

**MOUNTAIN BROOK CITY COUNCIL  
MEETING AGENDA**

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

**MONDAY, NOVEMBER 10, 2014, 7:00 P.M.**

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1. Consideration: Resolution expressing gratitude to Amy G. Carter for her service on the Mountain Brook City Council.
2. Approval of the minutes of the October 27, 2014 regular meeting of the City Council.
3. Approval of the minutes of the November 3, 2014 organizational meeting of the City Council.
4. Consideration: Resolution reappointing Sally Legg to the Tree Commission, to serve without compensation through November 28, 2017.
5. Consideration: Resolution authorizing the waiver of building permit and contractor license fees for building projects attributable to City, Park Board, or Library Board building projects (contractors must comply with all applicable state and local building code laws and regulations to qualify for such fee waivers).
6. Consideration: Resolution authorizing the execution of a [commercial] Fire Protection and Emergency Medical Services agreement.
7. Consideration: Resolution authorizing the execution of the Business Associates Agreement between the City and TASC (formerly Benefit Elect of Alabama) with respect to the City's Flexible Benefit ("cafeteria") Plan administration services.
8. Announcement: The City Council shall conduct a public hearing on November 24, 2014 at 7 p.m. to consider rezoning parcels along Vine Street with respect to the proposed Piggly Wiggly development.
9. Announcement: The next meeting of the City Council is November 24, 2014, at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.
10. Comments from residents.
11. Adjourn.

## RESOLUTION

WHEREAS, Amy Carter served with distinction on the City Council of the City of Mountain Brook, Alabama, from November 1, 2010 to November 3, 2014; and

WHEREAS, Amy Carter served as Council President Pro-Tempore from November 5, 2012 until November 3, 2014; and

WHEREAS, Amy Carter served as Council Liaison to the Board of Zoning Adjustment, the Editorial Board, the Chamber of Commerce, the Parking Committee, and the Emmet O'Neal Library Board; and

WHEREAS, Amy Carter's dedication to village improvements and beautification was instrumental in the construction of the new Municipal Complex (2010-2012), expansion of the City's sidewalk system to promote health and safety and connectivity, approval of the Lane Parke Planned Unit Development in 2010; negotiating the purchase of 4.7 acres for the development of Cahaba River Park in 2011; and securing a benefactor who provided most of the funding necessary for the construction of the fountain in front of the new City Hall in 2013.

WHEREAS, Amy Carter, has worked tirelessly to faithfully execute the responsibilities of her office and has exercised caring leadership; and

NOW, THEREFORE, BE IT RESOLVED that the City Council and Mayor, on behalf of the residents of Mountain Brook, do publicly thank Amy Carter, for her exemplary service and wish her well in future endeavors.

ADOPTED: The 10th day of November, 2014.

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Virginia C. Smith, Council President

APPROVED: The 10th day of November, 2014.

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Lawrence T. Oden, Mayor

2014-151

**MOUNTAIN BROOK CITY COUNCIL  
PRE-MEETING DISCUSSION  
OCTOBER 27, 2014**

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The City Council of the City of Mountain Brook, Alabama met in public session in the Pre-council Room (A106) of City Hall at 6:15 p.m. on Monday, the 27th day of October, 2014. 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  
Jesse S. Vogtle, Jr.  
Lawrence T. Oden, Mayor

Absent: William S. Pritchard, III

Also present were City Attorney Carl Johnson, City Manager Sam Gaston, and City Clerk Steven Boone.

**1. AGENDA**

1. Oakdale Drive/Overton Road/River Run Drive traffic study – Richard Caudle of Skipper Consultants (Appendix 1).

The City Council asked that Mr. Caudle continue discussing the matter with Jefferson County officials. The general consensus of the members of the Council was that no pedestrian crossing improvements be made at this time if the County insists on requiring all of their recommended improvements.

2. Proposal to review traffic signals modifications on Cahaba Road at Little Hardware exit – Richard Caudle of Skipper Consultants (Appendix 2).

This matter will be considered again by the City Council after traffic patterns settle down.

3. Organizational meeting committee and liaison assignments carried-over from last meeting.
4. Review and discussion of the 7 p.m. City Council formal meeting agenda topics.

