#### **SECTION 00 52 13**

#### CONSTRUCTION AGREEMENT

#### For The

#### Groveland Community Resilience Center and Tuolumne Community Resilience Center

THIS AGREEMENT ("Agreement") is made and entered into this 4th day of April, 2021, by and between the County of Tuolumne, a political subdivision of the State of California ("County"), and Robert E. Boyer Construction, Inc., ("Contractor").

That the parties hereto, for and in consideration of the covenants, promises and agreements to be made, kept and performed as hereinafter set forth, do agree as follows:

### ARTICLE 1 CONTRACT DOCUMENTS

The complete Agreement between the County and the Contractor shall consist of the following Contract Documents: The Notice to Bidders, the Bonds, the Instruction to Bidders, the Accepted Bid Proposal, all Addenda, this Construction Agreement, the General Conditions, Appendix A Supplemental Conditions the Drawings and Specifications, Notice of Intent to Award, Notice to Proceed, Change Orders, Notice of Completion, and modifications incorporated in those documents. The Agreement, Drawings, and Specifications are intended to supplement one another. A complete listing of the Contract Documents can be found in Article 9.

#### ARTICLE 2 THE WORK

The Contractor agrees to furnish at its own cost and expense, all tools, equipment, apparatus, labor, materials, mechanical workmanship, transportation and services necessary to complete the construction of the Groveland and Tuolumne Community Resilience Centers and in strict accordance with the Contract Documents. All such work shall be completed in a good and workmanlike manner.

# ARTICLE 3 TIME FOR COMPLETION

- **3.1** For the purpose of determining the contract completion date, the date of commencement shall be ten (10) calendar days after mailing the written Notice to Proceed, or if no such written Notice to Proceed is issued, it shall be ten (10) calendar days from the date of this Agreement.
- **3.2** The Work shall be commenced on the date provided for in Paragraph 3.1 and shall be diligently pursued by the Contractor and completed not later than **450 calendar days** from the date of commencement.

### ARTICLE 4 CONTRACT PAYMENT

In consideration of the covenants, agreements, and promises on the part of the Contractor contained in the Contract Documents, and the strict and literal fulfillment of each and every such covenant, agreement, and promise, and as compensation agreed upon for the erection, construction, and completion of the said work as described in Article 1 hereof in strict accordance

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with the Plans and Specifications therefor, the County agrees to pay and cause to be paid to the Contractor the Contract Sum of \$16,731,476.00, lawful money of the United States, subject to any additions or deductions as provided in the Contract Documents.

The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the County:

## ARTICLE 5 PROGRESS PAYMENTS

- **5.1** Applications for Payment shall be submitted monthly in a timely manner by the Contractor on or before the date mutually agreed upon by the County and Contractor. The form shall be approved by the County.
- **5.2** Contractor shall provide three separate applications for payment. One for Groveland NDRC, one for Groveland NSP, and one for Tuolumne NDRC.
- **5.3** Progress Payments shall be made once each month, on or about a date to be determined by the County. The amount shall be based on the percent completion of each portion of work completed at the end of the month covered by the Application of Payment. Payment of undisputed contract amounts (progress payments) is contingent upon the Contractor providing all labor compliance documentation as required by Appendix A Supplemental Provisions, State and Federal codes and furnishing the County with a release of all claims against the County arising by virtue of the work relating to the amount so paid. The release may be on the form used for computing monthly progress payment.
- **5.4** The progress payment amount shall be adjusted as set forth in Article 23 of the General Conditions.
- **5.5** No invoices shall be paid until labor standards have been submitted, reviewed, and approved.

# ARTICLE 6 FINAL PAYMENT

- **6.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the County to the Contractor when 1) the Agreement has been fully performed by the Contractor, and 2) a final Certificate for Payment has been issued by the Contract Administrator. Such final payment shall be made by the County not more than forty-five (45) days after the recording of the Notice of Completion.
- **6.2** Pursuant to Public Contract Code sections 7101 and 7201, in the event of a dispute between the County and Contractor, the County may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. Except as so withheld, the County shall release the retention withheld within 60 days after the date of completion of the work of improvement, as "completion" is defined in Public Contract Code section 7107. In the event that retention payments are not made within the time periods required by Public Contract Code section 7107, the County shall be subject to the interest payment provisions of Public Contract Code section 7107.

