

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING DISCUSSION
JUNE 24, 2013**

The City Council of the City of Mountain Brook, Alabama met in public session in the Council Chamber of City Hall at 7:00 p.m. on Monday, the 24th day of June, 2013. The Council President called the meeting to order and the roll was called with the following results:

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

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and Acting City Clerk Joy Moman.

1. INFORMAL DISCUSSION

1. Sam Gaston gave an update on the community hotspot initiative.
2. Regarding the Brick & Tin conditional use application (Resolution No. 2013-099), a representative from Safeguard Parking gave a brief explanation of how parking services will be made available to patrons of Brick & Tin Restaurant and offered assurances to the council that appropriate measures will be taken to ensure that traffic and alleyways will not be hindered.

2. RECOGNITION OF GUESTS

Council President Smith recognized Boy Scout Rob Ritchie from Troop 320.

3. CONSENT AGENDA

Council President Smith 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 June 10, 2013 meeting of the City Council.

2013-094	Reappoint Ruth Mears to the Tree Commission, to serve without compensation through April 12, 2016.	Exhibit 1
2013-095	Reappoint Stephen Bostock to the Tree Commission, to serve without compensation through March 22, 2016.	Exhibit 2
2013-096	Reappoint John H. (Jack) Martin the Finance Committee, to serve without compensation through July 10, 2017.	Exhibit 3
2013-097	Reject all bids with respect to the Cahaba River Park construction project (NLA #11-300) dated June 6, 2013.	Exhibit 4
2013-098	Declare certain property surplus and authorizing its sale at public Internet auction.	Exhibit 5

2013-099	Approve the conditional use (restaurant) application submitted by Brick & Tin (restaurant) for the former Village Dermatology location in Mountain Brook Village, 2901 Cahaba Road - Mauricio Papapietro.	Exhibit 6, Appendix 1
2013-100	Authorize the execution of a contract between the City and Modern Quality Construction, Inc. with respect to dormitory renovations at Fire Station No. 2 (Locksley Drive).	Exhibit 7, Appendix 2

Thereupon, the foregoing minutes and resolutions were introduced by Council President Smith 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: Virginia C. Smith, Council President
Amy G. Carter, Council President Pro Tempore
Jack D. Carl
William S. Pritchard III
Jesse S. Vogtle, Jr.

Nays: None

Council President Smith thereupon declared that said minutes and resolutions (nos. 2013-094 through 2013-100) are adopted by a vote of 5—0 and, as evidence thereof, she signed the same.

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

Council President Smith announced that the next regular meeting of the City Council will be Monday, July 8, 2013, at 7 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213. Please visit the City's web site (www.mtnbrook.org) for more information.

5. EXECUTIVE SESSION AND ADJOURNMENT

There being no further business to come before the City Council, it was moved by Council member Pritchard that the City Council convene in executive session to discuss a matter involving potential litigation. The motion was seconded by Council President Smith. The City Attorney certified that the subject matter of the executive session is allowed pursuant to the Open Meetings Act. Then, upon the question being put and the roll called, the vote was recorded as follows:

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

Nays: None

President Smith declared that the motion carried by a vote of 5—0 and then asked that the members of the audience be excused. President Smith also announced that the City Council meeting will adjourn upon conclusion of the executive session.


Joy Moman, Acting City Clerk

EXHIBIT 1**RESOLUTION NO. 2013-094**

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that Ruth Mears is hereby reappointed to the Tree Commission, to serve without compensation, with the term of office to end April 12, 2016.

EXHIBIT 2**RESOLUTION NO. 2013-095**

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that Stephen Bostock is hereby reappointed to the Tree Commission, to serve without compensation, with the term of office to end March 22, 2016.

EXHIBIT 3**RESOLUTION NO. 2013-096**

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that John H. (Jack) Martin is hereby reappointed to the Finance Committee, to serve without compensation, with the term of office to end July 10, 2017.