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

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Steven Boone, City Clerk

**MINUTES OF THE REGULAR MEETING OF THE  
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK, ALABAMA  
OCTOBER 27, 2014**

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The City Council of the City of Mountain Brook, Alabama met in public session in the City Hall Council Chamber at 7:00 p.m. on Monday, the 27th day of October, 2014. 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  
Jesse S. Vogtle, Jr.  
Lawrence T. Oden, Mayor

Absent: William S. Pritchard, III

Also present were City Attorney Carl Johnson, 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. RECOGNITION OF GUESTS**

Council President Smith recognized several Boy Scouts from Troops 53, 63 and 28 in attendance for their Citizenship in the Community merit badge.

**2. JUDGE SHANTA OWENS, PRESIDING JUDGE OF THE JEFFERSON COUNTY DRUG COURT**

Judge Owens requested the support of the voters in her upcoming bid for re-election to the Jefferson County Drug Court (Appendix 1).

**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 September 22, 2014 meeting of the City Council

Approval of the minutes of the October 13, 2014 meetings of the City Council

<b>2014-139</b>	Reappoint Charles E. Carper, IV to the Park and Recreation Board	Exhibit 1
<b>2014-140</b>	Reappoint William T. ("Bill") Warren to the Tree Commission	Exhibit 2
<b>2014-141</b>	Authorize the creation of one (1) Geographic Information Systems Technician II position for the Planning Department	Exhibit 3, Appendix 2
<b>2014-142</b>	Authorize a service agreement with the Alabama Ballet	Exhibit 4, Appendix 3
<b>2014-143</b>	Authorize the execution of an engagement letter for the 2014 annual financial audit.	Exhibit 5, Appendix 4

<b>2014-144</b>	Authorize the following fiscal 2014 [cash and surplus] intrafund transfers: 1) \$49,115 from the Park Board (115) to General Operations (100), 2) \$58,631 from General Operations (100) to Emergency Reserves (146), and 3) \$1,176,161 from General Operations (100) to Capital-Infrastructure Projects (417)	Exhibit 6, Appendix 5
<b>2014-145</b>	Authorize the execution of Fire Protection and Emergency Medical Services agreement with C-K Breckenridge, LLC	Exhibit 7, Appendix 6
<b>2014-146</b>	Authorize the execution of the Cahaba River Park project contract change-order no. 1 in the amount of \$23,239.97 with respect to the contract between the City and Landscape Services, Inc. (Resolution No. 2014-050)	Exhibit 8, Appendix 7

Thereupon, the foregoing minutes and resolutions were introduced by Council President Smith and their immediate adoption was moved by Council member Vogtle. The minutes and resolutions were then considered by the City Council. Council President Pro Tempore Carter 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  
Jesse S. Vogtle, Jr.

Nays: None

Council President Smith thereupon declared that said minutes and Resolution Nos. 2014-139 through 2014-146 are adopted by a vote of 4-0.

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

Council President Smith announced that the next [organizational] meeting of the Mountain Brook City Council will be held on Monday, November 3, 2014 at 7:30 a.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](http://www.mtnbrook.org)) for more information.

#### **5. ADJOURNMENT**

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

\_\_\_\_\_  
Steven Boone, City Clerk

#### **EXHIBIT 1**

#### **RESOLUTION NO. 2014-139**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that Charles E. Carper, IV, is hereby reappointed to the Park and Recreation Board, to serve without compensation, with the term of office to end October 25, 2019.

#### **EXHIBIT 2**

**MINUTES OF THE ORGANIZATIONAL MEETING OF THE  
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK, ALABAMA  
NOVEMBER 3, 2014**

The City Council of the City of Mountain Brook, Alabama, met in special public session to conduct its organizational meeting as required by the laws of the State of Alabama in the City Hall Council Chambers (Room A108) of the City of Mountain Brook on Monday, the 3rd day of November 2014, at 7:30A.M.

The meeting was called to order by the City Manager and the roll was called with the following results:

Present:            Jack D. Carl  
                      William S. ("Billy") Pritchard, III  
                      Lloyd C. Shelton  
                      Virginia C. Smith  
                      Alice B. Womack  
                      Lawrence T. Oden, Mayor

Absent:            None

Also present were City Attorney Carl Johnson, City Manager Sam Gaston, and City Clerk Steven Boone.

**1. INTRODUCTION OF JUDGE PETE JOHNSON**

The City Manager introduced Mountain Brook Municipal Court Judge Pete Johnson who will administer the oaths of office.

