

**MOUNTAIN BROOK CITY COUNCIL
MEETING AGENDA**

**CITY HALL COUNCIL CHAMBER
56 CHURCH STREET
MOUNTAIN BROOK, AL 35213**

DECEMBER 9, 2013, 7:00 P.M.

1. Approval of the minutes of the November 25, 2013 regular meeting of the City Council.
2. Consideration: Resolution authorizing the execution of an amendment to the fire and emergency medical services contract between the City and Protective Life Insurance.
3. Consideration: Resolution authorizing the execution of a contractor agreement between the City and Pat Pickle Construction/Plumbing, Inc. with respect to the renovations of the Fire Stations 2 and 3 restrooms.
4. Announcement: Due to the lack of a quorum, the City Council will not meet on December 23, 2013. Therefore, the next regular meeting of the City Council will be January 13, 2014, at 7 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.
5. Other business.
6. Comments from residents.
7. Adjourn.

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING DISCUSSION
NOVEMBER 25, 2013**

The City Council of the City of Mountain Brook, Alabama met in public session in the Pre-council Room (A106) of City Hall at 6:00 p.m. on Monday, the 25th day of November, 2013. The Council President Pro Tempore called the meeting to order and the roll was called with the following results:

Present: Amy G. Carter, Council President Pro Tempore
Jack D. Carl
William S. Pritchard III
Jesse S. Vogtle, Jr.
Lawrence T. Oden, Mayor

Absent: Virginia C. Smith, Council President

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and City Clerk Steven Boone.

1. AGENDA

1. Traffic/Speed count and sidewalk estimate for area at Montevallo Road and Montevallo Park Place (Appendix 1).

The members of the City Council expressed their general opposition to the notion of authorizing a stop sign on Montevallo Road. The matter of constructing a sidewalk can be revisited at such time that the neighborhood raises the money for construction materials estimated to be \$23,005.

2. REVIEW OF THE FORMAL (7P.M.) AGENDA

1. Resolution authorizing the installation of a street light on an existing pole in the alley located at 3772 Montevallo Road (Appendix 2).

Ms. Mary Evans requested the street light for safety reasons considering there are 25 children who reside in the 23 homes situated along the very dark alley.

The members of the City Council expressed their general opposition to the City installing a street light in any alley. Various members of the City Council suggested to Ms. Evans that landscape lighting be installed privately or that neighbors get together for such a lighting project.

At the request of the applicant, this matter was removed from the formal agenda (it appears that the adjacent neighbors and applicant reached a consensus as to an alternate solution to Ms. Evan's concerns that do not include a street light).

2. Ordinance authorizing a 3-way stop sign at the intersection of Fairmont Drive and Lorena Lane and provide for punishment for violations thereof.

The stop signs were requested by Mr. John Christian (Appendix 3). Ms. Christian and another neighbor stated that they were not opposed to the stop signs but were more concerned with the general speed of traffic along Fairmont Drive and Lorena Lane and requested that the City install speed bumps and/or consider stop a stop sign at the Baddock Avenue intersection.

The members of the City Council explained that speed bumps are 1) not generally utilized in the City due to their effect on fire and ambulance vehicles and that 2) speed bumps are not considered safe in curves or steep grades.

The members of the City Council requested that the Police Chief conduct a study of the area and offer suggestions for safety improvements. The ordinance authorizing the 3-way stop was removed from the formal agenda pending the Police Department's study.

3. Added to the formal (7 p.m. agenda): A resolution (No. 2013-176) declaring certain Fire Department equipment surplus and authorizing its sale at public [Internet] auction or its disposal of such items not sold at said auction.

Upon conclusion of the City Council's review of the other formal [7 p.m.] agenda issues, Council President Pro Tempore Carter adjourned the meeting.

Steven Boone, City Clerk

**MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK, ALABAMA
NOVEMBER 25, 2013**

The City Council of the City of Mountain Brook, Alabama met in public session in the City Hall Council Chamber (Room A108) at 7:00 p.m. on Monday, the 25th day of November, 2013. The Council President Pro Tempore called the meeting to order and the roll was called with the following results:

Present: Amy G. Carter, Council President Pro Tempore
Jack D. Carl
William S. Pritchard III
Jesse S. Vogtle, Jr.
Lawrence T. Oden, Mayor

Absent: Virginia C. Smith, Council President

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and City Clerk Steven Boone.

The City Council President stated that a quorum was present and that the meeting was open for the transaction of business.

1. MAYORAL APPOINTMENT (NO. 2013-182) TO THE PLANNING COMMISSION

Mayor Oden announced that he is appointing Ms. Cay Alby to the Planning Commission to serve without compensation through November 28, 2017 to fill the unexpired term of Mr. Brian Christine.

2. CONSENT AGENDA

Council President Pro Tempore Carter announced that the following matters will be considered at one time on the consent agenda provided no one in attendance objects:

Approval of the minutes of the November 12, 2013 meeting of the City Council.