EXHIBIT 4**RESOLUTION NO. 2013-097**

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby rejects all bids with respect to the Cahaba River Park renovation project (NLA #11-300) dated June 6, 2013.

EXHIBIT 5**RESOLUTION NO. 2013-098**

**A RESOLUTION AUTHORIZING THE SALE OR DISPOSAL
OF CERTAIN SURPLUS PROPERTY**

WHEREAS, the City of Mountain Brook, Alabama, has certain items of personal property which are no longer needed for public or municipal purposes; and

WHEREAS, Section 11-43-56 of the Alabama Code of 1975 authorizes the municipal governing body to dispose of unneeded personal property.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Mountain Brook, as follows:

Section 1. It is hereby established and declared that the following property owned by the City of Mountain Brook, Alabama is not needed for public or municipal purposes and is hereby declared surplus property:

Item	Description	Notes
1	2003 Ford F-350 6.8 gas (PR)	1FTWW32S13EA63270

Item	Description	Notes
2	1999 Ford F-350 6.8 gas (PR)	1FTWW32S9XED67825
3	2000 Case 75xt diesel (PW)	JAF0296500
4	2005 Ford F-450 6.0 diesel (PW)	1FDXW46P15EC97066
5	2009 Ford Crown Vic 4.6 gas (PD)	2FAHP71V99X123575
6	2001 Dodge Durango 4.7 gas (PR)	1B4HS28N81F563950
7	1998 Chevrolet 1500 5.7 gas (PW)	1GCEC19R4WE144280
8	2003 Chevrolet S-10 4.3 gas (PD)	1GCCS19X838210820
9	2006 Chevrolet Trail Blazer 5.3 gas (PD)	1GNES13MX62221727
10	2006 Chevrolet Trail Blazer 5.3 gas (PD)	1GNES13M562215690
11	1992 Caterpillar 943 3204 diesel (PW)	19Z01809
12	Fire Guard double wall steel fuel tank (FD)	serial #9762
13	2010 Ford Crown Vic 4.6 gas (PD)	2FABP7BV8AX126721
14	Case, 95xt, wheels and tracks	
15	Robin, EY15, packer	
16	Huskvarna, K960, concrete saw, 2 stroke gas	
17	CH&E, water pump, 5.5 horse 4 stroke gas	
18	Vetec, pesticide sprayer, 18 horse Briggs 4 stroke gas	
19	Briggs and Stratton, twin II, engine, 18 hp 4 stroke gas	
20	Sears\Craftsman, 10' radial arm saw, electric	
21	Sears\Craftsman, belt\disc sander, electric	
22	Sears\Craftsman, 12' table saw, electric	
23	Diamond, walk behind cement saw, Vanguard 16hp 4 stroke gas	
24	Hale Torrent, water pump, 3hp Briggs 4 stroke gas	
25	Honda, WX15, water pump with hoses, 4 stoke gas	
26	3 aluminum truck tool boxes	
27	4 55 gal drum dollies	
28	Stow, 18, mortar plaster mixer	
29	Stow, CM6, concrete barrel mixer	
30	Wacker Packer, WP1550, packer, Honda 5.5 hp, 4 stroke gas	

Section 2. That the City Manager, or his designated representative, is hereby authorized and directed to sell the above property by way of public Internet.

EXHIBIT 6

RESOLUTION NO. 2013-099

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby approves the conditional use application submitted by Brick & Tin restaurant (2901 Cahaba Road) for lunch service between the hours of 11:00 a.m. and 1:00 p.m., subject to the following conditions:

1. Employees utilize public, long-term parking during business hours (which shall not include areas designated as 4-hour public parking);
2. A valet service for restaurant patrons be provided between the hours of 11:00 am and 1:00 pm.

APPENDIX 1

EXHIBIT 7

RESOLUTION NO. 2013-100

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the execution of a construction contract, in the form as attached hereto as Exhibit A subject to such minor revisions as may be determined appropriate by the City Attorney, between the City and Modern Quality Construction, Inc. with respect to the dormitory renovations at Fire Station No. 2.

