

**LEWISTOWN PUBLIC SCHOOLS  
BOARD OF TRUSTEES**

Lincoln Board Room  
215 Seventh Avenue South  
Lewistown, Montana 59457

**Wednesday, April 19, 2017**

**SPECIAL BOARD MEETING**

**CALL TO ORDER (7:00 a.m.)**

**AGENDA**

1. Roll Call
2. Pledge of Allegiance
3. Recognition of Parents, Patrons, and Others Who Wish to Address the Board

**ACTION ITEMS**

4. Approve Awarding the Contract for the Roof Repair Project at Fergus High School to Empire Roofing

**ADJOURNMENT**

## **PUBLIC PARTICIPATION**

The Board of Education encourages participation at public School Board meetings. Under normal circumstances it is desirable to allow everyone to address the Board. However, when there are many persons who wish to address the Board, the following rules shall apply to protect the public's right to be heard:

- Speaker must first be recognized by the Chair and identify him/herself.
- Comments may not infringe on the rights to privacy of another.
- Each speaker shall be allowed a presentation not to exceed three (3) minutes at the appropriate time on the Agenda.
- There will be a limit of one presentation per person.
- The Board requests that organizations and groups be represented by a single spokesperson. The spokesperson for each group shall be limited to a presentation of three (3) minutes. To save repetition and time, the Board also requests that persons not speak if a previous speaker has expressed a similar position on the same issue.
- Appropriate comments are welcome but no action is likely to be taken at this time to ensure that others have the opportunity to address the same issue also. Items discussed may, at the discretion of the Board, be placed on a later agenda.
- The Board will accept comments from the public on each agenda item as it is discussed.

By a majority vote of the Board, these rules may be suspended for special reasons at any particular meeting. Further, the Board may reserve the right to adjust the length of time.

LEWISTOWN PUBLIC SCHOOLS  
Lewistown, Montana

**BOARD AGENDA ITEM**

Meeting Date

04/19/2017

Agenda Item No.

3

☐ Minutes/Claims    ☐ Board of Trustees    ☐ Superintendent's Report    ☐ Action - Consent  
☐ Action - Indiv.

ITEM TITLE: RECOGNITION OF PARENTS, PATRONS, AND OTHERS WHO WISH TO ADDRESS  
THE BOARD

Requested By: Board of Trustees    Prepared By: \_\_\_\_\_

**SUMMARY:**

Time is provided on the agenda for anyone who wishes to address the Board.

**SUGGESTED ACTION:**

☐ Additional Information Attached    Estimated cost/fund source \_\_\_\_\_

**NOTES:**

	Motion	Second	Aye	Nay	Abstain	Other
<i>Board Action</i>						
Bailey						
Birdwell						
Koterba						
Poss						
Kelsey						
Thompson						
Weeden						

**LEWISTOWN PUBLIC SCHOOLS**  
**Lewistown, Montana**

**BOARD AGENDA ITEM**

**Meeting Date**

04/19/2017

**Agenda Item No.**

4

**ITEM TITLE:** APPROVE AWARDING THE CONTRACT FOR THE REPAIR OF THE ROOF AT FERGUS HIGH SCHOOL TO EMPIRE ROOFING

**Requested By:** Board of Trustees **Prepared By:** Rebekah Rhoades

**SUMMARY:**

At 12:00 p.m. on Tuesday, March 28, 2017, Durward Solbeck, Space Planning for People, and Rebekah Rhoades, Business Manager/District Clerk, opened the sealed Bids for the Fergus High School Roof Repair Project located at 1001 Casino Creek Drive as advertised. After the bid tabulation was received, Mr. Solbeck was able to negotiate with Empire Roofing to reduce the cost. This contract was reviewed by an Attorney with the Montana School Boards Association. It is the recommendation to accept the attached contract with Empire Roofing.