2013-174	Appoint Richard Simonton to the Board of Zoning Adjustment to fill the unexpired term of Noel Dowling, to serve without compensation, with the term of office to end July 25, 2014.	Exhibit 1, Appendix 1
2013-175	Set a public hearing at 7 p.m. on January 13, 2014 to consider an ordinance adopting the 2014 edition of the National Electrical Code (NFPA 70).	Exhibit 2
2013-176	Declare certain Fire Department equipment surplus and authorize its sale at public Internet auction (or disposal of items not sold at said auction).	Exhibit 3
2013-177	Declare two (2) police cruiser [Crown Victoria] light bars surplus and authorize their sale to the City of Warrior in consideration of \$1.	Exhibit 4, Appendix 2
2013-178	Reaffirm the City's intention to implement safety guidelines with respect to the City's workers' compensation program.	Exhibit 5, Appendix 3
2013-179	Authorize the City Attorney to certify that the City's drug and alcohol testing policy is compliant with the fourth amendment to the U. S. Constitution.	Exhibit 6, Appendix 4

- | | | |
|-----------------|--|--------------------------|
| 2013-180 | Award the bid for two (2) variable message sign trailers for the Police Department. | Exhibit 7,
Appendix 5 |
| 2013-181 | Recommend to the State of Alabama, Alcoholic Beverage Control Board, the issuance of a 020 – Restaurant Retail Liquor License to Brick and Tin, LLC located at 2901 Cahaba Road, Mountain Brook, AL 35223. | Exhibit 8,
Appendix 6 |

Thereupon, the foregoing minutes and resolutions were introduced by Council President Pro Tempore Carter and their immediate adoption was moved by Council member Pritchard. The minutes and resolutions were then considered by the City Council. Council member Vogtle seconded the motion to adopt the foregoing minutes and resolutions. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: Amy G. Carter, Council President Pro Tempore
Jack D. Carl
William S. Pritchard III
Jesse S. Vogtle, Jr.

Nays: None

Council President Pro Tempore Carter thereupon declared that said minutes and resolutions (nos. 2013-174 through 181) are adopted by a vote of 4—0.

3. CONSIDERATION OF AN ORDINANCE (NO. 1900) AUTHORIZING THE PUBLIC AUCTION OF CERTAIN ABANDONED AND STOLEN PROPERTY (EXHIBIT 9)

Council President Pro Tempore Carter introduced the ordinance in writing and invited comments and questions from the audience. There being no discussion or comments, Council member Pritchard made a motion that all rules and regulations which, unless suspended, would prevent the immediate consideration and adoption of said ordinance be suspended, and that unanimous consent for the immediate consideration of said ordinance be given and that the reading of the ordinance at length be waived. The motion was seconded by Council member Vogtle and was carried, as follows:

Ayes: Amy Carter, Council President Pro Tempore
Jack D. Carl
William S. Pritchard III
Jesse S. Vogtle, Jr.

Nays: None

The President Pro Tempore of the Council declared the motion carried by a vote of 4—0.

After said ordinance had been considered in full by the Council, Council member Pritchard moved for the adoption of said ordinance. The motion was seconded by Council member Vogtle. Thereupon, Council President Pro Tempore Carter called for vote with the following results:

Ayes: Amy Carter, Council President Pro Tempore
Jack D. Carl
William S. Pritchard III
Jesse S. Vogtle, Jr.

The President Pro Tempore of the Council declared that the ordinance (No. 1900) is hereby adopted by a vote of 4—0 and, as evidence thereof, she signed the same.

4. ANNOUNCEMENT REGARDING THE NEXT REGULAR MEETING OF THE CITY COUNCIL

Council President Pro Tempore Carter announced that the next regular meeting of the City Council will be December 9, 2013, at 7 p.m. in the Council Chamber (Room A0108) of City Hall located at 56 Church Street, Mountain Brook, AL 35213. Also, due to a lack of a quorum for the second meeting date in December, the City Council shall not meet on December 23, 2013.

5. ADJOURNMENT

There being no further business to come before the City Council at this time, Council President Pro Tempore Carter adjourned the meeting.

Steven Boone, City Clerk

EXHIBIT 1

RESOLUTION NO. 2013-174

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that Supernumerary Board of Zoning Adjustment member Richard Simonton is hereby appointed as regular member of the Board of Zoning Adjustment to fill the unexpired term of Noel Dowling, to serve without compensation, with the term of office to end July 25, 2014.

APPENDIX 1

EXHIBIT 2

RESOLUTION NO. 2013-175

BE IT RESOLVED by the City Council of the City of Mountain Brook that, at the meeting of the City Council to be held on Monday, January 13, 2014, at 7:00 p.m., in the Council Chamber (Room A108) of City Hall located at 56 Church Street, Mountain Brook, AL 35213, the City Council will hold a public hearing regarding an ordinance adopting the 2014 National Electrical Code (NFPA70).

BE IT FURTHER RESOLVED by the City Council of the City of Mountain Brook that the City Clerk be, and he hereby is, authorized and directed to cause to be published not fewer than fifteen (15) days prior to January 13, 2014, by posting in five (5) conspicuous places within the City of Mountain Brook, as follows: City Hall—56 Church Street, Gilchrist Drug Company—2805 Cahaba Road, , The Invitation Place—3150 Overton Road, and Overton Park, 3020 Overton Road, the following notice concerning both proposed actions in words and figures substantially as follows:

"PUBLIC HEARING

Notice is hereby given that at a regular meeting of the City Council of the City of Mountain Brook to be held on Monday, January 13, 2014, at 7:00 p.m., in the Council Chamber (Room A108) of City Hall located at 56 Church Street, Mountain Brook, AL 35213, the City Council will hold a public hearing regarding a proposal that the City Council adopt an ordinance in words and figures substantially as follows:

'ORDINANCE NO.