APPENDIX 2



MEMO

DATE: June 17, 2013

TO: Mayor
City Council
City Manager

FROM: Dana Hazen, City Planner

RE: Conditional Use – Brick & Tin Restaurant
2901 Cahaba Road (former Village Dermatology – “Iron Arts” building)

Refer to attached letter from applicant as to specific proposed operational characteristics. The proposal involves a fast-casual restaurant to be open for lunch and dinner. Council approval of a conditional use is required for food service between the hours of 11:00am and 1:00pm.

As stated in the applicant’s letter, the dining room will seat 50-60 patrons; valet is to be provided to Heathermoor during the lunch hours (a valet company is to present a valet plan at council meeting). Ten employees will work during a peak hour, and will park in the long term parking along Cahaba and Heathermoor.

There are no on-site parking spaces to speak of, but seven parking spaces adjoining the site on Culver have historically been posted “for private use” by this property and could be reserved for the proposed business. As far as public parking along this section of Cahaba, an average of 18 vacant on-street parking spaces are observed during peak weekday hours.

The zoning ordinance requires council approval of service uses as a conditional use, and states that any proposed conditional use will be reviewed as to the following:

- Whether the use would disparately impact public parking in the area;
- Whether vehicular or pedestrian circulation would be impacted by the use;
- Whether the use is compatible with surrounding existing uses;
- Whether the hours of operation or peak traffic times would impact existing use

Dana Hazen
City of Mountain Brook,

My name is Mauricio Papapietro and I am in the process of opening a restaurant at 2901 Cahaba Road, in Mountain Brook Village. It is my understanding that I will need to go before the City Council in order to obtain a Conditional Use Permit, since this restaurant will be open for lunch throughout the business week.

As requested by Ms. Hazen, I am bringing a Site Survey to City Hall and am including in this letter a description of the business. It is my intention, if possible, to be added to the agenda for the City Council Meeting on Monday, the 24th of June.

Description of Business:

Business Type	Fast Casual Restaurant
Name	brick & tin
Address	2901 Cahaba Road 35213 (currently Village Dermatology)
Square Footage	2700
No. of Seats	50-60
Hours of Operation	7 days a week 10:30am-10pm
Alcohol Served	yes
No. of Employees	up to 20 (10 working at a time)
Parking	Valet during lunch (10:30-2pm) <i>see notes below</i> Dinner self-parking

Notes

- This is the 2nd location for *brick & tin*. There is currently one at 214 20th Street North, Downtown Birmingham. This downtown location has been in business for 3 years.
- I have been in touch with the owner of Safeguard Parking Systems (Matt Yancey), who has a preliminary plan for Valet Service during lunch hours. I am requesting his attendance at the City Council Meeting (6/24) to address the specifics.
- The issue of employec parking is currently being addressed. I will be able to address this in detail at City Council meeting.

Thank you,

Mauricio Papapietro
brick & tin
214 20th Street North
Birmingham, AL 35203
205-297-8636
Mauricio@brickandtin.com
www.brickandtin.com

772

Minute Book 85

CONTRACTOR AGREEMENT

This Agreement is made this 24th day of June, 2013, by and between:

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

and

CONTRACTOR: Modern Quality Construction, Inc.
152 West Valley Avenue
Birmingham, Alabama 35209

for contracting services on the

PROJECT: Mountain Brook Fire Department
Station #2 - Dormitory Renovation

- 4.1 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, 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 or delivered to the Worksite by Contractor on its behalf.

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 the sum of Forty-Eight Thousand Three Hundred Eighty-Seven & No/100 Dollars (\$48,387.00). The lump sum price is hereinafter referred to as the Contract Price, which shall be subject to increase or decrease only as provided in this Agreement. Contractor acknowledges and understands that the Alabama Public Works Law applies to Owner and applies to improvements to municipal buildings when the project cost exceeds \$50,000.00. Contractor agrees that no increase in price, as permitted by this Agreement, shall result in the payment of over \$50,000.00 to Contractor.

