide periodic reports to DSH to monitor compliance with the terms of this Agreement, the Program Requirements, and to perform Infrastructure Project evaluations. Any information requested by DSH shall be submitted electronically in a format provided by DSH.

6.3 The County shall assign the necessary staff to monitor the use of the Program Funds, ensure adherence to the Program Requirements, and monitor ongoing compliance with Program Requirements for the duration of any deed restriction required by this Agreement or the Term of this Agreement, whichever is longer, or as may be required by the County.

6.4 The County shall comply with any reporting and record retention requirements in the Program Requirements or this Agreement.

6.5 Any Program Funds that have not been disbursed to the County by the expiration of the Period of Performance set forth in the Summary Cover Sheet shall no longer be available to the County for disbursement for the Infrastructure Project. Any Programs Funds that have been disbursed to the County but remain unexpended by the expiration of the Period of Performance shall be returned to DSH, with accrued interest at the Local Agency Investment Fund (“LAIF”) rate in effect on the date such funds were disbursed to the County, within thirty (30) calendar days after the expiration of the Period of Performance in accordance with directions provided by DSH. The enabling legislation for the LAIF is California Government Code section 16429.1 *et seq.* The County shall not be entitled to disbursement of any Program Funds after expiration of the Period of Performance and any such undisbursed funds shall be retained by DSH.

ARTICLE 7. **DEFAULT AND REMEDIES**

7.1 Event of Default. Any of the following, after notice to the County by AHP or DSH, provided in accordance with the notice requirements of this Agreement, and expiration of any applicable cure period, shall constitute an event of default (“Event of Default”) under this Agreement:

- 7.1.1 The County’s failure to timely satisfy each or any of the conditions set forth in this Agreement, or the Approval Letter.
- 7.1.2 The County’s violation of any of the Program Requirements.
- 7.1.3 AHP’s or DSH’s determination of the following:
 - 7.1.3.1 The County has concealed any material fact from AHP or DSH related to the County; or
 - 7.1.3.2 Any material fact or representation made or furnished to AHP or DSH by the County in connection with this Agreement shall have been untrue or misleading at the time that such fact or representation was made known to AHP, or subsequently becomes untrue or misleading;
 - 7.1.3.3 Any Certification provided by the County is determined to be untrue or misleading; or

7.1.3.4 Any objectives or requirements of the Program cannot be met in accordance with this Agreement or within applicable timeframes, as memorialized by this Agreement.

7.2 Right to Cure. If the breach, violation, or default pursuant to Section 7.1 is not cured to AHP's and DSH's satisfaction, as determined by AHP and DSH, each in their sole and absolute discretion, within thirty (30) days of notice to the County, provided in accordance with the notice requirements of this Agreement, then AHP, with DSH approval, may declare an Event of Default under this Agreement.

7.2.1 Notwithstanding the foregoing, the County may request additional time to cure any default from AHP. AHP may, but shall not be required to, grant any such request, subject to DSH approval, such approval shall not be unreasonably withheld, conditioned, or delayed. DSH's approval of the County's request for additional time to cure shall be subject to the County's continuing and diligent efforts to cure, and any additional cure period provided to the County shall be reasonable, as determined by DSH, in DSH's sole discretion. AHP, shall provide notice to the County of approval or denial of the County's request for additional time to cure any default. In no event shall any extension of the cure period exceed thirty (30) days.

7.3 AHP/DSH Remedies. Upon the occurrence of an Event of Default, AHP (on DSH's behalf) or the State (represented by DSH in this Agreement) may take any and all actions or remedies that are available under this Agreement, at law, or in equity, including, but not limited to, the following:

- 7.3.1 temporarily withhold disbursement of any Program Funds pending correction of the breach, violation, or default;
- 7.3.2 disallow use of any Program Funds for all or part of the costs resulting from the breach, violation, or default;
- 7.3.3 wholly or partly suspend or terminate this Agreement and the County's award of the Program Funds, or disbursements of any portion thereof (any such suspension or termination of this Agreement or the County's award of the Program Funds shall be effective upon the County's receipt of AHP or DSH notice of termination or suspension);
- 7.3.4 withhold or deny further disbursements of Program Funds or awards to the County;
- 7.3.5 require the County to return all or part of any Program Funds disbursed to the County, including any interest;
- 7.3.6 specific performance;
- 7.3.7 injunctive relief; and

7.3.8 any and all remedies allowed by law or equity.

