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**RULE OF THE CHAMBER**

Any person wishing to address City Council shall step up to the lectern, state their name and address in an audible tone of voice for the record, and unless further time is granted by the presiding officer, shall limit their address to **three (3) minutes**. A person may not give up or relinquish all or a portion of their time to the person having the floor or another person in order to extend a person's time limit in addressing the Council.

Any person who does not wish to address Council from the lectern, may print their name, address and comment/question which he/she would like brought before Council on a card provided by the Clerk/Treasurer and return the card to the Clerk/Treasurer before the meeting begins. The Clerk/Treasurer will address the presiding officer at the start of Citizen Comments on the Agenda, notifying him of the card comment, and read the card into the record for response.

Those who want to use audio and image recording equipment in Council Chambers that requires a monopod, tripod or other auxiliary equipment for the audio and image devices shall notify the City Clerk before the meeting begins. Arrangements will be made to accommodate the request in a manner that minimizes the possibility of disrupting the meeting. No additional illuminating lights may be used in Council Chambers unless a majority of City Council members consent. Additionally, cell phones and pagers should be set to vibrate or silent mode when inside Council Chambers.

Should any person fail or refuse to comply with any Rules of the Chamber, after being informed of such noncompliance by the presiding officer, such a person may be deemed by the presiding officer to have committed a breach of the peace by disrupting the public meeting, and the presiding officer may then order such person excluded from the public meeting under Section 3 (6) of Open Meetings Act, Act 267 of 1976.

You will notice a numbering system under each heading. There is significance to these numbers. Each agenda item is numbered consecutively beginning in January and continues through December of each calendar year.

The City of Monroe will provide necessary reasonable auxiliary aids and services to individuals with disabilities at the meeting/hearing upon one week's notice to the City Clerk/Treasurer. Individuals with disabilities requiring auxiliary aids or services should contact the City of Monroe by writing or calling: City of Monroe, City Clerk/Treasurer, 120 E. First St., Monroe, MI 48161, (734) 384-9138. The City of Monroe website address is [www.monroeml.gov](http://www.monroeml.gov).

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**AGENDA - CITY COUNCIL REGULAR MEETING  
MONDAY, FEBRUARY 6, 2012  
7:30 P.M.  
AMENDED**

- I. CALL TO ORDER.**
- II. ROLL CALL.**
- III. INVOCATION/PLEDGE OF ALLEGIANCE.**
- IV. COUNCIL ACTION.**

252 This item was postponed at the January 17, 2012 meeting.

It was moved by Council Member Molenda and seconded by Council Member Beneteau that the communication from the Director of Human Resources, submitting Proposed Ordinance No. 11-010, an ordinance to amend several sections of Chapter 127, Retirement, of the Code of the City of Monroe, be postponed until the next regular scheduled Council Meeting to be held on February 6, 2012.

Ayes: 7 Nays: 0

Motion carried.

- V. CONSENT AGENDA.** (All items listed under the Consent Agenda are considered to be routine by Mayor and Council and will be approved by one motion, unless a Council member or citizen requests that an item be removed and acted on as a separate agenda item.)

- A. Approval of the Minutes of the Work Session held on January 9, 2012, the Minutes of the Special Meeting held on January 17, 2012, the Minutes of the Regular Meeting held on January 17, 2012, and the Minutes of the Special Meeting held on January 23, 2012.

- B. Approval of payments to vendors in the amount of \$\_\_\_\_\_.

Action: Bills be allowed and warrants drawn on the various accounts for their payment.

13 Establishment of a Mayor Pro Tem Resolution.

- 1. Communication from the Mayor's Office, submitting a proposed resolution that designates City Council Member Jeremy J. Molenda to serve as Mayor Pro Tem during the Mayor's absence, and recommending that Council adopt the proposed Resolution.

2. Supporting documents.
  3. Accept, place on file and the resolution be adopted
- 14 Appointments Resolution.
1. Communication from the Mayor's Office, submitting a proposed resolution for appointments to various boards, commissions and committees, and recommending that the resolution be adopted.
  2. Supporting documents.
  3. Accept, place on file and the resolution be adopted.
- 15 Monroe County Farm Bureau Banner Request
1. Communication from the City Manager's Office, reporting back on a request from the Monroe County Farm Bureau for permission to display a banner across Monroe Street from February 29 – March 14, 2012 announcing National Agriculture Week, and recommending that Council approve the request subject to meeting qualifications outlined in the banner policy.
  2. Supporting documents.
  3. Accept, place on file and the recommendation be carried out
- 16 Relay for Life Banner Request
1. Communication from the City Manager's Office, reporting back on a request from the Relay for Life of Monroe for permission to display a banner across Monroe Street from May 21 – June 3, 2012 announcing the Monroe Relay for Life on June 2-3, and recommending that Council approve the request subject to meeting qualifications outlined in the banner policy.
  2. Supporting documents.
  3. Accept, place on file and the recommendation be carried out
- 17 Annual Memorial Day Parade Request.
1. Communication from the City Manager's Office, reporting back on a request from the VFW Memorial Day Parade Committee for permission to hold the annual parade on May 28, 2012 at 2:00 p.m., and recommending that council approve this request contingent upon items being met as outlined by the administration, subject to insurance requirements being met, parade permit, and that the City Manager be granted authority to alter/amend the event due to health and/or safety reasons.
  2. Supporting documents.
  3. Accept, place on file and the recommendation be carried out.
- 18 Fire Department Flashover Training Provided by Oakland Community College Fire Training Center.
1. Communication from the Deputy Director of Public Safety, reporting back on the Fire Department flashover training on April 28 – 29, 2012 provided by Oakland Community College Fire Training Center, and recommending approval of the contract with Oakland Community College for flashover training in the amount of \$6,500.
  2. Supporting documents.
  3. Accept, place on file and the recommendation be carried out.

- 19 Assistance to Firefighters Grant Award for Regional Training.
1. Communication from the Deputy Director of Public Safety, reporting back on an AFG Regional Training Grant program with Frenchtown and Monroe Townships, for a three day rapid intervention safety and survival training program for Firefighters / Public Safety Officer personnel, with the City of Monroe's obligation for this grant to be a maximum of \$4,281, and recommending that Council approve our participation in this regional grant.
  2. Supporting documents.
  3. Accept, place on file and the recommendation be carried out.
- 20 City of Monroe's Flexible Benefit Plan.
1. Communication from the Human Resources Director, submitting amendments to the City of Monroe's Flexible Benefit Plan, and recommending that Council adopt and approve the mandatory amendments to the City's Flexible Spending Benefit Plan document based on the new regulations.
  2. Supporting documents.
  3. Accept, place on file and the recommendation be carried out.
- 21 "The Sawyer Homestead" Lease/Service Agreement
1. Communication from the Director of Economic & Community Development, submitting a Lease/Service Agreement for the Sawyer Homestead located at 320 E. Front Street, and recommending that Council approve the proposed 5-year Lease/Service Agreement for the Sawyer Homestead between the City of Monroe and "The Sawyer Homestead," a Not-for-Profit Corporation, with the option for a 2-year extension and further recommending that the Mayor and Clerk-Treasurer be authorize to execute the Lease/Service Agreement.
  2. Supporting documents.
  3. Accept, place on file and the recommendation be carried out.
- 22 War of 1812 Bicentennial Events Coordinator Agreement
1. Communication from the Director of Economic & Community Development, submitting an agreement to provide funding for the War of 1812 Bicentennial Celebration Events Coordinator, and recommending that Council approve the Agreement between the City of Monroe and the Community Foundation of Monroe County to provide funding for the War of 1812 Bicentennial Celebration Events Coordinator.
  2. Supporting documents.
  3. Accept, place on file and the recommendation be carried out.
- 23 Monroe County Chamber of Commerce Banner Request.
1. Communication from the City Manager's Office, reporting back on a request from the Monroe County Chamber of Commerce on behalf of the Home Builders Association for permission to display a banner across West Front and West First Streets from February 10 – March 5, 2012 announcing the Home Tour and Builders Show, and recommending that Council approve the request subject to meeting qualifications outlined in the banner policy.
  2. Supporting documents.
  3. Accept, place on file and the recommendation be carried out.

- VI. MAYOR'S COMMENTS.
- VII. CITY MANAGER COMMUNICATION.
- VIII. COUNCIL COMMENTS.
- IX. CITIZEN COMMENTS
- X. ADJOURNMENT.



# CITY COUNCIL AGENDA FACT SHEET

**RELATING TO:** RESOLUTION SUPPORTING THE ESTABLISHMENT OF A MAYOR PRO TEM

**DISCUSSION:** The Mayor by virtue of that office is requested to attend functions as a representative of the City. On occasion, due to scheduling difficulties attendance at functions may be impractical so a representative is needed to fill in at these functions.

The proposed resolution designates City Council Member Jeremy J. Molenda to serve as Mayor Pro Tem during the Mayor's absence.

It is recommended that Council adopt the proposed Resolution.

**CITY MANAGER RECOMMENDATION:**

- For
- For, with revisions or conditions
- Against
- No Action Taken/Recommended

**APPROVAL DEADLINE:**

**REASON FOR DEADLINE:**

**STAFF RECOMMENDATION:**

For

Against

**REASON AGAINST:**

**INITIATED BY:**

**PROGRAMS, DEPARTMENTS, OR GROUPS AFFECTED:**

## **FINANCES**

**COST AND REVENUE PROJECTIONS:**

Cost of Total Project	\$
Cost of This Project Approval	\$
Related Annual Operating Cost	\$
Increased Revenue Expected/Year	\$

**SOURCE OF FUNDS:**

City

Account Number

Amount

\$  
\$  
\$  
\$  
\$  
\$  
\$  
\$

Other Funds

Budget Approval: \_\_\_\_\_

**FACT SHEET PREPARED BY:** Mayor's Office

**DATE:** 1/23/12

**REVIEWED BY:** Robert E. Clark

**DATE:**

**COUNCIL MEETING DATE:** 2/6/12

## RESOLUTION

**BE IT RESOLVED**, that in accordance with Charter Section 311, City Council Member Jeremy J. Molenda is appointed to preside, and exercise the powers and duties of the Mayor, at any such time as the Mayor is absent or unable to serve. Council Member Molenda is designated Mayor Pro Tem through January 1, 2014.



# CITY COUNCIL AGENDA FACT SHEET

**RELATING TO:** Appointments

**DISCUSSION:** The attached Resolution recommends appointment to various City Boards and Commissions whose terms have expired and/or where there is a vacancy.

**Therefore, it is recommended,** that City Council approve the proposed Resolution making appointments to various City Boards and Commissions.

**CITY MANAGER RECOMMENDATION:**

- For
- For, with revisions or conditions
- Against
- No Action Taken/Recommended

**APPROVAL DEADLINE:** N/A

**REASON FOR DEADLINE:** N/A

**STAFF RECOMMENDATION:**  For  Against

**REASON AGAINST:** N/A

**INITIATED BY:**

**PROGRAMS, DEPARTMENTS, OR GROUPS AFFECTED:** City Operations

## FINANCES

**COST AND REVENUE PROJECTIONS:**

Cost of Total Project	\$ N/A
Cost of This Project Approval	\$ N/A
Related Annual Operating Cost	\$ N/A
Increased Revenue Expected/Year	\$ N/A

<b><u>SOURCE OF FUNDS:</u></b>	<u>City</u>	<u>Account Number</u>	<u>Amount</u>
			\$ N/A
	<u>Other Funds</u>		\$ N/A
			\$ N/A
			\$ N/A
			\$ N/A

Budget Approval: \_\_\_\_\_

**FACT SHEET PREPARED BY:** Mayor's Office

**DATE:** 1/30/12

**REVIEWED BY:** Robert E. Clark, Mayor

**DATE:**

**COUNCIL MEETING DATE:** 2/6/12

## **R E S O L U T I O N**

WHEREAS, there are terms on various Boards, Commissions, and Committees which have vacancies; and

WHEREAS, a diligent effort has been made to fill these appointments;

THEREFORE BE IT RESOLVED that the following person is hereby appointed to the office and the term hereinafter indicated, February 6, 2012

### **BOARD OF REVIEW**

Dennis Knab (Precinct 1 / Alt for 2)	1 year term to January 14, 2013
Mike Desilvis (Precinct 4)	1 year term to January 14, 2013
Leo Leask (Precinct 6)	1 year term to January 14, 2013

### **CITIZEN PLANNING COMMISSION**

Josh Myers	fill an expired term to January 14, 2013
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### **CONSTRUCTION BOARD OF APPEALS**

George O'Dell (Architect)	3 year term to January 12, 2015
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### **ZONING BOARD OF APPEALS**

Harold Caldwell (CPC)	3 year term to January 12, 2015
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# CITY COUNCIL AGENDA FACT SHEET

**RELATING TO: REQUEST FROM THE MONROE COUNTY FARM BUREAU FOR PERMISSION TO DISPLAY A BANNER ACROSS MONROE STREET FROM FEBRUARY 29 - MARCH 14, 2012**

**DISCUSSION:** The City received a request from the Monroe County Farm Bureau for permission to display a banner. Specifically the request is to display a banner across Monroe Street from February 29 - March 14, 2012 announcing *National Agriculture Week*.

The request has been sent to the various departments for their review and there were no objections. After Council approval, advance notification will be sent to MDOT.

**Manager:** The City Manager recommends approval of the request subject to meeting qualifications outlined in the banner policy.

**CITY MANAGER RECOMMENDATION:**

- For
- For, with revisions or conditions
- Against
- No Action Taken/Recommended

**APPROVAL DEADLINE:**

**REASON FOR DEADLINE:**

**STAFF RECOMMENDATION:**

For

Against

**REASON AGAINST:**

**INITIATED BY:**

**PROGRAMS, DEPARTMENTS, OR GROUPS AFFECTED:**

## **FINANCES**

**COST AND REVENUE PROJECTIONS:**

Cost of Total Project	\$
Cost of This Project Approval	\$
Related Annual Operating Cost	\$
Increased Revenue Expected/Year	\$

**SOURCE OF FUNDS:**

City

Account Number

Amount

\$  
\$  
\$  
\$  
\$

Other Funds

\$  
\$  
\$  
\$

Budget Approval: \_\_\_\_\_

**FACT SHEET PREPARED BY:** City Manager's Office

**DATE:** 1/24/12

**REVIEWED BY:**

**DATE:**

**COUNCIL MEETING DATE:** 2/6/12



### CITY OF MONROE, MICHIGAN BANNER APPLICATION

Name of Applicant Mary Janssens  
MONROE COUNTY FARM BUREAU  
 Name of Organization MONROE COUNTY FARM BUREAU  
 Applicant's Affiliation with Organization Chairperson of Promotion & Education Comm.  
 Applicant's Home Address 3315 W. Albain Rd. MONROE, MI 48161  
 Mailing Address (if different) Same  
 Day Phone (734) 242-3588 Evening Phone Same

Type of Banner **o Overhead Banner (\$150)**

Overhead Banner Locations: (List as 1 for first choice, 2 for second...)

       E. Front St.

Dates Requested

Feb 29 - 2012 thur March Feb 14

       W. First St.

  X   Monroe St.

Type of Banner **o Vertical Pole Banner (\$25/banner)**

Vertical Pole Banner Locations: (List the total number of banners to be displayed and choice of placement location.) Dates Requested \_\_\_\_\_

No. of Banners:        Monroe St. (42)

       o Spring (March-May)

       Elm Ave. (8)

       o Summer (June-Aug.)

       First St. (8)

       o Fall (Sept.-Nov.)

       Macomb St. (8)

       o Winter (Dec.-Feb.)

Company Fabricating Banners: \_\_\_\_\_

Please provide a sketch complete with banner specifications and message to be displayed for City Council Review. Applications will be accepted up to eleven (11) months in advance and no later than four (4) weeks prior to proposed installation date.

On behalf of the organization listed above, I, as applicant, hereby acknowledge receipt of the Banner Policy of the City of Monroe.

Applicant covenants and agrees to hold harmless from, indemnify and defend the City, its agents, officers and employees against all suits, demands, claims, judgments, liens, cost of repair or replacement of any damaged poles or electrical equipment, costs, attorney fees and expenses which may arise out of, result from or be caused by Applicant's banner installation.

Applicant covenants and agrees to strictly comply with all terms and conditions of the Banner Policy, and further understands and agrees that the City Council, in its sole and absolute discretion, may approve, deny or set any conditions or limitations on any banner(s) which may be approved, or may at any time alter, amend, modify, rescind or revoke any approval, all without recourse or remedy by the Applicant, or liability of the City.

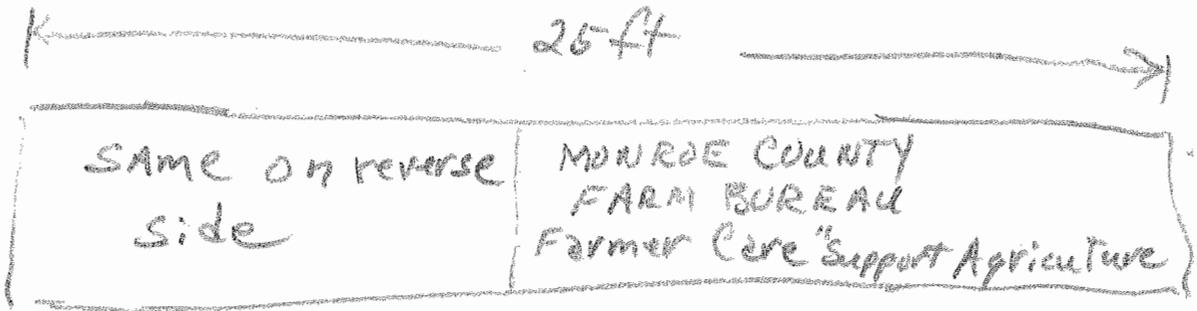
Applicant Mary Janssens

Date Jan. 12, 2012

RECEIVED

JAN 13 2012

MAYOR'S OFFICE



Applicant Mary Jantlers

Date 1-12-2012



# CITY COUNCIL AGENDA FACT SHEET

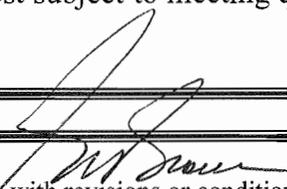
**RELATING TO: REQUEST FROM THE RELAY FOR LIFE OF MONROE FOR PERMISSION TO DISPLAY A BANNER ACROSS MONROE STREET FROM MAY 21 – JUNE 3, 2012**

**DISCUSSION:** The City received a request from the Relay for Life of Monroe for permission to display a banner. Specifically the request is to display a banner across Monroe Street from May 21 – June 3, 2012 announcing the Monroe Relay for Life on June 2-3.

