

AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT, made and entered into on this 27 day of June, 2012, by and between the Board of Trustees of Idaho Falls School District No. 91, 690 John Adams Parkway, Idaho Falls, Idaho 83402, (hereinafter "Owner"), and Smith Roofing, (hereinafter "Contractor"), as follows:

IT IS ACKNOWLEDGED by and between the parties that the scope and nature of the project is generally described as:

Re-Roof A.H. Bush Elementary School

IT IS THEREFORE AGREED, for and in consideration of their mutual promises set out herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, as follows:

1. The Contract Documents

1.1. The Contract between the parties executing this Agreement collectively consists of this Agreement, and attached specifications, other documents listed in this Agreement and Modifications issued after execution of this Agreement. Contractor, by executing this Agreement, acknowledges that it has received all identified documents and agrees that all listed items are made a part of this Agreement as if fully incorporated herein.

2. The Scope of Work

2.1. The Contractor shall execute the entire work described in the contract documents, except to the extent specifically indicated in the contract documents to be the responsibility of others.

2.2. The contractor shall be responsible for complying with all manufacturers' requirements for inspections to verify compliance to warranty.

3. Date of Commencement and Substantial Completion

3.1. The date of commencement of this Agreement shall be the date first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

Commencement Date: June 27, 2012

3.2. The Contractor shall achieve substantial completion of the entire work not later than August 31, 2012.

4. Contract Sum

- 4.1. The Owner shall pay the Contractor for the Contractor's performance of the contract the total sum of \$140,102.00, subject to any applicable additions and deductions as provided in the contract documents or as altered by change orders approved by the Owner.
- 4.2. The contract sum is based upon the alternates, if any, which are described in the contract documents and are hereby accepted by the Owner.
- 4.3. Unit prices, if any, are as follows:

Not Applicable

5. Progress Payments

- 5.1. Based upon applications for payment submitted by the Contractor to and certified by the Owner.
- 5.2. The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows: Not Applicable
- 5.3. Each application for payment shall be based upon the schedule of values submitted by the Contractor. This schedule, unless objected to by the Owner shall be used as a basis for reviewing the contractor's applications for payment.
- 5.4. The Owner shall retain a total of five (5%) percent of each requested payment. Such retainage shall be paid as part of the final payment.

6. Final Payment

- 6.1. Final payment, constituting the entire unpaid balance of the contract sum, shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor, and (2) after warranty certification is received. Final payment shall be made by the Owner not more than 30 days after the issuance of the final project certificate for payment, and receipt of all required documents and tax release information from the Idaho Tax Commission.

7. Miscellaneous Provisions

- 7.1. Temporary facilities and services: It is the Contractor's responsibility to open, clean and secure the facilities. Power will be available to contractor. It is the Contractor's responsibility to connect to building utilities.

8. Termination or Suspension

- 8.1. The Contract may be terminated by the Owner or the Contractor for failure to perform or comply with required codes, rules regulations, statutes or contractual requirements and duties.

9. Enumeration of Contract Documents

9.1. The contract documents, except for modifications issued after execution of this Agreement, are enumerated as follows:

Not Applicable

9.2. The specifications are those contained in the Bid Documents.

9.3. The addenda, if any, are as follows:

Contractor will work with District and other contractors to minimize impact to schedule and school activities.

10. Licensing Requirements

10.1. This agreement is not binding and effective upon Owner until such time as Contractor provides to Owner all verifications necessary to establish that Contractor and any and all subcontractors have the required and necessary public works contractors licenses. Any and all other applicable licenses required by the State of Idaho, Bonneville County, of City of Idaho Falls, the existence of necessary and required liability insurance, including but not limited to, automobile insurance and workman's compensation insurance and all insurance requirements that are referenced and required by either the contract documents or the State of Idaho.

10.2. Contractor also confirms that it is licensed and/or trained to apply the manufacturer's products.

11. Miscellaneous Provisions.

11.1. Contractor agrees that it will provide to Owner any and all documentation or verification required by this Agreement within five (5) days of the execution of the same.

11.2. Contractor agrees that within thirty (30) days of the execution of this Agreement to file with the Idaho Tax Commission any and all required notices or documentation relating to this project.

11.3. Contractor agrees that within five (5) days of execution of this Agreement to provide to Owner any and all bonding requirements set out in this Agreement or any associated documents.

