

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 9/12/2013

Action Requested By:
Human Services

Agenda Item Type
Resolution

Subject Matter:

Business Associate Agreement between the City of Huntsville and Cobbs, Allen & Hall, Inc., for safeguarding protected health information on brokered insurance coverage for the City's group insurance plans.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Business Associate agreement between the City of Huntsville and Cobbs, Allen & Hall, Inc., for the purpose of safeguarding protected health information on brokered insurance coverage in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH)

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

[Empty box for providing details on why the action is required, recommended, and what Council action will provide, allow, and accomplish.]

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: *Byron K. Stevens*

Date: 9/6/2013

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Human Resources

Council Meeting Date: 9/12/2013

Department Contact: Deloise Manning

Phone # 256-427-5241

Contract or Agreement: Business Associate Agreement with Cobbs, Allen & Hall

Document Name: Business Associate Agreement

City Obligation Amount: 0.00

Total Project Budget:

Uncommitted Account Balance:

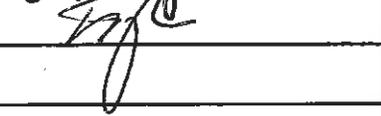
Account Number:

Procurement Agreements

<u>Select...</u>	<u>Select...</u>
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Grant-Funded Agreements

<u>Select...</u>	Grant Name: <input type="text"/>
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Department	Signature	Date
1) Originating		9/6/13
2) Legal		9/6/13
3) Finance 		9/9
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 13-_____

WHEREAS Cobbs, Allen & Hall, Inc. provides brokerage services for City of Huntsville group insurance coverage; and

WHEREAS the City of Huntsville desires to continue to offer group insurance coverage; and

WHEREAS, pursuant to provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPPA) and the Health Information Technology for Economic and Clinical Health Act (HITECH), the City of Huntsville is required to obtain a Business Associate Agreement for safeguarding of Protected Health Information; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into a Business Associate Agreement between Cobbs, Allen & Hall, Inc. and the City of Huntsville, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as a "Business Associate Agreement", consisting of ten (10) pages and the date of September 12, 2013, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 12th day of September, 2013.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 12th day of September, 2013.

Mayor of the City of
Huntsville, Alabama

BUSINESS ASSOCIATE AGREEMENT

This **BUSINESS ASSOCIATE AGREEMENT** (this "*Agreement*") is entered into by and between City of Huntsville whose principal place of business is Huntsville, AL (*the "Company"*), on behalf of its Plans (as defined below), and Cobbs, Allen & Hall, Inc., whose principal place of business is Birmingham, Alabama ("*Business Associate,*" and with Company, each a "*Party*" and together the "*Parties*"). This Agreement supersedes and replaces any prior Business Associate Agreements and related amendments thereto between the Parties.

RECITALS:

WHEREAS, Company maintains certain health care benefit plans, which provide health plan benefits to certain of Company's members, employees and/or retirees, and their eligible dependents, if any (collectively, the "*Plans*");

WHEREAS, Business Associate provides services for Company and the Plans;

WHEREAS, pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("*HIPAA*"), the Department of Health and Human Services ("*HHS*") has promulgated regulations at 45 C.F.R. Parts 160-64, implementing the privacy requirements set forth in HIPAA (the "*Privacy Rule*") and the electronic security requirements set forth in HIPAA ("*Security Rule*"), each as amended by the "Health Information Technology for Economic and Clinical Health Act," part of the "American Recovery and Reinvestment Act of 2009" ("*HITECH Act*");

WHEREAS, the Privacy Rule provides, among other things, that before a health plan is permitted to disclose Protected Health Information (as defined below) to a business associate and to allow the business associate to obtain and receive Protected Health Information, the health plan must obtain satisfactory assurances in the form of a written contract that the business associate will appropriately safeguard the Protected Health Information;

WHEREAS, the Security Rule provides, among other requirements, for a health plan to obtain additional assurances from a business associate with respect to Protected Health Information that is transmitted by or maintained in electronic media;

WHEREAS, Business Associate will have access to, create and/or receive certain Protected Health Information in conjunction with the services being provided to the Covered Entity, thus necessitating a written agreement that meets the applicable requirements of the Privacy Rule, and may maintain Protected Health Information in electronic media, thus necessitating a written agreement that meets the applicable requirements of the Security Rule; and

WHEREAS, Business Associate and Company, on behalf of the Plans, have mutually agreed to satisfy the foregoing regulatory requirements through this Agreement.

