

AMENDMENT TO THE SETTLEMENT AGREEMENT AND RELEASE

THIS AMENDMENT TO THE SETTLEMENT AGREEMENT AND RELEASE (the “Amended Agreement”), which is entered into this ____ day of _____, 2024 by and between Granite County, a political subdivision of the State of Montana (the “County”) and Ace Roofing, LLC (“Ace”) (each individually referred to in this Amended Agreement as a “Party” and collectively as “the Parties”), hereby amends the Settlement Agreement and Release that was entered into on the 21st day of May, 2024, by and between the County and Ace as provided herein. This Amended Agreement is intended to replace the May 21, 2024 Settlement Agreement and Release.

RECITALS

WHEREAS, Ace entered into a contract with the County whereby Ace performed or caused to be performed certain roofing construction work and services on or for the project known as the Granite County Courthouse located at 220 N. Sansome St., Phillipsburg, MT 59858 (the “Project”); and

WHEREAS, a dispute arose between the County and Ace related to alleged ponding of water on the roof and leaks related to the roof drains and mold that the County contends arose from the alleged roof drain leaks (collectively, the “Alleged Roof Issues”); and

WHEREAS, Ace denies liability for the Alleged Roof Issues and, to the extent any liability may be found, Ace disputes the amount of damages claimed; and

WHEREAS, the Parties reached a mutual agreement to resolve and settle the Alleged Roof Issues and entered into a Settlement Agreement and Release on May 21, 2024; and

WHEREAS, the Parties reached a mutual agreement to amend the terms of the May 21, 2024 Settlement Agreement and Release to remove the obligation for Ace to perform the Scope of Work described as Ace’s Work in Paragraph 2 and Exhibit A of the May 21, 2024 Settlement Agreement and Release, and instead to pay the County an additional settlement payment; and

WHEREAS, the Parties agree that the Recitals set forth in this Amended Agreement shall replace the Recitals set forth in the May 21, 2024 Settlement Agreement and Release; and

NOW THEREFORE, in consideration of the foregoing premises and the mutual terms, covenants, and conditions contained herein, and without admitting or determining any liability, the Parties agree as follows:

AMENDED AGREEMENT AND RELEASE

1. Payment. In addition to the Settlement Payment of Five Thousand One Hundred Forty-Six & 89/100 Dollars (\$5,146.89) (the “Settlement Payment”) set forth in the May 21, 2024 Settlement Agreement and Release, Ace shall pay the County the sum of Six Thousand & 00/100 Dollars (\$6,000.00) (the “Additional Settlement Payment”). Within ten (10) business days after execution of this Amended Agreement by the County, Ace shall mail the Settlement Payment and

Additional Settlement Payment to the County Attorney, Blaine Bradshaw, at P.O. Box 489, Philipsburg, Montana 54858.

2. Scope of Work. Paragraph 2 and Exhibit A of the May 21, 2024 Settlement Agreement and Release are deleted in their entirety. Ace shall have no obligation to perform the Scope of Work or any other obligations described in Paragraph 2 and/or Exhibit A of the May 21, 2024 Settlement Agreement and Release.

3. Release of Ace by the County. Paragraph 3 of the May 21, 2024 Settlement Agreement and Release is deleted in its entirety and replaced with the following: Upon execution of this Amended Agreement by Ace and payment by Ace of the Settlement Payment and Additional Settlement Payment set forth in Paragraph 1 above, the County on behalf of itself and its officers, directors, board members, agents, employees, servants, insurers, sureties, attorneys, successors and assigns, hereby releases, acquits, and forever discharges Ace Roofing, LLC and its owners, officers, directors, partners, members, agents, employees, servants, insurers, sureties, attorneys, successors and assigns, of and from any and all liability, claims, demands, liens, causes of action, and damages, known and unknown and including attorneys', consultants' and experts' fees and expenses, which the County now has or may have arising from or in connection with the Alleged Roof Issues, including, but not limited to, claims related to mold. Notwithstanding the foregoing, expressly excluded from this release are claims pursuant to existing contractual warranties and manufacturer warranties, which were issued for the Project for the benefit of the County.