AN ORDINANCE AMENDING SECTION 109-56 OF THE CITY CODE ALL INVOLVING THE ADOPTION OF "NATIONAL ELECTRICAL CODE, 2011 EDITION" RELATING TO INSPECTION ACTIVITIES OF THE CITY OF MOUNTAIN BROOK AND ENFORCEMENT OF BUILDING PROVISIONS AS PROVIDED IN SAID CODE

RESOLUTION NO. 2013-183

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to execute Amendment No. 1 to the Agreement to Provide Fire Protection and Emergency Medical Services for Protective Life Corporation, a copy of which amendment (and contract) is attached hereto as Exhibit A.

ADOPTED: This 9th day of December 2013.

Council President

APPROVED: This 9th day of December 2013.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on December 9, 2013, as same appears in the minutes of record of said meeting.

City Clerk

**AMENDMENT NO. 1 TO THE AGREEMENT TO PROVIDE FIRE PROTECTION
AND EMERGENCY MEDICAL SERVICES**

This Amendment No. 1 to the Agreement ("Amendment") is made and entered into as of this ___ day of December, 2013 (the "Amendment Effective Date"), by and between **PROTECTIVE LIFE CORPORATION**, ("Protective") and the **CITY OF MOUNTAIN BROOK**, an Alabama municipal corporation ("City").

WHEREAS, Protective and City are parties to a certain Agreement, executed May 7, 2012 (the "Agreement"), pursuant to which Protective was provided fire protection and emergency medical services upon the terms and conditions set forth therein; and,

WHEREAS, Protective and City have agreed to amend the term of the Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, Protective and City, in consideration of the mutual promises and undertakings set forth herein, hereby agree to amend the Agreement as follows:

1. The following is hereby added to the end of the sole sentence in **Paragraph 2 of the "Agreements" Section**:

"; and shall automatically renew for additional three-year periods thereafter, beginning on January 1st of the appropriate renewal year unless otherwise terminated by Protective or City as provided in paragraph 5 hereof."

2. The following is hereby added to the end of **Paragraph 3 of the "Agreements" Section**:

"The annual fee for each year of any renewal term shall be mutually determined by Protective and City, but shall not exceed three percent (3%) of the lowest annual fee of the preceding term."

3. All other provisions of the Agreement remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto, each acting with proper authority, have executed this Amendment No. 1 to the Agreement as of the Amendment Effective Date.

CITY OF MOUNTAIN BROOK

PROTECTIVE LIFE CORPORATION

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

AGREEMENT

This agreement is made and entered into by and between Protective Life Corporation, ("Protective") and the City of Mountain Brook, an Alabama municipal corporation ("City").

RECITALS

1. Protective owns office facilities which are located at, and are contiguous to, 2801 Highway 280 South, Jefferson County, Alabama, and which are within the police jurisdiction of the City ("Buildings").
2. The Buildings are located within the formally declared Community Services Area (CSA) for the City of Mountain Brook Fire Department as designated by the Insurance Services Office (ISO).
3. Protective has requested that the City provide or otherwise make available to Protective and the occupants of the Buildings, fire protection and emergency medical services.
4. The City has agreed to make available to the Buildings and the occupants thereof such fire protection and emergency medical services upon the terms and conditions contained in this Agreement and Protective agrees to such terms and conditions.

AGREEMENTS

1. The City agrees to make available fire protection for the building and to make available emergency medical services to the occupants of the building.
2. The term of this Agreement shall be for a period of three (3) years beginning January 1, 2012 through December 31, 2014.
3. In consideration of City's agreement to provide and make available said services, Protective shall pay to the City a fee, the amount of which shall not exceed the cost (direct costs and overhead expenses) incurred by the City to ensure the availability of personnel, equipment, and infrastructure required to make available such services. Shades Brook and the City agree that the fee for the 3-year term shall be as follows:

2012	\$15,450
2013	15,450
2014	15,450

~~The annual fee for each year of the term of this Agreement shall be determined by the agreement of Protective and the City at least thirty (30) days before the commencement of each term year. If the amount of the annual fee for any year is not agreed upon by Protective and the City by the~~

~~First day of January of the new term year, the fee for services shall be increased by three percent (3%) until a different fee is agreed upon or this Agreement is terminated.~~ ¹⁰⁰

- 5. Protective and the City shall each have the right to terminate this Agreement at any time by giving the other party hereto at least thirty (30) days prior written notice of termination. In the event of such termination by either party, the pro rata portion of the annual fee for the remainder of the then current term of this Agreement shall be promptly refunded to Protective.
- 6. Notwithstanding any other provisions contained in this Agreement, the City shall have no greater liability for negligence or breach of contract with respect to providing the services referred to herein than the limitations imposed under the provisions of the Code of Alabama 1975, Section 11-93-2.

In witness whereof, the City of Mountain Brook has caused this Agreement to be executed by its duly authorized Mayor and Protective Life Corporation has caused this Agreement to be executed by its authorized corporate officer, all as of the 7 day of May, 2012

Witness:
Steven Boone
Steven Boone
Its City Clerk

City of Mountain Brook
By: Sam S. Gaston
Sam S. Gaston
Its City Manager

Witness:
[Signature]
Its 2nd VP, Facilities Manager

Protective Life Corporation
By: Jason C. Otts
Jason C. Otts
Its VP & Chief Project Officer

EXHIBIT A

RESOLUTION NO. 2012-184

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to execute a contractor agreement, in the form as attached hereto as Exhibit A, between the City and Pat Pickle Construction/Plumbing, Inc. with respect to the renovations of the Fire Stations 2 and 3 restrooms.