NOW THEREFORE, Business Associate and Company, on behalf of the Plans, agree as follows:

President of the City Council of the
City of Huntsville, Alabama
Date:

1. Definitions

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Privacy and Security Rules and the final Omnibus Rule issued by the Department of Health and Human Services on January 17, 2013, effective March 26, 2013. The following terms shall have the following meaning when used in this Agreement:

- a. **Breach** means that term as set forth in 45 C.F.R. § 164.402.
- b. **Business Associate** shall generally have the same meaning as the term “business associate” at 45 C.F.R. § 160.103, and in reference to the party to this Agreement, shall mean Cobbs, Allen & Hall, Inc.
- c. **Covered Entity** shall generally have the same meaning as the term “covered entity” at 45 C.F.R. § 160.103, and in reference to the party to this Agreement, shall mean City of Huntsville.
- d. **Designated Record Set** means that term as set forth in 45 C.F.R. § 164.501.
- e. **Electronic Protected Health Information** means Protected Health Information that is transmitted or maintained in electronic media, including, but not limited to, hard drives, disks, on the internet, or on an intranet.
- f. **HIPAA Rules** means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. part 160 and part 164.
- g. **Individual** means that term as set forth in 45 C.F.R. § 160.103, and includes a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- h. **Omnibus Rule** means the Health Insurance Portability and Accountability Act rule issued by the Department of Health and Human Services and published in the Federal Register on January 25, 2013 at 78 Fed. Reg. 5566.
- i. **Privacy Rule** means the Standards of Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- j. **Protected Health Information** means that term as set forth in 45 C.F.R. § 160.103, except limited to the information created or received by Business Associate from or on behalf of The Plans.
- k. **Required By Law** means that term as set forth in 45 C.F.R. § 164.103.
- l. **Secretary** means the Secretary of the Department of Health and Human Services or his/her designee.
- m. **Security Rule** means the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subparts A and C.

- n. **Subcontractor** means a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.
- o. **Unsecured Protected Health Information** means that term as set forth in 45 C.F.R. § 164.402.

Any capitalized term not specifically defined herein shall have the same meaning as set forth in 45 C.F.R. Parts 160 and 164, and the Omnibus Rule issued on January 17, 2013, effective March 26, 2013, where applicable. The terms “use,” “disclose” and “discovery,” or derivations thereof, although not capitalized, shall also have the same meanings set forth in HIPAA and its implementing regulations.

2. **Obligations and Activities of Business Associate**

- a. Business Associate agrees not to use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law.
- b. Business Associate agrees to document and use appropriate administrative, technical and physical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement and in compliance with the Security Rule.
- c. Business Associate agrees to establish procedures for mitigating, and shall follow those procedures and so mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- d. Business Associate agrees to report to the Plans’ privacy officer in writing within fifteen (15) business days the names and addresses of any subcontractor(s) that the Business Associate uses in connection with this Agreement.
- e. Business Associate agrees that it will report to the Plans within three (3) business days after discovering, as defined in 45 C.F.R. § 164.410, any Breach of Unsecured Protected Health Information, and that it will provide to the Plans within five (5) days: (i) a list of all Individuals whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used, or disclosed during the Breach, and (ii) any other available information that the Plans is required to include in notifications to such Individuals pursuant to 45 C.F.R. § 164.404(c), and to the Secretary.
- f. In the event of any Breach referred to in the preceding paragraph, Business Associate agrees to cooperate with the Plans to notify, at the Business Associate’s expense: (i) Individuals whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed; (ii) the media, as required pursuant to 45 C.F.R. § 164.406; and (iii) the Secretary, as required by 45

C.F.R. § 164.408(b), if the legal requirements for media or HHS notification are triggered by the circumstances of such Breach, *provided that* Business Associate shall not initiate any such notifications without the express written approval of the Plans.

- g. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of the Plans, agrees in writing to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Business Associate shall provide copies of such agreements to the Plans upon request.
- h. Business Associate agrees to comply with all requests by the Company for the restriction on the use or disclosure of PHI the company has agreed to or required to abide by under 45 CFR 164.522.
- i. Business Associate agrees to provide, within fifteen (15) days of receiving a request from the Plans or from an Individual, in the manner reasonably requested by the Plans, access to Protected Health Information in a Designated Record Set, to the Plans or, as directed by the Plans, to an Individual, in order for the Plans to fulfill their obligations under 45 C.F.R. § 164.524 to provide access and copies of Protected Health Information to an Individual.
- j. Business Associate agrees to make available to the Plans, within fifteen (15) days of receiving a request from the Plans or from an Individual, in the manner reasonably requested by the Plans, such information as the Plans may require to fulfill in a timely manner the Plans' obligations pursuant to 45 C.F.R. § 164.526 to amend Protected Health Information that Business Associate maintains in a Designated Record Set, and if so notified by the Plans, to incorporate any amendments to which the Plans have agreed.
- k. Business Associate agrees to make its internal practices, books, and records, including policies and procedures relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, the Plans, available to the Plans, or to the Secretary, for purposes of the Secretary determining the Plans' compliance with the Privacy Rule. If Business Associate directly receives a request from the Secretary, then Business Associate agrees to notify the Plans promptly of such request.
- l. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for the Plans to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.
- m. Business Associate agrees to provide to the Plans or an Individual, as soon as practicable and in the manner reasonably requested by the Plans or Individual,

information collected in accordance with Section 2(i) of this Agreement, to permit the Plans to respond in a timely manner to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

- n. Business Associate will comply with all obligations applicable to business associates as set forth in the Omnibus Rule located at 78 Fed. Reg. 5566 (January 25, 2013), as of the date that compliance with each such obligation is required pursuant to the Omnibus Rule.

