

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING DISCUSSION
NOVEMBER 10, 2014**

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 10th day of November. The Council President called the meeting to order and the roll was called with the following results:

Present: Virginia C. Smith, Council President
William S. Pritchard, III, Council President Pro Tempore
Jack D. Carl
Lloyd C. Shelton
Alice B. Womack
Lawrence T. Oden, Mayor

Absent: None

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

1. AGENDA

1. Allison Ingram (and Blair Lanier) to request a stop sign on Hastings Road at Laurel Lane (Appendix 1).

Richard Caudle of Skipper Consulting, Inc. was asked to meet with Police officials and the Public Works Superintendent to obtain information about their observations and submit a proposal for a traffic study to the City Council for its consideration on November 24, 2014.

2. Mayor Oden to discuss a possible Barber Motor Sports event in Mountain Brook Village in May 2015.

The event, if approved, will showcase antique racing cars and local car clubs on May 15, 2015. The members of the City Council expressed their consent to the event as described under the direction of the Chamber of Commerce and City public safety officials.

3. Cahaba River Park pedestrian crossing signals plans – Richard Caudle of Skipper Consultants (Appendix 2).

The members of the City Council expressed that they preferred not to make any pedestrian crossing improvements to the intersection as they viewed the requirements being imposed by Jefferson County undesirable and too costly.

4. Requested research and possible amendment to the City's retiree medical trust to be performed by Maynard, Cooper & Gale.

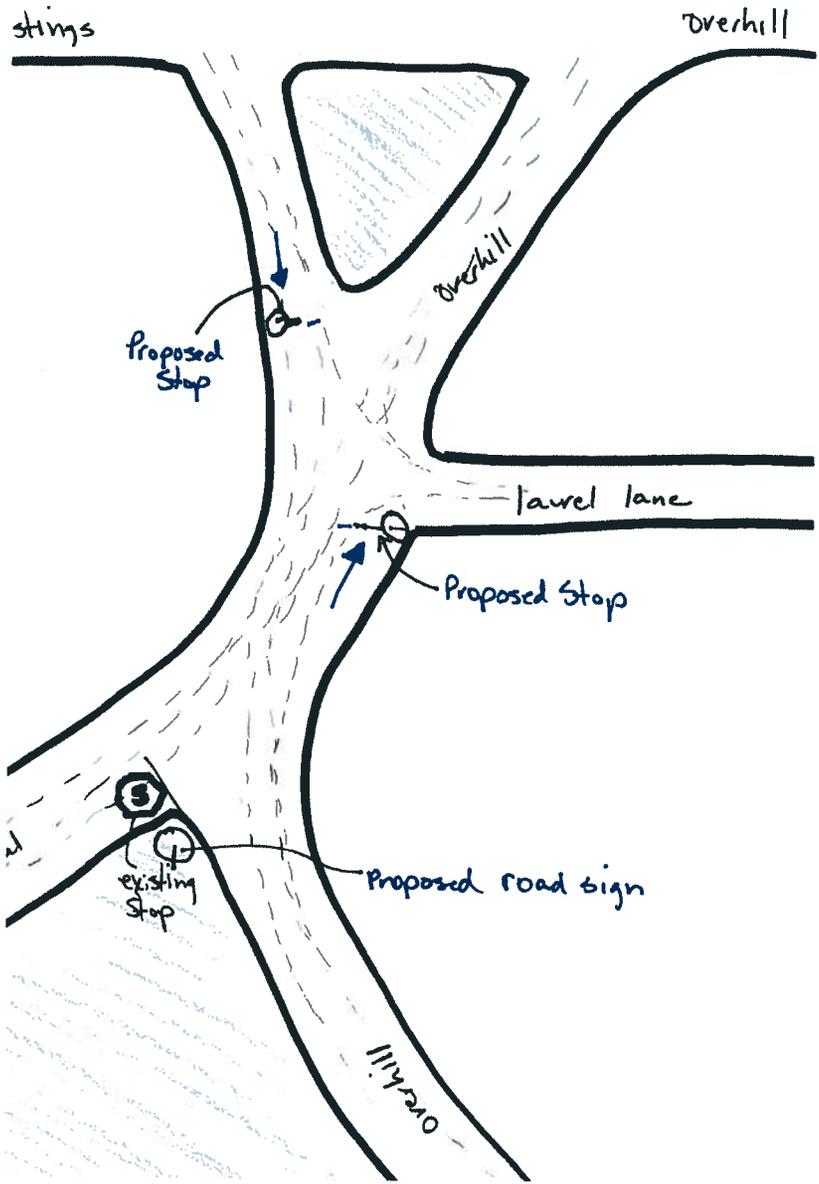
The members of the City Council agreed that Mr. Boone should pursue an amendment to the trust documents and opening another [custodial] investment account. The legal services engagement letter and new account application shall be presented to the City Council for consideration at a later date.