ADOPTED: This 9th day of December 2013.

Council President

APPROVED: This 9th day of December 2013.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on December 9, 2013, as same appears in the minutes of record of said meeting.

City Clerk

CONTRACTOR AGREEMENT

This Agreement is made this _____ day of December, 2013, by and between:

OWNER:

and

CONTRACTOR:

City of Mountain Brook
56 Church Street
Mountain Brook, Alabama 35213-3700

Pat Pickle Construction/Plumbing, Inc.
P.O. Box 95
Brookside, AL 35036

for contracting services on the following PROJECT:

Renovation of bathrooms and showers at:

Fire Station No. Two, 3785 Locksley Drive, Mountain Brook, AL 35223, and
Fire Station No. Three, 4277 Old Leeds Road, Mountain Brook AL 35213

1. THE WORK. Contractor shall provide all labor, materials, equipment and services necessary to complete the Work, as described in **Exhibit A**, all of which shall be provided in accordance and consistent with the Contract Documents as necessary to produce the indicated results. Contractor shall furnish construction and management services and use Contractor's diligent efforts to perform the Work in an expeditious manner consistent with the Contract Documents.

2. CONTRACT PRICE. As full compensation for performance by Contractor of the Work, Owner shall pay Contractor THIRTY-NINE THOUSAND Dollars (\$39,000.00). The lump sum price is hereinafter referred to as the Contract Price, which shall be subject to increase or decrease as provided in this Agreement.

3. EXHIBITS. The following Exhibits are incorporated by reference and made part of this Agreement:

EXHIBIT A: The Work. One page.

EXHIBIT B: Contract Documents (listed by title, date, and number of pages).

EXHIBIT C: Alternates and Unit Prices, include dates when alternates and unit prices no longer apply. One page.

EXHIBIT D: Addendum. Two pages.

4. CONTRACTOR'S RESPONSIBILITIES. Contractor shall be responsible for supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions.

4.1 Except for permits and fees that are the responsibility of the Owner pursuant to this Agreement, Contractor shall obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work.

- 4.2 Contractor shall pay all applicable taxes legally enacted when bids are received or negotiations concluded for the Work provided by Contractor.
- 4.3 In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to commencing the Work, Contractor shall examine and compare the drawings and specifications with information furnished by Owner, relevant field measurements made by Contractor, and any visible conditions at the Worksite affecting the Work.
- 4.4 **WARRANTY.**
- 4.4.1 The Work shall be executed in accordance with the Contract Documents in a good and workmanlike manner. Contractor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents.
- 4.4.2 If, prior to the Date of Substantial Completion and within one year after the date of Substantial Completion of the Work, any portion of the Work is found to be not in conformance with the Contract Documents ("Defective Work"), Owner shall promptly notify Contractor in writing. Unless Owner provides written acceptance of the condition, Contractor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible.
- 4.5 **SAFETY.** Contractor shall have overall responsibility for safety precautions and programs in the performance of the Work, except that Contractor's subcontractors shall also be responsible for the safety of persons or property in the performance of their work, and for compliance with the provisions of applicable laws and regulations. Contractor shall seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite; materials and equipment stored at on-site or off-site locations for use in the Work; and property located at the site and adjacent to Work areas, whether or not the property is part of the Work.
- 4.6 **MATERIALS BROUGHT TO THE WORKSITE.** Contractor shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Contractor in accordance with the Contract Documents and used or consumed in the performance of the Work.
- 4.7 **SUBMITTALS.** Contractor shall submit to Owner for review and approval all shop drawings, samples, product data, and similar submittals required by the Contract Documents. Contractor shall be responsible to Owner for the accuracy and conformity of its submittals to the Contract Documents. Contractor shall prepare and deliver its submittals to Owner in a manner consistent with the Schedule of the

Work and in such time and sequence so as not to delay the performance of the Work or the work of Owner and others retained by Owner. When Contractor delivers its submittals to Owner, Contractor shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The approval of any Contractor submittal shall not be deemed to authorize deviations, substitutions, or changes in the requirements of the Contract Documents unless express written approval is obtained from Owner specifically authorizing such deviation, substitution, or change. Owner shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay. Contractor shall perform all Work strictly in accordance with approved submittals. Owner's approval does not relieve Contractor from responsibility for Defective Work resulting from errors or omissions of any kind on the approved shop drawings.

- 4.8 SITE CONDITIONS. If the conditions at the Worksite are (a) subsurface or other physical conditions which are materially different from those indicated in the Contract Documents, or (b) unusual or unknown physical conditions which are materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, Contractor shall stop Work and give immediate written notice of the condition to Owner. Contractor shall not be required to perform any work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the Contract Price and/or Contract Time as a result of the unknown condition shall be made by Change Order.
- 4.9 CUTTING, FITTING, AND PATCHING. Contractor shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of Owner or others retained by Owner.
- 4.10 CLEANING UP. Contractor shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, Contractor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Contractor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Contractor shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

5. OWNER'S RESPONSIBILITIES. Any information or services to be provided by Owner shall be provided in a timely manner so as not to delay the Work.

