

## REPAIR AND REROOF AGREEMENT

**THIS AGREEMENT** (the “Agreement”) is made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 2021 (the “Effective Date”), by and between, on the one hand, **The City of Pascagoula, Mississippi** (the “City”), and, on the other hand, **Norman Enterprises, Inc. DBA Norman Roofing** (the “Contractor”). The City and Contractor may be severally referred to as a “Party” or collectively referred to as the “Parties.”

### WITNESSETH:

**WHEREAS**, the City desires to contract with an entity to repair and reroof the City’s Central Fire Station; and

**WHEREAS**, in November 2020, the City solicited bids for the repair and reroofing of Central Fire Station; and

**WHEREAS**, on January 19, 2021, the City awarded the bid for such work to Contractor; and

**WHEREAS**, the City desires to contract with Contractor for such work; and

**WHEREAS**, it is appropriate that the following Agreement be entered into for the repair and reroofing of Central Fire Station.

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby mutually enter and agree to this Agreement, each for itself and its successors and assigns, as follows:

### **Section 1. Repair and Reroof of Central Fire Station.**

1.1. The Contractor hereby agrees to repair and reroof Central Fire Station. The Contractor agrees to perform such work in accordance with the specification requirements contained in the bid documents related to the repair and reroof of Central Fire Station. The Contractor agrees to complete such work on or before May 31, 2021.

1.2. The City hereby agrees to pay Contractor the sum of \$72,500.00 for the repair and reroofing of Central Fire Station.

**Section 2. Remedies Upon Default.** In the event that either Party is in material default under any of the terms or conditions of this Agreement or has materially breached any of its representations or warranties in this Agreement, the non-defaulting or non-breaching Party shall be entitled to pursue, in addition, to any

remedies specifically provided herein, all further remedies then available at law or in equity. In the event that a court of competent jurisdiction finds that Contractor is in material default under any of the terms or conditions of this Agreement or has materially breached any of its representations or warranties in this Agreement, the City shall be entitled to recover from Organizer all attorneys' fees, expenses, and costs incurred by the City in obtaining such a finding.

### **Section 3. Hold Harmless, Defense, and Indemnity.**

3.1. Contractor, on its own behalf, as well as on behalf of its employees, agents, representatives, clients, customers, and participants, acknowledges, stipulates, and accepts the dangers, risks, and potential liabilities associated with the repair and reroofing of Central Fire Station (the "Permitted Activity"). Contractor, its employees, agents, and representatives agree, swear, and affirm to release and hold harmless the City for any and all loss, damage, injury, claim, or liability (including, without limitation, attorneys' fees) arising from their engagement in the Permitted Activity.

3.2. In consideration of the benefits conferred herein, and to the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the City, its agents, and employees (collectively, the "Indemnities"), from and against any and all demands, claims, causes of action, liens, fines, penalties, losses, damages, costs, and expenses (including legal fees), of every kind and nature, regardless of whether in law or in equity, or whether nominal, actual, direct, indirect, consequential, special, punitive, or otherwise (collectively, the "Liabilities"), arising out of, or related to, participation in the Permitted Activity by Contractor and its employees, agents, and representatives.

3.3. The City shall be entitled to recover from the Contractor all attorneys' fees, costs, and expenses incurred enforcing the defense and indemnity obligations contained in Section 3 of this Agreement. The defense and indemnity obligations contained in Section 3 of this Agreement shall survive the expiration of this Agreement.

3.4. If any portion of Section 3 is determined to be in contravention of applicable law or otherwise invalid or unenforceable, that portion shall be deemed severable and the rest of Section 3 shall be reformed to provide the maximum enforceable defense and indemnity in favor of the Indemnities permitted by applicable law.

**Section 4. Licenses.** Contractor shall, at its expense, obtain all licenses and permits required for the conduct of its business. Contractor shall, at its expense, observe and comply with all present and future laws, ordinances, directives, orders, rules, and regulations of governmental authorities having or claiming jurisdiction over Contractor's repair and reroofing of Central Fire Station.

## **Section 5. Assignment.**

5.1. This Agreement, or any interest therein, shall not be assigned, transferred, or otherwise encumbered under any circumstances by Contractor without the prior written consent of the City.

5.2. Subject to the requirements of Section 5.1 and to the extent authorized by law, covenants and conditions herein contained shall apply to and bind the successors and assigns of all the Parties hereto.