**SUGGESTED ACTION:** Approve awarding the contract to Empire Roofing for the Repair of the Roof at the Fergus High School Building located at 1001 Casino Creek Drive

☒ **Additional Information Attached**

**NOTES:**

	Motion	Second	Aye	Nay	Abstain	Other
<b><i>Board Action</i></b>						
Bailey						
Birdwell						
Koterba						
Poss						
Kelsey						
Thompson						
Weeden						



# AIA<sup>®</sup> Document A105<sup>™</sup> – 2007

## **Standard Form of Agreement Between Owner and Contractor** for a Residential or Small Commercial Project

**AGREEMENT** made as of the Eleventh day of April in the year Two Thousand Seventeen  
(Paragraph deleted)

**BETWEEN** the Owner:

School District #1  
Lewistown Public Schools  
215 7<sup>th</sup> Avenue South  
Lewistown, Montana 59457  
Telephone Number: 406-535-8777

and the Contractor:

Empire Roofing Inc.  
5623 Story Road  
Billings, Montana 59101  
Telephone Number: 406-656-4613  
Fax Number: 406-896-9496

for the following Project:

High School Roof Repair  
Lewistown Public Schools  
Lewistown, Montana  
The project involves removal and replacement of roof membrane and standing seam metal roof and flashing systems as well as all incidentals and as defined in the plans and specifications.

The Architect:

Durward K. Sobek AIA Architect  
Space Planning For People,  
2817 2nd Ave. North, Suite #202  
Billings, MT 59101  
Telephone Number: 406-245-5082  
Fax Number: 406-245-2341

The Owner and Contractor agree as follows.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

State or local law may impose requirements on contracts for home improvements. If this document will be used for Work on the Owner's residence, the Owner should consult local authorities or an attorney to verify requirements applicable to this Agreement.

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User Notes:

## TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
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16	TERMINATION OF THE CONTRACT
17	OTHER TERMS AND CONDITIONS

### ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 The Contractor shall complete the Work described in the Contract Documents for the Project. The Contract Documents consist of

- .1 this Agreement signed by the Owner and Contractor;
- .2 the drawings and specifications prepared by the Architect, dated February 1, 2017 , and enumerated as follows:

#### Drawings:

Number	Title	Date
A1	General Construction,. Notes Code Data, Location Plan	2-1-17
A2	Overall Roof Plan, Notes, Roofing Details	2-1-17
A3	Roof Repair Plans, Notes, Roofing Details	2-1-17
A4	Elevations, Roofing Details	2-1-17
A5	Drainage and Concrete Plans Notes, Misc. Details	2-1-17
M-1	Mechanical Plans and Details	2-1-17
		1-23-17

Specifications:

Section	Title	Pages
Division 1	General Requirements – Bidding Documents	8 plus AIA Doc and Wage Rates
Division 2	Roof Removal and Replacement Work	15
Division 3	Concrete	8
Division 5	Metal	4
Division 6	Wood	4
Division 7	Thermal and Moisture Protection	24
Division 8	Doors and Windows	2
Division 9	Finishes	7
Division 15	Mechanical	5
Division 16	Electrical	1

.3 addenda prepared by the Architect as follows:

Number	Date	Pages
#1	2-17-17	3
#2	2-23-17	1

.4 written orders for changes in the Work issued after execution of this Agreement; and

.5 other documents, if any, identified as follows:  
None

## ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The number of calendar days available to the Contractor to substantially complete the Work is the Contract Time. The date of commencement of the Work shall be the date of this Agreement unless otherwise indicated below. The Contractor shall substantially complete the Work, no later than Friday, August 11, 2017 subject to adjustment as provided in Article 10 and Article 11.

Work to commence on or before Tuesday May 30, 2027 and upon receipt of a written Notice To Proceed. Bidder must pay as liquidated damages the sum of \$500 for each consecutive calendar thereafter the above Construction Deadline.

## ARTICLE 3 CONTRACT SUM

§ 3.1 Subject to additions and deductions in accordance with Article 10, the Contract Sum is:

Three Hundred Twenty-seven Thousand Nine Hundred Eighteen Dollars and Zero Cents (\$ 327,918.00 )

The Contract sum, as mutually agreed upon, is a result of negotiation between Owner and the Bidder.

§ 3.2 For purposes of payment, the Contract Sum includes the following values related to portions of the Work:

*(Paragraph deleted)*

### Portion of Work

Schedule of Values to be submitted and prior approved.