- 5.1 BUILDING PERMIT, FEES, AND APPROVALS. Except for those required of Contractor pursuant to this Agreement, Owner shall secure other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.
- 5.2 ELECTRONIC DOCUMENTS. If the Owner requires that the Owner and Contractor exchange documents and data in electronic or digital form, prior to any

such exchange, the Owner and Contractor shall agree on a written protocol governing all exchanges in Consensus DOCS 200.1 or a separate Agreement.

6. **SUBCONTRACTS.** Work not performed by Contractor with its own forces shall be performed by subcontractors. Contractor agrees to bind every subcontractor and material supplier (and require every subcontractor to so bind its subcontractors and material suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the subcontractor's and material supplier's portions of the Work.

7. **CONTRACT TIME.**

7.1 **DATE OF COMMENCEMENT.** The Date of Commencement is the date of this Agreement as first written on page one of this Agreement, unless otherwise set forth below.

7.2 **TIME.** Substantial Completion of the Work shall be achieved in Sixty (60) days from the Date of Commencement. Unless otherwise specified in the Certificate of Substantial Completion, the Work shall be finally complete within sixty (60) days after the date of Substantial Completion, subject to adjustments as provided for in the Contract Documents. Time limits stated above are of the essence of the Agreement.

8. **SCHEDULE OF THE WORK.** Before submitting the first application for payment, Contractor shall submit, for review by the Architect/Engineer and approval by Owner, a Schedule of the Work that shall show the dates on which Contractor plans to begin and to complete various parts of the Work, including dates on which information and approvals are required from Owner.

9. [Intentionally deleted]

10. **CHANGES.**

10.1 Contractor may request and/or Owner may order changes in the Work or the timing or sequencing of performance of the Work that impacts the Contract Price or the Contract Time. All such changes in the Work that affect Contract Time or Contract Price shall be formalized in a Change Order.

10.2 Owner and Contractor shall negotiate in good faith an appropriate adjustment to the Contract Price and/or the Contract Time and shall conclude these negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the Contract Price and/or Contract Time shall not be unreasonably withheld.

10.3 **COST OR CREDIT DETERMINATION.**

An increase or decrease in the Contract Price and/or the Contract Time resulting from a change in the Work shall be determined by one or more of the following methods:

- a. unit prices set forth in this Agreement or as subsequently agreed;
- b. a mutually accepted, itemized lump sum;
- c. costs calculated on a basis agreed upon by the Owner and Contractor.

10.4 UNIT PRICES. If unit prices are included in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit price items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to Owner or Contractor, such unit prices shall be equitably adjusted.

10.5 PERFORMANCE OF CHANGED WORK. Contractor shall not be obligated to perform Changed Work until a Change Order has been executed by Owner and Contractor.

11. PAYMENT.

11.1 FINAL COMPLETION. When final completion has been achieved, Contractor shall prepare for Owner's acceptance an application for payment stating that to the best of Contractor's knowledge, and based on Owner's inspections, the Work has reached final completion in accordance with the Contract Documents.

11.1.1 Payment of the Contract Price shall be made to Contractor within twenty (20) Days after Contractor has submitted to the Owner a complete and accurate application for final payment and the following submissions:

- (a) An affidavit declaring any indebtedness connected with the Work, e.g. payrolls or invoices for materials or equipment, to have been paid, satisfied or to be paid with the proceeds of final payment, so as not to encumber Owner's property;
- (b) As-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;
- (c) Release of any liens, conditioned on final payment being received;
- (d) Consent of any surety, if applicable; and
- (e) A report of any accidents or injuries experienced by Contractor or its Subcontractors at the Worksite.

11.2 Claims not reserved in writing with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects.

12. INDEMNITY.

12.1 To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the Owner, Owner's officers, directors, members, consultants, agents,

and employees (the Indemnitees) from all claims for bodily injury and property damage, including reasonable attorneys' fees, costs, and expenses that may arise from the performance of the Work.

12.2 NO LIMITATION ON LIABILITY. In any and all claims against the Indemnitees by any employee of the Contractor, anyone directly or indirectly employed by the Contractor or anyone for whose acts the Contractor, may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor under Workers' Compensation act, disability benefit acts, or other employment benefit acts.

12.3 ADDENDUM. The Addendum attached as **Exhibit D** shall be executed by Contractor.

13. INSURANCE.

13.1 Prior to the start of the Work, the Contractor shall procure and maintain in force Workers Compensation Insurance, Employer's Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. If requested, the Contractor shall provide the Owner with certificates of the insurance coverage required, and such certificates should name the proper entity. The Contractor's Employers' Liability, Business Automobile Liability, and Commercial General Liability policies, as required by this Agreement shall be written with at least the following limits of liability:

13.1.1 Employers' Liability Insurance:

- a. \$1,000,000.00
Bodily Injury by Accident
Each Accident
- b. \$1,000,000.00
Bodily Injury by Disease
Policy Limit
- c. \$1,000,000.00
Policy Injury by Disease
Each Employee

13.1.2 Business Automobile Liability Insurance

- a. \$1,000,000.00
Each Accident

13.1.3 Commercial General Liability Insurance

- a. \$1,000,000.00
Each Occurrence
- b. \$1,000,000.00
General Aggregate
- c. \$1,000,000.00
Products/Completed
Operations Aggregate
- d. \$1,000,000.00
Personal and Advertising Injury Limit

13.2 Employers' Liability, Business Automobile Liability, and Commercial General Liability coverage may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess or Umbrella Liability policies. The Contractor shall maintain in effect all insurance coverage required under this Agreement with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If the Contractor fails to obtain or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and charge the expense to the Contractor, or terminate this Agreement. The policies of insurance required herein shall contain a provision that the coverage afforded under the policies shall not be cancelled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Owner. The Contractor shall maintain completed operations liability insurance for one year after acceptance of the Work, Substantial Completion of the Project, or to the time required by the Contract Documents, whichever is longer. Prior to commencement of the Work, Contractor shall furnish the Owner with certificates evidencing the required coverage.