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

EXHIBIT A: Scope of Work and Job Cost Breakdown (5 pages).

EXHIBIT B: Contract Addendum (3 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.

J:\Minutes & Agendas\Council\2013\20130624 Minutes.doc

2013-06-24 09:15

4.7 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 and the Architect. 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.

4.8 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.

6. SUBCONTRACTS. Work not performed by Contractor with its own forces may 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. July 15, 2013 is Commencement date.

7.2 TIME. Completion of the Work shall be achieved in sixty (60) days from the Date of Commencement. Time limits stated above are of the essence of the Agreement.

8. SCHEDULE OF THE WORK. Before beginning any work on the Project, Contractor shall submit to 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. CHANGES.

9.1. CHANGE ORDERS. 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.

9.2 PROCESS. 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.

9.3 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.

9.4 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.

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

10. PAYMENT.

10.1. 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.

10.1.1 Payment of the Contract Price shall be made to Contractor within thirty (30) Days after Contractor has submitted to the Owner a complete and accurate application for final payment and the following submissions:

774

Minute Book 85

- (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.

10.2 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.

11. INDEMNITY.

11.1 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.

11.2 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.

11.3 ADDENDUM. The Addendum attached as Exhibit B shall be executed by Contractor.

12. INSURANCE.

12.1 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. 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:

- 12.1.1 Employers' Liability Insurance:
 - a. \$1,000,000
Bodily Injury by Accident
Each Accident
 - b. \$1,000,000
Bodily Injury by Disease
Policy Limit
 - c. \$1,000,000
Policy Injury by Disease
Each Employee

12.1.2 Business Automobile Liability Insurance

- a. 1,000,000
Each Accident

12.1.3 Commercial General Liability Insurance

- a. \$1,000,000
Each Occurrence
- b. \$2,000,000
General Aggregate
- c. \$2,000,000
Products/Completed
Operations Aggregate
- d. \$1,000,000
Personal and Advertising
Injury Limit

12.2 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.

13. **BONDS. Performance and Payment Bonds** [_____ (are)] [(are not)] required of the Contractor. Such bonds shall be issued by a surety admitted in the State in which the Project is located and must be acceptable to Owner. Owner's acceptance shall not be withheld without reasonable cause. The penal sum of the Payment Bond shall equal the penal sum of the Performance Bond.

14. **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 Completion unless, otherwise agreed to by the Parties.

15. **NOTICE TO CURE AND TERMINATION.**

15.1 **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.

15.2 **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.

15.2.1 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.

15.3 **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:

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

15.3.2 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.

15.4 **PAYMENT UPON TERMINATION.** Upon termination by Contractor pursuant to this Agreement, Contractor shall be entitled to recover from Owner payment for all Work executed.

15.5 **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.

16. **CLAIMS AND DISPUTE RESOLUTION.**

16.1 **CLAIMS FOR ADDITIONAL COST OR TIME** Except as provided in this Agreement 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 will be addressed through the Change Order process.

MQ
EXHIBIT A

MODERN QUALITY CONSTRUCTION INC.

152 West Valley Avenue Birmingham, AL 35209
Office (205) 290-0388 Fax (205) 290-0348 Cellular (205) 369-2824
Scott Eichelberger General Contractors

“PROPOSAL”

Submitted to : Mountain Brook Fire Department – Station #2
Street Address: 3785 Locksley Drive
City/State/Zip : Birmingham, AL 35223
Ph./ Fax/ Date : (205) 427-6364 / (205) / 5-22-2013
Job Name : Dorm Renovation
Job Location : Same

We hereby submit specifications and estimates to supply labor, materials, worker compensation and general liability insurance to complete the following project:

Improvements per drawing/meeting & Scope of Work clarifications issued.