§ 3.3 Unit prices, if any, are as follows:

*(Paragraph deleted)*

Item	Units & Limitations	Price per Unit (\$0.00)
Unit Cost A – Replace unsuitable Roof/Fascia wood decking	Per Square Foot	\$ 4.06
Unit Cost B – Replace existing Unidentified Fascia boards	Per Linear Foot	\$ 5.23
Unit Cost C – Patch/Repair existing metal gutter system beyond that shown.	Per Linear Foot	\$24.66

§ 3.4 Allowances included in the Contract Sum, if any, are as follows:

*(Paragraph deleted)*

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Item	Price
None	

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

None

§ 3.6 The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work.

#### ARTICLE 4 PAYMENT

§ 4.1 Based on Contractor's Applications for Payment certified by the Architect, the Owner shall pay the Contractor, in accordance with Article 12, as follows:

Payment shall be made (30) thirty days after Payment is certified by the Architect. Retainage shall be a sum of (5%) five percent of each pay request. The Montana State Gross receipt tax applies to this project.

§ 4.2 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate below, or in the absence thereof, at the legal rate prevailing at the place of the Project.

15 % Fifteen

#### ARTICLE 5 INSURANCE

§ 5.1 The Contractor shall provide Contractor's general liability and other insurance as follows:

(Paragraph deleted)

Type of insurance	Limit of liability (\$0.00)
Per Specifications and as Attachment A	

§ 5.2 The Owner shall provide property insurance to cover the value of the Owner's property, including any Work provided under this Agreement. The Contractor is entitled to receive an increase in the Contract Sum equal to the insurance proceeds related to a loss for damage to the Work covered by the Owner's property insurance.

§ 5.3 The Contractor shall obtain an endorsement to its general liability insurance policy to cover the Contractor's obligations under Section 8.12.

§ 5.4 each party shall provide certificates of insurance showing their respective coverages prior to commencement of the Work.

§ 5.5 Unless specifically precluded by the Owner's property insurance policy, the Owner and Contractor waive all rights against (1) each other and any of their subcontractors, suppliers, agents and employees, each of the other; and (2) the Architect, Architect's consultants and any of their agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance or other insurance applicable to the Work.

#### ARTICLE 6 GENERAL PROVISIONS

##### § 6.1 THE CONTRACT

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification in accordance with Article 10.

##### § 6.2 THE WORK

The term "Work" means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment and services provided, or to be provided, by the Contractor to fulfill the Contractor's obligations.

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### **§ 6.3 INTENT**

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

### **§ 6.4 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

Documents prepared by the Architect are instruments of the Architect's service for use solely with respect to this Project. The Architect shall retain all common law, statutory and other reserved rights, including the copyright. The Contractor, subcontractors, sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce the instruments of service solely and exclusively for execution of the Work. The instruments of service may not be used for other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Architect.

## **ARTICLE 7 OWNER**

### **§ 7.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§ 7.1.1** If requested by the Contractor, the Owner shall furnish all necessary surveys and a legal description of the site.

**§ 7.1.2** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, the Owner shall obtain and pay for other necessary approvals, easements, assessments and charges.

### **§ 7.2 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work which is not in accordance with the Contract Documents, the Owner may direct the Contractor in writing to stop the Work until the correction is made.

### **§ 7.3 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, the Contract Sum shall be adjusted to deduct the cost of correction from payments due the Contractor.

### **§ 7.4 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

**§ 7.4.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project.

**§ 7.4.2** The Contractor shall coordinate and cooperate with the Owner's own forces and separate contractors employed by the Owner.

**§ 7.4.3** Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

## **ARTICLE 8 CONTRACTOR**

### **§ 8.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**§ 8.1.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

**§ 8.1.2** The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies or omissions discovered to the Architect.

### **§ 8.2 CONTRACTOR'S CONSTRUCTION SCHEDULE**

The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work.

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### **§ 8.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**§ 8.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.

**§ 8.3.2** The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of subcontractors or suppliers for each portion of the Work. The Contractor shall not contract with any subcontractor or supplier to whom the Owner or Architect have made a timely and reasonable objection.

### **§ 8.4 LABOR AND MATERIALS**

**§ 8.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

**§ 8.4.2** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

### **§ 8.5 WARRANTY**

The Contractor warrants to the Owner and Architect that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents.

### **§ 8.6 TAXES**

The Contractor shall pay sales, consumer, use and similar taxes that are legally required when the Contract is executed.

