

Construction Contract

CONTRACT FOR: Thomasville High School- Gym EPDM Roof Restoration

This Contract is made and entered into as of the **21th day of April 2021**, by **Thomasville City schools** ("Owner") and GMG, Inc. ("Contractor"), (X) a corporation, () a professional corporation, () a professional association, () a limited partnership, () a sole proprietorship, or () a general partnership; organized and existing under the laws of the State of North Carolina.

Sec. 1. Title and Purpose. Contractor shall provide services to execute scope of work as identified in bid documents as required to restore roofs at Thomasville high school

Sec. 2. Scope and Services to be Performed. The Contractor shall perform Work in accordance with Attachments

A and Attachment B at the direction of the Owner. Contractor will render its Services in accordance with the standard of care, skill and diligence exercised by members of the same profession providing similar services under similar conditions at the locale of the Project and at the time the Services are to be performed. In this contract, "Work" means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor's duties to the Owner that arise out of this contract. Any modifications, corrections, or change orders by either party must be made in writing signed in the same manner as the original. The Owner reserves the right to refuse payment for any work outside that authorized herein or pursuant to a duly approved amendment or change order.

Sec. 3. Complete Work without Extra Cost. Unless otherwise provided, the Contractor shall obtain and provide, without additional cost to the Owner, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work. All work shall be completed by **June 1st 2021**

Sec. 4. Compensation. The Owner agrees to pay the Contractor for the work completed and for services performed within the scope of this contract up to and "not to exceed" **\$243,479.00** Payments for additional work completed or services performed under this contract must be approved in writing by the Owner prior to the commencement of such work or service. The Owner shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this contract.

Sec. 5. Contractor's Billings to the Owner. Contractors shall submit their invoice to the Owner for the work or portion of the work completed or services performed as well as provide a Contractor Sales Tax Report when applicable or requested. The Owner's project manager prior to submitting the invoice to the Finance Department will verify the charges for quantities of work completed or services performed. GMG to submit two invoices of \$121,739.50 one upon receipt of materials and the second after July 1st 2021

Sec. 6. Insurance. Contractor shall maintain insurance policies at all times with minimum limits as follows:

<u>Coverage</u>	<u>Minimum Limits</u>
Workers' Compensation	Statutory Limits
Employers' Liability	\$500,000
General Liability	\$1,000,000 per occurrence (\$2,000,000 aggregate)
Automobile Liability	\$1,000,000
Professional Liability (E & O)	\$1,000,000 per occurrence (\$2,000,000 aggregate)

Upon acceptance of the contract by the Owner the contractor shall provide the Owner with a **Certificate of Insurance** for review prior to the issuance of any contract or Purchase Order. All Certificates of Insurance will require thirty (30) days written notice by the insurer or contractor's agent in the event of cancellation, reduction or other modifications of coverage. In addition to the notice requirement above, the Contractor shall provide the Owner with immediate written notice of cancellation, reduction, or other modification of coverage of insurance. Upon failure of the Contractor to provide such notice, the Contractor assumes sole responsibility for all losses incurred by the Owner for which insurance would have provided coverage. The insurance certificate shall be for the initial contract period of one (1) year and shall be renewed by the contractor for each subsequent renewal period of the contract.

The Owner shall be named as an **additional insured** and the statement should read " Thomasville city schools is to be added as an additional insured as evidenced by an endorsement attached to this certificate." Only "A" rated insurance companies will be acceptable to the Owner. In the event the contractor fails to maintain and keep in force the insurance herein required, the Owner reserves the right to cancel and terminate the contract without notice.

The Principal Officer of the Contractor's firm shall, upon request of the Owner, provide a statement of proof indicating that a **Drug-Free Workplace Program** is in place and that where required by law, company drivers meet **the DOT/CDL licensing** requirements.

Sec. 7. Performance of Work by Owner. If the Contractor fails to perform the Work in accordance with the schedule referred to in Sec. 2 above, the Owner may, in its discretion, in order to bring the project closer to schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the Owner's rights and remedies. Before doing so, the Owner shall give the Contractor reasonable notice of its intention. The Contractor shall reimburse the Owner for all costs incurred by the Owner in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 8. Termination.

- (a) The Owner may terminate this contract in whole or, from time to time, in part, for the Owner's convenience or because of failure of the Contractor to fulfill the Contract obligations. The Owner shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall – (1) Immediately discontinue all services affected (unless the notice directs otherwise);
- (b) If the termination is for the convenience of the Owner, the Owner shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.
- (c) If, after termination for failure to fulfill contract obligations, it is determined that the Contractor had not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Owner.
- (d) The rights and remedies of the Owner provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

Sec. 9. Attachments. The following attachments are made a part of this contract and incorporated herein by reference:

Attachments A – GMG, Inc Plans/Scope of Work

In case of conflict between an attachment and the text of this contract excluding the attachment, the text of this contract shall control. Any attachment, which materially alters the Standard Terms contained herein, must be reviewed pursuant to the Owner's Contract Review Procedure.

Sec. 10. Notice.