**2. INAUGURATION OF THREE CITY COUNCIL MEMBERS**

Judge Johnson administered the oath of office (Appendices 1 through 3) to Council members Womack, Shelton, and Pritchard who then assumed their duties as Council members, respectively, of the City of Mountain Brook.

**3. ELECTION OF THE CITY COUNCIL PRESIDENT**

Mr. Gaston then invited a nomination from the City Council for Council President. Council member Carl nominated Council member Virginia C. Smith for Council President. Council member Prichard seconded the nomination. A vote was conducted with the following results:

Ayes:            Jack D. Carl  
                      William S. ("Billy") Pritchard, III  
                      Lloyd C. Shelton  
                      Virginia C. Smith  
                      Alice B. Womack

Nays:            None

The meeting was then turned over to Council President Smith who declared that the motion carried by a vote of 5-0.

**4. ELECTION OF CITY COUNCIL PRESIDENT PRO TEMPORE**

Council President Smith then called for a nomination regarding the appointment of the Council President Pro Tempore. Council member Carl nominated Council member William S. ("Billy") Pritchard, III for Council President Pro Tempore of the Council. The nomination was seconded by Council President Smith. Council President Smith then called for a vote with the following results:

Ayes: Virginia C. Smith, Council President  
 Jack D. Carl  
 William S. ("Billy") Pritchard, III  
 Lloyd C. Shelton  
 Alice B. Womack

Nays: None

Council President Smith declared that Council member William S. ("Billy") Pritchard, III has been appointed to be Council President Pro Tempore by a vote of 5—0.

**5. CONSIDERATION: MOTION (NO. 2014-147) FOR THE ADOPTION OF THE RULES OF ORDER AND PROCEDURE (APPENDIX 4)**

Council President Smith introduced the motion (in writing). It was then moved by Council member Pritchard that the City Council adopts the Rules of Order and Procedure as presented by the Council President. The motion was seconded by Council member Carl. President Smith then called for a vote with the following results:

Ayes: Virginia C. Smith, Council President  
 William S. ("Billy") Pritchard, III, Pro Tempore  
 Jack D. Carl  
 Lloyd C. Shelton  
 Alice B. Womack

Nays: None

The President of the Council declared the motion (No. 2014-147) carried by a vote of 5—0.

**6. CONSIDERATION: ORDINANCE (NO. 1921) APPOINTING THE CITY MANAGER (EXHIBIT 1)**

Council President Smith introduced the ordinance in writing. It was then moved by Council member Pritchard that all rules and regulations which, unless suspended, would prevent the immediate consideration and adoption of said ordinance be suspended and that unanimous consent to 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 Womack and was unanimously carried, as follows:

Ayes: Virginia C. Smith, Council President  
 William S. ("Billy") Pritchard, III, Pro Tempore  
 Jack D. Carl  
 Lloyd C. Shelton  
 Alice B. Womack

Nays: None

The President of the Council declared the motion carried.

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

Ayes: Virginia C. Smith, Council President  
 William S. ("Billy") Pritchard, III, Pro Tempore  
 Jack D. Carl  
 Lloyd C. Shelton  
 Alice B. Womack

Nays: None

The President of the Council declared that the ordinance (No. 1921) is hereby adopted by a vote of 5—0 and, as evidence thereof, she signed the same.

**7. CONSIDERATION: ORDINANCE (NO. 1922) APPOINTING THE CITY CLERK (EXHIBIT 2)**

Council President Smith introduced the ordinance in writing. It was then moved by Council member Shelton that all rules and regulations which, unless suspended, would prevent the immediate consideration and adoption of said ordinance be suspended and that unanimous consent to 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 Womack and was unanimously carried, as follows:

Ayes: Virginia C. Smith, Council President  
William S. ("Billy") Pritchard, III, Pro Tempore  
Jack D. Carl  
Lloyd C. Shelton  
Alice B. Womack

Nays: None

The President of the Council declared the motion carried by a vote of 5—0.

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

Ayes: Virginia C. Smith, Council President  
William S. ("Billy") Pritchard, III, Pro Tempore  
Jack D. Carl  
Lloyd C. Shelton  
Alice B. Womack

Nays: None

The President of the Council declared that the ordinance (No. 1922) is hereby adopted by a vote of 5—0 and, as evidence thereof, she signed the same.