ARTICLE 8. **TERMINATION**

8.1 AHP and/or DSH shall have the right, each in its sole discretion and without prejudice to any other rights and remedies it may have under applicable law, to terminate this Agreement immediately upon notice of such termination to the County, if (i) an Event of Default occurs; (ii) three (3) violations, breaches or defaults by the County of the terms and conditions of this Agreement (whether the same or different) occur within any twelve-month period, regardless of whether any or all such violations, breaches or defaults are timely corrected; (iii) the County files a petition in bankruptcy, (iv) the County is adjudicated by a court of competent jurisdiction to be bankrupt or insolvent, (v) the County makes an assignment for the benefit of creditors, (vi) the County makes an arrangement pursuant to any bankruptcy law, (vii) if a receiver is appointed for the County, or any department, or agency, thereof, (viii) the County fails to provide AHP with adequate assurances within a reasonable time that the County is financially solvent, or (ix) AHP or DSH determines that the County is financially insecure.

8.2 Notwithstanding the foregoing, or anything to the contrary stated herein, AHP may terminate this Agreement upon thirty (30) days' notice if AHP is directed by DSH to terminate this Agreement.

8.3 Upon termination of this Agreement for any reason, neither AHP nor DSH shall be liable for any work that is not performed in accordance with the Agreement or for any commitments made by the County to any third-party contractors. Upon any termination, neither AHP nor DSH shall be responsible for additional disbursements of any Program Funds after the termination date or for any damages to the County as a result of such termination. Upon termination, the County shall return all Program Funds to the State at the direction of AHP or DSH.

ARTICLE 9. **INDEMNIFICATION**

9.1 The County shall indemnify, defend, and hold harmless AHP, its officers, employees and agents, and DSH and its officers, employees and agents, against liabilities to third persons and other losses (not compensated by insurance or otherwise) and for any costs and expenses incurred by AHP and DSH, including reasonable attorneys' fees, judgments, settlements or penalties against all liabilities, claims, suits, demands or liens for damages to persons or property (collectively "**Claims**") (unless such Claims arise from the gross negligence or willful misconduct of AHP or DSH), arising out of, resulting from, or relating to, the County's performance under this Agreement and including, but not limited to, the following:

9.1.1 Any act, omission, or statement of the County, or any person employed by or engaged under contract with the County, that results in injury (including death), loss, or damage to any person or property;

9.1.2 Any failure on the part of the County to comply with applicable Program Requirements and requirements of law;

- 9.1.3 Any act or omission of any third-party contractor engaged by the County, including, but not limited to, any failure of any third-party contractor to comply with the Program Requirements and the terms of this Agreement.
- 9.1.4 Any failure on the part of the County or its third-party contractors to satisfy all claims for labor, equipment, materials, and other obligations relating to the performance of the work hereunder;
- 9.1.5 Any injury to property or person occurring on or about the infrastructure or the property of the County or the Infrastructure Project; or
- 9.1.6 Any claims related to the use, generation, storage, release, threatened release, discharge, disposal or presence of hazardous materials on, under or about the property upon which the Infrastructure Project funded with any Program Funds is located.

9.2 The County shall indemnify AHP or DSH, each, individually, or both, collectively, as the case may be, under this clause for any of the above acts attributable to its employees, consultants, agents, or lower-tiered subcontractors in connection with this Agreement. AHP or DSH shall provide timely notice of any Claims describing in reasonable detail such facts and circumstances with respect to such Claims. The County shall defend AHP or DSH, each, individually, or both, collectively, as the case may be, with counsel reasonably acceptable to AHP or DSH, respectively. AHP or DSH may, each, at its option and own expense, engage separate counsel to advise regarding the Claim and its defense. Such counsel may attend all proceedings and meetings. The County shall not settle any Claim without the consent of AHP or DSH, as applicable.

9.3 The County agrees to indemnify, defend and save harmless AHP, its officers, agents and employees and DSH, its officers, agents and employees from any and all claims, costs (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened), 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 the County in connection with this Agreement.