5. 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.

A handwritten signature in blue ink that reads "Steven Boone". The signature is written in a cursive style with a large initial "S".

Steven Boone, City Clerk



Petition Requests

1. Stop sign at the intersection of Overhill Road and Laurel Lane. Stop sign is to face Mt. Brook Parkway direction.
2. Signage directing private drive or obstructed view.
3. Signage with speed limit. Current signs are obstructed and need to be reviewed.
4. Street sign clarifying Overhill/Balmoral Roads.
5. Additional Stop sign at Triangle #1 where Hastings Road heads toward Laurel Lane. Currently there is a Yield sign that is obstructed.

Sam Gaston

From: Allison Ingram
Sent: Wednesday, October 15, 2014 10:11 PM
To: Ted Cook
Cc: Sam Gaston; Chuck Clark
Subject: Re: stop sign

Mr. Cook,
Thank you for your help initiating another study. There are numerous problems with the two intersections, it's not just a speeding issue. At the intersection where the alley ends, there are 5 roads converging. On only one side is a stop sign. I have driven through many intersections in Mt. Brook that have an excessive number of stop signs due to safety issues so I am curious why it is so difficult to put one in place here.
Please tell me the dates of the next city council meeting. I would like to attend with a petition from my neighbors in hand.
Sincerely,
Allison Ingram

Sent from my iPad

On Oct 10, 2014, at 3:42 PM, Ted Cook <cookt@mtnbrook.org> wrote:

Ms. Ingram,

Our traffic flow study has been completed and a memo with it's results is attached. I understand we did a similar study some years back. I am afraid, at least as far as the PD regards these results, that our response is much the same. Due to the relatively low traffic volume, the speeds indicated, and lack of documented incidents or accidents at this location we do not recommend the addition of a stop sign. The speed more than 5 mph over the posted speed limit is only .6% of the total traffic. We normally use the 10 mph over the posted speed threshold before we start making recommendations. The average speed of all the traffic is below the posted speed limit.

Chief Ted Cook
Mountain Brook Police Department
101 Tibbett St.
Mountain Brook, AL 35213
(205) 802-3852



11/10/2014

On Wed, Sep 17, 2014 at 1:45 PM, Allison Ingram <allisondixoningram@gmail.com> wrote:
Thank you. Please contact me if you have any questions.

Sent from Allison's iPhone

> On Sep 17, 2014, at 9:08 AM, Sam Gaston <gastons@mtnbrook.org> wrote:
>
> I will ask our Police Dept to review , make a recommendation and get
> back with us.
>
> Sent from my iPhone
> Sam Gaston
>

>> On Sep 17, 2014, at 9:08 AM, allison ingram <allisondixoningram@gmail.com> wrote:
>>
>> Mr. Gaston,
>> The residents on Overhill Road that back up to Laurel Lane would like a stop sign erected at the column of Laurel Lane. The stop sign would be placed in my yard and stop traffic headed to Mountain Brook Parkway. I requested this years ago to no avail. However, more people have moved in since that time and we now have teenage drivers trying to pull out of the lane. Safety is our priority!
>> Thank you for your time. Please contact me with any questions.
>>

>> Sincerely,
>> Allison Ingram
>> 3032 overhill road
>> [205-746-4568](tel:205-746-4568)

<3000 Blk Overhill Rd 9-25-14.doc>

11/10/2014

Memorandum

To: Lt. C. Clark
 From: Sgt. J. Rhoads
 Date: 9/25/14
 Re: Traffic Count – Overhill Road at Laurel Lane