**8. CONSIDERATION: ORDINANCE (NO. 1923) APPOINTING THE CITY TREASURER (EXHIBIT 3)**

Council President Smith introduced the ordinance in writing. It was then moved by Council member Pritchard that all rules and regulations which, unless suspended, would prevent the immediate consideration and adoption of said ordinance be suspended and that unanimous consent to 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 Shelton and was unanimously carried, as follows:

Ayes: Virginia C. Smith, Council President  
William S. ("Billy") Pritchard, III, Pro Tempore  
Jack D. Carl  
Lloyd C. Shelton  
Alice B. Womack

Nays: None

The President of the Council declared the motion carried by a vote of 5—0.

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

Ayes: Virginia C. Smith, Council President  
William S. ("Billy") Pritchard, III, Pro Tempore  
Jack D. Carl  
Lloyd C. Shelton  
Alice B. Womack

Nays: None

The President of the Council declared that the ordinance (No. 1923) is hereby adopted by a vote of 5—0 and, as evidence thereof, she signed the same.

**9. CONSIDERATION: ORDINANCE (NO. 1924) APPOINTING THE ASSISTANT CITY TREASURER (EXHIBIT 4)**

Council President Smith introduced the ordinance in writing. It was then moved by Council member Womack that all rules and regulations which, unless suspended, would prevent the immediate consideration and adoption of said ordinance be suspended and that unanimous consent to 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 Pritchard and was unanimously carried, as follows:

Ayes: Virginia C. Smith, Council President  
William S. ("Billy") Pritchard, III, Pro Tempore  
Jack D. Carl  
Lloyd C. Shelton  
Alice B. Womack

Nays: None

The President of the Council declared the motion carried by a vote of 5—0.

After said ordinance had been considered in full by the Council, Council President Smith then moved for the adoption of said ordinance. The motion was seconded by Council member Womack. Thereupon, Council President Smith called for vote with the following results:

Ayes: Virginia C. Smith, Council President  
William S. ("Billy") Pritchard, III, Pro Tempore  
Jack D. Carl  
Lloyd C. Shelton  
Alice B. Womack

Nays: None

The President of the Council declared that the ordinance (No. 1924) is hereby adopted by a vote of 5—0 and, as evidence thereof, she signed the same.

**10. INAUGURATION OF THE AFOREMENTIONED OFFICERS**

Judge Johnson then administered the oaths of office (Appendices 5 through 7) to Sam Gaston, Steven Boone, and William F. Angell, respectively, who then assumed their respective duties as officers of the City of Mountain Brook. [Note: The City Clerk administered the oath of office to the Assistant City Treasurer on November 5, 2014 (Appendix 7).]

**11. CONSIDERATION: RESOLUTION (NO. 2014-148) APPOINTING THE CITY ATTORNEY(S) FOR THE CITY (EXHIBIT5)**

Council President Smith introduced the resolution in writing appointing Bishop, Colvin, Johnson & Kent (general legal services) and Starnes, Davis & Florie, LLP (litigation services) as City Attorneys for the City. It was then moved by Council member Pritchard that the resolution be adopted as presented by the Council President. The motion was seconded by Council member Carl. Council President Smith then called for a vote with the following results:

Ayes: Virginia C. Smith, Council President  
 William S. ("Billy") Pritchard, III, Pro Tempore  
 Jack D. Carl  
 Lloyd C. Shelton  
 Alice B. Womack

Nays: None

The President of the Council declared that the resolution (No. 2014-148) motion carried by a vote of 5—0.

**12. CONSIDERATION: MOTION (NO. 2014-149) APPOINTING THE MAYOR AND CITY COUNCIL AS THE BOARD OF COMMISSIONERS OF THE MOUNTAIN BROOK EMERGENCY COMMUNICATIONS DISTRICT AND NOMINATING THE CHAIRMAN OF THE EMERGENCY COMMUNICATION DISTRICT BOARD**

Council President Smith called for a motion. Council member Pritchard made a motion appointing the Mayor and City Council as the Board of Commissioners of the Mountain Brook Emergency Communications District and nominating the Mayor of the City Chairman of the Emergency Communication District Board. The motion was seconded by Council member Carl. Council President Smith then called for a vote with the following results:

Ayes: Virginia C. Smith, Council President  
 William S. ("Billy") Pritchard, III, Pro Tempore  
 Jack D. Carl  
 Lloyd C. Shelton  
 Alice B. Womack

Nays: None

The President of the Council declared that the motion (No. 2014-149) carried by a vote of 5—0.

