

ATTACHMENT I
CONSTRUCTION CONTRACT ADDENDUM

This Construction Contract Addendum (this “**Addendum**”) is made this _____ day of _____, ___, by and between **County of Nevada**, a political subdivision of the State of California, acting through its Behavioral Health Department (the “**Owner**”), and _____ (the “**Contractor**”).

RECITALS

A. The Owner and Advocates for Human Potential, Inc., a Massachusetts corporation (“**AHP**”), acting as program administrator for the State of California (“**State**”) Department of Health Care Services, a public agency of the State of California (“**DHCS**”), have entered into that certain Program Funding Agreement dated _____ (the “**Agreement**”), pursuant to which Owner was allocated funds (“**Program Funds**”) pursuant to the Behavioral Health Continuum Infrastructure Program (“**BHCIP**”) for the purposes of developing the project located at 925 Maidu Avenue, Nevada City, CA 95959 (the “**Project**”).

B. Owner and Contractor have entered into a construction agreement dated _____, under which Contractor has agreed to undertake construction work on the Project (the “**Contract**”).

C. Owner and Contractor wish to modify and add to the terms of the Contract as set forth in this Addendum, and Contractor agrees to be bound by the following provisions in the construction of said Project, in order to provide for certain terms required by AHP as a condition of providing the Program Funds for the Project. It is a condition to AHP providing the Program Funds that the Contractor agrees to be bound by the terms hereof.

NOW, THEREFORE, Owner and Contractor hereby agree as follows:

1. OWNER’S OBLIGATIONS. Owner agrees that any obligation imposed on Contractor by this Addendum does not waive, diminish, or alter any of Owner’s obligations to AHP under the Agreement, and that the obligations of Contractor to AHP contained herein are in addition to those obligations of Owner to AHP or DHCS contained in the Agreement. Owner shall be solely responsible for satisfying its obligations to Contractor under the Contract.

2. CONSENT TO ASSIGNMENT OF DEVELOPMENT RIGHTS. Contractor consents to the assignment of its Contract with Owner to AHP, upon demand by AHP and written approval from DHCS, and to any subsequent assignment of the Contract by AHP at the election of AHP. Contractor agrees that if there is a breach of the Agreement or any other Event of Default (as the term may be defined in the Agreement), AHP may elect to enforce the assignment and take over the Contract. Contractor agrees to continue to perform its obligations under the Contract and this Addendum for the benefit and account of AHP in the same manner as if performed for the benefit and account of Owner in the absence of the assignment at no additional cost to AHP, as long as Contractor has received and continues to receive the compensation called for under the Contract. Contractor agrees that AHP shall not have any obligation under the Contract until AHP notifies it in writing of AHP’s election to accept the assignment. DHCS shall not provide its written approval to AHP without first consulting with the Sponsor about AHP’s request.

3. ASSIGNMENT OF SUBCONTRACTS. Contractor hereby consents to the assignment to AHP of all its interest in all subcontracts and agreements now or hereafter entered into by Contractor for performance of any part of the construction work required to be performed under the Contract. The assignment will be effective upon acceptance by AHP in writing and only as to those subcontracts and agreements which AHP designates in writing. After obtaining DHCS written approval, AHP may accept said assignment at any time during the course of the construction work required to be performed under the Contract and prior to final completion of construction work required to be performed under the Contract in the event of a suspension or termination of Contractor's rights under the Contract. Such assignment is part of the consideration to Owner for entering into the Contract with Contractor and may not be withdrawn prior to final completion of construction work required to be performed under the Contract. Contractor agrees that any subcontract entered by and between Contractor and a subcontractor in connection with the Contract or performance of the construction work required to be performed under the Contract shall expressly provide that such subcontract shall be assignable to AHP and that AHP subsequently may assign such subcontract. DHCS shall not provide its written approval to AHP without first consulting with the Sponsor about AHP's request.

4. COMMENCEMENT AND COMPLETION OF CONSTRUCTION. Contractor must begin construction of the Project by the date set for the commencement of construction in the Contract. Contractor must diligently prosecute construction of the Project to completion and must complete construction of the Project by the completion date set forth in the Contract. Incorporated herein are the Scope of Work, Performance Milestones, and Payment Schedule from the Agreement.

5. CONSTRUCTION BONDS. Upon execution of the Contract and prior to commencement of construction, unless otherwise approved by AHP or DHCS each in their sole discretion, Contractor must obtain a labor and material (payment) bond and a performance bond, or a dual bond which covers both payment and performance obligations, with respect to the construction of the Project in a penal sum each of not less than one hundred percent (100%) of the scheduled cost of construction. Such bonds must be issued by a company which is authorized to transact surety insurance in California and which has assets exceeding its liabilities in an amount equal to or in excess of the bond amount. The bonds must name AHP and DHCS as co-obligees. Owner shall provide to AHP a copy of any and all such payment and performance bonds prior to commencement of the construction work required to be performed under the Contract.