The request has been sent to the various departments for their review and there were no objections. After Council approval, advance notification will be sent to MDOT.

**Manager:** The City Manager recommends approval of the request subject to meeting qualifications outlined in the banner policy.

**CITY MANAGER RECOMMENDATION:**

- For  
 For, with revisions or conditions  
 Against  
 No Action Taken/Recommended
- 

**APPROVAL DEADLINE:**

**REASON FOR DEADLINE:**

**STAFF RECOMMENDATION:**       For       Against

**REASON AGAINST:**

**INITIATED BY:**

**PROGRAMS, DEPARTMENTS, OR GROUPS AFFECTED:**

## **FINANCES**

**COST AND REVENUE PROJECTIONS:**

Cost of Total Project	\$
Cost of This Project Approval	\$
Related Annual Operating Cost	\$
Increased Revenue Expected/Year	\$

<b><u>SOURCE OF FUNDS:</u></b>	<u>City</u>	<u>Account Number</u>	<u>Amount</u>
			\$
			\$
			\$
			\$
			\$
	<u>Other Funds</u>		\$
			\$
			\$
			\$

Budget Approval: \_\_\_\_\_

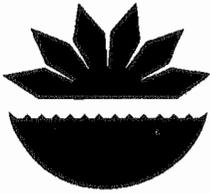
**FACT SHEET PREPARED BY:** City Manager's Office

**DATE:** 1/24/12

**REVIEWED BY:**

**DATE:**

**COUNCIL MEETING DATE:** 2/6/12



**CITY OF MONROE, MICHIGAN  
BANNER APPLICATION**

Name of Applicant CHRIS SIMS  
Name of Organization RELAY FOR LIFE OF MONROE  
Applicant's Affiliation with Organization COMMITTEE MEMBER / TEAM CAPTAIN  
Applicant's Home Address 900 N. MACOMB ST. - MONROE 48162  
Mailing Address (if different) \_\_\_\_\_  
Day Phone 625-4247 Evening Phone None

Type of Banner  **Overhead Banner (\$150)**  
Overhead Banner Locations: (List as 1 for first choice, 2 for second...)  
\_\_\_\_\_ E. Front St.                      Dates Requested MAY 21 - JUNE 3, 2012  
\_\_\_\_\_ W. First St.  
 Monroe St.

Type of Banner  **Vertical Pole Banner (\$25/banner)**  
Vertical Pole Banner Locations: (List the total number of banners to be displayed and choice of placement location.)      Dates Requested \_\_\_\_\_  
No. of Banners: \_\_\_\_\_ Monroe St. (42)                       Spring (March-May)  
                         \_\_\_\_\_ Elm Ave. (8)                                       Summer (June-Aug.)  
                         \_\_\_\_\_ First St. (8)                                       Fall (Sept.-Nov.)  
                         \_\_\_\_\_ Macomb St. (8)                                       Winter (Dec.-Feb.)

Company Fabricating Banners: \_\_\_\_\_

Please provide a sketch complete with banner specifications and message to be displayed for City Council Review. Applications will be accepted up to eleven (11) months in advance and no later than four (4) weeks prior to proposed installation date.

On behalf of the organization listed above, I, as applicant, hereby acknowledge receipt of the Banner Policy of the City of Monroe.  
Applicant covenants and agrees to hold harmless from, indemnify and defend the City, its agents, officers and employees against all suits, demands, claims, judgments, liens, cost of repair or replacement of any damaged poles or electrical equipment, costs, attorney fees and expenses which may arise out of, result from or be caused by Applicant's banner installation.  
Applicant covenants and agrees to strictly comply with all terms and conditions of the Banner Policy, and further understands and agrees that the City Council, in its sole and absolute discretion, may approve, deny or set any conditions or limitations on any banner(s) which may be approved, or may at any time alter, amend, modify, rescind or revoke any approval, all without recourse or remedy by the Applicant, or liability of the City.

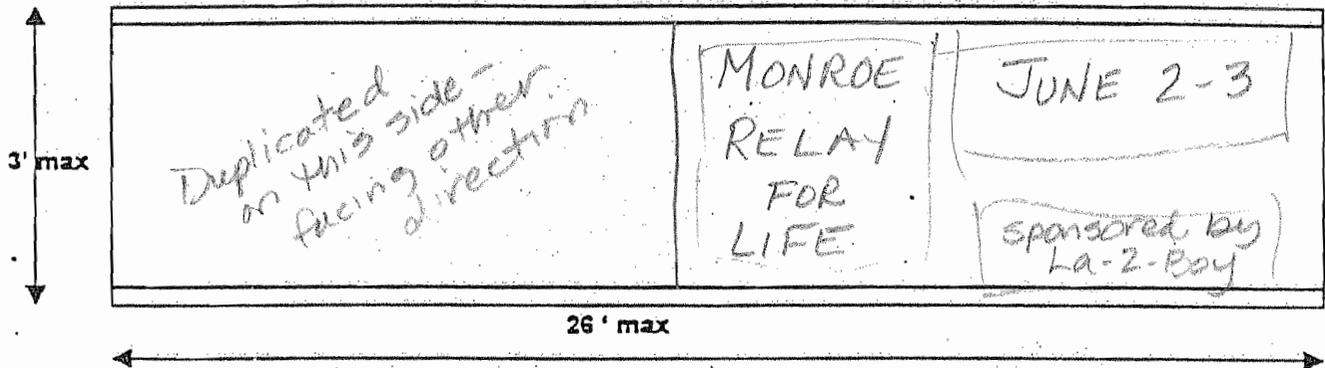
**RECEIVED**

JAN 20 2012

Applicant Chris Sims                      Date 1-19-12                      **MAYOR'S OFFICE**

**Attachment D**

**CITY OF MONROE  
OVERHEAD BANNER SPECIFICATIONS**



Banners shall have a top and bottom hem with grommets spaced not more than 5' on center. Grommets shall have a minimum 1/2" ID hole.

All unlettered areas shall be of a netting type material *yes*

Corners of banners shall be reinforced

Banners must be lettered on both sides for placement on Monroe St.

Banners shall be delivered to 222 Jones Ave. three (3) business days prior to scheduled installation date.

Banners must be picked up within one (1) week of being taken down

*Sign will be purchased through Jenny Bert who has experience w/ these signs.*



# CITY COUNCIL AGENDA FACT SHEET

**RELATING TO: REQUEST FROM THE VFW MEMORIAL DAY PARADE COMMITTEE TO HOLD THE ANNUAL MEMORIAL DAY PARADE ON MAY 28, 2012, BEGINNING AT 2:00 P.M., TO CLOSE THE AFFECTED STREETS, HOLD A BRIEF CEREMONY ON THE BRIDGE AND TO WAIVE ALL PERMITS AND FEES**

**DISCUSSION:** The City received a request from the VFW Memorial Day Parade Committee for permission to hold the annual Memorial Day Parade on May 28, 2012 at 2:00 p.m. Specifically the request is to close the affected streets (Monroe Street from Jones Avenue to Elm Avenue) and to hold a brief ceremony on the Monroe Street Bridge with a rifle volley. The parade will disband at the St. Mary's Parking lot.

The request was reviewed by the administrative staff and there were no objections to the request subject to insurance requirements being met and a parade permit.

The Police Department will coordinate with DPS, the Monroe County Sheriff Department, City Engineer, Monroe Fire Department, as well as the event organizers to assure that all safety aspects are covered. A total of thirteen officers (12 patrol and one command officer) need to be assigned to the event to ensure a safe, smooth event. The estimated cost to staff the 2011 parade was \$1,178.06 and this year's costs should be slightly higher.

The Department of Public Services will staff the event as in the past, set up advance detour route, and move barricades the day of the event. The cost to staff this year's parade is approximately \$1,000 - \$1,500. After Council approval, advance notification will be sent to MDOT, and a detour will be posted. Due to the reconstruction of the Macomb Street Bridge during this time period, the detour likely will be Dunbar to Hull / Kentucky to First to Winchester to Elm, back to M-125, though Roessler Street could be considered as well.

Therefore, it is recommended, that City Council approve this request contingent upon items being met as outlined by the administration, subject to insurance requirements being met, parade permit, and that the City Manager be granted authority to alter/amend the event due to health and/or safety reasons.

**CITY MANAGER RECOMMENDATION:**

- For
- For, with revisions or conditions
- Against
- No Action Taken/Recommended

**APPROVAL DEADLINE:**

**REASON FOR DEADLINE:**

**STAFF RECOMMENDATION:**       For       Against

**REASON AGAINST:**

**INITIATED BY:** City Manager's Office

**PROGRAMS, DEPARTMENTS, OR GROUPS AFFECTED:** D.P.S., Police, Engineering, Fire, Finance, Community Development, Water, and Manager

## **FINANCES**

**COST AND REVENUE PROJECTIONS:**

Cost of Total Project	\$
Cost of This Project Approval	\$
Related Annual Operating Cost	\$
Increased Revenue Expected/Year	\$

<b><u>SOURCE OF FUNDS:</u></b>	<b><u>City</u></b>	<b><u>Account Number</u></b>	<b><u>Amount</u></b>
			\$
			\$
			\$
			\$
			\$
	<b><u>Other Funds</u></b>		\$
			\$
			\$
			\$

Budget Approval: \_\_\_\_\_

**FACT SHEET PREPARED BY:** City Manager's Office

**DATE:** 1/24/12

**REVIEWED BY:**

**DATE:**

**COUNCIL MEETING DATE:** 2/6/12



VETERANS OF FOREIGN WARS OF THE U.S.  
CITY OF MONROE POST 1138  
400 Jones Avenue  
P.O. Box 1515  
Monroe, Michigan 48161

January 9, 2012

Mr. Charles D. Evans

City Clerk-Treasurer

120 E. First St.

Monroe, Mi. 48161

Dear Mr. Evans,

The VFW Memorial Day Parade Committee would like to request the city's Approval for the 2012 Memorial Day Parade.

The parade will be Monday, May 28<sup>th</sup> at 2:00 p.m. The parade will line up at the Department of Public Works yard on Jones Avenue, turn right on Monroe Street And proceed north to St. Mary's parking lot and disband. There will be a brief ceremony at the Monroe Street Bridge to honor those who died at sea with a rifle Volley. We are requesting that all permits and fees be waived.

We are actively pursuing participants for the parade and would appreciate a response to our request confirming date and time as soon as possible.

If you need more information or have any questions regarding this matter, please feel free to contact me at 734-755-1808. Thanking you in advance for your kind consideration on this matter.

Dan Burchfield  
Parade Chairman

RECEIVED  
CHARLES D. EVANS  
JAN 11 7 59 AM '12

# CITY OF MONROE INTERDEPARTMENT ACTIVITY FORM

**ADMINISTRATIVE ACTIVITY:** Request from the VFW Memorial Day Parade Committee for permission to hold the annual Memorial Day Parade on May 28, 2012 at 2:00 p.m., and to close the affected streets (see attached)

**INITIATING DEPARTMENT:** City Manager's Office

**DATE:** 1/11/12      **SUSPENSE:** A.S.A.P.

**DEPARTMENT ROUTING:**

DEPARTMENT	ACTIVITY REQUIRED	DATE RECEIVED	DATE TRANSMITTED	DEPARTMENT SIGNATURE
M. Hoskins	Review and Comment			
B. LaRoy	Review and Comment			
✓ P. Lewis	Review and Comment	01/11/12	01/12/12	
J. Mominee	Review and Comment			
T. Moore	Review and Comment			
E. Sell	Review and Comment			
D. Swallow	Review and Comment			
G. Brown	Review / Approve			

**SUMMARY:**

No objections to event, Public Services will plan to staff and maintain traffic control devices as in the past. Overtime will be required, and total costs of \$1,000 to \$1,500 have generally been associated with this event. Advance notice will be sent to MDOT, and a detour will be posted. Due to the reconstruction of the Macomb Street bridge during this time period, the detour likely will be Dunbar to Hull / Kentucky to First to Winchester to Elm, back to M-125, though Roessler Street could be considered as well.

# Memorandum

**To:** Thomas C. Moore III, Chief of Police  
**From:** Lt. Gregory N. Morgel  
**cc:** Patricia Weaver, Executive Secretary to the Mayor/Manager City of Monroe, file  
**Date:** January 12, 2012  
**Re:** **Staff Study - 2012 Memorial Day Parade**

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The annual Memorial Day Parade is scheduled for Monday, May 28, 2012 at 2:00 pm. The route will be the same as it has been in past years. The parade units will assemble in the DPS lot then stage in the 0-200 block of Jones Avenue. The parade will travel W/B Jones Avenue to N/B South Monroe Street and into the St. Mary's Parking Lot where it will disband. As in past years, there will be a ceremony on the Monroe St. Bridge, with a rifle volley, immediately after the parade. Last year's parade was cancelled due to inclement weather but past parades usually last approximately forty-five minutes. The ceremony on the Monroe St. Bridge usually lasts an additional thirty minutes.

As usual, barricades will be utilized at minor intersections to keep staffing costs to a minimum. I will coordinate with DPS to insure that all intersections are covered by actual police officers and/or barricades. The MCSO usually assists with two of their traffic units who handle a pair of intersections near the staging area of the parade route.

A total of thirteen officers (12 patrol officers and one command officer) are needed to ensure a safe, smooth event. One officer will lead the parade on a motorcycle and another officer is assigned to ride a bicycle and work as a "floater" along the parade route, and the rest will be assigned to intersections along the parade route.

I will request that the MCSO once again provide traffic assistance at South Monroe Street & Jones Avenue as well as at Jones Avenue & LaPlaisance Avenue. I will coordinate this with the MCSO Traffic & Safety Division.

The total cost for 2011's parade was \$1,178.06. I estimate the cost of this year's parade to be somewhat higher due to the raise that some of the officers have received as "PSOs." This figure includes two hours planning time as well as the applicable shift premium.

Provided the proper permits are obtained, I recommend approval of this event.

As always, I am available for any questions, comments, or concerns you may have.

Parade Chairman: Dan Burchfield 734-755-1808



# CITY COUNCIL AGENDA FACT SHEET

**RELATING TO:** Fire Department flashover training provided by Oakland Community College Fire Training Center

**DISCUSSION:** The Monroe Fire Department will be conducting live fire training on April 28 - 29, 2012. This training is an excellent program instructing Firefighter's to recognize the signs of flashover. Flashover conditions are one of the leading dangers that kill many Firefighter's each year. This live training will involve Firefighter's and Public Safety Officers from the City of Monroe, our mutual aid departments of Monroe and Frenchtown Townships and many other Monroe County Fire Departments.

I recommend approval to contract with Oakland Community College for flashover training in the amount of \$6,500.00

**CITY MANAGER RECOMMENDATION:**

- For
- For, with revisions or conditions
- Against
- No Action Taken/Recommended

**APPROVAL DEADLINE:** N/A

**REASON FOR DEADLINE:** N/A

**STAFF RECOMMENDATION:**  For  Against

**REASON AGAINST:** N/A

**INITIATED BY:** Joseph R. Mominee, Deputy Director of Public Safety

**PROGRAMS, DEPARTMENTS, OR GROUPS AFFECTED:** Division of Public Safety

## FINANCES

**COST AND REVENUE PROJECTIONS:**

Cost of Total Project	\$ 6,500.00
Cost of This Project Approval	\$ N/A
Related Annual Operating Cost	\$ N/A
Increased Revenue Expected/Year	\$ N/A

**SOURCE OF FUNDS:**

City  
101-55.336-860.000

Account Number

Amount  
\$ 6,500.00  
\$ N/A  
\$ N/A  
\$ N/A  
\$ N/A  
\$ N/A  
\$ N/A  
\$ N/A

Other Funds

Budget Approval: \_\_\_\_\_

**FACT SHEET PREPARED BY:** Joseph R. Mominee, Deputy Director of Public Safety

**REVIEWED BY:**

**DATE:** 1/20/12

**COUNCIL MEETING DATE:** 2/6/12



# CITY COUNCIL AGENDA FACT SHEET

**RELATING TO:** Assistance to Firefighters Grant Award for Regional Training

**DISCUSSION:** Frenchtown Township Fire Department has applied for and has received confirmation for an AFG Regional Training Grant for a 3 day rapid intervention / safety and survival training program. This program will be offered 3 different times for a maximum of 90 participants. This is an excellent training program that will enhance our agencies interoperability with our mutual aid partners, Frenchtown and Monroe Townships, and will provide for the safety and survival of our Firefighter / Public Safety Officer personnel. The City of Monroe's obligation for this grant will be a maximum of \$4,281.00

I recommend the City Council approve our participation in this regional grant.

