

## SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, 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 Agreement as a “Party” and collectively as “the Parties”).

### 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 (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

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:

### AGREEMENT AND RELEASE

1. Roof Drain Work. Upon execution of this Agreement by the County, (i) the County shall facilitate coordination between Ace and a plumber hired by the County so that Ace and the plumber can perform the corrective work described in CRCI, Inc.’s report dated November 10, 2023 (the “Roof Drain Report”), which is attached hereto as Exhibit A; and (ii) Ace shall coordinate with the plumber and shall furnish and install the Zurn roof drains described in the product data attached to the Roof Drain Report. Ace’s scope of corrective work under this Paragraph 1 is limited to those repairs described in the Roof Drain Report that are above the roof deck. The County shall hire a plumber and cause the plumber to coordinate with Ace, install new piping beneath the roof deck to connect to the roof drains, and perform repairs below the roof deck as stated in the Roof Drain Report.

2. Release of Ace by the County. Upon execution of this Agreement by Ace and completion of the Roof Drain Work described in Paragraph 1, 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 with respect to the Alleged Roof Issues. Notwithstanding the foregoing, expressly excluded from this release are latent defects and existing contractual warranties and manufacturer warranties, which were issued for the Project for the benefit of the County.

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

4. 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 Agreement.

5. Counterparts. This 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.

6. Advice. Each Party represents and warrants that: (i) it has executed this 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.

7. Construction. The terms of this 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.

8. 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 Agreement.

9. 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 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.

10. Attorney Fees and Costs. If any Party brings an action to enforce this 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.

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

12. Entire Agreement. This 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 Agreement may not be modified or amended, except by a written agreement signed by the Parties.

13. Enforceability. This 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 Agreement. If, for any reason, any provision contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this 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 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 Agreement on any future occasion.

14. 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 Agreement.

15. Remedies. This 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 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.

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

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

**GRANITE COUNTY**

**ACE ROOFING, LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_