We propose hereby to furnish labor and material-complete in accordance with attached specifications, for the sum: See Attached Dollars & 00/100

With payments to be made as follows:
Terms to be agreed upon.

The undersigned agrees to be jointly and severally liable for any purchase made under this agreement. The undersigned, the company he represents and Modern Quality Construction will be governed by this agreement. If failure to pay according to this agreement causes this account to be assigned for collection, or should an action of law be instituted to enforce the agreement, the undersigned agrees to pay reasonable costs, attorney's fees and court costs. We certify that all the information on this form is correct. We fully understand your credit terms and agree to the proper payment in consideration of extended credit.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alterations or deviations from attached or above specifications involving extra costs will be executed only upon written orders, and will become an extra change 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. Modern Quality Construction employees are fully covered by Workers Compensation insurance. Any unforeseen obstructions, rock, unsuitable soil, contaminated materials or buried utilities shall be located, removed, repaired or disposed of at the owner's expense.

PROPOSAL GOOD FOR 60 DAYS

ACCEPTANCE OF PROPOSAL Authorized Purchaser X _____ Date _____
(It is the OWNER'S or the OWNER'S Tenants responsibility to move, secure, disconnect or relocate any office equipment such as computers, copiers, fax machines, printers, modems, phone boards etc. M.Q.C. Inc. will take the time to cover with plastic and protect to the best of our ability any equipment left in place but we assume ABSOLUTELY NO RESPONSIBILITY for any damage occurring to any office equipment or HVAC equipment due to construction and or dust from construction to the OWNER'S or TENANT'S equipment on the premises. It will also be the OWNER'S responsibility to notify any tenant of the above mentioned requirements.)

Authorized Contractor Representative X _____ Date _____
Purchaser agrees to pay the full amount due within 30 days of invoice or a late charge of 1/12% per month (18% apr) will be applied.

CONCRETE*FOOTINGS*SLABS*METAL BUILDINGS*FRAMING*DRY WALL*SIDING*ROOFING*
*PAINTING*MAINTENANCE*TENANT READY SPACES*COMPLETE RENOVATIONS*
CUSTOM MOLDINGS

MQ
EXHIBIT A

MODERN QUALITY CONSTRUCTION INC.

152 West Valley Avenue Birmingham, AL 35209
Office (205) 290-0388 Fax (205) 290-0348 Cellular (205) 369-2824
Scott Eichelberger General Contractors

**SCOPE OF WORK AND JOB COST BREAKDOWN
MOUNTAIN BROOK FIRE DEPARTMENT**

- 1). GENERAL REQUIREMENTS:
 - A). Temporary Power. (By Owner)
 - B). Temporary Toilet.
 - C). Temporary Water. (By Owner)
 - D). Sewer Impacts. - NONE
 - E). Supervision.
 - F). Dumpster Rental.
 - G). Landfill Fees.
 - H). Daily Cleaning.
 - I). Equipment Rental.
 - J). Job Mobilization/De-Mobilization
 - K). Final Cleaning. (Damp mop new VCT, clean construction and associated areas affected by Construction. No Stripping or Waxing of VCT quoted.)
 - L). Permits.
 - M). License.
 - N). Automobile Insurance. (Included in line items)
 - O). Workers Compensation Insurance. (Included in line items)
 - P). General Liability Insurance. (Included in line items)
 - Q). Contractor Overhead and Profit Included in Line Items. (Included in line items)
 - R). No Architectural, Mechanical, Plumbing and Electrical Permit Drawings Quoted.
 - S). No Performance and Payment Bond.
 - T). Travel Expenses. -0-
- TOTAL GENERAL REQUIREMENTS. \$ 3,881.00**
- 2). SITEWORK/DEMOLITION:
 - A). Remove existing lockers and store on site for owner's future use.
 - B). Remove existing lighting, HVAC grilles, speakers, ceiling gid and tile system throughout Dorm area.
 - C). Dispose of debris according to city and county regulations.
(No hazardous material removal 'IF ANY' quoted)
- TOTAL SITEWORK/DEMOLITION. \$ 564.00**

CONCRETE*FOOTINGS*SLABS*METAL BUILDINGS*FRAMING*DRY WALL*SIDING*ROOFING*
*PAINTING*MAINTENANCE*TENANT READY SPACES*COMPLETE RENOVATIONS*
CUSTOM MOLDINGS

MQ
EXHIBIT A

MODERN QUALITY CONSTRUCTION INC.