**11. ANNOUNCEMENT: THE NEXT MEETING OF THE CITY COUNCIL**

Council President Smith announced that the next meeting of the Mountain Brook City Council will be held on Monday, November 24, 2014 at 7:00 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](http://www.mtnbrook.org)) for more information.

**12. ADJOURNMENT**

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

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Steven Boone, City Clerk

**RESOLUTION NO. 2014-152**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that Sally Legg is hereby appointed to the Tree Commission of the City of Mountain Brook to serve without compensation until November 28, 2017.

**ADOPTED:** This 10th day of November, 2014.

\_\_\_\_\_  
Council President

**APPROVED:** This 10th day of November, 2014.

\_\_\_\_\_  
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 November 10, 2014, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

**RESOLUTION NO. 2014-153**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook (the “City”) that the City Council does hereby authorize the City Clerk or the Building Inspection Superintendent to waive any building permit fee attributable to a City of Mountain Brook, Mountain Brook Park and Recreation Board or Emmet O’Neal Library Board building project.

**BE IT FURTHER RESOLVED** by the City Council of the City of Mountain Brook (the “City”) that the building permit fee waiver(s) permitted pursuant to this resolution shall not obviate a contractor from complying with applicable state and local building code and business license rules and regulations.

**BE IT FURTHER RESOLVED** by the City Council of the City of Mountain Brook (the “City”) that the City Council does hereby authorize the City Clerk or the Building Inspection Superintendent to waive any contractor business license fee attributable to a City of Mountain Brook, Mountain Brook Park and Recreation Board or Emmet O’Neal Library Board building project provides such contractor demonstrates compliance with applicable state building code regulations, the Alabama Immigration Act, and obtains any such bonds required in the City’s building code.

**ADOPTED:** This 10th day of November, 2014.

\_\_\_\_\_  
Council President

**APPROVED:** This 10th day of November, 2014.

\_\_\_\_\_  
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 regular meeting held on November 10, 2014, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

**RESOLUTION NO. 2014-154**

**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 the following Fire Protection and Emergency Medical Services agreement(s), copy(ies) of which are attached hereto:

- 1. Cahaba, LLC - Exhibit A  
-  
-  
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**ADOPTED:** This 10th day of November 2014.

\_\_\_\_\_  
Council President

**APPROVED:** This 10th day of November 2014.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City 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 November 10, 2014, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

## AGREEMENT

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This Agreement is made and entered into by and between **Cahaba, LLC ("Owner")** and the City of Mountain Brook, an Alabama municipal corporation ("City").

### RECITALS

1. Owner owns office facilities which are located at, and contiguous to, 3300 Cahaba Road, Jefferson County, Alabama which is within the police jurisdiction of the City ("Building").
2. Owner has requested that the City provide or otherwise make available to Owner and the occupants of the building fire protection and emergency medical services.
3. The City has agreed to make available to the building and the occupants thereof such fire protection and emergency medical services upon the terms and conditions contained in this Agreement and Owner 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, 2015 through December 31, 2017.
3. In consideration of City's agreement to provide and make available said services, **Cahaba, LLC** 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. Owner and the City agree that the fee for the 3-year term shall be as follows:

2015	\$3,500
2016	3,500
2017	3,500

4. To the extent that fire protection and emergency medical services are required to be allocated in the event of multiple calls for such services, houses, commercial, and institutional buildings and other buildings within the City limits of the City and residents of the City shall have priority.
5. Owner 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 the Owner.
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.

- Nothing in this agreement shall be deemed or construed to impose, establish, or recognize a duty or obligation on the party of the City to investigate, inspect, or evaluate the building for compliance with fire safety codes, regulations, or standards, to report or undertake any corrective or ameliorative action with respect thereto, or to create any special or enhanced standard of care with respect to the provision of services hereunder.

In witness whereof, the City of Mountain Brook has caused this Agreement to be executed by its duly authorized officer and Cahaba, LLC (Owner) has caused this Agreement to be executed by its duly authorized corporate officer, all as of the 29<sup>th</sup> day of OCTOBER, 2014.