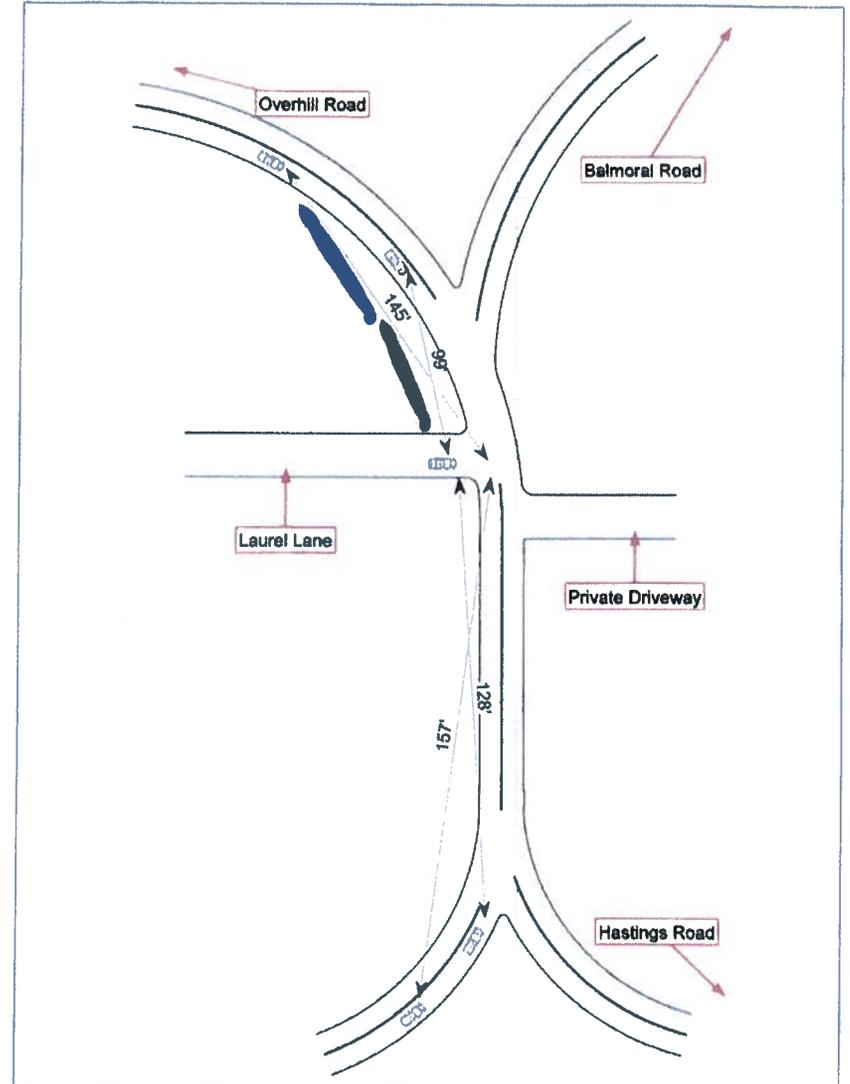
Per your request, I conducted a traffic count on Overhill Road at Laurel Lane. Data was gathered concerning speed and volume. The following data was gathered:

	Toward Balmoral		Toward Hastings		Total	
Vehicles counted	2,438		2,715		5,153	
Average speed	22 mph		21 mph		21 mph	
	#	%	#	%	#	%
00-25 mph	1,993	82	2,397	88	4,390	85
26-30 mph	431	17	300	11	731	14
31-35 mph	12	.5	16	.6	28	.5
36-40 mph	2	.1	2	.1	4	.1
41+ mph	0	0	0	0	0	0
Peak time	School traffic		School traffic		School traffic	

Conclusion: This study began Thursday September 18th and continued through Wednesday September 24th. Peak travel times for the weekdays included school drop off and pick up. During the two weekend days, traffic volume was heavier around lunchtime and 5:00pm.

Note: Speed limit is 25 mph.