**CITY MANAGER RECOMMENDATION:**

- For
- For, with revisions or conditions
- Against
- No Action Taken/Recommended

**APPROVAL DEADLINE:** N/A

**REASON FOR DEADLINE:** N/A

**STAFF RECOMMENDATION:**  For  Against

**REASON AGAINST:** N/A

**INITIATED BY:** Joseph R. Mominee, Deputy Director of Public Safety

**PROGRAMS, DEPARTMENTS, OR GROUPS AFFECTED:** Division of Public Safety

## FINANCES

**COST AND REVENUE PROJECTIONS:**

Cost of Total Project	\$ 4,281.00
Cost of This Project Approval	\$ N/A
Related Annual Operating Cost	\$ N/A
Increased Revenue Expected/Year	\$ N/A

**SOURCE OF FUNDS:**

City  
101-55.336-860.000

Account Number

Amount  
\$ 4,281.00  
\$ N/A  
\$ N/A  
\$ N/A  
\$ N/A  
\$ N/A  
\$ N/A  
\$ N/A

Other Funds

Budget Approval: \_\_\_\_\_

**FACT SHEET PREPARED BY:** Joseph R. Mominee, Deputy Director of Public Safety

**REVIEWED BY:**

**DATE:** 1/20/12

**COUNCIL MEETING DATE:** 2/6/12



# CITY COUNCIL AGENDA FACT SHEET

**RELATING TO:** CITY OF MONROE'S FLEXIBLE BENEFIT PLAN

**DISCUSSION:**

According to the City's third party administrator, Kushner & Company, who administers the City's Flexible Spending Account, the IRS (Internal Revenue Service), DOL (Department of Labor) and DHHS (Department of Health and Human Services) recently jointly published an amendment to the interim final regulations on rules relating to internal claims appeals and external review processes. These new rules require minor modifications to the standard plan document language and update references to applicable DOL code sections for Health Reimbursement Accounts (HRA) and Flexible Spending Account plans. As a result, the Appeals Procedures Amendment contains only brief, but necessary, changes to standard language in the applicable plan types. In order to comply with these new technical requirements of PPACA, the City's Flexible Benefit Plan documents need to be amended.

Attached please find a copy of the City's current Flexible Benefit Plan document, including the mandatory amendment(s) and consent/resolution that require Council's adoption.

This change is one of those rare language changes that does not require notice be given to employees. It is simply a change in the technical language of the plan document only.

It is therefore my recommendation that City Council adopt and approve the mandatory amendments to the City's Flexible Spending Account plan document based on the new regulations.

**CITY MANAGER RECOMMENDATION:**

- For
- For, with revisions or conditions
- Against
- No Action Taken/Recommended

**APPROVAL DEADLINE:** February 6, 2012

**REASON FOR DEADLINE:**

**STAFF RECOMMENDATION:**  For  Against

**REASON AGAINST:**

**INITIATED BY:**

**PROGRAMS, DEPARTMENTS, OR GROUPS AFFECTED:** CITY OF MONROE'S FLEXIBLE BENEFIT PLAN

## FINANCES

**COST AND REVENUE PROJECTIONS:**

Cost of Total Project	\$
Cost of This Project Approval	\$
Related Annual Operating Cost	\$
Increased Revenue Expected/Year	\$

<b>SOURCE OF FUNDS:</b>	<u>City</u>	Account Number	Amount
			\$
			\$
			\$
			\$
			\$
	<u>Other Funds</u>		\$
			\$
			\$
			\$

Budget Approval: \_\_\_\_\_

**FACT SHEET PREPARED BY:** PEGGY A. HOWARD/HR DIRECTOR *Peggy A. Howard* **DATE:** 1/30/12

**REVIEWED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**COUNCIL MEETING DATE:**

**CITY OF MONROE  
FORMAL RECORD OF ACTION**

The following is a formal record of action taken by the governing body of City of Monroe (the "City").

With respect to the amendment of the City of Monroe Flexible Benefit Plan (the "Plan"), the following resolutions are hereby adopted:

**RESOLVED:** That the Plan be amended in the form attached hereto, which amendment is hereby adopted and approved;

**RESOLVED FURTHER:** That the appropriate officers of the City be, and they hereby are, authorized and directed to execute said amendment on behalf of the City;

**RESOLVED FURTHER:** That the officers of the City be, and they hereby are, authorized and directed to take any and all actions and execute and deliver such documents as they may deem necessary, appropriate or convenient to effect the foregoing resolutions including, without limitation, causing to be prepared and filed such reports documents or other information as may be required under applicable law.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## CITY OF MONROE FLEXIBLE BENEFIT PLAN

### APPEALS PROCEDURES AMENDMENT

**WHEREAS**, City of Monroe (the "City") maintains the City of Monroe Flexible Benefit Plan (the "Plan") for the benefit of certain of its employees; and

**WHEREAS**, Pursuant to Section 8.01 of the Plan, the City desires to amend the Plan;

**NOW, THEREFORE**, the Plan is hereby amended as follows, effective as of the plan year beginning on or after January 1, 2011:

This Amendment to the Plan is adopted to reflect the provisions of the Patient Protection and Affordable Care Act, the Reconciliation Act (hereinafter both are collectively referred to as "PPACA") and certain other provisions of applicable law and the applicable regulations that are generally effective after December 31, 2009 ("Applicable Law"). This Amendment is intended as good faith compliance with the requirements of the PPACA and Applicable Law and is to be construed in accordance with same. This Amendment and the provisions of Applicable Law shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment, PPACA and Applicable Law.

#### Internal and External Claims Procedure for Health Care Reimbursement Account.

- (a) **Applicability.** This Amendment shall apply if 1) the Plan constitutes a group health plan as defined in Treas. Reg. section 54.9801-2 or if the Plan Administrator determines that the Plan is subject to HIPAA portability rules and 2) the Plan is not a grandfathered health plan under the Patient Protection and Affordable Care Act.
- (b) **Deemed Exhaustion of Internal Claims Process.** If the Plan fails to adhere to the requirements of DOL Reg. 2590.715-2719(b)(2), except as provided under DOL Reg. 2590.715-2719(b)(2)(ii)(F)(2), the claimant may initiate an external review under Section 6.02(b)(2) or may bring an action under section 502(a) of ERISA as provided in DOL Reg. 2590.715-2719(b)(2)(ii)(F) and any superseding guidance.

**IN WITNESS WHEREOF**, the City has caused this Amendment to be executed this  
\_\_\_\_\_ day of \_\_\_\_\_, 2012.

CITY OF MONROE:

Signature: \_\_\_\_\_

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

Title/Position: \_\_\_\_\_

V-3.00

**CITY OF MONROE FLEXIBLE BENEFIT PLAN**

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# CITY OF MONROE FLEXIBLE BENEFIT PLAN

## INTRODUCTION

The Employer has amended this Plan effective January 1, 2009, to recognize the contribution made to the Employer by its Employees. Its purpose is to reward them by providing benefits for those Employees who shall qualify hereunder and their Dependents and beneficiaries. The concept of this Plan is to allow Employees to choose among different types of benefits based on their own particular goals, desires and needs. This Plan is a restatement of a Plan which was originally effective on July 1, 2006. The Plan shall be known as City of Monroe Flexible Benefit Plan (the "Plan").

The intention of the Employer is that the Plan qualify as a "Cafeteria Plan" within the meaning of Section 125 of the Internal Revenue Code of 1986, as amended, and that the benefits which an Employee elects to receive under the Plan be excludable from the Employee's income under Section 125(a) and other applicable sections of the Internal Revenue Code of 1986, as amended.

## ARTICLE I DEFINITIONS

1.1 **"Administrator"** means the individual(s) or corporation appointed by the Employer to carry out the administration of the Plan. The Employer shall be empowered to appoint and remove the Administrator from time to time as it deems necessary for the proper administration of the Plan. In the event the Administrator has not been appointed, or resigns from a prior appointment, the Employer shall be deemed to be the Administrator.

1.2 **"Affiliated Employer"** means the Employer and any corporation which is a member of a controlled group of corporations (as defined in Code Section 414(b)) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Code Section 414(c)) with the Employer; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code Section 414(m)) which includes the Employer; and any other entity required to be aggregated with the Employer pursuant to Treasury regulations under Code Section 414(o).

1.3 **"Benefit"** or **"Benefit Options"** means any of the optional benefit choices available to a Participant as outlined in Section 4.1.

1.4 **"Cafeteria Plan Benefit Dollars"** means the amount available to Participants to purchase Benefit Options as provided under Section 4.1. Each dollar contributed to this Plan shall be converted into one Cafeteria Plan Benefit Dollar.

1.5 **"Code"** means the Internal Revenue Code of 1986, as amended or replaced from time to time.

1.6 **"Compensation"** means the amounts received by the Participant from the Employer during a Plan Year.

1.7 **"Dependent"** means any individual who qualifies as a dependent under an Insurance Contract for purposes of that Contract or under Code Section 152 (as modified by Code Section 105(b)).

1.8 **"Effective Date"** means July 1, 2006.

1.9 **"Election Period"** means the period immediately preceding the beginning of each Plan Year established by the Administrator, such period to be applied on a uniform and nondiscriminatory basis for all Employees and Participants. However, an Employee's initial Election Period shall be determined pursuant to Section 5.1.

1.10 **"Eligible Employee"** means any Employee who has satisfied the provisions of Section 2.1.

An individual shall not be an "Eligible Employee" if such individual is not reported on the payroll records of the Employer as a common law employee. In particular, it is expressly intended that individuals not treated as common law employees by the Employer on its payroll records are not "Eligible Employees" and are excluded from Plan participation even if a court or administrative agency determines that such individuals are common law employees and not independent contractors.

However, any Employee who is a "part-time" Employee shall not be eligible to participate in this Plan. A "part-time" Employee is any Employee who works, or is expected to work on a regular basis, less than 37.5 hours a week and is designated as a part-time Employee on the Employer's personnel records.

Seasonal employees shall not be eligible to participate in the Plan.

1.11 **"Employee"** means any person who is employed by the Employer. The term Employee shall include leased employees within the meaning of Code Section 414(n)(2).

1.12 **"Employer"** means City of Monroe and any successor which shall maintain this Plan; and any predecessor which has maintained this Plan. In addition, where appropriate, the term Employer shall include any Participating, Affiliated or Adopting Employer.

1.13 **"Employer Contribution"** means the contributions made by the Employer pursuant to Section 3.1 to enable a Participant to purchase Benefits. These contributions shall be converted to Cafeteria Plan Benefit Dollars and allocated to the funds or accounts established under the Plan pursuant to the Participants' elections made under Article V and as set forth in Section 3.1.

1.14 **"Grace Period"** means, with respect to any Plan Year, the time period ending on the fifteenth day of the third calendar month after the end of such Plan Year, during which Medical Expenses and Employment-Related Dependent Care Expenses incurred by a Participant will be deemed to have been incurred during such Plan Year.

1.15 **"Insurance Contract"** means any contract issued by an Insurer underwriting a Benefit.

1.16 **"Insurance Premium Payment Plan"** means the plan of benefits contained in Section 4.1 of this Plan, which provides for the payment of Premium Expenses.

1.17 **"Insurer"** means any insurance company that underwrites a Benefit under this Plan.

1.18 **"Key Employee"** means an Employee described in Code Section 416(i)(1) and the Treasury regulations thereunder.

1.19 **"Participant"** means any Eligible Employee who elects to become a Participant pursuant to Section 2.3 and has not for any reason become ineligible to participate further in the Plan.

1.20 **"Plan"** means this instrument, including all amendments thereto.

1.21 **"Plan Year"** means the 12-month period beginning January 1 and ending December 31. The Plan Year shall be the coverage period for the Benefits provided for under this Plan. In the event a Participant commences participation during a Plan Year, then the initial coverage period shall be that portion of the Plan Year commencing on such Participant's date of entry and ending on the last day of such Plan Year.

1.22 **"Premium Expenses"** or **"Premiums"** mean the Participant's cost for the Benefits described in Section 4.1.

1.23 **"Premium Expense Reimbursement Account"** means the account established for a Participant pursuant to this Plan to which part of his Cafeteria Plan Benefit Dollars may be allocated and from which Premiums of the Participant may be paid or reimbursed. If more than one type of insured Benefit is elected, sub-accounts shall be established for each type of insured Benefit.

1.24 **"Salary Redirection"** means the contributions made by the Employer on behalf of Participants pursuant to Section 3.2. These contributions shall be converted to Cafeteria Plan Benefit Dollars and allocated to the funds or accounts established under the Plan pursuant to the Participants' elections made under Article V.

1.25 **"Salary Redirection Agreement"** means an agreement between the Participant and the Employer under which the Participant agrees to reduce his Compensation or to forego all or part of the increases in such Compensation and to have such amounts contributed by the Employer to the Plan on the Participant's behalf. The Salary Redirection Agreement shall apply only to Compensation that has not been actually or constructively received by the Participant as of the date of the agreement (after taking this Plan and Code Section 125 into account) and, subsequently does not become currently available to the Participant.

1.26 **"Spouse"** means "spouse" as defined in an Insurance Contract for purposes of that Contract or the legally married husband or wife of a Participant, unless legally separated by court decree.

## **ARTICLE II PARTICIPATION**

### **2.1 ELIGIBILITY**

Any Eligible Employee shall be eligible to participate hereunder 90 days after his initial date of employment with the Employer. However, any Eligible Employee who was a Participant in the Plan on the effective date of this amendment shall continue to be eligible to participate in the Plan.

### **2.2 EFFECTIVE DATE OF PARTICIPATION**

An Eligible Employee shall become a Participant effective as of the first day of the month coinciding with or next following the date on which he met the eligibility requirements of Section 2.1.

## 2.3 APPLICATION TO PARTICIPATE

An Employee who is eligible to participate in this Plan shall, during the applicable Election Period, complete an application to participate and election of benefits form which the Administrator shall furnish to the Employee. The election made on such form shall be irrevocable until the end of the applicable Plan Year unless the Participant is entitled to change his Benefit elections pursuant to Section 5.4 hereof.

An Eligible Employee shall also be required to execute a Salary Redirection Agreement during the Election Period for the Plan Year during which he wishes to participate in this Plan. Any such Salary Redirection Agreement shall be effective for the first pay period beginning on or after the Employee's effective date of participation pursuant to Section 2.2.

## 2.4 TERMINATION OF PARTICIPATION

A Participant shall no longer participate in this Plan upon the occurrence of any of the following events:

- (a) **Termination of employment.** The Participant's termination of employment, subject to the provisions of Section 2.6;
- (b) **Change in employment status.** The end of the Plan Year during which the Participant became a limited Participant because of a change in employment status pursuant to Section 2.5;
- (c) **Death.** The Participant's death, subject to the provisions of Section 2.7; or
- (d) **Termination of the plan.** The termination of this Plan, subject to the provisions of Section 10.2.

## 2.5 CHANGE OF EMPLOYMENT STATUS

If a Participant ceases to be eligible to participate because of a change in employment status or classification (other than through termination of employment), the Participant shall become a limited Participant in this Plan for the remainder of the Plan Year in which such change of employment status occurs. As a limited Participant, no further Salary Redirection may be made on behalf of the Participant, and, except as otherwise provided herein, all further Benefit elections shall cease, subject to the limited Participant's right to continue coverage under any Insurance Contracts. However, any balances in the limited Participant's Dependent Care Flexible Spending Account may be used during such Plan Year to reimburse the limited Participant for any allowable Employment-Related Dependent Care incurred during the Plan Year. Subject to the provisions of Section 2.6, if the limited Participant later becomes an Eligible Employee, then the limited Participant may again become a full Participant in this Plan, provided he otherwise satisfies the participation requirements set forth in this Article II as if he were a new Employee and made an election in accordance with Section 5.1.

## 2.6 TERMINATION OF EMPLOYMENT

If a Participant's employment with the Employer is terminated for any reason other than death, his participation in the Benefit Options provided under Section 4.1 shall be governed in accordance with the following:

(a) **Insurance Benefit.** With regard to Benefits which are insured, the Participant's participation in the Plan shall cease, subject to the Participant's right to continue coverage under any Insurance Contract for which premiums have already been paid.

(b) **Dependent Care FSA.** With regard to the Dependent Care Flexible Spending Account, the Participant's participation in the Plan shall cease and no further Salary Redirection contributions shall be made. However, such Participant may submit claims for employment related Dependent Care Expense reimbursements for claims incurred up to the date of termination and submitted within 90 days after termination, based on the level of the Participant's Dependent Care Flexible Spending Account as of the date of termination.

(c) **COBRA applicability.** With regard to the Health Flexible Spending Account, the Participant may submit claims for expenses that were incurred during the portion of the Plan Year before the end of the period for which payments to the Health Flexible Spending Account have already been made. Thereafter, the health benefits under this Plan including the Health Flexible Spending Account shall be applied and administered consistent with such further rights a Participant and his Dependents may be entitled to pursuant to Code Section 4980B and Section 11.14 of the Plan.

## 2.7 DEATH

If a Participant dies, his participation in the Plan shall cease. However, such Participant's spouse or Dependents may submit claims for expenses or benefits for the remainder of the Plan Year or until the Cafeteria Plan Benefit Dollars allocated to each specific benefit are exhausted. In no event may reimbursements be paid to someone who is not a spouse or Dependent. If the Plan is subject to the provisions of Code Section 4980B, then those provisions and related regulations shall apply for purposes of the Health Flexible Spending Account.

## ARTICLE III CONTRIBUTIONS TO THE PLAN

### 3.1 EMPLOYER CONTRIBUTION

The Employer shall make available to each Participant who has other medical coverage and who opts out of the Employer's group medical plan an Employer Contribution to be used for any Benefit under the Plan in an amount to be determined by the Employer prior to the beginning of each Plan Year. The Employer's Contribution shall be made on a pro rata basis for each pay period of the Participant.