Witness:

\_\_\_\_\_  
Steven Boone, City Clerk

**City of Mountain Brook**

By: \_\_\_\_\_  
Sam Gaston, City Manager

Witness:

  
\_\_\_\_\_  
Its \_\_\_\_\_

**Cahaba, LLC,  
J. H. Berry & Gilbert, Inc., as Agent**

By:   
\_\_\_\_\_  
Its MEMBER

EXHIBIT A

**RESOLUTION NO. 2014-155**

**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 [HIPAA] Business Associate Agreement, in the form as attached hereto as Exhibit A subject to such minor changes as may be recommended by the City Attorney, between the City and TASC (formerly Benefit Elect of Alabama—third party administrator of the City’s Flexible Benefit Plan) in order to ensure compliance with applicable Health Information Technology for Economic and Clinical Health Act.

**ADOPTED:** This 10th day of November, 2014.

\_\_\_\_\_  
Council President

**APPROVED:** This 10th day of November, 2014.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City 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 November 10, 2014, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk



Steve Boone <boones@mtnbrook.org>

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## FW: Business Associate Agreement w City of Mountain Brook

1 message

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Steve Stine <sstine@bishopcolvin.com>

Thu, Nov 6, 2014 at 9:26 AM

Reply-To: sstine@bishopcolvin.com

To: ssyrkin@chappellebenefits.com, ssyrkin@tasconline.com

Cc: Steve Boone <boones@mtnbrook.org>, Carl Johnson <carljohnson@bishopcolvin.com>

The attached final version of the Bus Assoc Agmt that TASC has signed looks fine. (It appears that TASC accepts all of the changes that I made to its first version.)

Steve Boone will take it from here and have this signed by the City, and return a fully-executed version to you.

Thank you for your help on these matters.

Steve Stine

1910 First Avenue North

Birmingham, Alabama 35203

Phone : (205) 251-2881

Fax : (205) 254-3987

Email: sstine@bishopcolvin.com



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**From:** Steven Syrkin [mailto:Steven.Syrkin@tasconline.com]

**Sent:** Wednesday, November 05, 2014 2:05 PM

**To:** 'sstine@bishopcolvin.com'; ssyrkin@chappellebenefits.com

**Cc:** 'Steve Boone'

**Subject:** RE: Business Associate Agreement w City of Mountain Brook

Steve – Please see the revised copy. Let me know if this version is acceptable. Best Regards ! Steve

**BUSINESS ASSOCIATE AGREEMENT**

**RECITALS**

**WHEREAS**, the City of Mountain Brook, Alabama ("Covered Entity") furnishes a group health plan ("Plan") for persons providing public services in the City and wishes to engage the services of Total Administrative Services Corporation ("Business Associate" or "TASC") with respect to certain administrative aspects of the Plan as more specifically set forth in a Service Level Agreement ("SLA");

**WHEREAS**, Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of the SLA, some of which may constitute Protected Health Information ("PHI", as defined below).

**WHEREAS**, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the SLA in compliance with the Health Insurance Portability and Accountability Act of 1996, Public law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public law 111-005 (the "HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

**WHEREAS**, as part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entity to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("CF.R.") and contained in this Agreement.

**NOW THEREFORE**, in consideration of the mutual promises below and the exchange of information pursuant to this SLA, the parties enter into this Business Associate Agreement ("Agreement") and agree as follows:

The General Terms and Conditions attached hereto are incorporated herein and deemed part of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the date last written below.

**COVERED ENTITY:**

**BUSINESS ASSOCIATE:**

**CITY OF MOUNTAIN BROOK,  
ALABAMA**

**TOTAL ADMINISTRATIVE SERVICES  
CORPORATION**



By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: Richard Jones, Esq.