9.4 This indemnification shall survive the expiration or termination of the Agreement.

ARTICLE 10.
INSPECTIONS, AUDITS, AND RECORD RETENTION

10.1 AHP and DSH and any of their authorized representatives shall have the right to access any documents, papers, or other records of the County and any of its third-party contractors that are pertinent to any Program Funds, for the purpose of performing audits, examinations, and/or review regarding compliance with the provisions of this Agreement and the Program Requirements. Such monitoring activities shall include, but are not limited to, inspection of the

County and third-party contractor's books and records, in addition to site inspections, as AHP or DSH deems appropriate.

10.2 AHP and DSH and any of their authorized representatives may perform compliance reviews and review procedures and documents pertaining to the County's compliance with the terms of this Agreement and the Program Requirements, perform onsite visits and desk reviews in order to ensure any Program Funds are expended for eligible uses and to protect against fraud, waste, and abuse. The County shall include in all agreements with third-party contractors, a requirement that the third-party contractor: (i) provide to AHP, and its authorized representatives, and DSH and its authorized representatives, access to the third-party contractor's records and facilities; and (ii) cooperate with any desk reviews.

10.3 The right to access records also includes timely and reasonable access to the County's and any third-party contractor's personnel for the purpose of interview and discussion related to the requested documents and/or information.

10.4 The right to access records is not limited to the required retention period but lasts as long as the records are retained by the County and any third-party contractor.

10.5 The County shall retain all financial records, supporting documents, statistical records, and all other records pertinent to any Program Funds for the term of this Agreement and for a minimum of three (3) years thereafter, and require that all third-party contractors retain all records related to any Program Funds for the same period.

10.6 Any review or inspection undertaken by AHP, its designee, or DSH, or its designee, of the County's records or of any third-party contractor's records or Infrastructure Project is solely for the purpose of determining whether the County is properly discharging its obligations to DSH, and should not be relied upon by the County or by any third parties as a warranty or representation by AHP or DSH as to the quality of the design, construction, or operation of the Infrastructure Project. The County agrees that claims based upon an audit finding and/or an audit finding that is appealed and upheld shall be recovered by AHP or DSH by one of the following options:

10.6.1 The County's remittance to AHP or DSH of the full amount of the audit exception within thirty (30) days following AHP request for payment; or

10.6.2 A repayment schedule which is agreeable to AHP, DSH and the County.

AHP reserves the right to select which option described above shall be employed; and AHP shall notify the County in writing of the claim procedure to be utilized. Interest on the unpaid balance of the audit finding or debt shall accrue at a rate equal to the maximum allowed by applicable law.

10.7 Reporting Requirements. The County shall provide AHP and DSH with the following reports:

10.7.1 Monthly and quarterly reports submitted within thirty (30) days of the end of each month or quarter, as applicable, in a form and substance acceptable to AHP, in its sole discretion.

10.7.2 A final report to be submitted no later than sixty (60) days after the final disbursement of any Program Funds for each Infrastructure Project, in a form and substance acceptable to AHP, in its sole discretion.

All reports shall be in a form and contain such information as required by DSH in its sole and absolute discretion. In addition to the above reporting requirements, AHP and DSH may request additional reports and information necessary for AHP and DSH to monitor compliance with the Program Requirements. The County shall be responsible for obtaining any necessary reporting information from its third-party contractors.

ARTICLE 11.
THIRD-PARTY BENEFICIARIES.

The State, represented by DSH in this Agreement, is a third-party beneficiary of this Agreement. This Agreement shall not be construed so as to give any other person or entity, other than the Parties and DSH, any legal or equitable claim or right. DSH or another authorized department or agency representing the State of California may enforce any provision of this Agreement to the full extent permitted in law or equity as a third-party beneficiary of this Agreement. The State may take any and all remedies available in law and equity. In the event of litigation, the State may choose to seek any type of damages available in law or equity, up to the full amount of the Program Funds awarded to the County.

The County shall name AHP and DSH as third-party beneficiaries with rights of enforcement in all agreements entered into by the County with third-party contractors.

ARTICLE 12.
MISCELLANEOUS.