### 3.2 SALARY REDIRECTION

Any Salary Redirection shall be determined prior to the beginning of a Plan Year (subject to initial elections pursuant to Section 5.1) and prior to the end of the Election Period and shall be irrevocable for such Plan Year. However, a Participant may revoke a Benefit

election or a Salary Redirection Agreement after the Plan Year has commenced and make a new election with respect to the remainder of the Plan Year, if both the revocation and the new election are on account of and consistent with a change in status and such other permitted events as determined under Article V of the Plan and consistent with the rules and regulations of the Department of the Treasury. Salary Redirection amounts shall be contributed on a pro rata basis for each pay period during the Plan Year. All individual Salary Redirection Agreements are deemed to be part of this Plan and incorporated by reference hereunder.

### **3.3 APPLICATION OF CONTRIBUTIONS**

As soon as reasonably practical after each payroll period, the Employer shall apply the Employer Contribution and Salary Redirection to provide the Benefits elected by the affected Participants. Any contribution made or withheld for the Health Flexible Spending Account or Dependent Care Flexible Spending Account shall be credited to such fund or account. Amounts designated for the Participant's Premium Expense Reimbursement Account shall likewise be credited to such account for the purpose of paying Premium Expenses.

### **3.4 PERIODIC CONTRIBUTIONS**

Notwithstanding the requirement provided above and in other Articles of this Plan that Salary Redirections be contributed to the Plan by the Employer on behalf of an Employee on a level and pro rata basis for each payroll period, the Employer and Administrator may implement a procedure in which Salary Redirections are contributed throughout the Plan Year on a periodic basis that is not pro rata for each payroll period. However, with regard to the Health Flexible Spending Account, the payment schedule for the required contributions may not be based on the rate or amount of reimbursements during the Plan Year.

## **ARTICLE IV BENEFITS**

### **4.1 BENEFIT OPTIONS**

Each Participant may elect any one or more of the following optional Benefits:

- (1) Health Flexible Spending Account
- (2) Dependent Care Flexible Spending Account
- (3) Insurance Premium Payment Plan
  - (i) Health Insurance Benefit
- (4) Health Savings Account Benefit

### **4.2 HEALTH FLEXIBLE SPENDING ACCOUNT BENEFIT**

Each Participant may elect to participate in the Health Flexible Spending Account option, in which case Article VI shall apply.

### **4.3 DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT BENEFIT**

Each Participant may elect to participate in the Dependent Care Flexible Spending Account option, in which case Article VII shall apply.

#### 4.4 HEALTH INSURANCE BENEFIT

(a) **Coverage for Participant and Dependents.** Each Participant may elect to be covered under a health Insurance Contract for the Participant, his or her Spouse, and his or her Dependents.

(b) **Employer selects contracts.** The Employer may select suitable health Insurance Contracts for use in providing this health insurance benefit, which policies will provide uniform benefits for all Participants electing this Benefit.

(c) **Contract incorporated by reference.** The rights and conditions with respect to the benefits payable from such health Insurance Contract shall be determined therefrom, and such Insurance Contract shall be incorporated herein by reference.

#### 4.5 HEALTH SAVINGS ACCOUNT BENEFIT

Each Participant may elect to have a portion of his Employer Contributions and Salary Redirections contributed to a Health Savings Account, as defined in Code Section 223. The amounts contributed shall be subject to the terms of the Health Savings Account as established.

#### 4.6 CASH BENEFIT

If a Participant fails to properly make any election of Benefit options or does not elect any Salary Redirections, such Participant shall be deemed to have chosen the Cash Benefit as his sole Benefit option.

#### 4.7 NONDISCRIMINATION REQUIREMENTS

(a) **Intent to be nondiscriminatory.** It is the intent of this Plan to provide benefits to a classification of employees which the Secretary of the Treasury finds not to be discriminatory in favor of the group in whose favor discrimination may not occur under Code Section 125.

(b) **25% concentration test.** It is the intent of this Plan not to provide qualified benefits as defined under Code Section 125 to Key Employees in amounts that exceed 25% of the aggregate of such Benefits provided for all Eligible Employees under the Plan. For purposes of the preceding sentence, qualified benefits shall not include benefits which (without regard to this paragraph) are includible in gross income.

(c) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination or possible taxation to Key Employees or a group of employees in whose favor discrimination may not occur in violation of Code Section 125, it may, but shall not be required to, reject any election or reduce contributions or non-taxable Benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reject any election or reduce contributions or non-taxable Benefits, it shall be done in the following manner. First, the non-taxable Benefits of the affected Participant (either an employee who is highly compensated or a Key Employee, whichever is applicable) who has the highest amount of non-taxable Benefits for the Plan Year shall have his non-taxable Benefits reduced until the

discrimination tests set forth in this Section are satisfied or until the amount of his non-taxable Benefits equals the non-taxable Benefits of the affected Participant who has the second highest amount of non-taxable Benefits. This process shall continue until the nondiscrimination tests set forth in this Section are satisfied. With respect to any affected Participant who has had Benefits reduced pursuant to this Section, the reduction shall be made proportionately among Health Flexible Spending Account Benefits and Dependent Care Flexible Spending Account Benefits, and once all these Benefits are expended, proportionately among insured Benefits. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited and deposited into the benefit plan surplus.

## **ARTICLE V PARTICIPANT ELECTIONS**

### **5.1 INITIAL ELECTIONS**

An Employee who meets the eligibility requirements of Section 2.1 on the first day of, or during, a Plan Year may elect to participate in this Plan for all or the remainder of such Plan Year, provided he elects to do so on or before his effective date of participation pursuant to Section 2.2.

### **5.2 SUBSEQUENT ANNUAL ELECTIONS**

During the Election Period prior to each subsequent Plan Year, each Participant shall be given the opportunity to elect, on an election of benefits form to be provided by the Administrator, which Benefit options he wishes to select. Any such election shall be effective for any Benefit expenses incurred during the Plan Year which follows the end of the Election Period. With regard to subsequent annual elections, the following options shall apply:

- (a) A Participant or Employee who failed to initially elect to participate may elect different or new Benefits under the Plan during the Election Period;
- (b) A Participant may terminate his participation in the Plan by notifying the Administrator in writing during the Election Period that he does not want to participate in the Plan for the next Plan Year;
- (c) An Employee who elects not to participate for the Plan Year following the Election Period will have to wait until the next Election Period before again electing to participate in the Plan, except as provided for in Section 5.4.

### **5.3 FAILURE TO ELECT**

With regard to Benefits available under the Plan for which no Premium Expenses apply, any Participant who fails to complete a new benefit election form pursuant to Section 5.2 by the end of the applicable Election Period shall be deemed to have elected not to participate in the Plan for the upcoming Plan Year. No further Salary Redirections shall therefore be authorized or made for the subsequent Plan Year for such Benefits.

With regard to Benefits available under the Plan for which Premium Expenses apply, any Participant who fails to complete a new benefit election form pursuant to Section 5.2 by the end of the applicable Election Period shall be deemed to have made the same Benefit elections as are then in effect for the current Plan Year. The Participant shall also be deemed to have elected Salary Redirection in an amount necessary to purchase such Benefit options.

## 5.4 CHANGE IN STATUS

(a) **Change in status defined.** Any Participant may change a Benefit election after the Plan Year (to which such election relates) has commenced and make new elections with respect to the remainder of such Plan Year if, under the facts and circumstances, the changes are necessitated by and are consistent with a change in status which is acceptable under rules and regulations adopted by the Department of the Treasury, the provisions of which are incorporated by reference. Notwithstanding anything herein to the contrary, if the rules and regulations conflict, then such rules and regulations shall control.

In general, a change in election is not consistent if the change in status is the Participant's divorce, annulment or legal separation from a Spouse, the death of a Spouse or Dependent, or a Dependent ceasing to satisfy the eligibility requirements for coverage, and the Participant's election under the Plan is to cancel accident or health insurance coverage for any individual other than the one involved in such event. In addition, if the Participant, Spouse or Dependent gains or loses eligibility for coverage, then a Participant's election under the Plan to cease or decrease coverage for that individual under the Plan corresponds with that change in status only if coverage for that individual becomes applicable or is increased under the family member plan.

Regardless of the consistency requirement, if the individual, the individual's Spouse, or Dependent becomes eligible for continuation coverage under the Employer's group health plan as provided in Code Section 4980B or any similar state law, then the individual may elect to increase payments under this Plan in order to pay for the continuation coverage. However, this does not apply for COBRA eligibility due to divorce, annulment or legal separation.

Any new election shall be effective at such time as the Administrator shall prescribe, but not earlier than the first pay period beginning after the election form is completed and returned to the Administrator. For the purposes of this subsection, a change in status shall only include the following events or other events permitted by Treasury regulations:

- (1) **Legal Marital Status:** events that change a Participant's legal marital status, including marriage, divorce, death of a Spouse, legal separation or annulment;
- (2) **Number of Dependents:** Events that change a Participant's number of Dependents, including birth, adoption, placement for adoption, or death of a Dependent;
- (3) **Employment Status:** Any of the following events that change the employment status of the Participant, Spouse, or Dependent: termination or commencement of employment, a strike or lockout, commencement or return from an unpaid leave of absence, or a change in worksite. In addition, if the eligibility conditions of this Plan or other employee benefit plan of the Employer of the Participant, Spouse, or Dependent depend on the employment status of that individual and there is a change in that individual's employment status with the consequence that the individual becomes (or ceases to be) eligible under the plan, then that change constitutes a change in employment under this subsection;

(4) Dependent satisfies or ceases to satisfy the eligibility requirements: An event that causes the Participant's Dependent to satisfy or cease to satisfy the requirements for coverage due to attainment of age, student status, or any similar circumstance; and

(5) Residency: A change in the place of residence of the Participant, Spouse or Dependent, that would lead to a change in status (such as a loss of HMO coverage).

For the Dependent Care Flexible Spending Account, a Dependent becoming or ceasing to be a "Qualifying Dependent" as defined under Code Section 21(b) shall also qualify as a change in status.

(b) **Special enrollment rights.** Notwithstanding subsection (a), the Participants may change an election for accident or health coverage during a Plan Year and make a new election that corresponds with the special enrollment rights provided in Code Section 9801(f). Such change shall take place on a prospective basis, unless otherwise required by Code Section 9801(f) to be retroactive.

(c) **Qualified Medical Support Order.** Notwithstanding subsection (a), in the event of a judgment, decree, or order (including approval of a property settlement) ("order") resulting from a divorce, legal separation, annulment, or change in legal custody which requires accident or health coverage for a Participant's child (including a foster child who is a Dependent of the Participant):

(1) The Plan may change an election to provide coverage for the child if the order requires coverage under the Participant's plan; or

(2) The Participant shall be permitted to change an election to cancel coverage for the child if the order requires the former Spouse to provide coverage for such child, under that individual's plan and such coverage is actually provided.

(d) **Medicare or Medicaid.** Notwithstanding subsection (a), a Participant may change elections to cancel accident or health coverage for the Participant or the Participant's Spouse or Dependent if the Participant or the Participant's Spouse or Dependent is enrolled in the accident or health coverage of the Employer and becomes entitled to coverage (i.e., enrolled) under Part A or Part B of the Title XVIII of the Social Security Act (Medicare) or Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under Section 1928 of the Social Security Act (the program for distribution of pediatric vaccines). If the Participant or the Participant's Spouse or Dependent who has been entitled to Medicaid or Medicare coverage loses eligibility, that individual may prospectively elect coverage under the Plan if a benefit package option under the Plan provides similar coverage.

(e) **Cost increase or decrease.** If the cost of a Benefit provided under the Plan increases or decreases during a Plan Year, then the Plan shall automatically increase or decrease, as the case may be, the Salary Redirections of all affected Participants for such Benefit. Alternatively, if the cost of a benefit package option increases significantly, the Administrator shall permit the affected Participants to either make corresponding changes in their payments or revoke their elections and, in lieu thereof, receive on a prospective basis coverage under

another benefit package option with similar coverage, or drop coverage prospectively if there is no benefit package option with similar coverage.

A cost increase or decrease refers to an increase or decrease in the amount of elective contributions under the Plan, whether resulting from an action taken by the Participants or an action taken by the Employer.

(f) **Loss of coverage.** If the coverage under a Benefit is significantly curtailed or ceases during a Plan Year, affected Participants may revoke their elections of such Benefit and, in lieu thereof, elect to receive on a prospective basis coverage under another plan with similar coverage, or drop coverage prospectively if no similar coverage is offered.

(g) **Addition of a new benefit.** If, during the period of coverage, a new benefit package option or other coverage option is added, an existing benefit package option is significantly improved, or an existing benefit package option or other coverage option is eliminated, then the affected Participants may elect the newly-added option, or elect another option if an option has been eliminated prospectively and make corresponding election changes with respect to other benefit package options providing similar coverage. In addition, those Eligible Employees who are not participating in the Plan may opt to become Participants and elect the new or newly improved benefit package option.

(h) **Loss of coverage under certain other plans.** A Participant may make a prospective election change to add group health coverage for the Participant, the Participant's Spouse or Dependent if such individual loses group health coverage sponsored by a governmental or educational institution, including a state children's health insurance program under the Social Security Act, the Indian Health Service or a health program offered by an Indian tribal government, a state health benefits risk pool, or a foreign government group health plan.

(i) **Change of coverage due to change under certain other plans.** A Participant may make a prospective election change that is on account of and corresponds with a change made under the plan of a Spouse's, former Spouse's or Dependent's employer if (1) the cafeteria plan or other benefits plan of the Spouse's, former Spouse's or Dependent's employer permits its participants to make a change; or (2) the cafeteria plan permits participants to make an election for a period of coverage that is different from the period of coverage under the cafeteria plan of a Spouse's, former Spouse's or Dependent's employer.

(j) **Change in dependent care provider.** A Participant may make a prospective election change that is on account of and corresponds with a change by the Participant in the dependent care provider. The availability of dependent care services from a new childcare provider is similar to a new benefit package option becoming available. A cost change is allowable in the Dependent Care Flexible Spending Account only if the cost change is imposed by a dependent care provider who is not related to the Participant, as defined in Code Section 152(a)(1) through (8).

(k) **Health FSA cannot change due to insurance change.** A Participant shall not be permitted to change an election to the Health Flexible Spending Account as a result of a cost or coverage change under any health insurance benefits.

(l) **Health Savings Account changes.** With regard to the Health Savings Account Benefit specified in Section 4.5, a Participant who has elected to make elective contributions under such arrangement may modify or revoke the election prospectively, provided such change is consistent with Code Section 223 and the Treasury regulations thereunder.

## ARTICLE VI HEALTH FLEXIBLE SPENDING ACCOUNT

### 6.1 ESTABLISHMENT OF PLAN

This Health Flexible Spending Account is intended to qualify as a medical reimbursement plan under Code Section 105 and shall be interpreted in a manner consistent with such Code Section and the Treasury regulations thereunder. Participants who elect to participate in this Health Flexible Spending Account may submit claims for the reimbursement of Medical Expenses. All amounts reimbursed shall be periodically paid from amounts allocated to the Health Flexible Spending Account. Periodic payments reimbursing Participants from the Health Flexible Spending Account shall in no event occur less frequently than monthly.

### 6.2 DEFINITIONS

For the purposes of this Article and the Cafeteria Plan, the terms below have the following meaning:

(a) **"Health Flexible Spending Account"** means the account established for Participants pursuant to this Plan to which part of their Cafeteria Plan Benefit Dollars may be allocated and from which all allowable Medical Expenses incurred by a Participant, his or her Spouse and his or her Dependents may be reimbursed.

(b) **"Highly Compensated Participant"** means, for the purposes of this Article and determining discrimination under Code Section 105(h), a participant who is:

- (1) one of the 5 highest paid officers;
- (2) a shareholder who owns (or is considered to own applying the rules of Code Section 318) more than 10 percent in value of the stock of the Employer; or
- (3) among the highest paid 25 percent of all Employees (other than exclusions permitted by Code Section 105(h)(3)(B) for those individuals who are not Participants).

(c) **"Medical Expenses"** means any expense for medical care within the meaning of the term "medical care" as defined in Code Section 213(d) and as allowed under Code Section 105 and the rulings and Treasury regulations thereunder, and not otherwise used by the Participant as a deduction in determining his tax liability under the Code. "Medical Expenses" can be incurred by the Participant, his or her Spouse and his or her Dependents.

A Participant who contributes to a Health Savings Account may only be reimbursed for medical expenses that are considered to be for dental, vision

and/or "preventative care" or other expenses as allowed under Code Section 223.

A Participant may not be reimbursed for the cost of other health coverage such as premiums paid under plans maintained by the employer of the Participant's Spouse or individual policies maintained by the Participant or his Spouse or Dependent.

A Participant may not be reimbursed for "qualified long-term care services" as defined in Code Section 7702B(c).

(d) The definitions of Article I are hereby incorporated by reference to the extent necessary to interpret and apply the provisions of this Health Flexible Spending Account.

### 6.3 FORFEITURES

The amount in the Health Flexible Spending Account as of the end of any Plan Year (and after the processing of all claims for such Plan Year pursuant to Section 6.7 hereof) shall be forfeited and credited to the benefit plan surplus. In such event, the Participant shall have no further claim to such amount for any reason, subject to Section 8.2.

### 6.4 LIMITATION ON ALLOCATIONS

Notwithstanding any provision contained in this Health Flexible Spending Account to the contrary, no more than \$5,000 may be allocated to the Health Flexible Spending Account by a Participant in or on account of any Plan Year.

### 6.5 NONDISCRIMINATION REQUIREMENTS

(a) **Intent to be nondiscriminatory.** It is the intent of this Health Flexible Spending Account not to discriminate in violation of the Code and the Treasury regulations thereunder.