### **§ 8.7 PERMITS, FEES AND NOTICES**

**§ 8.7.1** The Contractor shall obtain and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

**§ 8.7.2** The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the Architect in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules and regulations.

### **§ 8.8 SUBMITTALS**

The Contractor shall promptly review, approve in writing and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

### **§ 8.9 USE OF SITE**

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the Owner.

### **§ 8.10 CUTTING AND PATCHING**

The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

### **§ 8.11 CLEANING UP**

The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, the Contractor shall remove its tools, construction equipment, machinery and surplus material; and shall properly dispose of waste materials.

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## § 8.12 INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

## ARTICLE 9 ARCHITECT

§ 9.1 The Architect will provide administration of the Contract as described in the Contract Documents. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 9.2 The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work.

§ 9.3 The Architect will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

§ 9.4 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor.

§ 9.5 The Architect has authority to reject Work that does not conform to the Contract Documents.

§ 9.6 The Architect will promptly review and approve or take appropriate action upon Contractor's submittals, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 9.7 The Architect will promptly interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request from either the Owner or Contractor.

§ 9.8 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 9.9 The Architect's duties, responsibilities and limits of authority as described in the Contract Documents shall not be changed without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

## ARTICLE 10 CHANGES IN THE WORK

§ 10.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly in writing. If the Owner and Contractor cannot agree to a change in the Contract Sum, the Owner shall pay the Contractor its actual cost plus reasonable overhead and profit.

§ 10.2 The Architect will have authority to order minor changes in the Work not involving changes in the Contract Sum or the Contract Time and not inconsistent with the intent of the Contract Documents. Such orders shall be in writing and shall be binding on the Owner and Contractor. The Contractor shall carry out such orders promptly.

§ 10.3 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

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## **ARTICLE 11 TIME**

**§ 11.1** Time limits stated in the Contract Documents are of the essence of the Contract.

**§ 11.2** If the Contractor is delayed at any time in progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, the Contract Time shall be subject to equitable adjustment.

## **ARTICLE 12 PAYMENTS AND COMPLETION**

### **§ 12.1 CONTRACT SUM**

The Contract Sum stated in the Agreement, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### **§ 12.2 APPLICATIONS FOR PAYMENT**

**§ 12.2.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for Work completed in accordance with the values stated in the Agreement. Such Application shall be supported by data substantiating the Contractor's right to payment as the Owner or Architect may reasonably require. Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

**§ 12.2.2** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

### **§ 12.3 CERTIFICATES FOR PAYMENT**

The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part.

### **§ 12.4 PROGRESS PAYMENTS**

**§ 12.4.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner provided in the Contract Documents.

**§ 12.4.2** The Contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from the Owner, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.

**§ 12.4.3** Neither the Owner nor the Architect shall have responsibility for payments to a subcontractor or supplier.

**§ 12.4.4** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the requirements of the Contract Documents.

### **§ 12.5 SUBSTANTIAL COMPLETION**

**§ 12.5.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

**§ 12.5.2** When the Work or designated portion thereof is substantially complete, the Architect will make an inspection to determine whether the Work is substantially complete. When the Architect determines that the Work is substantially complete the Architect shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish the responsibilities of the Owner and Contractor, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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## **§ 12.6 FINAL COMPLETION AND FINAL PAYMENT**

**§ 12.6.1** Upon receipt of a final Application for Payment, the Architect will inspect the Work. When the Architect finds the Work acceptable and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment.

**§ 12.6.2** Final payment shall not become due until the Contractor submits to the Architect releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract.

**§ 12.6.3** Acceptance of final payment by the Contractor, a subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **ARTICLE 13 PROTECTION OF PERSONS AND PROPERTY**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall take reasonable precautions to prevent damage, injury or loss to employees on the Work, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

## **ARTICLE 14 CORRECTION OF WORK**

**§ 14.1** The Contractor shall promptly correct Work rejected by the Architect as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement and additional testing.

**§ 14.2** In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.

**§ 14.3** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.3.

## **ARTICLE 15 MISCELLANEOUS PROVISIONS**

### **§ 15.1 ASSIGNMENT OF CONTRACT**

Neither party to the Contract shall assign the Contract as a whole without written consent of the other.