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Its: Staff Attorney

Date: November 5, 2014

## GENERAL TERMS AND CONDITIONS

### Definitions

#### Catch-all definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

#### Specific definitions:

- (a) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean TASC.
- (b) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the Plan Sponsor identified on the attached Group Application and Service Level Agreement.
- (c) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

### Obligations and Activities of Business Associate

Business Associate agrees to:

- (a) Not use or disclose protected health information ("PHI") other than as permitted or required by the Agreement or as required by law;
- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;
- (c) Report to Covered Entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;
- (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;
- (e) Make available protected health information in a designated record set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;
- (f) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;

- (g) Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;
- (h) To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);
- (i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules; and

#### **Permitted Uses and Disclosures by Business Associate**

- (a) Business Associate may only use or disclose protected health information as required and limited by the Service Level Agreement between the parties.
- (b) Business Associate may use or disclose protected health information as required by law.
- (c) Business Associate agrees to make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures.
- (d) Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.
- (e) Business Associate may use protected health information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (f) Business Associate may disclose protected health information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (g) Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity.

#### **Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions**

- (a) Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of protected health information.
- (b) Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect Business Associate's use or disclosure of protected health information.

(c) Covered Entity shall notify Business Associate of any restriction on the use or disclosure of protected health information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.

### **Permissible Requests by Covered Entity**

Covered Entity shall not request Business Associate to use or disclose protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

### **Term and Termination**

- (a) The Term of this Agreement shall be effective as of the date of last written above, and shall terminate on the sooner of (i) when the SLA terminates or (ii) all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- (b) Termination for Cause. Upon a material breach by Business Associate of its obligation hereunder or under the Service Level Agreement, Covered Entity may terminate this Agreement and the Service Level Agreement before the expiration of their term effective upon providing written notice to the Business Associate; and (ii) report the violation to the Secretary.
- (c) Obligations of Business Associate upon Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to protected health information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity hereunder, shall:
  - 1. Retain only that protected health information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
  - 2. Return to Covered Entity or, destroy the remaining protected health information that the Business Associate still maintains in any form;
  - 3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as Business Associate retains the protected health information;
  - 4. Not use or disclose the protected health information retained by Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at above which applied prior to termination; and
  - 5. Return to Covered Entity or, destroy the protected health information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
- (d) Survival. The obligations of the Business Associate under this Section shall survive the termination of this Agreement.

### Miscellaneous

- (a) **Regulatory References.** A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- (b) **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- (c) **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
- (d) **Business Associate agrees to defend and indemnify the Covered Entity for any claims, damages, costs, expenses or liabilities, including reasonable legal fees and costs, arising from or related to a breach of the Business Associate's obligations and responsibilities hereunder.**
- (e) **HIPAA Data Breach Notification and Mitigation.** Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any "breach" of "unsecured PHI" as those terms are defined by 45 C.F.R. §164.402 ("HIPAA Breach"). The parties acknowledge and agree that 45 C.F.R. §§164.404 and 164.410, as describe below in this section govern the determination of the date of a HIPAA Breach. Following the discovery of a HIIPAA Breach, Business Associate will notify Covered Entity in no later than ten (10) business days after Business Associate discovers such HIPAA Breach, unless it is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations. For purposes of reporting a HIPAA Breach to Covered Entity, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to Business Associate or, by exercising reasonable diligence, would have been known to it. Business Associate will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of Business Associate. No later than ten (10) business days following a HIPAA Breach, Business Associate shall provide Covered Entity with sufficient information to permit Covered Entity to comply with the HIPAA Breach notification requirements set forth at 45 C.F.R. §164.400 *et. seq.* This section shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Business Associate maintains PHI.

In addition to the requirements immediately above, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including, but not limited to, PHI and referred to hereinafter as "Individually Identifiable Information") that, if misused, disclosed, lost or stolen would trigger an obligation under one or more State data breach notification laws (each a "State Breach") to notify the individuals who are the subject of the information. Business Associate agrees that in the event any Individually Identifiable Information is lost, stolen, used or disclosed in violation of one or more State data breach notification laws, Business Associate shall promptly: (i) notify Covered Entity within ten (10) business days of such misuse, disclosure, loss or theft; and (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach. This section shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Business Associate maintains PHI or Individually Identifiable Information.

- (f) **Business Associate is an independent contractor of the Covered Entity. This Agreement and the SLA do not create any partnership, joint venture or principal-agent relationship between the Business Associate and the**

Covered Entity. Further, the Covered Entity retains no control or authority with respect to the means and methods in which the Business Associate (or any of its employees or representatives) perform its services.

- (g) This Agreement and the SLA are made only for the benefit of the Business Associate and the Covered Entity. Neither of them is intended, nor shall they be construed, to grant or bestow any benefit, right or privilege to any third party.