(b) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination under this Health Flexible Spending Account, it may, but shall not be required to, reject any elections or reduce contributions or Benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reject any elections or reduce contributions or Benefits, it shall be done in the following manner. First, the Benefits designated for the Health Flexible Spending Account by the member of the group in whose favor discrimination may not occur pursuant to Code Section 105 that elected to contribute the highest amount to the fund for the Plan Year shall be reduced until the nondiscrimination tests set forth in this Section or the Code are satisfied, or until the amount designated for the fund equals the amount designated for the fund by the next member of the group in whose favor discrimination may not occur pursuant to Code Section 105 who has elected the second highest contribution to the Health Flexible Spending Account for the Plan Year. This process shall continue until the nondiscrimination tests set forth in this Section or the Code are satisfied. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited and credited to the benefit plan surplus.

## 6.6 COORDINATION WITH CAFETERIA PLAN

All Participants under the Cafeteria Plan are eligible to receive Benefits under this Health Flexible Spending Account. The enrollment under the Cafeteria Plan shall constitute enrollment under this Health Flexible Spending Account. In addition, other matters concerning contributions, elections and the like shall be governed by the general provisions of the Cafeteria Plan.

## 6.7 HEALTH FLEXIBLE SPENDING ACCOUNT CLAIMS

(a) **Expenses must be incurred during Plan Year.** All Medical Expenses incurred by a Participant, his or her Spouse and his or her Dependents shall be reimbursed during the Plan Year subject to Section 2.6, even though the submission of such a claim occurs after his participation hereunder ceases; but provided that the Medical Expenses were incurred during the applicable Plan Year. Medical Expenses are treated as having been incurred when the Participant is provided with the medical care that gives rise to the medical expenses, not when the Participant is formally billed or charged for, or pays for the medical care.

(b) **Reimbursement available throughout Plan Year.** The Administrator shall direct the reimbursement to each eligible Participant for all allowable Medical Expenses, up to a maximum of the amount designated by the Participant for the Health Flexible Spending Account for the Plan Year. Reimbursements shall be made available to the Participant throughout the year without regard to the level of Cafeteria Plan Benefit Dollars which have been allocated to the fund at any given point in time. Furthermore, a Participant shall be entitled to reimbursements only for amounts in excess of any payments or other reimbursements under any health care plan covering the Participant and/or his Spouse or Dependents.

(c) **Payments.** Reimbursement payments under this Plan shall be made directly to the Participant. However, in the Administrator's discretion, payments may be made directly to the service provider. The application for payment or reimbursement shall be made to the Administrator on an acceptable form within a reasonable time of incurring the debt or paying for the service. The application shall include a written statement from an independent third party stating that the Medical Expense has been incurred and the amount of such expense. Furthermore, the Participant shall provide a written statement that the Medical Expense has not been reimbursed or is not reimbursable under any other health plan coverage and, if reimbursed from the Health Flexible Spending Account, such amount will not be claimed as a tax deduction. The Administrator shall retain a file of all such applications.

(d) **Grace Period.** Notwithstanding anything in this Section to the contrary, Medical Expenses incurred during the Grace Period, up to the remaining account balance, shall also be deemed to have been incurred during the Plan Year to which the Grace Period relates.

(e) **Claims for reimbursement.** Claims for the reimbursement of Medical Expenses incurred in any Plan Year shall be paid as soon after a claim has been filed as is administratively practicable; provided however, that if a Participant fails to submit a claim within 15 days after the end of the Grace Period, those Medical Expense claims shall not be considered for reimbursement by the Administrator. However, if a Participant terminates employment during the

Plan Year, claims for the reimbursement of Medical Expenses must be submitted within 90 days after termination of employment.

## ARTICLE VII DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT

### 7.1 ESTABLISHMENT OF ACCOUNT

This Dependent Care Flexible Spending Account is intended to qualify as a program under Code Section 129 and shall be interpreted in a manner consistent with such Code Section. Participants who elect to participate in this program may submit claims for the reimbursement of Employment-Related Dependent Care Expenses. All amounts reimbursed shall be paid from amounts allocated to the Participant's Dependent Care Flexible Spending Account.

### 7.2 DEFINITIONS

For the purposes of this Article and the Cafeteria Plan the terms below shall have the following meaning:

(a) **"Dependent Care Flexible Spending Account"** means the account established for a Participant pursuant to this Article to which part of his Cafeteria Plan Benefit Dollars may be allocated and from which Employment-Related Dependent Care Expenses of the Participant may be reimbursed for the care of the Qualifying Dependents of Participants.

(b) **"Earned Income"** means earned income as defined under Code Section 32(c)(2), but excluding such amounts paid or incurred by the Employer for dependent care assistance to the Participant.

(c) **"Employment-Related Dependent Care Expenses"** means the amounts paid for expenses of a Participant for those services which if paid by the Participant would be considered employment related expenses under Code Section 21(b)(2). Generally, they shall include expenses for household services and for the care of a Qualifying Dependent, to the extent that such expenses are incurred to enable the Participant to be gainfully employed for any period for which there are one or more Qualifying Dependents with respect to such Participant. Employment-Related Dependent Care Expenses are treated as having been incurred when the Participant's Qualifying Dependents are provided with the dependent care that gives rise to the Employment-Related Dependent Care Expenses, not when the Participant is formally billed or charged for, or pays for the dependent care. The determination of whether an amount qualifies as an Employment-Related Dependent Care Expense shall be made subject to the following rules:

(1) If such amounts are paid for expenses incurred outside the Participant's household, they shall constitute Employment-Related Dependent Care Expenses only if incurred for a Qualifying Dependent as defined in Section 7.2(d)(1) (or deemed to be, as described in Section 7.2(d)(1) pursuant to Section 7.2(d)(3)), or for a Qualifying Dependent as defined in Section 7.2(d)(2) (or deemed to be, as described in Section 7.2(d)(2) pursuant to Section 7.2(d)(3)) who regularly spends at least 8 hours per day in the Participant's household;

(2) If the expense is incurred outside the Participant's home at a facility that provides care for a fee, payment, or grant for more than 6 individuals who do not regularly reside at the facility, the facility must comply with all applicable state and local laws and regulations, including licensing requirements, if any; and

(3) Employment-Related Dependent Care Expenses of a Participant shall not include amounts paid or incurred to a child of such Participant who is under the age of 19 or to an individual who is a Dependent of such Participant or such Participant's Spouse.

(d) **"Qualifying Dependent"** means, for Dependent Care Flexible Spending Account purposes,

(1) a Participant's Dependent (as defined in Code Section 152(a)(1)) who has not attained age 13;

(2) a Dependent or the Spouse of a Participant who is physically or mentally incapable of caring for himself or herself and has the same principal place of abode as the Participant for more than one-half of such taxable year; or

(3) a child that is deemed to be a Qualifying Dependent described in paragraph (1) or (2) above, whichever is appropriate, pursuant to Code Section 21(e)(5).

(e) The definitions of Article I are hereby incorporated by reference to the extent necessary to interpret and apply the provisions of this Dependent Care Flexible Spending Account.

### **7.3 DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS**

The Administrator shall establish a Dependent Care Flexible Spending Account for each Participant who elects to apply Cafeteria Plan Benefit Dollars to Dependent Care Flexible Spending Account benefits.

### **7.4 INCREASES IN DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS**

A Participant's Dependent Care Flexible Spending Account shall be increased each pay period by the portion of Cafeteria Plan Benefit Dollars that he has elected to apply toward his Dependent Care Flexible Spending Account pursuant to elections made under Article V hereof.

### **7.5 DECREASES IN DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS**

A Participant's Dependent Care Flexible Spending Account shall be reduced by the amount of any Employment-Related Dependent Care Expense reimbursements paid or incurred on behalf of a Participant pursuant to Section 7.12 hereof.

### **7.6 ALLOWABLE DEPENDENT CARE REIMBURSEMENT**

Subject to limitations contained in Section 7.9 of this Program, and to the extent of the amount contained in the Participant's Dependent Care Flexible Spending Account, a Participant who incurs Employment-Related Dependent Care Expenses shall be entitled to

receive from the Employer full reimbursement for the entire amount of such expenses incurred during the Plan Year or portion thereof during which he is a Participant.

#### **7.7 ANNUAL STATEMENT OF BENEFITS**

On or before January 31st of each calendar year, the Employer shall furnish to each Employee who was a Participant and received benefits under Section 7.6 during the prior calendar year, a statement of all such benefits paid to or on behalf of such Participant during the prior calendar year.

#### **7.8 FORFEITURES**

The amount in a Participant's Dependent Care Flexible Spending Account as of the end of any Plan Year (and after the processing of all claims for such Plan Year pursuant to Section 7.12 hereof) shall be forfeited and credited to the benefit plan surplus. In such event, the Participant shall have no further claim to such amount for any reason.

#### **7.9 LIMITATION ON PAYMENTS**

Notwithstanding any provision contained in this Article to the contrary, amounts paid from a Participant's Dependent Care Flexible Spending Account in or on account of any taxable year of the Participant shall not exceed the lesser of the Earned Income limitation described in Code Section 129(b) or \$5,000 (\$2,500 if a separate tax return is filed by a Participant who is married as determined under the rules of paragraphs (3) and (4) of Code Section 21(e)).

#### **7.10 NONDISCRIMINATION REQUIREMENTS**

(a) **Intent to be nondiscriminatory.** It is the intent of this Dependent Care Flexible Spending Account that contributions or benefits not discriminate in favor of the group of employees in whose favor discrimination may not occur under Code Section 129(d).

(b) **25% test for shareholders.** It is the intent of this Dependent Care Flexible Spending Account that not more than 25 percent of the amounts paid by the Employer for dependent care assistance during the Plan Year will be provided for the class of individuals who are shareholders or owners (or their Spouses or Dependents), each of whom (on any day of the Plan Year) owns more than 5 percent of the stock or of the capital or profits interest in the Employer.

(c) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination or possible taxation to a group of employees in whose favor discrimination may not occur in violation of Code Section 129 it may, but shall not be required to, reject any elections or reduce contributions or non-taxable benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reject any elections or reduce contributions or Benefits, it shall be done in the following manner. First, the Benefits designated for the Dependent Care Flexible Spending Account by the affected Participant that elected to contribute the highest amount to such account for the Plan Year shall be reduced until the nondiscrimination tests set forth in this Section are satisfied, or until the amount designated for the account equals the amount designated for the account of the affected Participant who has elected the second highest contribution to the Dependent Care Flexible

Spending Account for the Plan Year. This process shall continue until the nondiscrimination tests set forth in this Section are satisfied. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited.

#### **7.11 COORDINATION WITH CAFETERIA PLAN**

All Participants under the Cafeteria Plan are eligible to receive Benefits under this Dependent Care Flexible Spending Account. The enrollment and termination of participation under the Cafeteria Plan shall constitute enrollment and termination of participation under this Dependent Care Flexible Spending Account. In addition, other matters concerning contributions, elections and the like shall be governed by the general provisions of the Cafeteria Plan.

#### **7.12 DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT CLAIMS**

The Administrator shall direct the payment of all such Dependent Care claims to the Participant upon the presentation to the Administrator of documentation of such expenses in a form satisfactory to the Administrator. However, in the Administrator's discretion, payments may be made directly to the service provider. In its discretion in administering the Plan, the Administrator may utilize forms and require documentation of costs as may be necessary to verify the claims submitted. At a minimum, the form shall include a statement from an independent third party as proof that the expense has been incurred and the amount of such expense. In addition, the Administrator may require that each Participant who desires to receive reimbursement under this Program for Employment-Related Dependent Care Expenses submit a statement which may contain some or all of the following information:

- (a) The Dependent or Dependents for whom the services were performed;
- (b) The nature of the services performed for the Participant, the cost of which he wishes reimbursement;
- (c) The relationship, if any, of the person performing the services to the Participant;
- (d) If the services are being performed by a child of the Participant, the age of the child;
- (e) A statement as to where the services were performed;
- (f) If any of the services were performed outside the home, a statement as to whether the Dependent for whom such services were performed spends at least 8 hours a day in the Participant's household;
- (g) If the services were being performed in a day care center, a statement:
  - (1) that the day care center complies with all applicable laws and regulations of the state of residence,
  - (2) that the day care center provides care for more than 6 individuals (other than individuals residing at the center), and
  - (3) of the amount of fee paid to the provider.

- (h) If the Participant is married, a statement containing the following:
  - (1) the Spouse's salary or wages if he or she is employed, or
  - (2) if the Participant's Spouse is not employed, that
    - (i) he or she is incapacitated, or
    - (ii) he or she is a full-time student attending an educational institution and the months during the year which he or she attended such institution.

(i) **Grace Period.** Notwithstanding anything in this Section to the contrary, Employment-Related Dependent Care Expenses incurred during the Grace Period, up to the remaining account balance, shall also be deemed to have been incurred during the Plan Year to which the Grace Period relates.

(j) **Claims for reimbursement.** If a Participant fails to submit a claim within 15 days after the end of the Grace Period, those claims shall not be considered for reimbursement by the Administrator. However, if a Participant terminates employment during the Plan Year, claims for reimbursement must be submitted within 90 days after termination of employment.

## ARTICLE VIII BENEFITS AND RIGHTS

### 8.1 CLAIM FOR BENEFITS

(a) **Insurance claims.** Any claim for Benefits underwritten by Insurance Contract(s) shall be made to the Insurer. If the Insurer denies any claim, the Participant or beneficiary shall follow the Insurer's claims review procedure.

(b) **Dependent Care Flexible Spending Account or Health Flexible Spending Account claims.** Any claim for Dependent Care Flexible Spending Account or Health Flexible Spending Account Benefits shall be made to the Administrator. For the Health Flexible Spending Account, if a Participant fails to submit a claim within 15 days after the end of the Grace Period, those claims shall not be considered for reimbursement by the Administrator. However, if a Participant terminates employment during the Plan Year, claims for the reimbursement of Medical Expenses must be submitted within 90 days after termination of employment. For the Dependent Care Flexible Spending Account, if a Participant fails to submit a claim within 15 days after the end of the Grace Period, those claims shall not be considered for reimbursement by the Administrator. However, if a Participant terminates employment during the Plan Year, claims for reimbursement must be submitted within 90 days after termination of employment. If the Administrator denies a claim, the Administrator may provide notice to the Participant or beneficiary, in writing, within 90 days after the claim is filed unless special circumstances require an extension of time for processing the claim. The notice of a denial of a claim shall be written in a manner calculated to be understood by the claimant and shall set forth:

- (1) specific references to the pertinent Plan provisions on which the denial is based;

(2) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation as to why such information is necessary; and

(3) an explanation of the Plan's claim procedure.

(c) **Appeal.** Within 60 days after receipt of the above material, the claimant shall have a reasonable opportunity to appeal the claim denial to the Administrator for a full and fair review. The claimant or his duly authorized representative may:

(1) request a review upon written notice to the Administrator;

(2) review pertinent documents; and

(3) submit issues and comments in writing.

(d) **Review of appeal.** A decision on the review by the Administrator will be made not later than 60 days after receipt of a request for review, unless special circumstances require an extension of time for processing (such as the need to hold a hearing), in which event a decision should be rendered as soon as possible, but in no event later than 120 days after such receipt. The decision of the Administrator shall be written and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, with specific references to the pertinent Plan provisions on which the decision is based.

(e) **Forfeitures.** Any balance remaining in the Participant's Dependent Care Flexible Spending Account or Health Flexible Spending Account as of the end of the time for claims reimbursement for each Plan Year and Grace Period (if applicable) shall be forfeited and deposited in the benefit plan surplus of the Employer pursuant to Section 6.3 or Section 7.8, whichever is applicable, unless the Participant had made a claim for such Plan Year, in writing, which has been denied or is pending; in which event the amount of the claim shall be held in his account until the claim appeal procedures set forth above have been satisfied or the claim is paid. If any such claim is denied on appeal, the amount held beyond the end of the Plan Year shall be forfeited and credited to the benefit plan surplus.

## 8.2 APPLICATION OF BENEFIT PLAN SURPLUS

Any forfeited amounts credited to the benefit plan surplus by virtue of the failure of a Participant to incur a qualified expense or seek reimbursement in a timely manner may, but need not be, separately accounted for after the close of the Plan Year (or after such further time specified herein for the filing of claims) in which such forfeitures arose. In no event shall such amounts be carried over to reimburse a Participant for expenses incurred during a subsequent Plan Year for the same or any other Benefit available under the Plan; nor shall amounts forfeited by a particular Participant be made available to such Participant in any other form or manner, except as permitted by Treasury regulations. Amounts in the benefit plan surplus shall be used to defray any administrative costs and experience losses or used to provide additional benefits under the Plan. No amounts attributable to the Health Savings Account shall be subject to the benefit plan surplus.

## **ARTICLE IX ADMINISTRATION**

### **9.1 PLAN ADMINISTRATION**

The operation of the Plan shall be under the supervision of the Administrator. It shall be a principal duty of the Administrator to see that the Plan is carried out in accordance with its terms, and for the exclusive benefit of Employees entitled to participate in the Plan. The Administrator shall have full power to administer the Plan in all of its details, subject, however, to the pertinent provisions of the Code. The Administrator's powers shall include, but shall not be limited to the following authority, in addition to all other powers provided by this Plan:

- (a) To make and enforce such rules and regulations as the Administrator deems necessary or proper for the efficient administration of the Plan;
- (b) To interpret the Plan, the Administrator's interpretations thereof in good faith to be final and conclusive on all persons claiming benefits by operation of the Plan;
- (c) To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan and to receive benefits provided by operation of the Plan;
- (d) To reject elections or to limit contributions or Benefits for certain highly compensated participants if it deems such to be desirable in order to avoid discrimination under the Plan in violation of applicable provisions of the Code;
- (e) To provide Employees with a reasonable notification of their benefits available by operation of the Plan;
- (f) To approve reimbursement requests and to authorize the payment of benefits;
- (g) To appoint such agents, counsel, accountants, consultants, and actuaries as may be required to assist in administering the Plan.