6. CONTRACT WORK. Contractor warrants and represents that it is licensed or otherwise authorized to perform the construction work specified in the Contract in the State of California. All construction work must be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work in the State of California. Contractor shall insert similar provisions in all subcontracts for work for the Project.

7. QUALITY OF WORK. Contractor must construct the Project in conformance with the plans and specifications and any modifications thereto approved by AHP. Contractor must construct the Project according to general industry standards and shall employ building materials of a quality suitable for the requirements of the Project and conforming to general industry standards. Contractor must construct the Project in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes.

The parties acknowledge that AHP and DHCS are under no duty to review the Plans and Specifications or to inspect construction of the Project. Any review or inspection undertaken by AHP or

DHCS of the Project is solely for the purpose of determining whether Owner and Contractor are properly discharging their obligations, and should not be relied upon by Owner, Contractor, or any third parties as a warranty or representation by AHP or DHCS as to the quality of the design or construction of the Project.

8. ADDITIONS OR CHANGES IN WORK. AHP must be notified, no later than thirty (30) days after the execution of a change order by and between Owner and Contractor, of any changes in the work required to be performed under the Contract or this Addendum, including any substantial additions, changes, or deletions to the approved plans and specifications, which exceeds One Hundred Thousand Dollars (\$100,000). Contractor shall not allow subcontractors to mark-up any change order by more than fifteen percent (15%). Contractor shall provide AHP and Owner with an updated budget and schedule prior to the commencement of construction at the Project and at fifty percent (50%) completion of the Project showing all changes from the budget and schedule prepared prior to the issuance of the notice to proceed to Contractor.

9. SITE INSPECTIONS. Contractor shall permit and facilitate in person and remote observation and inspection of work at the job site by AHP and DHCS and their agents and by public authorities during reasonable business hours.

10. AUDITS. Contractor must make available for examination at reasonable intervals and during normal business hours to AHP and DHCS's representatives all books, accounts, reports, files, and other papers or property with respect to all matters covered by the Contract and this Addendum, and must permit these representatives to audit, examine, and make copies, excerpts, or transcripts from such records.

11. NONDISCRIMINATION. Contractor may not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, sexual preference, national origin, AIDS or AIDS-related conditions, or disability in any phase of employment during construction. Contractor agrees to post in conspicuous places, available to all employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

12. PREVAILING WAGES. All workers performing construction work for the Project employed by Contractor and by any of its subcontractors must be compensated in an amount no less than the general prevailing rate of per diem wages as determined by the California Department of Industrial Relations under California Labor Code section 1770 et seq. and implementing rules and regulations. Contractor must comply with, and must ensure that its subcontractors comply with, all reporting and recordkeeping requirements of the applicable prevailing wage statutes and regulations.

In the event of underpayment of wages by Contractor or by any subcontractor employed on the Project, AHP, in addition to other rights and remedies afforded by this Agreement, may: (1) demand that any underpaying employer comply with these requirements; (2) demand that the underpaying employer pay the difference between the prevailing wage rate and the amount actually paid to workers; (3) withhold and/or pay any Program Funds as necessary to compensate workers the full wages required under this Agreement; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements against the underpaying employer. Any underpaying employer shall comply with a demand to pay any amounts due under this section within ten (10) calendar days of the demand.

Contractor must include the prevailing wage requirement in all subcontracts for work on this Project and must specify that AHP and DHCS are intended third-party beneficiaries of such provisions. Contractor must take reasonable measures to monitor and enforce the prevailing wage requirements

imposed on its subcontractors, including withholding payments to those subcontractors who violate these requirements. In the event that Contractor fails to take the above measures, Contractor shall be liable for the full amount of any underpayment of wages, plus costs and attorneys' fees, as if Contractor was the actual employer.

13. INSURANCE COVERAGE. Contractor must have in full force and effect during the complete course of construction of the Project, insurance, providing coverage in the types and amounts set forth below:

13.1 Workers' compensation insurance as required by the State of California.

13.2 Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including on-site and off-site operations, and owned, non-owned, or hired vehicles, with One Million Dollars (\$1,000,000) combined single limits.

13.3 Commercial general liability insurance of not less than One Million Dollars (\$1,000,000) per occurrence with an annual aggregate limit of Five Million Dollars (\$5,000,000) for bodily injury and property damage liability combined. Such insurance can be provided pursuant to a combination of a commercial general liability insurance policy and an umbrella policy. The commercial general liability insurance policy shall cover liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured agreement. The commercial general liability insurance shall apply to each insured against whom claim is made or suit is brought subject to the Sponsor's limit of liability.

14. NON-LIABILITY OF OFFICIALS, EMPLOYEES, AND AGENTS. No director, officer, official, employee, consultant, or agent of AHP or DHCS shall be personally liable to Contractor for any obligation created under the terms of the Contract or this Addendum except in the case of actual fraud or willful misconduct by such person.