## **Section 6. Extent of Agreement, Severability, and Modification.**

6.1. This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, or agreement, either written or oral.

6.2 In the event any provision of this Agreement shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the Parties. One or more waivers by either Party of any breach of any provision, term, condition, or covenant shall not be construed by the other party as a waiver of any subsequent breach.

6.3 No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by both Parties.

**Section 7. Force Majeure.** Any delay in the performance of any duties or obligations of either Party will not be considered a breach of this Agreement if such delay is caused by any occurrence or contingency beyond the Party's reasonable control, including, but not limited to, acts of God, weather, labor disputes and strikes, market shortage of materials, riots, war, and governmental requirements (any such event, a "Force Majeure Event"), provided that such Party uses reasonable efforts, under the circumstances, to resume performance as soon as reasonably practicable. The obligations and rights of the Party so excused will be extended on a day-to-day basis for the period of time reasonably necessary to overcome the effects of the underlying cause of the delay.

## **Section 8. Successors, Survival, and Remaining Obligations.**

8.1. City and Contractor each binds itself and its successors, executors, administrators, and assigns to the other Party of this Agreement and to the successors, executors, administrators, and assigns, or such Party, in respect to all covenants of this Agreement.

8.2. This Agreement and all covenants and warranties contained herein shall survive indefinitely unless agreed otherwise in writing by the Parties.

8.3. Termination of this Agreement, unless expressly provided herein, shall not relieve or release any Party from any rights, liabilities, or obligations that it has accrued prior to the date of such termination and those rights, liabilities, and obligations expressed herein of the Parties upon the termination of this Agreement.

### **Section 9. Notices.**

9.1. Except as stated otherwise herein, any notice required or permitted to be sent to the City hereunder shall be deemed given when deposited in the United States mail, postage prepaid, certified mail, to the City at the address below:

City of Pascagoula  
c/o City Manager  
Post Office Drawer 908  
Pascagoula, Mississippi 39568

9.2. Except as stated otherwise herein, any notice required or permitted to be sent to the Organizer hereunder shall be deemed given when deposited in the United States mail, postage prepaid, certified mail, to the Organizer at the address below:

Norman Enterprises, Inc.  
Post Office Box 1350  
Meridian, Mississippi 39302-1350

**Section 10. Governing Law and Venue.** This Agreement shall be governed and construed in accordance with Mississippi law, without regard to conflict of law principles. In the event any litigation arises between the Parties in connection with this Agreement, venue for such litigation shall lie exclusively in Jackson County, Mississippi, to the exclusion of all other venues.

### **Section 11. Representations and Warranties.**

11.1. Each Party represents and warrants to the other Party as of the Effective Date that: (i) it has the full power and authority to make, deliver, enter into, and perform pursuant to the terms and conditions of this Agreement, and (ii) it has taken all necessary action to authorize the execution, delivery, and performance of the terms and conditions of this Agreement.

11.2. Each Party represents and warrants to the other Party that it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendation of the Party

in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions, and risks of this Agreement.

**Section 12. Headings and Section Names.** The headings and section names in this Agreement are for convenience only and shall not be used to interpret or construe the provisions of this Agreement.

**Section 13. Counterparts.** This Agreement and any amendment or supplement hereto or any waiver granted in connection herewith may be executed in any number of counterparts and by the different Parties on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute one and the same agreement.

**IN WITNESS WHEREOF,** the Parties hereto have executed and caused this Agreement to be effective as of the Effective Date first written above.

*[Intentionally Left Blank]*

Michael Silverman

By: \_\_\_\_\_  
Michael Silverman, City Manager  
City of Pascagoula, Mississippi

STATE OF MISSISSIPPI

COUNTY OF JACKSON

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid County and State, within my jurisdiction, the within named Michael Silverman, and that he signed and delivered the above and foregoing instrument for and on his behalf after being duly authorized to do so.

SWORN TO AND SUBSCRIBED BEFORE ME, this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
NOTARY PUBLIC

[SEAL]

My Commission Expires: \_\_\_\_\_

C. Tyler Norman

By: \_\_\_\_\_  
C. Tyler Norman  
Norman Enterprises, Inc.  
DBA Norman Roofing

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid County and State, within my jurisdiction, the within named C. Tyler Morgan, and that he signed and delivered the above and foregoing instrument for and on his behalf after being duly authorized to do so.

SWORN TO AND SUBSCRIBED BEFORE ME, this the \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
NOTARY PUBLIC

[SEAL]

My Commission Expires: \_\_\_\_\_