14. [Intentionally deleted]

15. RISK OF LOSS. Except to the extent a loss is covered by applicable insurance, risk of loss and/or damage to the Work shall be upon the Contractor until the Date of Substantial Completion, unless otherwise agreed to by the Parties.

16. NOTICE TO CURE AND TERMINATION.

16.1 NOTICE TO CURE A DEFAULT. If Contractor persistently refuses or fails to supply enough qualified workers, proper materials, and/or equipment to maintain the approved Schedule of the Work or fails to make prompt payment to its workers, subcontractors, or material suppliers, disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, Contractor may be deemed in default. If Contractor fails within seven (7) business Days after written notification to commence and continue satisfactory correction of such default with diligence and promptness, then Owner shall give the Contractor a second

written notice to correct the default within a three (3) business Day period. If the Contractor fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, the Owner, without prejudice to any other rights or remedies, shall have the right to take reasonable steps it deems necessary to correct deficiencies and charge the cost to Contractor who shall be liable for such payments including reasonable overhead, profit, and attorneys' fees.

16.2 **TERMINATION BY OWNER.** If, within seven (7) Days of receipt of a notice to cure pursuant to this Agreement, Contractor fails to commence and satisfactorily continue correction of the default set forth in the notice to cure, Owner may notify Contractor that it intends to terminate this Agreement within fourteen (14) additional days. After the expiration of the additional fourteen (14) Day period, Owner may terminate this Agreement by written notice absent appropriate corrective action. Termination for default is in addition to any other remedies available to Owner. If Owner's costs arising out of Contractor's failure to cure, including the cost of completing the Work and reasonable attorney fees, exceed the unpaid Contract Price, Contractor shall be liable to Owner for such excess costs. If Owner's costs are less than the unpaid Contract Price, Owner shall pay the difference to Contractor. In the event Owner exercises its rights under this paragraph, upon the request of Contractor, Owner shall furnish to Contractor a detailed accounting of the costs incurred by Owner.

16.2.1 The Owner shall make reasonable efforts to mitigate damages arising from the Contractor default and shall promptly invoice the Contractor for all amounts due pursuant to the above paragraphs.

16.3 **TERMINATION BY CONTRACTOR.** Upon seven (7) Days' written notice to Owner, Contractor may terminate this Agreement if the Work has been stopped for a thirty (30) Day period through no fault of Contractor for any of the following reasons:

16.3.1 Under court order or order of other governmental authorities having jurisdiction;

16.3.2 As a result of the declaration of a national emergency or other governmental act during which, through no act or fault of Contractor, materials are not available.

16.4 Upon termination by Contractor pursuant to this Agreement, Contractor shall be entitled to recover from Owner payment for all Work executed.

16.5 **OBLIGATIONS ARISING BEFORE TERMINATION.** Even after termination, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.

17. CLAIMS AND DISPUTE RESOLUTION.

- 17.1 CLAIMS FOR ADDITIONAL COST OR TIME. Except as provided in Paragraphs 10.3 and 10.4 for any claim for an increase in the Contract Price and/or the Contract Time, Contractor shall give Owner written notice of any claim within fourteen (14) days after the occurrence giving rise to the claim or within fourteen (14) days after Contractor first recognizes, or should have recognized, the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Any change in the Contract Price and/or the Contract Time resulting from such claim shall be authorized by Change Order.
- 17.2 WORK CONTINUANCE AND PAYMENT. Unless otherwise agreed in writing, Contractor shall continue the Work and maintain the Schedule of the Work during any dispute resolution proceedings. If Contractor continues to perform, Owner shall continue to make payments in accordance with the Agreement.
- 17.3 INITIAL DISPUTE RESOLUTION PROCESSES. If a dispute arises out of or relates to this Agreement or its breach, the Parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the Parties shall endeavor to settle the dispute by mediation under the current Construction Industry Mediation Rules of the American Arbitration Association before recourse to any binding dispute resolution procedures.
- 17.4 BINDING DISPUTE RESOLUTION. If the matter is unresolved after submission of the matter to mediation, the Parties may submit the matter to the binding dispute resolution procedure designated herein (Designate only one):
- Arbitration using the current Construction Industry Arbitration Rules of the American Arbitration Association or the Parties may mutually agree to select another set of arbitration rules. The administration of the arbitration shall be as mutually agreed by the Parties.
- Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.
- 17.5 VENUE. The venue of any binding dispute resolution procedure shall be the location of the Project, unless the Parties agree on a mutually convenient location.

18. ASSIGNMENT. Neither Owner nor Contractor shall assign its interest in this Agreement without the written consent of the other except as to the assignment of proceeds. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns and legal representatives. Neither Party to this Agreement shall assign the Agreement as a whole without written consent of the other.