Any procedure, discretionary act, interpretation or construction taken by the Administrator shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to comply with the terms of Code Section 125 and the Treasury regulations thereunder.

### **9.2 EXAMINATION OF RECORDS**

The Administrator shall make available to each Participant, Eligible Employee and any other Employee of the Employer such records as pertain to their interest under the Plan for examination at reasonable times during normal business hours.

### **9.3 PAYMENT OF EXPENSES**

Any reasonable administrative expenses shall be paid by the Employer unless the Employer determines that administrative costs shall be borne by the Participants under the Plan or by any Trust Fund which may be established hereunder. The Administrator may impose reasonable conditions for payments, provided that such conditions shall not discriminate in favor of highly compensated employees.

#### **9.4 INSURANCE CONTROL CLAUSE**

In the event of a conflict between the terms of this Plan and the terms of an Insurance Contract of an independent third party Insurer whose product is then being used in conjunction with this Plan, the terms of the Insurance Contract shall control as to those Participants receiving coverage under such Insurance Contract. For this purpose, the Insurance Contract shall control in defining the persons eligible for insurance, the dates of their eligibility, the conditions which must be satisfied to become insured, if any, the benefits Participants are entitled to and the circumstances under which insurance terminates.

#### **9.5 INDEMNIFICATION OF ADMINISTRATOR**

The Employer agrees to indemnify and to defend to the fullest extent permitted by law any Employee serving as the Administrator or as a member of a committee designated as Administrator (including any Employee or former Employee who previously served as Administrator or as a member of such committee) against all liabilities, damages, costs and expenses (including attorney's fees and amounts paid in settlement of any claims approved by the Employer) occasioned by any act or omission to act in connection with the Plan, if such act or omission is in good faith.

### **ARTICLE X AMENDMENT OR TERMINATION OF PLAN**

#### **10.1 AMENDMENT**

The Employer, at any time or from time to time, may amend any or all of the provisions of the Plan without the consent of any Employee or Participant. No amendment shall have the effect of modifying any benefit election of any Participant in effect at the time of such amendment, unless such amendment is made to comply with Federal, state or local laws, statutes or regulations.

#### **10.2 TERMINATION**

The Employer is establishing this Plan with the intent that it will be maintained for an indefinite period of time. Notwithstanding the foregoing, the Employer reserves the right to terminate this Plan, in whole or in part, at any time. In the event the Plan is terminated, no further contributions shall be made. Benefits under any Insurance Contract shall be paid in accordance with the terms of the Insurance Contract.

No further additions shall be made to the Health Flexible Spending Account or Dependent Care Flexible Spending Account, but all payments from such fund shall continue to be made according to the elections in effect until 90 days after the termination date of the Plan. Any amounts remaining in any such fund or account as of the end of such period shall be forfeited and deposited in the benefit plan surplus after the expiration of the filing period.

## **ARTICLE XI MISCELLANEOUS**

### **11.1 PLAN INTERPRETATION**

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner. This Plan shall be read in its entirety and not severed except as provided in Section 11.12.

### **11.2 GENDER AND NUMBER**

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

### **11.3 WRITTEN DOCUMENT**

This Plan, in conjunction with any separate written document which may be required by law, is intended to satisfy the written Plan requirement of Code Section 125 and any Treasury regulations thereunder relating to cafeteria plans.

### **11.4 EXCLUSIVE BENEFIT**

This Plan shall be maintained for the exclusive benefit of the Employees who participate in the Plan.

### **11.5 PARTICIPANT'S RIGHTS**

This Plan shall not be deemed to constitute an employment contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon him as a Participant of this Plan.

### **11.6 ACTION BY THE EMPLOYER**

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

### **11.7 EMPLOYER'S PROTECTIVE CLAUSES**

(a) **Insurance purchase.** Upon the failure of either the Participant or the Employer to obtain the insurance contemplated by this Plan (whether as a result of negligence, gross neglect or otherwise), the Participant's Benefits shall be limited to the insurance premium(s), if any, that remained unpaid for the period in question and the actual insurance proceeds, if any, received by the Employer or the Participant as a result of the Participant's claim.

(b) **Validity of insurance contract.** The Employer shall not be responsible for the validity of any Insurance Contract issued hereunder or for the failure on the part of the Insurer to make payments provided for under any

Insurance Contract. Once insurance is applied for or obtained, the Employer shall not be liable for any loss which may result from the failure to pay Premiums to the extent Premium notices are not received by the Employer.

#### **11.8 NO GUARANTEE OF TAX CONSEQUENCES**

Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under the Plan will be excludable from the Participant's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant. It shall be the obligation of each Participant to determine whether each payment under the Plan is excludable from the Participant's gross income for federal and state income tax purposes, and to notify the Employer if the Participant has reason to believe that any such payment is not so excludable. Notwithstanding the foregoing, the rights of Participants under this Plan shall be legally enforceable.

#### **11.9 INDEMNIFICATION OF EMPLOYER BY PARTICIPANTS**

If any Participant receives one or more payments or reimbursements under the Plan that are not for a permitted Benefit, such Participant shall indemnify and reimburse the Employer for any liability it may incur for failure to withhold federal or state income tax or Social Security tax from such payments or reimbursements. However, such indemnification and reimbursement shall not exceed the amount of additional federal and state income tax (plus any penalties) that the Participant would have owed if the payments or reimbursements had been made to the Participant as regular cash compensation, plus the Participant's share of any Social Security tax that would have been paid on such compensation, less any such additional income and Social Security tax actually paid by the Participant.

#### **11.10 FUNDING**

Unless otherwise required by law, contributions to the Plan need not be placed in trust or dedicated to a specific Benefit, but may instead be considered general assets of the Employer. Furthermore, and unless otherwise required by law, nothing herein shall be construed to require the Employer or the Administrator to maintain any fund or segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in, any fund, account or asset of the Employer from which any payment under the Plan may be made.

#### **11.11 GOVERNING LAW**

This Plan is governed by the Code and the Treasury regulations issued thereunder (as they might be amended from time to time). In no event shall the Employer guarantee the favorable tax treatment sought by this Plan. To the extent not preempted by Federal law, the provisions of this Plan shall be construed, enforced and administered according to the laws of the State of Michigan.

#### **11.12 SEVERABILITY**

If any provision of the Plan is held invalid or unenforceable, its invalidity or unenforceability shall not affect any other provisions of the Plan, and the Plan shall be construed and enforced as if such provision had not been included herein.

### **11.13 CAPTIONS**

The captions contained herein are inserted only as a matter of convenience and for reference, and in no way define, limit, enlarge or describe the scope or intent of the Plan, nor in any way shall affect the Plan or the construction of any provision thereof.

### **11.14 CONTINUATION OF COVERAGE (COBRA)**

Notwithstanding anything in the Plan to the contrary, in the event any benefit under this Plan subject to the continuation coverage requirement of Code Section 4980B becomes unavailable, each Participant will be entitled to continuation coverage as prescribed in Code Section 4980B, and related regulations. If during the Plan Year, the Employer employs fewer than twenty (20) employees on a typical business day, this Section shall not apply.

### **11.15 FAMILY AND MEDICAL LEAVE ACT (FMLA)**

Notwithstanding anything in the Plan to the contrary, in the event any benefit under this Plan becomes subject to the requirements of the Family and Medical Leave Act and regulations thereunder, this Plan shall be operated in accordance with Regulation 1.125-3.

### **11.16 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)**

Notwithstanding anything in this Plan to the contrary, this Plan shall be operated in accordance with HIPAA and regulations thereunder.

### **11.17 UNIFORM SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)**

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with the Uniform Services Employment And Reemployment Rights Act (USERRA) and the regulations thereunder.

### **11.18 COMPLIANCE WITH HIPAA PRIVACY STANDARDS**

(a) **Application.** If the Health Flexible Spending Account under this Cafeteria Plan is subject to the Standards for Privacy of Individually Identifiable Health Information (45 CFR Part 164, the "Privacy Standards"), then this Section shall apply.

(b) **Disclosure of PHI.** The Plan shall not disclose Protected Health Information to any member of the Employer's workforce unless each of the conditions set out in this Section are met. "Protected Health Information" shall have the same definition as set forth in the Privacy Standards but generally shall mean individually identifiable information about the past, present or future physical or mental health or condition of an individual, including information about treatment or payment for treatment.

(c) **PHI disclosed for administrative purposes.** Protected Health Information disclosed to members of the Employer's workforce shall be used or disclosed by them only for purposes of Plan administrative functions. The Plan's administrative functions shall include all Plan payment functions and health care operations. The terms "payment" and "health care operations" shall have the same definitions as set out in the Privacy Standards, but the term "payment" generally shall mean activities taken to determine or fulfill Plan responsibilities

with respect to eligibility, coverage, provision of benefits, or reimbursement for health care.

(d) **PHI disclosed to certain workforce members.** The Plan shall disclose Protected Health Information only to members of the Employer's workforce who are authorized to receive such Protected Health Information, and only to the extent and in the minimum amount necessary for that person to perform his or her duties with respect to the Plan. "Members of the Employer's workforce" shall refer to all employees and other persons under the control of the Employer. The Employer shall keep an updated list of those authorized to receive Protected Health Information.

(1) An authorized member of the Employer's workforce who receives Protected Health Information shall use or disclose the Protected Health Information only to the extent necessary to perform his or her duties with respect to the Plan.

(2) In the event that any member of the Employer's workforce uses or discloses Protected Health Information other than as permitted by this Section and the Privacy Standards, the incident shall be reported to the Plan's privacy officer. The privacy officer shall take appropriate action, including:

(i) investigation of the incident to determine whether the breach occurred inadvertently, through negligence or deliberately; whether there is a pattern of breaches; and the degree of harm caused by the breach;

(ii) appropriate sanctions against the persons causing the breach which, depending upon the nature of the breach, may include oral or written reprimand, additional training, or termination of employment;

(iii) mitigation of any harm caused by the breach, to the extent practicable; and

(iv) documentation of the incident and all actions taken to resolve the issue and mitigate any damages.

(e) **Certification.** The Employer must provide certification to the Plan that it agrees to:

(1) Not use or further disclose the information other than as permitted or required by the Plan documents or as required by law;

(2) Ensure that any agent or subcontractor, to whom it provides Protected Health Information received from the Plan, agrees to the same restrictions and conditions that apply to the Employer with respect to such information;

(3) Not use or disclose Protected Health Information for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Employer;

- (4) Report to the Plan any use or disclosure of the Protected Health Information of which it becomes aware that is inconsistent with the uses or disclosures permitted by this Section, or required by law;
- (5) Make available Protected Health Information to individual Plan members in accordance with Section 164.524 of the Privacy Standards;
- (6) Make available Protected Health Information for amendment by individual Plan members and incorporate any amendments to Protected Health Information in accordance with Section 164.526 of the Privacy Standards;
- (7) Make available the Protected Health Information required to provide an accounting of disclosures to individual Plan members in accordance with Section 164.528 of the Privacy Standards;
- (8) Make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from the Plan available to the Department of Health and Human Services for purposes of determining compliance by the Plan with the Privacy Standards;
- (9) If feasible, return or destroy all Protected Health Information received from the Plan that the Employer still maintains in any form, and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and
- (10) Ensure the adequate separation between the Plan and members of the Employer's workforce, as required by Section 164.504(f)(2)(iii) of the Privacy Standards and set out in (d) above.

#### 11.19 COMPLIANCE WITH HIPAA ELECTRONIC SECURITY STANDARDS

Under the Security Standards for the Protection of Electronic Protected Health Information (45 CFR Part 164.300 et. seq., the "Security Standards"):

(a) **Implementation.** The Employer agrees to implement reasonable and appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of Electronic Protected Health Information that the Employer creates, maintains or transmits on behalf of the Plan. "Electronic Protected Health Information" shall have the same definition as set out in the Security Standards, but generally shall mean Protected Health Information that is transmitted by or maintained in electronic media.

(b) **Agents or subcontractors shall meet security standards.** The Employer shall ensure that any agent or subcontractor to whom it provides Electronic Protected Health Information shall agree, in writing, to implement reasonable and appropriate security measures to protect the Electronic Protected Health Information.

(c) **Employer shall ensure security standards.** The Employer shall ensure that reasonable and appropriate security measures are implemented to comply with the conditions and requirements set forth in Section 11.18.

IN WITNESS WHEREOF, this Plan document is hereby executed this  
Jan. 6 day of 2009.

City of Monroe

By *Raymond A. Howard*  
EMPLOYER



# CITY COUNCIL AGENDA FACT SHEET

**RELATING TO:** Approval of a Lease/Service Agreement for the Sawyer Homestead located at 320 E. Front Street between the City of Monroe and "The Sawyer Homestead," a Not-for-Profit Corporation.

**DISCUSSION:** Since July 1996, the City has leased the Sawyer Homestead to the not-for-profit organization currently known as "The Sawyer Homestead," and previously known as the Monroe Women's Center. The original lease was extended two times, first in 2000 and again in 2006; with some changes in the terms in 2006. The most significant change in 2006 was shifting responsibility for the Utilities from the Organization to the City. Through this Lease, the Organization has taken on responsibility for maintaining and operating the City owned Sawyer house and grounds located at 320 E. Front Street. Additionally, the Organization has made financial contributions and donated numerous volunteer hours towards capital improvements to The Sawyer Homestead. The City continues to maintain most of the exterior elements of the Homestead, including grass mowing, and parking lot maintenance.

Without the assistance of The Sawyer Homestead and its volunteers, the City would be left with the task of supervising and staffing the facility on a day-to-day basis. Considering the time intensive tasks and responsibilities involved in properly managing a facility like this, it is much more cost effective for a not-for-profit organization to administer The Sawyer Homestead on behalf of the City. The benefits to the City residents include preservation of a unique and historically significant property in the City. Additionally, the educational and interpretive programs arranged and funded by The Sawyer Homestead Organization provide a cultural resource with exceptional living history components. As noted in the Lease/Service Agreement, the Homestead is open to the public at least 12 times a year (typically more often) and is also available for tours and room rentals.

- There are several proposed changes in the terms of this new Lease/Service Agreement, which are summarized below:
- Section 6. Utilities: Provides for a 50% or \$5,000.00 (whichever is less) contribution toward utility costs.
  - Section 7. Subleasing: Requires that the organization charge a market rate rent or rent + in-kind services equal to a Fair Market Rent (Compared to HUD Data).
  - Section 8. Public Visitation: Adds an annual Public Use Report.
  - Section 12. Financial Statement: Notes that Organization activities must be separated from those directly associated with the operation and maintenance of the Homestead and provides for a Financial Statement template.

These changes were made to clarify the responsibilities of the Organization and the City, and provide additional financial support for the costs associated with operating the facility. The contribution that The Sawyer Homestead Organization is willing to make towards the Utilities will be very helpful in offsetting the direct cost of operations. However, there are still significant capital improvements that should to be made to the house, which the City will need to consider in the next few years.

While the Lease could simply be extended again, staff's opinion was that it was time to update the document to reflect the changes in the Organization and the City, address questions and concerns that have been raised in the past, and more closely review the terms of the Lease. At this time a 5-year lease with an option for a 2-year extension is proposed. This provides a reasonable term for planning purposes and continuity of management at the site.

**IT IS RECOMMENDED** that the City Council Approve the Proposed 5-year Lease/Service Agreement for the Sawyer Homestead between the City of Monroe and "The Sawyer Homestead," a Not-for-Profit Corporation, with the Option for a 2-year Extension; and Authorize the Mayor and Clerk/Treasurer to Execute the Lease/Service Agreement.

**CITY MANAGER RECOMMENDATION:**

- For
- For, with revisions or conditions
- Against
- No Action Taken/Recommended

**APPROVAL DEADLINE:** February 6, 2012

**REASON FOR DEADLINE:** The current Lease has expired, which defaults to a month-month arrangement.

**STAFF RECOMMENDATION:**           X For                    Against

**REASON AGAINST:** N.A.

**INITIATED BY:** Department of Economic and Community Development and The Sawyer Homestead

**PROGRAMS, DEPARTMENTS, OR GROUPS AFFECTED:** City Manager's Office, Department of Economic and Community Development, Department of Public Services, The Sawyer Homestead

## FINANCES

<b>COST AND REVENUE PROJECTIONS:</b>	Cost of Total Project	\$ 0
	Cost of This Project Approval	\$ 0
	Related Annual Operating Cost	\$ 20,200.00*
	Increased Revenue Expected/Year	\$ 5,000.00

\* Estimated based on prior years

<b>SOURCE OF FUNDS:</b>	<u>City</u>	Account Number	Amount
	<u>Other Funds</u>		

Budget Approval: \_\_\_\_\_

**FACT SHEET PREPARED BY:** Dan Swallow, Director of Economic and Community Development   **DATE:** 01/31/12

**REVIEWED BY:** Ed Sell, Finance Director



**DATE:**

**COUNCIL MEETING DATE:** February 6, 2012

# LEASE / SERVICE AGREEMENT

City of Monroe – The Sawyer Homestead

This lease is made this \_\_\_\_\_ day of \_\_\_\_\_, 2012, between the **CITY OF MONROE**, Lessor, a municipal corporation in the County of Monroe and the State of Michigan, and **THE SAWYER HOMESTEAD**, Lessee, a not for profit corporation in the State of Michigan:

Lessor, in consideration of the covenants and agreements later contained, by the Lessee to be performed, has let the Lessee those certain premises, including all buildings, structures, hereditaments and appurtenances thereto, in the City of Monroe, County of Monroe, State of Michigan, described as follows:

House and Lots 136, 137, 138, 164, 165, 166, and 167 o the Wadsworth and Navarre Plat as recorded in the office of the Register of Deeds for Monroe County, Michigan. Subject to all easements, restrictions, and rights-of-way or similar interests which may exist, whether of record or not.