3. Permitted Uses and Disclosures by Business Associate

- a. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the Plans, provided that such use or disclosure would not violate the Privacy Rule if done by the Plans and is the minimum necessary to accomplish the purpose of the use or disclosure.
- b. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information only if such use or disclosure is in full compliance with 45 C.F.R. § 164.504(e). The additional requirements of the HITECH Act that relate to privacy and that are made applicable to covered entities shall also apply to Business Associate, and are hereby incorporated into this Agreement.
- c. Except as otherwise limited in this Agreement, 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.
- d. Except as otherwise limited in this Agreement or any other arrangement between Business Associate and the Plans, Business Associate may use Protected Health Information to provide data aggregation services as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B) (i.e., the combining of Protected Health Information received from the Plans with protected health information received by Business Associate in its capacity as the business associate of other group health plans, to permit data analyses that relate to the health care operations of various group health plans.).
- e. Business Associate may use Protected Health Information to report violations of law to the appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

4. Security Standards

- a. Business Associate shall implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of Electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of the Plans.

- b. With respect to the Safeguards required by Section 4(a) above, 45 C.F.R. § 164.308 (administrative safeguards), § 164.310 (physical safeguards), § 164.312 (technical safeguards) and § 164.316 (policies and procedures and documentation requirements), shall apply to Business Associate in the same manner that such sections apply to the Plans. The additional requirements of the HITECH Act that relate to security and that are made applicable to covered entities shall also apply to Business Associate, and are hereby incorporated into this Agreement. Business Associate shall be liable under the civil and criminal enforcement provisions set forth at 45 C.F.R. § 160.402 and 42 U.S.C. § 1320d-5 and 1320d-6, as amended from time to time, for failure to comply with the safeguards and any guidance issued by the Secretary with respect to such requirements.
- c. Business Associate shall ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information, agrees in writing to implement reasonable and appropriate safeguards to protect such Electronic Protected Health Information and to comply with the Security Rule and 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2).
- d. Without limiting the provisions of Section 2 above, Business Associate shall report in writing to the Plans within three (3) business days of becoming aware of any Security Incident involving Electronic Protected Health Information, including breaches of unsecured protected health information as required by 45 C.F.R. § 164.410 and security incidents involving subcontractors and as reasonably appropriate, shall advise the Plans of measures Business Associate will be taking to mitigate harm from such Security Incident, and to prevent similar future incidents.
- e. Business Associate shall make its policies and procedures and documentation required by the Security Rule relating to the Safeguards described in subsection (a) above, available to the Plans and to the Secretary for purposes of determining the Plans' compliance with the Security Rule, and Business Associate's compliance with the HITECH Act.

5. Security Breach

- a. Business Associate agrees to report to the Plans' Privacy Officer any potential Breach of Unsecured PHI without unreasonable delay and in no case later than three (3) business days after discovery of a Breach. Such notice shall include, to the extent the details are available: (i) the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate, to have been, accessed, acquired, or disclosed; and (ii) a brief description of the event; and (iii) the date of the potential Breach; and (iv) the date of discovery; and (v) the type of PHI involved; and (vi) any preliminary steps taken to mitigate the damage caused by the Breach; and (vii) a description of any investigatory steps taken. In the event that the details of the Breach are not known at the time of the initial notification to Plans, Business Associate shall promptly follow up with Plans' privacy officer with the details as such become available. In addition, Business Associate shall provide any additional information reasonably requested by Plans for purposes of investigating the Breach. Without limiting any of the provisions of this Section 5, Business Associate's notification of a Breach under this Section 5 shall comply in all respects with each applicable provision of Section 13400 of the HITECH Act,

Subpart D of 45 C.F.R. 164 and related regulations and guidance issued by the Secretary from time to time.

- b. In addition to the foregoing, Business Associate agrees that in the event of such a Breach, Plans shall have the sole right to determine (i) whether notice is to be provided to any Individuals, regulators, law enforcement agencies, consumer reporting agencies, and/or media or others as required by law or regulation, in Plans' discretion; whether such notice(s) shall be sent out directly by Business Associate or by Plans; whether such notice(s) shall be sent under the letterhead of Plans or that of Business Associate; the contents of such notice(s); whether any type of remediation may be offered to affected persons, and the nature and extent of any such remediation (which remediation shall include, but not be limited to, credit monitoring by nationally recognized credit monitoring companies). Business Associate shall bear the sole expense of the preparation and sending of such notices and the remediation for such Breach. In the event that Plans send out such notice(s) directly and/or directly incurs the expense of such remediation, Business Associate shall promptly reimburse Plans its reasonable costs of preparation and mailing of such notice(s), its actual costs for providing remediation, and reasonable costs and expenses of Plans' investigation of the Breach by Business Associate (or that of Business Associate's subcontractors or agents).