- (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, electronic delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the Owner:

Thomasville City Board of
Education - also known as
Thomasville city schools

400 Turner Street Thomasville, NC
27360
Phone Number: (336) 870-1626
Email johannesene@tcs.k12.nc.us

To the Contractor:

Alex Gallaher
GMG Inc.
761 Gray road
lexington , NC 27292
Phone Number: (910) 650-9483
Email: agallaher@gmgroofing.com

- (b) **Change of Address, Date Notice Deemed Given:** A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by US Mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the US Postal Service or upon actual delivery, whichever first occurs.

Sec. 11. Indemnification. To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save

harmless **Thomasville City Schools**, its agents, officers, and employees, from and against all charges that arise in any manner from, in connection with, or out of this contract to the extent proximately caused by the negligent acts, errors or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them.. In performing its duties under this section, the Contractor shall at its sole expense defend Thomasville City Schools, its agents, officers, and employees with legal counsel reasonably acceptable to the Owner. As used in this subsection – “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, expenses, interest, reasonable attorney’s fees, and amounts for alleged violations of North Carolina law or federal law, including but not limited to, sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders. Nothing in this section shall affect any warranties in favor of the Owner that are otherwise provided in or arise out of this contract. Nothing in this section shall require the Contractor to defend Thomasville City Schools if the Contractor is a “design professional” as defined in N.C.G.S. § 22B-1(f)(4), or if this Contract includes “design professional services” as defined in N.C.G.S. § 22B-1(f)(6). This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

Sec. 12 Miscellaneous.

- (a) **Choice of Law and Forum.** This contract shall be deemed made in Davidson County, North Carolina.

This contract shall be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the appropriate division of the North Carolina General Court of Justice, in Davidson County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

- (b) **Waiver.** No action or failure to act by the Owner shall constitute a waiver of any of its rights or remedies that arise out this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.
- (c) **Performance of Government Functions:** Nothing contained in this contract shall be deemed or construed so as to in any way stop, limit, or impair the Owner from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.
- (d) **Severability.** If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.
- (e) **Assignment, Successors and Assigns.** Without the Owner's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out this contract. Unless the Owner otherwise agrees in writing, the Contractor and all assigns shall be subject to all of the Owner's defenses and shall be liable for all of the Contractor’s duties that arise out of this contract and all of the Owner's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

- (f) **Compliance with Law.** In performing all of the Work or Services contained herein, the Contractor and Contractors Employees shall comply with all applicable laws and regulations of the State of North Carolina pertaining to such Work or Services including Occupational Safety & Health laws.
- (g) **Owner Policy.** THE Owner OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER Owner CONTRACTS.
- (h) **EEO Provisions.** During the performance of this Contract the Contractor agrees as follows:
 - 1. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall post in conspicuous places available to employees and applicants for employment, notices setting forth these EEO provisions.
 - 2. The Contractor in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
- (i) **No Third Party Right Created.** This contract is intended for the benefit of the Owner and the contractor no other person
- (j) **Principles of Interpretation.** In this contract, unless the context requires otherwise the singular includes the plural and the plural the singular. The pronouns “it” and “its” include the masculine and feminine. Reference to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The word “person” includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and any other legal entities.
- (k) **Modifications, Construction Change Directives (CCD), Entire Agreement.** A modification, or construction change directive per the AIA standards, of this Contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. This Contract contains the entire agreement between the parties pertaining to the subject matter of this Contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Contract. Construction change directives to unit priced contracts will be paid at the unit price and non-unit priced contracts will be paid at the contractor’s cost as defined by the AIA plus the reasonable allowance for overhead and profit which shall be agreed to between the contractor and Owner.

Sec. 13 E-Verify. Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if Contractor utilizes a subcontractor, Contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

Sec. 14 Attorney’s Fees. Should either party deem it necessary to retain an attorney or other counsel to defend and/or pursue the enforcement of this Contract, the prevailing party shall be entitled to recover reasonable attorney’s fees and costs.

IN WITNESS WHEREOF, Zachary Gallaher and the Contractor have caused this Contract to be executed under seal by their respective duly authorized agents or officers.

Owner:

CONTRACTOR:

By: _____
Thomasville city schools

By:  Alex Gallaher/ Vice president
Authorized Company Official

Attachment A

DATE: 3-30-2021

To: Thomasville city schools

RE: Fluid applied roofing

Narrative: Please see photos and pricing below. Pricing is based off allowances/ budgets.



Figure 1, overview of building

Narrative:

There was a competitive bid held 3-03-2021

GMG bid was low on bid day with a bid of \$243,479.00

GMG is willing to perform the scope of work bid on 3-03-2021 in its entirety before July 1st in effort to save school system a 4% material increase.

GMG is willing to forgo payment of \$121,739.50 (50 %) until after July 1st making two projects of \$121,739.50 for a combined total equal to the bid summation of \$243,479.00

Thank you for the opportunity to provide pricing on this work.
Sincerely,

Adam Amende
G.M.G. Inc.
(336) 309-1320

All material is guaranteed to be as specified, all work to be completed in a workman like manner according to standard practices. Any alteration or deviation from the above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Nail punctures are not responsibility of GMG. Inc.

Payment terms: Due upon Completion of work.

Owner's Acceptance: _____

G.M.G. Acceptance: _____