Cc: Chief T. Cook
 Captain G. Hagood



Created using Easy Street Draw. Licensed customer: CARE Research & Development Lab - Univ of Alabama

www.uh.edu

Page 1 of 1

Overton Road at Oakdale Drive/River Run Drive
 Cost Estimate for Pedestrian Crossing Improvements

Prepared by:

Skipper Consulting, Inc.
 In conjunction with Kimrod Long & Associates
 November 5, 2014

BASE COST ESTIMATE

The Base cost estimate consists of elements which would satisfy Jefferson County Roads and Transportation requirements to provide adequate pedestrian access from Overton Road and Oakdale Drive to Cahaba River Park. The elements of the base include:

- Installation of a pedestrian crossing of Overton Road on the south side of the intersection
- Installation of a pedestrian crossing of River Run Drive
- Constructing a sidewalk from the southeast corner of the intersection of Overton Road at River Run Drive into the walkway system of Cahaba River Park
- Decreasing the curb radius for the movement from Overton Road northbound turning right onto River Run Drive
- Installing ADA curb ramps as required
- Installing pedestrian crossing signals and pushbuttons as required

The cost estimate to perform the Base work is as follows:

Traffic Signal Work	\$35,900
Sidewalk	\$7,700
ADA Ramps	\$1,450
Curb and Asphalt Work	\$2,450
Total	\$47,500

ALTERNATE A COST ESTIMATE

In addition to the Base, Alternate A consists of the following elements

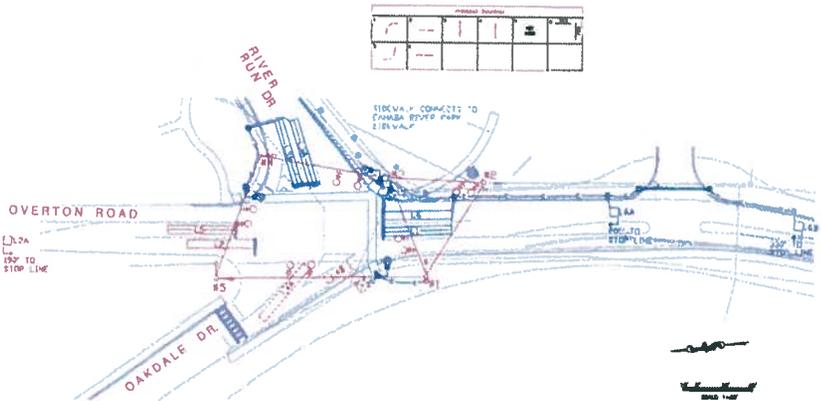
- Installation of a pedestrian crossing of Overton Road on the north side of the intersection
- Extending the existing sidewalk on Oakdale Drive eastward to Overton Road
- Installing ADA curb ramps as required
- Installing pedestrian crossing signals and pushbuttons as required

The additive cost estimate to perform Alternate A is as follows:

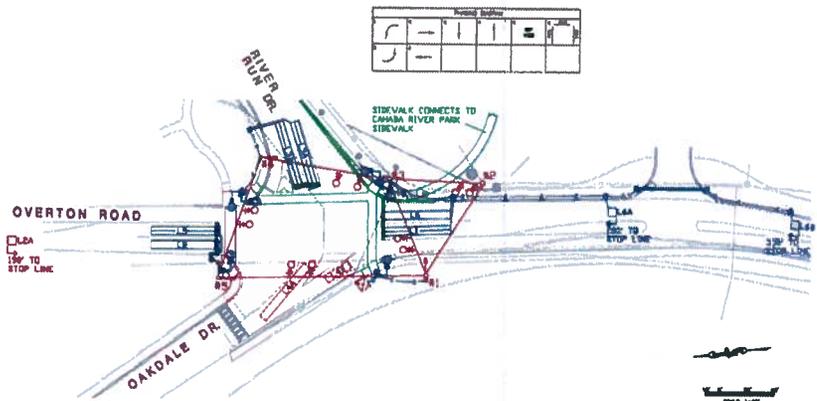
Traffic Signal Work	+\$9,900
Sidewalk and ADA Ramps	+\$10,700
Total	+\$20,600

Page 1

BASE



ALTERNATE A



APPENDIX 2

**MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK, ALABAMA
NOVEMBER 10, 2014**

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 10th day of November, 2014. The Council President called the meeting to order and the roll was called with the following results:

Present: Virginia C. Smith, Council President
William S. Pritchard, III, Council President Pro Tempore
Jack D. Carl
Lloyd C. Shelton
Alice B. Womack
Lawrence T. Oden, Mayor

Absent: None

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

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

1. RECOGNITION OF GUESTS

Council President Smith recognized several Boy Scouts from Troop 63 in attendance for their Citizenship in the Community merit badge.