4. Fair and Adequate Consideration. The Parties acknowledge that the consideration given or received in this Amended Agreement is fair and adequate consideration for the covenants, undertakings, and forbearances herein made.

5. Cost of Settlement. Each Party shall assume and pay for its own attorneys', consultants' and experts' fees, costs, and expenses incurred in connection with the Alleged Roof Issues and the negotiation and execution of this Amended Agreement and the May 21, 2024 Settlement Agreement and Release.

6. Counterparts. This Amended Agreement may be executed in multiple, original counterparts, each of which counterpart constitutes and serves as an original hereof. Signatures transmitted by electronic means, including in PDF format, are acceptable as original signatures and shall be considered original signatures.

7. Advice. Each Party represents and warrants that: (i) it has executed this Amended Agreement based upon its own knowledge; (ii) it is entitled to and has had the advice of its respective legal counsel, professionals, consultants, and experts of its own choosing; and (iii) it has not relied on any statements or representations of any other Party, except as stated herein.

8. Construction. The terms of this Amended Agreement are and shall be deemed jointly drafted and written by the Parties to them and shall not be construed or interpreted against any Party originating or preparing them.

9. Authority. Each person signing below, by his or her signature, warrants and represents that he or she has the authority to so execute and bind the Party for whom he or she is acting to the terms and provisions of this Amended Agreement.

10. No Assignment of Released Claims. The County represents and warrants to Ace that none of the liabilities, claims, demands, causes of action, or damages, including attorneys', consultants' and experts' fees and expenses, that are being released in this Amended Agreement (collectively, the "Released Claims") have been sold, transferred, or assigned to any person or entity prior to the date hereof and that all such Released Claims of the County, if and to the extent they exist, are owned by the County.

11. Attorney Fees and Costs. If any Party brings an action to enforce this Amended Agreement or any of its terms and conditions, the prevailing Party in such action or dispute resolution process shall be entitled to an award of attorneys' fees and costs from the losing Party.

12. No Admissions. The Parties expressly understand and agree that this Amended Agreement is a resolution of disputed claims. Nothing in this Amended Agreement shall be construed as an admission of liability on the part of any Party, and the Parties expressly deny any such liability.

13. Entire Agreement. This Amended Agreement sets forth the entire agreement of the Parties with respect to resolution of the Alleged Roof Issues described herein and supersedes any and all prior negotiations, agreements, or understandings between the Parties with respect to such Alleged Roof Issues. This Amended Agreement may not be modified or amended, except by a written agreement signed by the Parties.

14. Enforceability. This Amended Agreement shall be binding on the respective heirs, successors, devisees, executors, representatives, beneficiaries, subsidiaries, affiliates, partners, assigns and the estates of the Parties to this Amended Agreement. If, for any reason, any provision contained in this Amended Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Amended Agreement shall nonetheless remain binding and valid and be enforced to the fullest extent permitted by law. No waiver by any Party of any term or condition of this Amended Agreement in one or more instances shall be deemed or construed as a waiver of the same or any other term or condition of this Amended Agreement on any future occasion.

15. Further Assurances. The Parties agree to execute such other and further documents and to otherwise cooperate with the reasonable requests of any other Party or its counsel to effectuate the intent of this Amended Agreement.

16. Remedies. This Amended Agreement is the settlement of disputed claims, with no admission of liability by any Party. In the event any Party breaches any provision of this Amended Agreement, the other Party shall be entitled to specific performance; provided, that if specific performance is not available, then the non-breaching Party shall have all other rights or remedies as may be available at law or equity.

17. Choice of Law. This Amended Agreement shall be interpreted, enforced, and governed under the laws of the State of Montana without regard to application of conflict of laws principles.

18. Headings. The various headings in this Amended Agreement are inserted for convenience only and shall not affect this Amended Agreement or any of its provisions.

GRANITE COUNTY

ACE ROOFING, LLC

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____