Said premises being located at 320 East Front Street, Monroe, Michigan, and commonly known as The Sawyer Homestead.

Lessee has agreed to the following terms and conditions of tenancy:

1. **Term:** The term of this Lease shall be five (5) years, beginning on January 1, 2012, and ending of December 31, 2016. The Lease may be renewed for an additional term of two (2) years at Lessor's option upon application of Lessee.

2. **Purpose:** The Sawyer Homestead shall be used for and administered consistent with uses enumerated in the Indenture dated May 25, 1939, entered into by Jenny T. Sawyer, as Grantor, and the City of Monroe, as Grantee and Trustee, recorded in Liber 286 of Deeds, Page 141, Office of the Register of Deeds, Monroe County, Michigan, which is incorporated by reference and attached to this Lease as "Exhibit A."

3. **Rent:** The parties agree that the Lessor shall not charge or collect any monetary rent from the Lessee under this Lease in consideration of the mutual covenants contained in this Lease.

4. **Utilities:** The Lessor shall be responsible for and will promptly pay to the respective supplier all utility costs.

The Lessee shall make an annual contribution toward the utility costs for the premises in an amount equal to fifty percent (50%) of the actual utility costs or Five Thousand Dollars (\$5,000.00), whichever is less. The actual utility costs shall be

calculated by adding the electric, natural gas, and water and sewer costs for the premises for the preceding fiscal year (July 1- June 30). The contribution shall be due on or before August 31 of each year this Lease is in full force and effect. Further, the Lessee shall be responsible for telephone service to the premises during the term of this Lease, inclusive of any extensions installed, and any and all costs assessed for the service.

**5. Condition of Premises:** Lessee accepts the premises in their existing order and repair. The parties will jointly inspect the condition of the premises annually prior to the anniversary date of the Lease.

(a) Lessee shall maintain the interior of the leased premises so as to preserve the local historical integrity of features, materials, appearances, workmanship, and environment.

(b) **Repairs and Maintenance:** Lessee agrees, after submission of appropriate plans and receipt of written approval of the Lessor's City Manager, and if necessary, City of Monroe Historic District Commission and/or Michigan Department of State, to make all interior decorative improvements (paint, paper and/or any and all other forms of redecoration) and repairs as specified in the approved plans in a good and workmanlike manner consistent with the historical integrity of the premises at Lessee's sole cost and expense. Exterior brick may be cleaned in a preservation appropriate manner upon terms and conditions stated here. All such improvements shall be deemed to be a part of the premises and upon termination hereof, title to all such improvements shall be in the Lessor, free and clear of any right, title, claim, or interest of the Lessee. Structural changes to the premises shall be made at Lessee's sole cost and expense upon approval of appropriate plans by the Lessor's City Manager, and /or the City of Monroe Historic District Commission and/or Michigan Department of State.

Lessee agrees to keep the premises safe and in good order and condition at all times during the term. Upon expiration of this Lease, or at any sooner termination, the Lessee will quit and surrender possession of the premises peaceable and in as good order and condition as the premises were at the commencement of the term; reasonable wear, tear, and damage by the elements excepted. Lessee further agrees to leave the premises free from all nuisance and dangerous and defective conditions.

Further Lessee shall be responsible for any damage caused to the premises by negligence, carelessness or waste of Lessee's agents, employees or sublessees and will promptly report to Lessor any damage caused to or discovered in the premises. Repairs, at Lessee's expense, shall be made to restore the damaged area to its original condition or otherwise in such a manner as is satisfactory to the Lessor.

(c) The Lessor shall be responsible for the operation of the furnace, air conditioner, primary electrical system, plumbing system, inclusive of sewer connection, the exterior and structural elements of the premises including, but not limited to, roof

repairs or replacement, exterior painting, storm windows, concrete walkways and steps; and any damages directly attributable to these systems absent negligence of the Lessee, its agents, employees or sublessees.

(d) **Landscaping and Grounds Maintenance:** Lessor agrees to perform all snow removal, tree trimming or removal, grass cutting, lawn maintenance, and parking lot maintenance and signage on said premises in such a manner as the Lessor deems to be reasonable necessary and generally in the same manner and to the same extent as it performs these services at other municipally-owned property. A Grounds Committee shall be established by Lessee to work with the Lessor's Department of Public Services in the development of a landscaping plan for the premises consistent with the historical nature and architectural features of the premises. Lessee shall be responsible for the planting and maintenance, inclusive of weeding, of all landscaping on the premises, other than the lawned areas, consistent with the landscaping plan identified above.

**6. Assignment and Mortgage:** This Lease or any interest in this Lease shall not be assigned, hypothecated or mortgaged by the Lessee; and any attempted assignment, hypothecation or mortgaging of this Lease shall be of no force or effect, and shall confer no rights upon any assignee, mortgagee or pledgee.

**7. Subleasing:** Upon approval of the Lessor's City Manager, Lessee may sublet the premises consistent with paragraph 2 and may set, charge, collect, and retain all rents received from sublessees; provided, however, that the Lessee shall not enter into any such sublease which would result in any other person or entity being substituted as a party to this Lease. In the event that Lessee elects to sublease the premises, the Lessee shall accomplish same by a written lease which includes the provisions of paragraphs 5, 8, and 12 of this Lease. Further, Lessee shall ascertain and ensure that any sublease of the premises complies with all other relevant terms and conditions of the primary Lease. Lessee shall not be permitted to sublease the entire premises. Any subletting of the premises shall not relieve Lessee of its obligations under this Lease unless by written consent of the Lessor. In the event eviction of any sublessee is required, Lessee agrees to bear all expenses of such eviction, including attorney fees.

The Lessee shall charge market rate rent or a combination of rent and documented in-kind services equal to a fair market rent for any sublease of the premises. If in-kind services are utilized in establishing a reduced rent payment, a description of the services and the estimated cash value of these services shall be submitted to the Lessor with the request for approval to the City Manager. If the in-kind services are to be accrued over time; the actual hours worked and other contributions shall be documented at least quarterly by the Lessee and kept on file in a secure location on the premises. Market rate rent for residential purposes shall be determined

by comparison to the U.S. Department of Housing and Urban Development Fair Market Rent for Monroe County, Michigan; with appropriate deductions. It shall be the responsibility of the Lessee and/or sublessees to report any taxable income, benefits, or property to the appropriate taxing jurisdiction(s).

This section is not intended to apply to rental of meeting rooms by the Lessee to third parties.

**8. Public Visitation and Access, Fees; City Use of Premises:** Lessee shall administer the premises and the adjacent and surrounding grounds so that the general public shall have access for purposes of viewing the interior and exterior of the premises. Such right of public access shall be for no less than twelve (12) days per year on an equitably spaced basis and at other times by appointment. "Equitably spaced" as used in this Lease does not necessarily require access on a once-a-month basis and may take into account seasonal and other reasonably related factors. Likewise, what constitutes a "day" will depend upon Lessee's good faith judgment in providing for the public benefit and may reasonably include opportunities for evening visitation. The Lessee shall submit an annual calendar of events to the Lessor on or before August 31 each year that contains the planned public access events to occur within the subsequent 12-month period. The Lessee shall track attendance at the public events and other unscheduled events or activities on the premises and file an annual "Public Use Report" to the Lessor. The Public Use Report shall contain at minimum the dates of the events or activities, a brief description of the events or activities, and the estimated number of attendees from the general public.

Subject to approval by the Lessor's City Manager, the Lessee may charge a reasonable fee for public visitation and access to the premises. If an admission fee is charged, the same shall be established at a rate which will not discourage visitation and will compare with fees charged at comparable historic sites or facilities in the Monroe area. The Lessor shall be permitted to use the facility for meetings, social events and training seminars, at no cost to the Lessor; provided, however, that such use shall be scheduled by the Lessor in advance of the date of such use, under circumstances which will not interfere with Lessee's use of the premises.

**9. Right to Enter Premises:** Lessor, or Lessor's agent, has the right to enter the premises at reasonable times and upon reasonable notice to inspect the premises or make repairs. In an emergency, Lessor may enter the premises without notice for any purpose reasonable connected with the emergency.

**10. Liability and Insurance:** Lessee shall hold Lessor harmless from any loss, cost or damage that may arise in connection with this Lease or the use of the premises by Lessee, or its agents, employees or any other person using the premises. Lessee shall

at all times keep in full force an effect, at its sole cost and expense, comprehensive public liability and property damage insurance with respect to the leased premises with a single combined public liability limit of not less than One Million Dollars (\$1,000,000.00) and with property damage liability limits of not less than Five Hundred Thousand Dollars (\$500,000.00).

Fire and extended coverage is to be in place as well providing coverage for Lessee's real and personal property as well as for personal property of others which may be situated on the premises with knowledge and consent of the Lessee.

If the Lessee employs three or more part-time employees at one time, or one or more persons for at least 35-hours per week for at least 13-weeks during the preceding 52-weeks, the Lessee shall maintain the minimum required workers' compensation and employer's liability coverage for all its employees, as prescribed by Michigan law.

All policies of insurance required to be maintained by Lessee shall name Lessor and Lessee as insured as their respective interests may appear, and shall contain a provision that the Insurer will not cancel or change the insurance without providing no less than thirty (30) days' written notice to the Lessor. Lessee shall furnish to the Lessor such evidence as Lessor may require that the insurance referred to in this section is in full force and effect and that the premiums have been paid. The Lessee shall provide copies of all policies of insurance required to be maintained by Lessee to the Lessor's Clerk/Treasurer to be kept on file in the office of the Clerk/Treasurer.

**11. Mechanic's Liens:** Lessee agrees that at least five (5) days before any construction work, labor, or materials are done, used or expended by Lessee or on Lessee's behalf by any person, firm or corporation or by any contractor, that Lessee will post and record or cause to be posted and recorded, as provided by law, a notice of nonresponsibility on behalf of Lessor, giving notice that the Lessor is not responsible for any work, labor or materials used or expended or to be used or expended on the premises.

**12. Financial Statement:** Lessee agrees to provide to the Lessor an annual financial statement showing all receivables and disbursements connected with the leased premises. The financial statement shall be delivered to the Lessor on or before August 31 of each year this Lease is in full force and effect. Receivables and disbursements that are associated with the Lessee's independent organization activities and are not directly connected with the operation and maintenance of the leased premises shall be shown separately on the Financial Statement. The Financial Statement shall be in substantial conformance with the form and format of the template attached to this Lease as "Exhibit B."

**13. Termination by Lessor or Lessee:** Lessor may terminate this Lease at any time it should be determined by its City Council that public necessity and convenience require

it to do so, by serving upon Lessee in the manner subsequently provided, a written notice of its election to so terminate, which notice shall be served at least sixty (60) days prior to the date in the notice named for such termination. Similarly, the Lessee terminate this Lease by serving upon Lessor in the manner subsequently provided, a written notice of its election to so terminate, which notice shall be served at least sixty (60) days prior to the date in the notice named for such termination.

This Lease may also be terminated upon the mutual consent of the parties.

**14. Default:** In the event that the Lessee shall be in default in the performance of any of the terms or conditions agreed to be kept and performed by Lessee, then in that event, Lessor may terminate and end this Lease, immediately, and Lessor may enter upon the premises and remove persons and property.

**15. Holding Over:** In the event that Lessee holds over and remains in possession of the premises with the consent of Lessor, that holding over shall be deemed to be from month to month only, and upon all of the same terms, covenants and conditions as contained in this Lease.

**16. Notice:** Any notices that are required here, or which either Lessor Lessee may desire to serve upon the other, shall be in writing and shall be deemed served when delivered personally, or when deposited in the United States mail, postage-prepaid, return receipt requested, addressed to:

Lessee: The Sawyer Homestead  
Attn: President  
320 E. Front St.  
Monroe, MI 48161

Lessor: City of Monroe  
Attn: City Manager  
120 E. First St.  
Monroe, MI 48161

**17. Waiver:** Waiver by Lessor of any default in performance by Lessee of any of the terms, covenants or conditions contained in this Lease, shall not be deemed a continuing waiver of that default or any subsequent default.

**18. Compliance with Laws:** Lessee agrees to comply with all laws, ordinances, rules and regulations of the City of Monroe and State of Michigan that may pertain or apply to the premises and its use.

**19. Severability:** If any part of this Lease is held invalid, the remainder will remain in full force and effect.

**20. Successors in Interest:** All of the terms, covenants and conditions contained here shall continue and bind all successors in interest of Lessee.

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

CITY OF MONROE:

By \_\_\_\_\_

Robert E. Clark, Mayor

By \_\_\_\_\_

Charles D. Evans,  
Clerk/Treasurer

THE SAWYER HOMESTEAD:

By \_\_\_\_\_

Jeannie Micka, President

By \_\_\_\_\_

\_\_\_\_\_, Secretary

## **Exhibit A**

Indenture dated May 25, 1939, entered into by Jenny T. Sawyer, as Grantor, and the City of Monroe, as Grantee and Trustee, recorded in Liber 286 of Deeds, Page 141, Office of the Register of Deeds, Monroe County, Michigan

THIS INDENTURE, Made this 25<sup>th</sup> day of May in the year of our Lord one thousand nine hundred and thirty-nine BETWEEN Jenny T. Sawyer, party of the first part, and the City of Monroe, Michigan, a municipal corporation, Trustee, party of the second part,

WITNESSETH, That the party of the first part, for and in consideration of her charitable desires, and of the implied covenants herein contained to be performed on the part of second party, upon acceptance and recording of this deed by the party of the second part, the receipt whereof is hereby confessed and acknowledged as full and adequate consideration, does by these presents, grant, bargain, sell, remise, release, alien and confirm unto the party of the second part and its successors corporate, FOREVER, all those certain pieces or parcels of land situate and being in the City of Monroe, County of Monroe and State of Michigan, and described as follows, to-wit:

House and Lots 136, 137, 138, 139, 164  
165, 166 and 167 of the Wadsworth and  
Navarre Plat, according to the recorded  
plat thereof.

The said premises and all buildings thereon and/or all buildings that second party shall hereafter desire to erect thereon, shall be held and used in trust nevertheless for the use of the inhabitants of the City of Monroe, and, in the discretion of the City of Monroe, to the use of the public beyond the boundaries of the city's limits, subject to the following uses and conditions which the acceptance of the premises and of this trust shall imply as a contract on the part of the said city to perform:

The present buildings, or buildings substituted for the present buildings, and such other buildings as shall be added to the premises by second party, shall be liberally used, (subject nevertheless to such reasonable regulations as shall be adopted from time to time by second party) by the said public to serve the CULTURAL, HISTORICAL, EDUCATIONAL, CIVIC and SOCIAL-SERVICE needs of the community, subject also to such service charges and regulations as second party may

set for the time any organization makes use of the premises. The Monroe Chapter of the American Red Cross, or its successor in name or functions, shall be allowed liberal use and quarters, according to its needs, in the premises at all times. Charities, character-building agencies, patriotic bodies, study, literary, civic and social service clubs shall be served with such quarters and facilities as are reasonably available, in the discretion of the City Commission.

[The general premises shall be known and appropriately marked by tablet, or other marking, as the SAWYER CENTER and as a memorial to my father, Dr. Alfred Isaac Sawyer, M.D. and to my mother, Sarah Gazena Toll Sawyer. The present homestead, main structure, not its annex, shall be known and marked as "The Sawyer Homestead", so long as it shall be left standing.]

"Social-Service", and "Civic" needs and uses, above recited, shall not be construed to extend to housing, hospitalization, penal, warehouse, - or others of the baser needs and functions of society and city government, - but primarily for the higher and better causes of social advancement, dealing more with the finer purposes of life than with its destitutions and/or depravities or correctives. This qualification shall not be construed, however, to preclude the use of the premises as a future City Hall containing reasonable police functions, city auditorium, library or others of the more refined functions of government:

In no event shall the premises be used for any purpose abetting the traffic of intoxicating liquors nor of un-American, Communistic assembly or causes. The administration of this trust of the premises shall repose in the governing body of the City of Monroe, now consisting of a Mayor and the City Commission.

Said conveyances of the premises, and creation of trust for the purposes above described, are subject to the reservation made by first party to use and occupy, for the remainder of her natural life, the so-called Annex or smaller apartment affixed to the major homestead upon said premises, as a place of dwelling.

AIDET — USUALLY USED IN CONNOTATION WITH CRIMINAL ACTIVITY  
" AN INSTIGATION OR SETTER UPON  
ONE WHO PROMOTES OR PROVES A CRIME TO BE COMMITTED

Black's Law Dictionary p. 17 —

TO ACTUALLY SECURE + ENCOURAGE (AN ACTIVITY OR PLAN) } Webster — New Collins  
TO ASSIST OR SUPPORT IN THE ACHIEVEMENT OF A PURPOSE } 1974.

This conveyance is also subject to the implied covenant and undertaking on the part of the said City, as authorized by unanimous resolution and vote of its City Commission and governing body in regular chambers and session, on Monday evening, August 8, A.D. 1938 to furnish first party, for the remainder of her life, as a part of the maintenance of said premises, with adequate heat, light, fuel, water and the sum of Seventy-five (\$75.00) Dollars per month for the necessities of life, payable semi-monthly from the city treasury, together with suitable repairs and reasonable decoration and re-conditioning, from time to time, of the annex apartment reserved to her life use.