11.4. Binding Agreement. This Agreement, hereby agreed to by the Parties, is binding upon and enforceable against any and all of the persons and entities in whose favor the Agreement runs. This Agreement, agreed to by the Parties is also enforceable by and binding upon all of the Parties respective spouses, heirs, assigns, successors, agents, employees, trustees and representatives.

- 11.5. Parties Fully Advised. The Parties also warrant and represent to one another that they have, either personally or through their attorneys and accountants, fully investigated to their satisfaction all facts surrounding the herein expressed claims, controversies, and disputes between and among themselves, the adequacy of the consideration provided herein, the tax consequences of the consummation of the transactions contemplated hereby, and the legal effect thereof. The Parties assume the risk that this Agreement has been made on the basis of mistake or mistakes, mutual or unilateral, whether or not fully expressed herein.
- 11.6. Right to Enter Into Agreement. The Parties represent and warrant to one another that they have the full right, power, and authority to enter into this Agreement, that they have not assigned, conveyed, encumbered, or in any manner transferred to others, all or any portion of the claims covered by this Agreement, and that the individuals executing this Agreement have authority to sign this Agreement and bind such Party.
- 11.7. Governing Law. This Agreement shall be interpreted and enforced according to the laws of the State of Idaho.
- 11.8. Attorneys Fees. Should it be necessary for any Party to this Agreement to initiate or defend any legal proceedings wherein any issues arising under the Agreement are adjudicated, the prevailing party in such legal proceedings shall be entitled to an award of its attorney fees, costs, expenses and disbursements (including the fees and expenses of expert and fact witnesses), reasonably incurred or made by it in preparing to bring suit, during suit, on appeal, on petition for review and in enforcing any judgment or award.
- 11.9. Severability. This Agreement hereto does not violate any federal, state or local statute, ordinance, regulation or common law known, but any provision or portion thereof that is found to be in violation of any statute, ordinance, regulation or common law shall be considered null and void with the remaining provisions remaining viable and in effect.
- 11.10. Headings Not Controlling. The paragraph headings included herein are for reference only and are not part of this Agreement. The headings shall not control or alter the meaning of this Agreement as set forth in the text.
- 11.11. Equal Participation in the Drafting. The Parties have had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any Party based upon a claim that the Party drafted the ambiguous language.
- 11.12. Waiver. A waiver or any breach of, or failure to enforce, any of the terms or conditions of this Agreement shall not in any way affect, limit or waive a Party's rights to enforce noncompliance thereafter with each and every term and condition of this Agreement.
- 11.13. Entire Agreement. This Agreement memorializes the entire agreement of the Parties in all these subjects. This Agreement may not be modified, interpreted, amended,

waived or revoked orally, but only by writing signed by all Parties. No Party is entering into this Agreement in reliance on oral or written promises, inducements, representations, understandings, interpretations or agreements other than those contained in this Agreement.


- 11.14. Survival of Claims and Assignment. The Parties hereby acknowledge that by virtue of this Agreement, no rights, claims, or causes of action will survive against the other Party. The Parties further covenant, in consideration of the promises contained herein, that they have not assigned and will make no assignment of any putative right, claim, or cause of action to any third party arising out of the circumstances referenced herein above and hereby acknowledge that the Parties would suffer irreparable harm by virtue of any such assignment.
- 11.15. Counterparts. This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.
- 11.16. Signature Pages. A facsimile of the signature page evidencing the signature of a Party(s) to this Agreement shall constitute an original signature(s).
- 11.17. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person or entity, other than the Parties hereto, any remedy or claim under or by reason of this Agreement or any term, covenant, or condition hereof, as third-party beneficiary or otherwise, and all of the terms, covenants and conditions hereof shall be for the sole and exclusive benefit of the Parties hereto.
- 11.18. Survival of Representations and Warranties. All representations, warranties, covenants and agreements of all Parties hereto or contained herein shall survive the closing and delivery of the documents described herein and the payment of all sums required to be paid hereunder.

Signatures

CONTRACTOR:

DATED: 6-27-18

SMITH ROOFING & siding LLC

By: 

OWNER:

DATED: 6/27/12

IDAHO FALLS SCHOOL DISTRICT NO. 91

By: 