Lionakis No. 017140 March 21, 2021

### ARTICLE 7 MISCELLANEOUS

**7.1** Liquidated Damages shall be imposed upon the Contractor should the Contractor fail to complete this Agreement and the work provided herein within the time fixed for such completion. The Contractor shall also become liable to the County for all loss and damage which the latter may suffer on account of any other basis.

**7.2** IT IS HEREBY FURTHER AGREED, that in case the Contractor does not complete the work within the days as herein provided, for reasons or causes other than those provided for in the Contract Documents hereof, the County will be damaged. After considering such a breach and all aspects of the work including, but not limited to, the type of installation, the current and future uses of facilities and premises, the disarrangement of the premises and facilities thereof during the work, and the additional cost and difficulty of using the disarranged facilities during the work, the parties agree that a reasonable daily damage for such a breach, if any, will be **\$2,500.00** per calendar day and the payment of the same, if any, is payment of liquidated damages and not a penalty. It is understood that this agreement for liquidated damages is entered into because the amount is manifestly reasonable under the circumstances existing at the time of this Agreement and it would be extremely difficult or impossible to determine with any degree of accuracy the actual damages in case of any such breach. In case of such breach, it is agreed that the County may deduct the amount thereof from any money due or to become due to the Contractor under this Agreement.

**7.3** Terms used in the Agreement which are defined in the General Conditions of the Contract Documents shall have the meanings designated in those Conditions.

# ARTICLE 8 TERMINATION OR SUSPENSION

- **8.1** The Agreement may be terminated by the County or the Contractor as provided in Article 27 of the General Conditions.
- **8.2**The Work may be suspended by the County as provided in Article 27 of the General Conditions.

### ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

- **9.1** The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:
- 9.1.1 The agreement is this executed standard form of Construction Agreement.
- 9.1.2 The General Conditions are the General Conditions dated December 23, 2020.
- 9.1.3The Supplementary Conditions, and any other Conditions of the Agreement are those detailed below:

**Document** Supplementary Conditions Date

Pages

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appendices

**9.1.4** The Specifications contained in the Contract Documents approved by the Tuolumne County Board of Supervisors, as amended by Addenda.

Number

**9.1.5** The Drawings contained in the Contract Documents approved by the Tuolumne County Board of Supervisors, as amended by Addenda.

Date

9.1.6 The Addenda, if any, are as follows:

Number	Date
#1	February 16, 2021
#2	February 24, 2021
#3	February 26, 2021

**9.1.7** Other documents, if any, forming part of the Contract Documents are as follows: those documents listed in Article 1.

# ARTICLE 10 INDEMNIFICATION

If indemnification of the County becomes necessary, the County Counsel for the County shall have the absolute right and discretion to approve or disapprove of any and all counsel employed to defend the County. The indemnification provisions of the Contract Documents shall survive the termination or expiration of this Agreement.

### ARTICLE 11 CAPTIONS

The captions of the Contract Documents are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

#### ARTICLE 12 CONTROLLING LAW

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

COUNT OF TUOLUMNE	Robert E. Boyer Construction
By: Ryan Campbell, Chair Board of Supervisors	By: Robert E. Boyer, President
By: Heather Ryan Christina Cusha Seal Deputy Clerk of the Board	I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.  CHRISTINA M. CUNHA Deputy Clerk of the Board  By:
APPROVED AS TO LEGAL FORM: County Counsel  By: Christopher Schmidt, Deputy	

NOTE: If the Contractor executing this contract is a corporation, a certified copy of the By-Laws, or of the Resolution of the Board of Directors, authorizing the officers of said corporation to execute the contract and the bonds required thereby must be annexed thereto.