19. GOVERNING LAW. This Agreement shall be governed by the law in effect at the location of the Project.

20. JOINT DRAFTING. The Parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms prior to execution. This Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

21. ALABAMA IMMIGRATION LAW COMPLIANCE. Contractor agrees that it will fully comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, which makes it unlawful for an employer in Alabama to knowingly hire or continue to employ an alien who is or has become unauthorized with respect to such employment or to fail to comply with the I-9 requirements or fails to use E-Verify to verify the eligibility to legally work in the United States for all of its new hires who are employed to work in the State of Alabama. Without limiting the foregoing, Contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien, and shall have an officer or other managerial employee who is personally familiar with the Contractor's hiring practices to execute an affidavit to this effect on the form supplied by the Board and return the same to the City. Contractor shall also enroll in the E-Verify Program prior to performing any work, or continuing to perform any ongoing work, and shall remain enrolled throughout the entire course of its performance hereunder, and shall attach to its affidavit the E-Verify Program for Employment Verification and Memorandum of Understanding and such other documentation as the Board may require to confirm Contractor's enrollment in the E-Verify Program. Contractor agrees not to knowingly allow any of its subcontractors, or any other party with whom it has a contract, to employ in the State of Alabama any illegal or undocumented aliens to perform any work in connection with the Project, and shall include in all of its contracts a provision substantially similar to this paragraph. If Contractor receives actual knowledge of the unauthorized status of one of its employees in the State of Alabama, it will remove that employee from the project, jobsite or premises of the City and shall comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act. Contractor shall require each of its subcontractors, or other parties with whom it has a contract, to act in a similar fashion. If Contractor violates any term of this provision, this Agreement will be subject to immediate termination by the City. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the City from any and all losses, consequential damages, expenses (including, but not limited to, attorneys' fees), claims, suits, liabilities, fines, penalties, and any other costs arising out of or in any way related to Contractor's failure to fulfill its obligations contained in this paragraph.

22. STATE GENERAL CONTRACTOR'S LICENSE. The Contractor does hereby certify that Contractor is currently licensed by the Alabama State Licensing Board for General Contractors and that the certificate for such license bears the following:

License No. 48261 Bid Limit: \$100,000 Classification: BC-S: Renovation, M-S: Plumbing

The Owner and Contractor have entered into this Agreement as of the date first written above and have executed this Agreement in sufficient counterparts to enable each contracting party to have an originally executed Agreement each of which shall, without proof or accounting for the other counterparts, be deemed an original thereof.

OWNER :

CONTRACTOR :

By : _____
T. Lawrence Oden, Mayor

By : _____
Pat Pickle, President

Attest :

Attest :

By : _____
Print Name: _____
Print Title: _____

By : _____
Print Name: _____
Print Title: _____

EXHIBIT A: THE WORK

The Contractor shall demolish the interior of the bathrooms and remove all tile and plumbing fixtures at Fire Station No. Two, 3785 Locksley Drive, Mountain Brook, AL 35223, and Fire Station No. Three, 4277 Old Leeds Road, Mountain Brook AL 35213. The Contractor shall install new tile as specified, new plumbing fixtures, a new dividing wall in the shower, new shower drains, a new divider for toilet, and new electrical fixtures as required. The Contractor shall repaint the bathrooms as well. The two fire stations to be renovated are similar in design and construction. More specifically, the Contractor shall:

1. *Remove all existing cabinets, plumbing fixtures, valves, and trim.*
2. *Remove all existing tile, floors and walls.*
3. *Build partition wall in shower – approximately 6 feet tall and 30 inches deep (field verify). Partition shall be made from 6-inch concrete blocks with rebar reinforcement, rebar being doweled into slab and block cavities filled with concrete. Exterior of partition wall shall be tiled. Top of partition wall will have a suitable “cap” installed with 1” overhang on three finished sides.*
4. *Move existing floor drain and add one drain; the drains to be located below each shower head (field verify placement).*
5. *Re-mud the shower floor with new liner to ensure properly functioning drains.*
6. *Seal block walls after tile removal to prevent future water and moisture problems.*
7. *Install new tile “similar to existing – customer to choose” to shower floor, walls, new partition wall, and ceiling; tile ceiling being applied to concrete board or as otherwise required by applicable codes.*
8. *Install two new “Delta” shower valves and trim kits in chrome finish.*
9. *Install new urinal and valve at Station Three.*
10. *Reinstall the existing urinal at Station Two because it is new.*
11. *Install new comfort-height (ADA Compliant) commodes at both stations with new flush valves and chrome finish.*
12. *Install new stainless partition with door between the urinal and commode having the same dimensions as existing partition between urinal and commode.*
13. *Install new wall-hung lavatories, two at each station.*
14. *Install new “Delta” faucets and valves for lavatories.*
15. *Install Chrome supply and drains at lavatories.*
16. *Install two recessed light fixtures in each shower.*
17. *Replace ceiling lights and light fixtures over lavatories.*
18. *Repair or replace plugs, switches, and covers.*
19. *Replace radio speaker in recessed ceiling or wall mount with volume control. Color should match surrounding décor.*
20. *Repair any trim near or at the ceiling.*
21. *Paint any exposed block and ceilings.*
22. *Remove all debris, construction materials, tools, and trash. Clean up site at both locations.*

EXHIBIT B: CONTRACT DOCUMENTS

1. Contractor Agreement between the City of Mountain Brook and Pat Pickle Construction/Plumbing, Inc. dated December __, 2013.
2. Certificate of Insurance Liability issued by Robert E. Langston & Associates of Birmingham, Alabama to **Pat Pickle Construction/Plumbing, Inc.** on _____, 2013.
3. Certificate of Licensure as General Contractor, License No. 48261, dated May 31, 2013.
4. Certificate of Licensure as Master Plumber, License No. 00364, issued to James P. Pickle, 2631 Torrance Road, Warrior, AL 35180.
5. Proposal of Pickle Construction Company, P.O. Box 95, Brookside, AL 35036 to Tim Wooten of the Mountain Brook Fire Department, dated November 14, 2013.