152 West Valley Avenue Birmingham, AL 35209
Office (205) 290-0388 Fax (205) 290-0348 Cellular (205) 369-2824
Scott Eichelberger General Contractors

MQ
EXHIBIT A

MODERN QUALITY CONSTRUCTION INC.

152 West Valley Avenue Birmingham, AL 35209
Office (205) 290-0388 Fax (205) 290-0348 Cellular (205) 369-2824
Scott Eichelberger General Contractors

3). CONCRETE:

- A). Float/repair existing flooring with trowel applied skim coat for installation of new flooring over existing floorings.

TOTAL CONCRETE. \$ 250.00

4). MASONRY: NONE QUOTED

5). METALS: NONE QUOTED

6). WOOD AND PLASTICS:

7). THERMAL AND MOISTURE PROTECTION: NONE QUOTED

- A). We can supply an alternate cost upon request to insulate new partition wall cavities for sound control if desired.

8). DOORS AND WINDOWS:

- A). Install 5 new 3'-0" x 6'-8" hollow metal frames with solid core birch door leaves, brushed chrome hinges and Schlage passage function Elan lever locks.
B). Install 16 new 2'-0" x 6'-8" hollow metal frames with solid core birch door leaves, brushed chrome hinges and Schlage keyed closte function Elan lever locks.

TOTAL DOORS AND WINDOWS. \$ 9,975.00

9). FINISHES:

- A). Install approximately 190 LF of new 20 gauge 3-5/8" metal stud framing from floor to 6" +/- above new proposed ceiling with 1/2" gypsum panels floated for paint finish at new wall areas noted on plans.
B). Patch existing drywall throughout Dorm suite for uniform paint finish.
C). Prep floor slab and install new Azrock or Armstrong standard 12' x 12" x 1/8" VCT flooring throughout Dorm suite.
D). Install standard 4" vinyl base to wall/floor junctures at areas of new VCT flooring.
E). Install new standard 15/16" white 2' x 2' ceiling suspension system with standard 2' x 2' tegular edge ceiling tile. (USG 'RADAR' or equal)
F). Sand, clean and install 1 drywall primer coat to all new gypsum walls and patched areas of existing walls.
G). Sand, clean and install 2 coats eggshell latex wall paint to all gypsum surfaces throughout the suite.
H). Sand, clean, caulk, putty, prime as required and install 2 coats semi-gloss industrial enamel to all new door units throughout suite and 1 side of existing door units adjacent to suite.

TOTAL FINISHES. \$ 16,835.00

CONCRETE*FOOTINGS*SLABS*METAL BUILDINGS*FRAMING*DRY WALL*SIDING*ROOFING*
*PAINTING*MAINTENANCE*TENANT READY SPACES*COMPLETE RENOVATIONS*
CUSTOM MOLDINGS

10). SPECIALTIES: NONE QUOTED

- A). No blinds quoted at this time.
B). Install 2 ea. white wire shelving, brackets & accessories into each closet. (32 ea. total)

TOTAL SPECIALTIES. \$ 960.00

11). EQUIPMENT: NONE QUOTED

12). FURNISHINGS: NONE QUOTED

13). SPECIAL CONSTRUCTION: NONE QUOTED

14). CONVEYING SYSTEMS/ELEVATORS: NONE QUOTED

15). MECHANICAL:

PLUMBING: NONE QUOTED
HVAC:

- A). Demo existing supply and return outlets in dorm area and patch as needed.
B). Install one new 6" supply outlet with diffuser in the five dorm rooms and one in the hallway (up to 15' each).
C). Install one new 14" return with grille in the hallway (up to 15').
D). Installation to include license, permit, labor and miscellaneous materials.