It is also a reservational option that if said City of Monroe shall desire, either to remove the said Annex building or to use it for other purposes or replace it or to terminate the life use of the same on the part of first party, that if first party shall voluntarily surrender such life use (which surrender shall be purely optional with her) that; then, in that event, said City shall disburse to her, for her support and maintenance, for the then remaining period of her life the sum of One Hundred Twenty-five (\$125.00) Dollars per month, payable in semi-monthly payments.

Said premises are conveyed together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining: TO HAVE AND TO HOLD the said premises in trust, and under the terms, for the purposes as herein described, with the appurtenances, and the future additions thereto and the appurtenances which may be attached thereto in the future, unto the party of the second part in trust and to its corporate successors, FOREVER.

And the said party of the first part for herself, her heirs, executors and administrators does covenant, grant, bargain and agree to and with the said party of the second part, trustee, and its corporate successors, that at the time of the ensealing and delivery of these presents she is well seized of the above granted premises in fee simple subject only to a prior deed of almost the same content given to the City of Monroe, Trustee, hereinafter described, and except also any presen

unpaid general taxes.

First party covenants that she will, and her heirs, executors and administrators shall warrant and defend the same, subject only to the conditions and obligations herein delineated, against all other lawful claims of every sort and character. This deed is given and received to correct certain mutual mistakes which occurred in the original deed executed between said parties and dated August 15th, 1938 and recorded August 27th, 1938 in Liber 282 of Deeds on page 389 in the office of the Register of Deeds of Monroe County, Michigan, and there is no other or further consideration for this deed than the consideration herein stated which is also similarly stated in the original deed.

IN WITNESS WHEREOF, the said party of the first part has hereunto set her hand and seal the day and year first above written.

Signed, sealed and  
Delivered in Presence of

Lydia Schmeising  
Lydia Schmeising

Jenny T. Sawyer (I.S.)  
Jenny T. Sawyer

Edgar G. Gordon  
Edgar G. Gordon

STATE OF MICHIGAN }  
COUNTY OF MONROE } SS

On this 25<sup>th</sup> day of May in the year one thousand nine hundred and thirty-nine, before me a Notary Public in and for said County, personally appeared Jenny T. Sawyer to me known to be the person described in and who executed the within instrument, who acknowledged the same to be her free act and deed.

Edgar G. Gordon  
Edgar G. Gordon  
Notary Public, Monroe County, Mich.  
My commission expires Dec. 27, 1940

## **Exhibit B**

### Template for Annual Financial Statement

**THE SAWYER HOMESTEAD  
ANNUAL FINANCIAL STATEMENT  
For the Period Ending June 30, 20\_\_  
FOR EXAMPLE PURPOSES ONLY**

<b>REVENUE:</b>		<b>Actual (Prior Fiscal Year)</b>	<b>Actual (Reporting Year)</b>	<b>Budget</b>
	<b>Operations and Maintenance Revenue</b>			
	<b>Operations and Maintenance Revenue Category 1</b>			
	Revenue Line 1			
	Revenue Line X			
	<b>Operations and Maintenance Revenue Category X</b>			
	Revenue Line 1			
	Revenue Line X			
	<b>Operations and Maintenance Revenue Subtotal:</b>			
	<b>Organization Revenue</b>			
	<b>Organization Revenue Category 1</b>			
	Revenue Line 1			
	Revenue Line X			
	<b>Organization Revenue Category X</b>			
	Revenue Line 1			
	Revenue Line X			
	<b>Organization Revenue Subtotal:</b>			
	<b>TOTAL REVENUE:</b>			

	Actual (Prior Fiscal Year)	Actual (Reporting Year)	Budget
<b>EXPENDITURES: Operations and Maintenance Expenditures</b>  <b>Operations and Maintenance Expenditure Category 1</b> Expenditure Line 1 Expenditure Line X  <b>Operations and Maintenance Expenditure Category X</b> Expenditure Line 1 Expenditure Line X  <b>Operations and Maintenance Expenditures Subtotal:</b>			
<b>Organization Expenditures</b>  <b>Organization Expenditure Category 1</b> Expenditure Line 1 Expenditure Line X  <b>Organization Expenditure Category X</b> Expenditure Line 1 Expenditure Line X  <b>Organization Expenditures Subtotal:</b>			
<b>TOTAL EXPENDITURES:</b>			
<b>Beginning Fund Balance:</b>  Excess (Deficiency) of Revenues over Expenditures  <b>Ending Fund Balance:</b>			



# CITY COUNCIL AGENDA FACT SHEET

**RELATING TO:** Approval of an agreement between the City of Monroe and The Community Foundation of Monroe County to provide funding for the War of 1812 Bicentennial Celebration Events Coordinator.

**DISCUSSION:** The War of 1812 Bicentennial Celebration Coordinating Committee is a collaborative of local governments, businesses and not-for-profit organizations assembled by the Community Foundation of Monroe County. The primary goal of the Committee is to provide centralized coordination and promotion of events in Monroe County surrounding the 200<sup>th</sup> anniversary of the War of 1812. To achieve this goal the Coordinating Committee requested proposals for an Events Coordinator contract position.

The desire of the collaborative partners is to collectively plan activities and events in an effort to create series of connected events with a common theme. The events are regional in focus, but will interrelate with events from across Michigan, the Eastern United States and Ontario, Canada. It will be critical for the Events Coordinator to assist in developing and managing a calendar of events that promotes related activities designed to attract visitors from within and outside Monroe County. It is anticipated that a majority of events will be sponsored by existing community organizations and the role of the Events Coordinator will be coordination, technical support, and joint marketing.

One of the leading objectives of the Committee is to pool resources in order to create a cohesive and far-reaching marketing campaign. The Events Coordinator will have a key role in supporting a creative team made up of marketing professionals from partner organizations. Determining the best allocation of the marketing budget based on cost and the likely attendees will be a key assignment of the Events Coordinator. Due to limited resources, it is anticipated that the primary focus will be a web-based campaign augmented by brochures and targeted print publications.

The Events Coordinator will be tasked with preparation and maintenance of a central calendar of events. This calendar will form the basis of coordination efforts among partner organizations and a joint marketing tool. Working with partner organizations to plan and further develop their events will be a critical activity. These efforts may require conflict resolution efforts involving various stakeholders.

Supporting a diverse Marketing Team in development of a cohesive marketing campaign will be a primary task. The marketing effort will involve identification of the unique characteristics of the planned events, defining the target market, and determining what marketing methods will be most successful. It is anticipated the Events Coordinator will provide logistical and administrative support for a Marketing Team made up of creative staff from the media industry and interested partners from the Coordinating Committee.

The Committee received four proposals for the Events Coordinator position and through a review and interview process selected Teresa Beamsley to serve as the Coordinator. Ms. Beamsley has extensive experience in the not-for-profit sector, including several years of service at the Toledo Museum of Art and The Henry Ford Museum. The Community Foundation is prepared to enter into an agreement with Ms. Beamsley, subject to available funding from the City of Monroe as outlined in this proposed Agreement.

**IT IS RECOMMENDED** that City Council approve the Agreement between the City of Monroe and the Community Foundation of Monroe County to provide funding for the War of 1812 Bicentennial Celebration Events Coordinator; and authorize the Mayor and Clerk/Treasurer to execute the Agreement

**CITY MANAGER RECOMMENDATION:**

- For
- For, with revisions or conditions
- Against
- No Action Taken/Recommended

**APPROVAL DEADLINE:** February 6, 2012

**REASON FOR DEADLINE:** Allows the Community Foundation of Monroe County to enter into the Agreement with the Events Coordinator

**STAFF RECOMMENDATION:** X For  Against

**REASON AGAINST:** N.A.

**INITIATED BY:** Department of Economic and Community Development

**PROGRAMS, DEPARTMENTS, OR GROUPS AFFECTED:** Mayor's Office, City Manager's Office, Department of Economic and Community Development

## FINANCES

<b>COST AND REVENUE PROJECTIONS:</b>	Cost of Total Project	\$ 16,000.00
	Cost of This Project Approval	\$ 16,000.00
	Related Annual Operating Cost	\$ NA
	Increased Revenue Expected/Year	\$ 0

<b>SOURCE OF FUNDS:</b>	<u>City</u>	<u>Account Number</u>	<u>Amount</u>
Mayor and Council- Community Promotions		101-05.101-880.000	\$16,000.00
	<u>Other Funds</u>		

Budget Approval: \_\_\_\_\_

**FACT SHEET PREPARED BY:** Dan Swallow, Director of Economic and Community Development **DATE:** 01/31/12

**REVIEWED BY:** Ed Sell, Finance Director



**DATE:**

**COUNCIL MEETING DATE:** February 6, 2012

**Agreement between the City of Monroe and the Community Foundation of Monroe County**

Whereas the City of Monroe has an interest in promoting civic, artistic, and cultural activities as a public propose; and whereas the Community Foundation of Monroe County, a non-profit corporation, is working toward the planning and establishment of a series of presentations and events surrounding the War of 1812 Bicentennial; and whereas the Community Foundation of Monroe County is intending to employ or enter into a contract with an event coordinator to assist in the planning of the War of 1812 Bicentennial events; and whereas the Mayor and City Council of the City of Monroe deem it to be in the best interest of the City of Monroe to assist the Community Foundation of Monroe County with reference to the War of 1812 Bicentennial;

Now therefore, the City of Monroe and the Community Foundation of Monroe County agree as follows:

1. The City of Monroe agrees to pay the Community Foundation of Monroe County the sum of Sixteen Thousand Dollars (\$16,000.00) to assist in the hiring or contracting with an event coordinator for the War of 1812 Bicentennial to be accomplished by the Community Foundation of Monroe County. The funds will be split into two equal installments of Eight Thousand Dollars (\$8,000), the first due 30-days following the execution of this Agreement, and the second due no later than August 31, 2012.
2. The duties and obligation of the event coordinator as well as the contractual arrangements for the event coordinator shall be subject to the review and approval of the City of Monroe through its City Manager.
3. The Event Coordinator contract duration is anticipated to last from January 2012 through January 2013 (13 months) with planned 5-month extension (18 months total) depending on available funding. It is recognized that any additional funds provided by the City of Monroe for the purpose of employing or contracting with an event coordinator will be subject to budget review and approval by City Council; notwithstanding the Community Foundation of Monroe County may solicit other contributions for this purpose.
4. Either party may terminate this agreement by giving the other party no less than 30 days written notice of termination. Any funds not expended by the Community Foundation of Monroe County upon termination of this agreement shall be promptly refunded to the City of Monroe.

Witnesses:

City of Monroe

\_\_\_\_\_  
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Robert E. Clark, Mayor  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Charles Evans, Clerk/Treasurer  
Dated: \_\_\_\_\_

Community Foundation of Monroe County

\_\_\_\_\_  
Dated: \_\_\_\_\_

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

## **R E S O L U T I O N**

WHEREAS, there are terms on various Boards, Commissions, and Committees which have vacancies; and

WHEREAS, a diligent effort has been made to fill these appointments;

THEREFORE BE IT RESOLVED that the following person is hereby appointed to the office and the term hereinafter indicated, February 6, 2012

### **BOARD OF REVIEW**

Dennis Knab (Precinct 1 / Alt for 2)	1 year term to January 14, 2013
Mike Desilvis (Precinct 4)	1 year term to January 14, 2013
Leo Leask (Precinct 6)	1 year term to January 14, 2013

### **CITIZEN PLANNING COMMISSION**

Josh Myers	fill an expired term to January 14, 2013
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### **CONSTRUCTION BOARD OF APPEALS**

George O'Dell (Architect)	3 year term to January 12, 2015
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### **ZONING BOARD OF APPEALS**

Harold Caldwell (CPC)	3 year term to January 12, 2015
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# CITY COUNCIL AGENDA FACT SHEET

**RELATING TO:** REQUEST FROM THE MONROE COUNTY CHAMBER OF COMMERCE ON BEHALF OF THE HOME BUILDERS ASSOCIATION FOR PERMISSION TO DISPLAY TWO BANNERS ACROSS WEST FRONT AND WEST FIRST STREETS FROM FEBRUARY 10 - MARCH 5, 2012

**DISCUSSION:** The City received a request from the Monroe County Chamber of Commerce on behalf of the Home Builders Association for permission to display two banners across W. Front and W. First Streets from February 10 – March 5, 2012 announcing the Home Tour and Builders Show.

The request has been sent to the various departments for their review and there were no objections. After Council approval, advance notification will be sent to MDOT.

**Manager:** The City Manager recommends approval of the request subject to meeting qualifications outlined in the banner policy.

**CITY MANAGER RECOMMENDATION:**

- For
- For, with revisions or conditions
- Against
- No Action Taken/Recommended

**APPROVAL DEADLINE:**

**REASON FOR DEADLINE:**

**STAFF RECOMMENDATION:**

For

Against

**REASON AGAINST:**

**INITIATED BY:**

**PROGRAMS, DEPARTMENTS, OR GROUPS AFFECTED:**

## **FINANCES**

**COST AND REVENUE PROJECTIONS:**

Cost of Total Project	\$
Cost of This Project Approval	\$
Related Annual Operating Cost	\$
Increased Revenue Expected/Year	\$

**SOURCE OF FUNDS:**

City

Account Number

Amount

\$  
\$  
\$  
\$  
\$  
\$  
\$  
\$  
\$

Other Funds

Budget Approval: \_\_\_\_\_

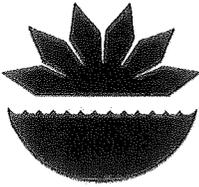
**FACT SHEET PREPARED BY:** City Manager's Office

**DATE:** 2/3/12

**REVIEWED BY:**

**DATE:**

**COUNCIL MEETING DATE:** 2/6/12



# CITY OF MONROE, MICHIGAN BANNER APPLICATION

Name of Applicant Home Builders & Remodelers Association

Name of Organization Michelle Dugan

Applicant's Affiliation with Organization Executive Officer

Applicant's Home Address P.O. Box 1602 48101

Physician Mailing Address (if different) 1645 N. Dixie

Day Phone 777-1516 Evening Phone 457-9790

Type of Banner  **Overhead Banner (\$150)**

Overhead Banner Locations: (List as 1 for first choice, 2 for second...)

E. Front St. Dates Requested February 10, 2012 - March 5, 2012

W. First St.

Monroe St.

Type of Banner  **Vertical Pole Banner (\$25/banner)**

Vertical Pole Banner Locations: (List the total number of banners to be displayed and choice of placement location.) Dates Requested \_\_\_\_\_

No. of Banners: \_\_\_\_\_ Monroe St. (42)  Spring (March-May)

\_\_\_\_\_ Elm Ave. (8)  Summer (June-Aug.)

\_\_\_\_\_ First St. (8)  Fall (Sept.-Nov.)

\_\_\_\_\_ Macomb St. (8)  Winter (Dec.-Feb.)

Company Fabricating Banners: \_\_\_\_\_

Please provide a sketch complete with banner specifications and message to be displayed for City Council Review. Applications will be accepted up to eleven (11) months in advance and no later than four (4) weeks prior to proposed installation date.

On behalf of the organization listed above, I, as applicant, hereby acknowledge receipt of the Banner Policy of the City of Monroe.

Applicant covenants and agrees to hold harmless from, indemnify and defend the City, its agents, officers and employees against all suits, demands, claims, judgments, liens, cost of repair or replacement of any damaged poles or electrical equipment, costs, attorney fees and expenses which may arise out of, result from or be caused by Applicant's banner installation.

Applicant covenants and agrees to strictly comply with all terms and conditions of the Banner Policy, and further understands and agrees that the City Council, in its sole and absolute discretion, may approve, deny or set any conditions or limitations on any banner(s) which may be approved, or may at any time alter, amend, modify, rescind or revoke any approval, all without recourse or remedy by the Applicant, or liability of the City.

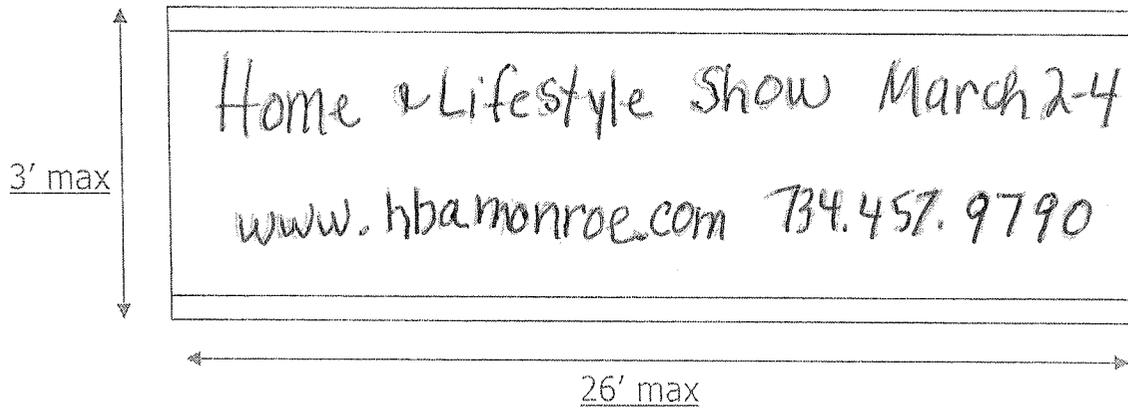
Applicant

Date 1.30.12

Homebuilders & Remodeler's Assoc.  
Michelle Dugan

Attachment D

CITY OF MONROE  
OVERHEAD BANNER SPECIFICATIONS



Banners still have a top and bottom hem with grommets spaced not more than 5' on center. Grommets shall have a minimum 1/2" ID hole.

All unlettered areas shall be of a netting type material

Corners of banners shall be reinforced.

Banners must be lettered on both sides for placement on Monroe St.

Banners shall be delivered to Engineering/DPS, 120 E. First Street three (3) business days prior to scheduled installation date.

Banners must be picked up within one (1) week of being taken down.