EXHIBIT C: ALTERNATES AND UNIT PRICES

[one page needed itemizing the most expensive materials needed for project]

EXHIBIT D:

**ADDENDUM TO AGREEMENT BETWEEN
THE CITY OF MOUNTAIN BROOK AND PAT PICKLE CONSTRUCTION/PLUMBING, INC.**

THIS ADDENDUM (“the/this Addendum”) to the principal agreement between the CITY OF MOUNTAIN BROOK, ALABAMA (“the City”) and PAT PICKLE CONSTRUCTION/PLUMBING, INC. (“the Contractor”) dated December __, 2013.

This Addendum is a part of the principal agreement, but supersedes and controls any conflicting or inconsistent terms or provisions in the principal agreement, particularly to the extent the conflicting or inconsistent terms or provisions purport either to (a) confer greater rights or remedies on the Contractor than are provided herein or under otherwise applicable law, or to (b) reduce, restrict, or eliminate rights or remedies that would be available to the City under otherwise applicable law. The addendum shall remain in full force and effect with respect to any amendment, extension, or supplement of or to the principal agreement, whether or not expressly acknowledged or incorporated therein. No agent, employee, or representative of the City is authorized to waive, modify, or suspend the operation of the Addendum or any of its terms or provisions without express approval of the Mountain Brook City Council.

1. *Definitions.* For purposes of this Addendum, the terms below have the following meanings
 - A. “*The City*” refers to and includes the City of Mountain Brook, Alabama, and its constituent departments, boards, and agencies.
 - B. “*The (this) Agreement*” refers to the principal contract, agreement, proposal, quotation, or other document that sets forth the basic terms and conditions under which the Contractor is engaged to provide goods, materials, or services to the City, including the payment or other consideration to be provided by the City in exchange therefor.
 - C. “*The Contractor*” refers to the person, firm, or other legal entity that enters into an agreement with the City to provide goods, materials, or services to the City, and includes vendors and suppliers providing goods, materials, and services to the City with or without a formal contract as well as the Contractor’s vendors, suppliers, and subcontractors.
2. *Arbitration; Mediation; Alternate Dispute Resolution.* The City agrees to arbitrate disputes or to engage in alternate dispute resolution (ADR) if arbitration or ADR is required by the agreement as a means of resolving disagreements arising thereunder or is a precondition to the pursuit of other legal remedies, but only to the extent (1) the rights and remedies available under such arbitration rules or processes do not afford the Contractor greater relief (e.g., attorney’s fees, damages, etc.) than would be available under otherwise applicable law, (2) the venue for the arbitration or mediation proceeding is in Jefferson County, Alabama, and (3) the costs of such proceedings (including the fees of the arbitrator or mediator) are divided evenly between the parties.
3. *Attorney’s Fees; Court Costs; Litigation Expenses.* The City shall not be liable for attorney’s fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs, and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor.

4. *Late Payment Charges; Fees; Interest.* The City shall not be liable for any late payment charges, interest, or fees on any delinquent bill for goods, materials, or services at a rate higher than two-thirds of one percent per month (eight percent per annum), but bills rendered to the City shall not be considered delinquent any earlier than thirty (30) days after rendition of a complete and accurate bill by the Contractor. Contested bills shall not be subject to late payment charges pending resolution of the dispute.
5. *Indemnification; Hold-Harmless; Release; Waiver; Limitations of Liability or Remedies.* The City shall not and does not indemnify, hold harmless, or release the Contractor or any other person, firm, or legal entity for, from, or with respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the agreement or the performance or nonperformance thereof; nor shall or does the City waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against the Contractor or any other person, firm, or entity for any actual or alleged default or other breach of legal duty on the part of the Contractor or any person, firm, or entity in privity therewith or acting on Contractor's behalf. Any limitation or restriction regarding the type, nature, form, amount, or extent of any right, remedy, relief, or recovery that would otherwise be available to the City is expressly disavowed, excluded from the terms of the agreement, and void.
6. *Choice of Law; Choice of Venue or Forum.* The meaning, legal effect, and enforcement of terms and provisions of the agreement and the resolution of any disputes arising thereunder or relating thereto shall be governed by the laws of the State of Alabama except to the extent otherwise required by applicable conflict-of-law principles. The venue of any suit, action, or legal proceeding brought to enforce or secure relief by reason of any asserted breach of duty arising out of or relating to the performance or nonperformance of the agreement shall be Jefferson County, Alabama except to the extent otherwise required by applicable principles of law.
7. *Construction of Addendum.* Nothing in this Addendum shall be construed to create or impose any duty or liability on the City, to create a right or remedy in favor of the Contractor against the City, or to restrict or abrogate any right or remedy that is available to the City against the Contractor or any other person, firm, or entity under either the principal agreement or as a matter of law.

DATED this ___ day of December, 2013.

PAT PICKLE CONSTRUCTION/PLUMBING, INC.

CITY OF MOUNTAIN BROOK, ALABAMA

By :


 Pat Pickle, President

By :

 T. Lawrence Oden, Mayor