12.1 Dispute Resolution:

12.1.1 In the event of a dispute, the Parties shall first try to resolve the dispute by escalating it to higher levels of management to negotiate in good faith. If negotiations are unsuccessful, any controversy, dispute or disagreement arising out of or relating to this Agreement, its breach, or its subject matter, shall be conducted in a court of competent jurisdiction in **[INSERT NAME OF COUNTY]** County, California. Any party bringing an action must comply with all applicable laws relating to claims against public entities, including the time limitations and manner of claim presentation prescribed by Chapter 2, commencing with Section 910 of Part 3 (Claims Against Public Entities) of Division 3.6 of Title 1 of the California Government Claims Act.

12.1.2 The County shall be obligated to continue to perform pursuant to this Agreement while any dispute is pending.

12.1.3 This Section 12.1 shall not apply to the State.

12.2 Attorneys' Fees. If a dispute arising out of this Agreement is finally adjudicated, the non-prevailing party shall pay the prevailing party's reasonable expenses incurred in connection therewith, including reasonable arbitration costs and reasonable attorneys' fees. If multiple items are disputed and the final decision is split, then the Parties shall allocate such expenses pro rata as to each item. This Section 12.2 does not apply to the State.

12.3 Waiver. AHP's failure to notify the County of a breach or to insist on strict performance of any provision of this Agreement shall not constitute waiver of such breach or provision.

12.4 Remedies. No remedy in this Agreement is exclusive of any other remedy available under this Agreement, at law or in equity. AHP or DSH may seek equitable relief, including an injunction, against the County in connection with any breach or threatened breach of this Agreement.

12.5 Limitation of Liability. Except as otherwise provided in this Agreement, or by applicable law, the County waives any right to seek, and AHP and DSH shall not be liable for, any special, consequential, or punitive damages; indirect, or incidental damages; or for any loss of goodwill, profits, data, or loss of use arising out of, resulting from, or in any way connected with the performance or breach of this Agreement, even if the County advises AHP or DSH of the possibility of any such damages.

12.6 Relationship. The County is an independent contractor with respect to AHP. This Agreement is not intended to create a partnership, joint venture, employment, or fiduciary relationship between the Parties or between any Party hereto and DSH.

12.7 Notices. Notices under this Agreement must be (i) in writing; (ii) addressed to the receiving Party at the address described in the Summary Cover Sheet (unless notice of a different address is given); and (iii) (A) if personally delivered to the recipient, notice is effective upon delivery, (B) if sent by a nationally recognized overnight courier service, notice is effective on the first business day following its timely deposit with such courier service, delivery fees for next business day delivery prepaid; no signature affirming receipt by the receiving party is required, the internal records of the courier service shall be accepted as sufficient evidence of the date of the deposit of the notice with the courier service, or (C) if sent by certified U.S. mail, notice is effective three (3) days after deposit thereof in the U.S. mail, postage prepaid, certified, return receipt requested. Counsel for a Party may send notice on behalf of its client.

12.7.1 Notwithstanding the foregoing, the Parties may deliver any approval, disapproval, or request therefor via email. Such email notices and deliveries shall be valid and binding on the Parties, subject to the following:

12.7.1.1 Such email must be properly addressed to the other Party's Designated Representatives. For purposes of this Agreement, "**Designated Representative**" means initially (i) for AHP at ISTNotices@ahpnet.com and (ii) for the County, [REDACTED] and [REDACTED]. A Party may change a Designated

Representative only upon notice to the other Party pursuant to the requirements of Section 12.7(iii)-(A), (B) or (C).

12.7.1.2 If the sender receives a bounce-back, out-of-office or other automated response indicating non-receipt, the sender shall (i) re-attempt delivery until the other Party confirms receipt, or (ii) deliver the item in accordance with Section 12.7(iii) (A), (B) or (C).

12.8 Governing Law. The place of performance of this Agreement is California and the laws of the State of California, shall govern the validity, performance, enforcement, and interpretation of this Agreement. Any litigation or enforcement of an award must be brought in the appropriate state or federal court in the State of California, County of Sacramento. Each Party consents to personal and subject matter jurisdiction and venue in such courts and waives the right to change venue with respect to any such proceeding. The Parties acknowledge that all directions issued by the forum court, including injunction and other decrees, shall be binding and enforceable in all jurisdictions and countries.