### **§ 15.2 TESTS AND INSPECTIONS**

**§ 15.2.1** At the appropriate times, the Contractor shall arrange and bear cost of tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

**§ 15.2.2** If the Architect requires additional testing, the Contractor shall perform those tests.

**§ 15.2.3** The Owner shall bear cost of tests, inspections or approvals that do not become requirements until after the Contract is executed.

### **§ 15.3 GOVERNING LAW**

The Contract shall be governed by the law of the place where the Project is located.

Change to Section 15.3 GOVERNING LAW

See Attachment Titled A105-2007

Empire Roofing and Lewistown School District

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User Notes:



## ARTICLE 16 TERMINATION OF THE CONTRACT

### § 16.1 TERMINATION BY THE CONTRACTOR

If the Architect fails to certify payment as provided in Section 12.3 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 12.4.1 for a period of 30 days, the Contractor may, upon seven additional days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit, and costs incurred by reason of such termination.

### § 16.2 TERMINATION BY THE OWNER FOR CAUSE

#### § 16.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 is otherwise guilty of substantial breach of a provision of the Contract Documents.

§ 16.2.2 When any of the above reasons exist, the Owner, after consultation with the Architect, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may

- .1 take possession of the site and of all materials thereon owned by the Contractor, and
- .2 finish the Work by whatever reasonable method the Owner may deem expedient.

§ 16.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 16.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 16.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

### § 16.3 TERMINATION BY THE OWNER FOR CONVENIENCE

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

## ARTICLE 17 OTHER TERMS AND CONDITIONS

Additions See Attachment Titled A105 – 2007 Empire Roofing and Lewistown School District

This Agreement entered into as of the day and year first written above.

April 11, 2017

\_\_\_\_\_  
**OWNER (Signature)**

Jason Butcher Superintendent  
School District #1 Lewistown Public Schools  
(Printed name, title and address)

\_\_\_\_\_  
**CONTRACTOR (Signature)**

Everett Martin, President  
Empire Roofing Inc.  
(Printed name, title and address)  
LICENSE NO.:  
JURISDICTION:



A105 - 2007  
Empire Roofing and Lewistown School District

Lewistown School District  
Provisions for Consideration  
April 12, 2017

Additions to Section 8.5 WARRANTY

8.5.2 The Contractor agrees to promptly make good, without cost to the Owner, any and all defects due to faulty workmanship and/or materials which may appear within the guarantee or warranty period established in the Contract Documents, and if no such period be stipulated in the Contract Documents, then such guarantee shall be for the a period of 1 year from the date to project completion. The Contractor further agrees to execute any special warranties as provided by the Contract Documents or required by law.

8.5.3 The Contractor shall pay for all changes to the work resulting from such defects in workmanship or materials and all expenses necessary to replace or repair the work, including that damaged or disturbed by making replacements or repairs. This warranty is in addition to all other guarantees, warranties and/or rights contained in the Contract Documents.

Change to Section 15.3 GOVERNING LAW

The Contract shall be governed by the laws of the state of Montana. The venue for any proceeding brought under this Agreement shall be the Montana Tenth Judicial District Court – Fergus County.

Additions to Section 17 OTHER TERMS AND CONDITIONS

17.1 All work, labor, services and materials to be furnished by Contractor must strictly comply with all applicable federal, state and local laws, school district policies, rules, regulations, statutes, ordinances and directives now in force or hereafter in with effect. All work, labor, services or materials necessary to comply with those laws will be furnished by the Contractor as part of this Agreement without any additional compensation. Contractor agrees to indemnify and hold harmless the Owner from and against all claims, loss or expense caused directly or indirectly by its failure to fully comply herewith.

17.2 The Contactor specifically agrees to comply with Montana law, including but not limited to Section 18-2-403, MCA, requiring payment of the standard prevailing rate of wages, including fringe benefits, in effect and applicable to the Contractor.