FIRE SPRINKLER: NONE QUOTED
TOTAL MECHANICAL. \$ 1,976.00

CONCRETE*FOOTINGS*SLABS*METAL BUILDINGS*FRAMING*DRY WALL*SIDING*ROOFING*
*PAINTING*MAINTENANCE*TENANT READY SPACES*COMPLETE RENOVATIONS*
CUSTOM MOLDINGS

MQ
EXHIBIT A

MODERN QUALITY CONSTRUCTION INC.

152 West Valley Avenue Birmingham, AL 35209
Office (205) 290-0388 Fax (205) 290-0348 Cellular (205) 369-2824
Scott Eichelberger General Contractors

16). ELECTRICAL:

- A). Re-work electrical receptacle feeds as required due to demolition/modifications.
 - B). Provide conduit, wire breakers, fasteners and accessories to complete the following items noted below.
 - C). Install 2 new 2'x4' T-8 florescent lay in light fixtures in hallway with switch.
 - D). Install 5 new wall mounts for LCD TV's. (TV's by others)
 - E). Install 5 new 110 volt general purpose receptacles at each TV mount.
 - F). Install 5 new coaxial cable rough in boxes and cable wiring at each TV mount.
 - G). Install 5 new wall mounted reading lights above bed area.
 - H). Install 5 adjustable ceiling mounted speakers in each bedroom.
 - I). Install wall mount ironing board and 110 volt receptacle in hallway.
 - J). Install rough in box, Cat 5 cable and general purpose 110 volt receptacle in hallway for IT.
 - K). Install 5 new 2'x4' T-8 florescent lay in light fixtures in the bedrooms.
 - L). Install 10 new single pole switches in bedrooms to control lighting & fans.
 - M). Install 5 new ceiling fans with \$ 150.00 purchase allowance each includes tax and freight.
 - N). Install 16 new surface mount closet light fixtures.
 - O). Install 16 new single pole switches for closet light fixtures.
 - P). Install 5 new 110 volt general purpose receptacles by each bed.
 - Q). Install 5 new smoke detectors in bedrooms and 1 in hallway interconnected.
 - R). Install 1 new emergency/exit combination light with audible alarm.
 - S). Install 1 new emergency/exit combination light.
 - T). Install 2 surface wall mount night light fixtures in hallway wired to burn 24/7.
- TOTAL ELECTRICAL. \$ 13,946.00

TOTAL JOB COST. \$ 48,387.00

ALTERNATE #1: Suggested HVAC Modification Adding Return Air to Bedrooms;
Install one new 6" return with grille in the five dorm rooms and one in the hallway (up to 15' each).

TOTAL ALTERNATE #1. \$ 696.00

CONCRETE*FOOTINGS*SLABS*METAL BUILDINGS*FRAMING*DRY WALL*SIDING*ROOFING*
*PAINTING*MAINTENANCE*TENANT READY SPACES*COMPLETE RENOVATIONS*
CUSTOM MOLDINGS

EXHIBIT B

**ADDENDUM TO AGREEMENT BETWEEN
THE CITY OF MOUNTAIN BROOK AND
MODERN QUALITY CONSTRUCTION, INC.
DATED JUNE 24, 2013**

THIS ADDENDUM ("the/this Addendum") to the principal agreement between the City of Mountain Brook, Alabama ("the City") and Modern Quality Construction, Inc. ("the Contractor") dated June 24, 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,

EXHIBIT B

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.
- 8. **Alabama Immigration Law Compliance Contract.** 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 1-9 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

EXHIBIT B

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.

DATED this 24th day of June, 2013.

Modern Quality Construction, Inc.

City of Mountain Brook, Alabama

By: _____

By: _____

Its: _____

Its: _____



11/11/2013 11:01:11 AM