12.9 Assignment. The County shall not assign, delegate, or otherwise transfer this Agreement, or its duties, or obligations in connection therewith, in whole or in part without the prior approval of AHP and DSH. AHP's obligations under this Agreement shall be assignable to DSH or DSH's designee upon DSH's request without the County's consent. In the event that AHP assigns its obligations under this Agreement to DSH, AHP shall make commercially reasonable efforts to transition any reasonably necessary documentation related to this Agreement to DSH or its designee, at no cost to DSH provided however, that AHP shall have no obligation to incur any liability, pay fees, charges, or reimbursement in connection with any assignment, wind-down or transition services.

12.10 Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the Parties with respect to its subject matter. It supersedes all oral or written agreements or communications between the Parties. No understanding, agreement, modification, change order, or other matter affecting this Agreement shall be binding, unless in writing, signed by both Parties. No handwritten changes shall be effective unless initialed by each Party.

12.11 Independent Legal Advice. AHP and the County, each, have reviewed and negotiated this Agreement using such independent legal counsel as each has deemed appropriate.

12.12 Exhibits. The Attachments, Schedules, and Addenda, ~~attached~~ to this Agreement are a part of this Agreement and incorporated into this Agreement by reference.

12.13 Partial Invalidity. If any part of this Agreement is unenforceable, the remainder of this Agreement and, if applicable, the application of the affected provision to any other circumstance, shall be fully enforceable.

12.14 Captions. The headings contained herein are for convenience only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.

12.15 Force Majeure. Neither Party shall be liable to the other for loss or damages due to failure or delay in rendering performance caused by circumstances beyond its reasonable control, if such failure could not have been overcome by the exercise of due diligence, due care, or foresight. Circumstances may include, but are not limited to, acts of God or a public enemy; wars; acts of terrorism; riots; fires; floods; epidemics; quarantine restrictions; labor disputes; strikes; defaults of subcontractors/vendors; failure/delays in transportation; unforeseen freight embargoes; unusually severe weather; or any law/order/regulation/request of a state or local government entity, the U.S. Government, or of any agency, court, commission, or other instrumentality of any such governments. Times of performance under this Agreement may be appropriately extended for excused delays if the Party whose performance is affected promptly notifies the other of the existence and nature of such delay.

12.16 Publicity. Without prior written approval of the other, neither Party shall use the other's name or make reference to the other Party or any of its employees in publications, news releases, advertising, speeches, technical papers, photographs, sales promotions, or publicity purposes of any form related to this work or data developed hereunder, unless disclosure of such materials is required by legal, accounting, or regulatory requirements beyond the disclosing Party's reasonable control. Use of either Party's name may be made in internal documents, annual reports, and proposals. This section shall survive expiration/termination of this Agreement. Notwithstanding the foregoing, the County agrees that the State may use and refer to the County in any publication, news release, advertising, speech, technical paper, or for any other purposes.

12.17 Notice of Litigation. Promptly, and in any event within five (5) business days after an officer or other authorized representative of the County obtains knowledge thereof, the County shall provide written notice to AHP of (i) any litigation or governmental proceeding pending against the County which could materially adversely affect the County's ability to perform its obligations under this Agreement and the Program Requirements; and (ii) any other event which is likely to materially adversely affect the County's ability to perform its obligations under this Agreement and the Program Requirements.

12.18 Survival. Except as otherwise stated, sections that by their terms impose continuing obligations or establish continuing rights shall be deemed to survive the expiration or termination of this Agreement.

12.19 Successors. This Agreement shall be binding upon the Parties, their successors, and assigns.

12.20 Approvals. Whenever this Agreement calls for a Party's approval or for DSH's approval, approval shall mean prior written approval (including via email), not to be unreasonably conditioned, delayed, or withheld, unless sole discretion is expressly noted.

12.21 Counterparts; Electronic Signatures. The Parties may sign this Agreement in several counterparts, each of which constitutes an original, but all of which together constitute one instrument. Electronic signatures are valid and shall bind the Party delivering such signature.

SIGNATURES ON THE FOLLOWING PAGE

IN WITNESS THEREOF, the Parties hereto have executed this Agreement by their duly authorized respective officers as of the day and year last written below.