17.3 All employees hired by Contractor to perform services under this Agreement shall be hired by Contractor on the basis of merit and qualifications to perform the duties necessitated by the requirements of this Agreement. Such qualifications are those abilities of an applicant for employment genuinely related to competent and satisfactory performance of Contractor's obligations under this Agreement. Contractor agrees and warrants that Contractor's hiring practices related to employees performing services under this Agreement, as well as Contractor's practices related to promotion, retention, compensation, and other terms, conditions or privileges of employment, shall be nondiscriminatory, and such hiring, promotion, retention, and general employment practices shall not be based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

17.4 All employees of Contractor performing labor under this Agreement, including Contractor in the event that Contractor personally performs labor under this Agreement, shall be subjected to a name-based and fingerprint criminal background investigation conducted by an appropriate law enforcement agency. Contractor shall provide to the District the results of such investigation for each employee (including Contractor) prior to any such employee performing any services under this Agreement. The District shall have the authority, in the discretion of the District Superintendent, to prohibit Contractor from permitting any such employee to perform services under this Agreement on the basis of information set forth in the results of a criminal background investigation.

17.5 All employees of Contractor (including Contractor) shall perform services under this Agreement in a professional manner, and shall, at all times while present on District property, behave in a manner appropriate to a school setting. Contractor shall discipline or terminate the employment of any of Contractor's employees performing services under this Agreement for engaging in any conduct inappropriate to a school setting, including, but not limited to, being under the influence or in possession of alcohol, tobacco, or any controlled substance while on District property; use of foul language; bullying or harassment of District students or staff; in possession of an unauthorized weapon; or such other conduct deemed inappropriate by the District. The District shall have the authority, in the discretion of the District Superintendent, to prohibit Contractor from permitting any employee to perform services under this Agreement based upon one or more instances of employee misconduct as described herein.

17.7 Nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to: 1) make Contractor the agent, servant or employee of the Owner; or 2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner or any of its authorized representatives in respect of the work shall relate to the results the Owner desires to obtain from the work, and shall in no way affect Contractor's independent contractor status.

17.8 Contractor represents and warrants the following to the Owner in addition to the other representations and warranties contained in the Agreement:

- that it is financial solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the work and perform its obligations under the Agreement;
- that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- that it is authorized to do business in Montana and properly licensed by all necessary governmental, public, and quasi-public authorities having jurisdiction over it, the work, or the site; and
- that the execution of the Agreement and its performance thereof are within its duly-authorized powers.

17.9 Contractor shall not use the image or likeness of Owner's facilities or Owner's official logo or emblem and any other trademark, service mark, or copyrighted or otherwise protected information of Owner, without Owner's prior written consent. Contractor shall not have any authority to advertise or claim that Owner endorses Contractor's services, without Owner's prior written consent.

17.10 Contractor shall not disclose any confidential information which comes into the possession of Contractor at any time during the Agreement, including but not limited to, the location and deployment of security devices, security access codes, student likenesses, student record information or employee information.

17.11 The parties acknowledge that, as a public entity in the State of Montana, Owner and entities contracting with Owner must comply with the open records laws of the State.

17.12 The Contractor shall require any potential subcontractor to disclose to the Contractor any ownership interest or familial relationship between the Contractor or the Owner and the potential subcontractor prior to entering into a subcontract. Contractor shall report to Owner all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated subcontractor.

17.13 Contractor shall promptly notify Owner of any material defaults by any Subcontractor or Sub-subcontractor. It is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any Subcontractor, Sub-subcontractor or other materialman or worker employed by Contractor the right to obtain a personal judgment or to create a mechanic's or materialman's lien against Owner for the amount due from the Owner or the Contractor.

**School District #1 Mission Statement:**

***Excellence Today, Success Tomorrow***

**Core Values of the Lewistown Public Schools:**

1. **High Standards:** Lewistown Public Schools upholds high standards and expectations for the Board, staff and students of the District. We strive to provide challenging curriculum taught by innovative leaders in the field of education, utilizing research-based curriculum and implementing best practices.
2. **Student-Centered:** The motivation for everything we do is based upon what is right and best for the children of our community. We ensure the development, well-being and education of students through a variety of academic and extracurricular activities. We assist students in overcoming challenges and help them celebrate their successes, all as part of a plan to maximize the potential of each student.
3. **Effective and Efficient Practices:** Lewistown Public Schools is committed to effective and efficient stewardship of our resources.
4. **Accountability:** Lewistown Public Schools is accountable for all that we do from fiscal management to the performance of students, staff, administration and the Board.
5. **Community Support:** Lewistown Public Schools understands that community support is vital, earned and continually renewed through consistent dedication to quality service. We believe the key to success is found through mutual engagement of the community and the schools, effective interaction between parents, students, staff, administrators, trustees and all elements of the Lewistown Community. We value the trust the community has invested in our public schools and we strive to earn and maintain that trust.
6. **Communication:** Lewistown Public Schools values effective and open communication with parents, students, staff, trustees and the community.