6. Term and Termination

- a. This Agreement shall be effective as of August 1, 2013, and shall terminate when all of the Protected Health Information provided by the Plans to Business Associate, or created or received by Business Associate on behalf of the Plans, is destroyed or returned to the Plans, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with Section 6(c).
- b. Upon the Plans' knowledge of a material breach of this Agreement by Business Associate, the Plans shall, at their election, either:
 - i. Provide an opportunity for Business Associate to cure the breach or end the violation, and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by the Plans;
 - ii. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - iii. If neither termination nor cure is feasible, the Plans shall report the violation to the Secretary.
- c. Effect of Termination
 - i. Except as provided in Section 6(c)(ii), upon termination of this Agreement for any reason, Business Associate shall return all Protected Health Information received from the Plans, or created or received by Business Associate on behalf of the Plans, or, at the election of the

Plans, Business Associate may alternatively certify in writing to the Plans that it has destroyed all Protected Health Information. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information, including no electronic copies.

- ii. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to the Plans notification of the conditions that make return or destruction infeasible. Upon Business Associate's establishing to the Plans' reasonable satisfaction that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

7. Miscellaneous

- a. **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule, the Security Rule, or to any other regulation promulgated under HIPAA means the section as in effect or as amended.
- b. **Indemnification.** Business Associate agrees during and after the term of this Agreement to hold the Plans and the Company, and their respective trustees, officers, directors, employees, elected officials, agents and affiliates, harmless from, and indemnify each of them against any and all claims, losses, liabilities penalties, fines, costs, damages and expenses, including reasonable attorneys' fees, incurred by or imposed upon any of them as a result of Business Associate's breach of this Agreement, HIPAA, the Privacy Rule or the Security Rule.
- c. **Survival.** The respective rights and obligations of the Parties under Sections 2, 5, 6(c) and 7 of this Agreement shall survive the termination of this Agreement.
- d. **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit the Plans to comply with the Privacy Rule, Security Rule and other provisions of HIPAA, including, but not limited to, any regulations promulgated under the HITECH Act.
- e. **Governing Law.** The construction, interpretation and performance of this Agreement and all transactions under this Agreement shall be governed and enforced pursuant to the laws of the State of Alabama, except as such laws are preempted by any provision of federal law, including by ERISA or HIPAA. Any action or proceeding arising out of or relating to this Agreement shall be brought and tried in a federal or state court of competent jurisdiction located in Madison County, Alabama and in no other forum or venue.

- f. **No Third Party Beneficiary.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.
- g. **Effect.** This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors, assigns, heirs, executors, administrators and other legal representatives.
- h. **Severability.** In the event any provision of this Agreement is rendered invalid or unenforceable under any new or existing law or regulation, or declared null and void by any court of competent jurisdiction, the remainder of the provisions of this Agreement shall remain in full force and effect if it reasonably can be given effect.
- i. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies thereof shall be deemed to be originals.
- j. **Notices.** All notices to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed given four (4) business days after being sent by certified mail, return receipt requested, postage prepaid or one (1) business day after being sent by reputable overnight mail delivery to the other Party, at the address set forth above or at such other address as a Party may designate from time to time by notice pursuant to this Section 7(j).
- k. **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Plans to comply with the requirements of the HIPAA Privacy, EDI and Security Rules, and any other provisions of HIPAA including, but not limited to, any regulations promulgated under the HITECH Act.
- l. **Obligations of Plans to Provide Notice of Privacy Practices.**
 - i. Plans shall notify Business Associate of any limitation(s) in notice of privacy practices of Plans under 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of protected health information.
 - ii. Plans 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.
 - iii. Plans 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 C.F.R. § 164.522, to the extent that such restriction may affect business associate's use or disclosure of protected health information.

IN WITNESS WHEREOF, the Parties have executed this Business Associate Agreement as of the Effective Date.

COMPANY

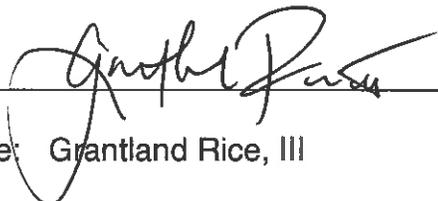
By: _____

Name:

Title:

Date:

BUSINESS ASSOCIATE

By: _____


Name: Grantland Rice, III

Title: President