AHP:

**ADVOCATES FOR HUMAN
POTENTIAL, INC.**, a Massachusetts
corporation

COUNTY:

**[INSERT FULL LEGAL NAME],
[ENTITY TYPE]**

By: _____
Charles Galland,
General Counsel

By: _____
[NAME OF COUNTY'S
REPRESENTATIVE]
[TITLE]

Date: _____

Date: _____

LIST OF ATTACHMENTS

Title	No. of Pages
Attachment A – RFP	
Attachment B – County Proposal	
Attachment C – Award Letter	
Attachment D – Form of Project Application	
Attachment E – Form of Disbursement Request	
Attachment F – Form of Compliance Certification No. 1	

ATTACHMENT A

RFP

ATTACHMENT B
COUNTY PROPOSAL

ATTACHMENT C

AWARD LETTER

ATTACHMENT D
FORM OF PROJECT APPLICATION PACKET

ATTACHMENT E
FORM OF DISBURSEMENT REQUEST

ATTACHMENT F
COUNTY'S COMPLIANCE CERTIFICATION NO. 1

COMPLIANCE CERTIFICATION NO. 1

MEMORANDUM OF AGREEMENT

I, _____, as an authorized representative of _____ (“County”), certify that:

1. I possess the legal authority to submit this certification on behalf of the County and the information and statements set forth below are, to the best of my knowledge and belief, true and correct.
2. Capitalized terms not defined herein shall have the meanings ascribed thereto in that certain Program Funding Agreement by and between the County and AHP.
3. I am providing this information in connection with the Project Application for approval and funding of the Infrastructure Project _____ **[insert name and delete this note]** from the State of California (“State”) pursuant to the California Department of State Hospitals (“DSH”) Incompetent to Stand Trial (“IST”) Diversion and Community-Based Restoration Infrastructure Program (“Program”) to use a portion of the Program Funds for the acquisition, down payment for acquisition, construction or renovation, of real property, furnishings, and for the provision of diversion or community-based restoration of competency services, to address the increasing number of patient referrals to DSH, and hereby acknowledge that the State and its contract manager, Advocates for Human Potential, Inc., a Massachusetts corporation (“AHP”) are relying on this information in disbursing any Program Funds.
4. The County has negotiated and attached to this Certification a copy of the fully executed and binding Memorandum of Agreement by and between the County and the third-party contractor or community-based organization (“**Memorandum of Agreement**”) which includes (i) the third-party contractor’s reporting obligations; (ii) the requirement that the third-party contractor respond to requests for information from AHP and DSH; (iii) the eligible uses of the Program Funds; (iv) the conditions under which any Program Funds will be disbursed from the County to the third-party contractor; (v) the method of disbursement; (vi) a requirement that the Infrastructure Project be deed restricted as required by the Program Funding Agreement; (vii) conditions for the repayment of any portion of the Program Funds or cancellation of future disbursements of any Program Funds; (viii) a requirement that the third-party contractor provide an annual audit within ninety (90) days of the end of the fiscal year, if applicable; (ix) a requirement to report material changes, such as changes in key staff or litigation against the third-party contractor or the Infrastructure Project, within thirty (30) days of such occurrence; (x) a requirement that the third-party contractor indemnify the County; and (xi) such other provisions required by AHP or DSH, in either AHP or DSH’s sole discretion.
5. Upon any amendment or modification of the Memorandum of Agreement, the County promptly shall provide AHP a copy of any fully executed amendment or modification.

6. The Memorandum of Agreement shall not be amended or modified in any manner, at any time, without prior approval of AHP, or the State, in their sole discretion.

7. The County shall provide AHP and the State prompt written notice of its receipt of a notice of termination or expiration of the Memorandum of Agreement.

8. The third-party contractor or community-based organization is registered with the California Department of Industrial Relations (“**DIR**”) as required by California Labor Code section 1725.5. The County further certifies that the Memorandum of Agreement and any subcontracts entered into by the third-party contractor or community-based organization shall require the third-party contractor or community-based organization and all subcontractors to comply with California Labor Code section 1720 *et seq.*, including, but not limited to, the payment of prevailing wages, for all work performed at the Infrastructure Project.

SIGNATURE ON THE FOLLOWING PAGE

I certify under penalty of perjury that the above information is true and correct and that the County shall comply with all requirements set forth above, in the County's Compliance Certification No. 1, Memorandum of Agreement, as a condition of receiving any Program Funds.

Authorized Signature

Typed Name of Signatory

Title of Signatory

Date