**LEWISTOWN PUBLIC SCHOOLS  
2016-2017 SCHOOL CALENDAR**

**A. Pupil Instruction**

**First Semester** **90 Days** **Second Semester** **89 Days**

<b>FIRST QUARTER</b>				<b>DAYS</b>
First Week	Aug	25 -- Aug	26	2
Second Week	Aug	29 -- Sept	2	5
Third Week	Sept	6 -- Sept	9	4
Fourth Week	Sept	12 -- Sept	16	5
Fifth Week	Sept	19 -- Sept	23	5
Sixth Week	Sept	26 -- Sept	30	5
Seventh Week	Oct	3 -- Oct	7	5
Eighth Week	Oct	10 -- Oct	14	5
Ninth Week	Oct	17 -- Oct	19	3
Tenth Week	Oct	24 -- Oct	28	5
				<b>44</b>

<b>THIRD QUARTER</b>				<b>DAYS</b>
First Week	Jan	23 -- Jan	27	5
Second Week	Jan	30 -- Feb	3	5
Third Week	Feb	6 -- Feb	10	5
Fourth Week	Feb	13 -- Feb	17	5
Fifth Week	Feb	20 -- Feb	23	4
Sixth Week	Feb	27 -- Mar	3	5
Seventh Week	Mar	6 -- Mar	10	5
Eighth Week	Mar	13 -- Mar	17	5
Ninth Week	Mar	20 -- Mar	24	5
				<b>44</b>

<b>SECOND QUARTER</b>				<b>DAYS</b>
First Week	Oct	31 -- Nov	2	3
Second Week	Nov	7 -- Nov	11	5
Third Week	Nov	14 -- Nov	18	5
Fourth Week	Nov	21 -- Nov	22	2
Fifth Week	Nov	28 -- Dec	2	5
Sixth Week	Dec	5 -- Dec	9	5
Seventh Week	Dec	12 -- Dec	16	5
Eighth Week	Dec	19 -- Dec	21	3
Ninth Week	Jan	3 -- Jan	6	4
Tenth Week	Jan	9 -- Jan	13	5
Eleventh Week	Jan	17 -- Jan	20	4
				<b>46</b>

<b>FOURTH QUARTER</b>				<b>DAYS</b>
First Week	Mar	27 -- Mar	31	5
Second Week	Apr	3 -- Apr	7	5
Third Week	Apr	10 -- Apr	13	4
Fourth Week	Apr	18 -- Apr	21	4
Fifth Week	Apr	24 -- Apr	28	5
Sixth Week	May	1 -- May	5	5
Seventh Week	May	8 -- May	12	5
Eighth Week	May	15 -- May	19	5
Ninth Week	May	22 -- May	26	5
Tenth Week	May	30 -- May	31	2
				<b>45</b>

**Totals**

**B. Pupil Instruction Related Days (PIR) - (Teachers ONLY - No School for Students)**

August 23-24	PIR	2.00
October 20-21	Staff Development Days - Teachers Convention	2.00
November 2-3	Parent Teacher Conferences (Evening on Nov 2, All Day on Nov 3)	1.50
January 16	PIR	1.00
March 28	Parent Teacher Conferences - Evening <u>ONLY</u> (Regular Day for Students)	0.50
Floater	PIR	1.00
		<b>8.00</b>

**Holidays / Vacations (Dates Inclusive)**

**C.**

September 5	Labor Day
October 20-21	Fall Vacation (Teachers - Convention)
November 3	Parent Teacher Conferences (Vacation Day for Students)
November 4	Vacation Day
November 23-25	Thanksgiving Vacation
December 22-January 2	Winter Break
January 16	PIR (Vacation day for Students)
February 24	Vacation Day
April 14-17	Spring Break
May 29	Memorial Day