15. INDEMNITY. Notwithstanding the insurance requirements herein, Contractor hereby indemnifies, defends, and holds AHP, DHCS, and their respective directors, officers, officials, employees, consultants, and agents (collectively, the "**Indemnified Parties**"), harmless against any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including reasonable attorneys' fees) which an Indemnified Party may incur as consequence of Contractor's failure to perform any obligations as and when required by the Contract or this Addendum, any act or omission by Contractor or its subcontractors with respect to the Project, or any failure of any of Contractor's representations or warranties to be true and complete, except to the extent such losses are caused by the negligence or willful misconduct of the Indemnified Party. Contractor shall pay immediately upon the Indemnified Party's demand any amounts owing under this indemnity. The duty of Contractor to indemnify includes the duty to defend the Indemnified Party in any court action, administrative action, or other proceeding brought by any third party arising from the Project or the Contract or this Addendum. Contractor's duty to indemnify the Indemnified Party shall survive the term of the Contract.

16. HAZARDOUS MATERIALS. Neither Contractor nor any of its subcontractors may use the real property upon which the Project is to be constructed (the "**Project Property**") or allow the Project Property to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials.

Contractor shall immediately notify AHP and Owner in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the Project Property requiring notice to be given to any governmental agency under Hazardous Materials Laws; (b) any knowledge by Contractor that the Project Property does not comply with any Hazardous Materials Laws; (c) the receipt by Contractor of written notice of any Hazardous Materials claims; and (d) the discovery by Contractor of any occurrence or condition on the Project Property or on any real property located within 2,000 feet of the Project Property that could cause the Project Property to be designated as a “hazardous waste property.”

17. NOTICES; NOTICE OF DEFAULT TO AHP. If at any time after the execution of the Contract it shall become necessary or convenient for Contractor to serve any notice, demand, or communication upon AHP, such notice, demand or communication shall be in writing provided in accordance with the notice requirements of the Agreement. Contractor shall give AHP prior or concurrent written notice of any default or breach claimed by Contractor against Owner or any other party under the Contract. The notice shall describe the default and give AHP the option to cure said default within thirty (30) calendar days. No termination of the Contract by Contractor shall be binding unless AHP has been given the required notice and has not cured the default within thirty (30) calendar days.

18. REMEDIES. The parties hereto agree that AHP, while not a party to the Contract, is an intended third-party beneficiary of the obligations imposed on Contractor in this Addendum. In the event of any breach or violation of any agreement or obligation of Contractor under the Contract or this Addendum, AHP may proceed with any of the following remedies:

- 18.1** Bring an action in equitable relief seeking the specific performance by Contractor of the terms and conditions of the Contract or this Addendum and/or enjoining, abating, or preventing any violation of said terms and conditions;
- 18.2** Order immediate stoppage of construction and demand that any condition leading to the default be corrected before construction may continue;
- 18.3** Enter the Project Property and take any actions necessary in its judgment to complete construction of the Project as permitted under the assignment of development rights;
- 18.4** Suspend disbursement of Program Funds for the Project until the breach or violation is corrected, or, if Owner had any concurrent obligation to perform on or ensure performance on the breached obligation, cancel the Program Funds commitment made to Owner and terminate AHP’s obligation to disburse Program Funds to Owner;
- 18.5** Terminate the Contract; or
- 18.6** Pursue any other remedy allowed in law or equity.

19. GOVERNING LAW. This Addendum shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

20. DEFINITIONS. Capitalized terms not defined in this Addendum shall have the same meaning as defined in the Agreement.

21. ATTORNEYS' FEES AND COSTS. In the event any legal action is commenced to interpret or to enforce the terms of this Addendum, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

22. TIME. Time is of the essence in the performance of this Addendum by Contractor.

23. CONSENTS AND APPROVALS. Any consent or approval required under this Addendum shall not be unreasonably withheld, delayed, or conditioned.

24. BINDING UPON SUCCESSORS. All provisions of this Addendum shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this section does not waive the prohibition on assignment of this Addendum by Contractor without AHP's consent.

25. RELATIONSHIP OF CONTRACTOR AND AHP. Contractor understands that neither AHP nor DHCS undertakes or assumes any responsibility or duty to Contractor or to any third party. The relationship of Contractor and AHP and DHCS for this Project shall not be construed as a joint venture, equity venture, or partnership. AHP shall have no obligation to any party under the Contract but is an intended third-party beneficiary of the obligations under this Addendum. Contractor shall have no authority to act as an agent of AHP or DHCS or to bind AHP or DHCS to any obligation.

26. ASSIGNMENT. Contractor may not assign any of its interests under the Contract or the Addendum to any other party, except with the prior written consent of AHP. Any unauthorized assignment shall be void.

27. AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to this Addendum must be in writing and shall be made only if executed by Owner and Contractor and consented to in writing by AHP.

28. SEVERABILITY. Every provision of this Addendum is intended to be severable. If any provision of this Addendum is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired.

29. ADDENDUM CONTROLS. In the event that any provisions of this Addendum and the Contract conflict, the terms of this Addendum shall control.

SIGNATURES ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, Owner and Contractor have executed this Construction Contract Addendum as of the date first written above.

OWNER:

By: _____

Name: _____

Title: _____

Date: _____

CONTRACTOR:

By: _____

Name: _____

Title: _____

Date: _____