2. PRESENTATION OF A RESOLUTION (NO. 2014-151) EXPRESSING GRATITUDE TO AMY G. CARTER FOR HER SERVICE ON THE MOUNTAIN BROOK CITY COUNCIL (EXHIBIT 1)

Mayor Oden read aloud the resolution and presented same to Ms. Amy Carter.

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 October 27, 2014 meetings of the City Council

Approval of the minutes of the November 3, 2014 organizational meeting of the City Council

2014-151	Expression of gratitude to Amy G. Carter for her service on the Mountain Brook City Council.	Exhibit 1
2014-152	Reappoint Sally Legg to the Tree Commission, to serve without compensation through November 28, 2017.	Exhibit 2
2014-153	Authorize the waiver of building permit 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).	Exhibit 3

- | | | |
|-----------------|--|--------------------------|
| 2014-154 | Authorize the execution of a [commercial] Fire Protection and Emergency Medical Services agreement (3300 Cahaba Road). | Exhibit 4,
Appendix 1 |
| 2014-155 | Authorize 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. | Exhibit 5,
Appendix 2 |

Thereupon, the foregoing minutes and resolutions were introduced by Council President Smith and their immediate adoption was moved by Council member Shelton. The minutes and resolutions were then considered by the City Council. Council member Womack 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
William S. Pritchard, III, Council President Pro Tempore
Jack D. Carl
Lloyd C. Shelton
Alice B. Womack

Nays: None

Council President Smith thereupon declared that said minutes and Resolution Nos. 2014-151 through 2014-155 are adopted by a vote of 5-0.

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

Council President Smith announced that the City Council will conduct a public hearing on November 24, 2014 at 7 p.m. to consider an ordinance rezoning certain parcels on Vine Street with respect to the proposed Piggly Wiggly development.

Council President Smith announced that the next meeting of the Mountain Brook City Council will be held on Monday, November 24, 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) 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 a pending real estate negotiation. 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
William S. Pritchard, III, Council President Pro Tempore
Jack D. Carl
Lloyd C. Shelton
Alice B. Womack

Nays: None

Council President Smith declared that the motion carried by a vote of 5-0 and then asked that the members of the audience be excused. She also announced that the City Council shall not reconvene upon conclusion of the executive session.


 Steven Boone, City Clerk

EXHIBIT 1

RESOLUTION NO. 2014-151

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.

EXHIBIT 2

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.

EXHIBIT 3

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.

EXHIBIT 4**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 |
| | - |
| | - |
| | - |

APPENDIX 1**EXHIBIT 5****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.

APPENDIX 2

AGREEMENT

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

EXHIBIT A

Alabama 1975, Section 11-93-2.

7. 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 25th day of October, 2014.

Witness:
Steven Boone
Steven Boone, City Clerk

City of Mountain Brook
By: _____
Sam Gaston, City Manager

Witness:
Calvin Greed
Its _____

Cahaba, LLC,
J. H. Berry & Gilbert, Inc., as Agent
By: _____
Its MURCI

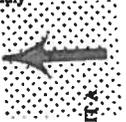


EXHIBIT A

GENERAL TERMS AND CONDITIONS

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 ("CFR") 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:
CITY OF MOUNTAIN BROOK,
ALABAMA

BUSINESS ASSOCIATE:
TOTAL ADMINISTRATIVE SERVICES
CORPORATION

By: 
Print Name: _____

By: 
Print Name: Richard Jones, Esq.

2014-155

Its: Lawrence T. Oden, Mayor
Date: November 10, 2014

Its: Staff Attorney
Date: November 5, 2014

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 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.

APPENDIX 2

(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.

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7

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 HIPAA Breach, Business Associate will notify Covered Entity 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

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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.

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