Finance Committee Meeting

AGENDA

August 6, 2013

I. CALL TO ORDER

II. MATTERS BEFORE COMMITTEE

1. Update - Committee Meeting July 8, 2013
2. Approval - Group Health Plan Amendment
3. Approval - Bravo Wellness Agreement
4. Approval - Purchase of Hand Held Units
5. Discussion / Approval - Out of State Travel

III. ADJOURN

Finance Committee Meeting

AGENDA

August 6, 2013

Item:

Update - Committee Meeting July 8, 2013

Department:

Additional Information:

Financial Impact:

Budgeted Item:

Recommendation / Request:

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Attachments / click to download

7/8/13 Finance Committee Minutes

Cover Memo

Item # 1

July 8, 2013 215 North Broad Street 8:00 A.M.

FINANCE Committee Members Present: Wayne Adcock, Chair
Lee Malcom
Larry Bradley
Nathan Little

Staff Present: Matthew Chancey
Renee Prather

I. CALL TO ORDER – Chairman Wayne Adcock

To approve the agenda as presented.

Motion by Little, seconded by Bradley.
Passed Unanimously.

II. MATTERS BEFORE COMMITTEE

1. Bravo Wellness

Council Member Lee Malcom arrived during the discussion.

The committee discussed adding spouses to Bravo Wellness. The committee requested Bravo Wellness to update their presentation keeping the current 20% spread and then report back when that information is available.

No Action.

III. ADJOURN

Motion by Bradley, seconded by Little.
Passed Unanimously.

Finance Committee Meeting

AGENDA

August 6, 2013

Item:

Approval - Group Health Plan Amendment

Department:

Additional Information:

Financial Impact:

Budgeted Item:

Recommendation / Request:

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Group Health Plan Amendment

Cover Memo

Item # 2

Amendment 111–2013-03

Effective April 1, 2013

Plan Amendment to Plan Document and Summary Plan Description
of
City of Monroe Group Health Plan

1. On Page 5, the following is deleted:

Enrollment Requirements for Newborn Children.

A newborn child of a covered Employee who has Dependent coverage is automatically enrolled in this Plan for 31 days. Charges for covered nursery care will be applied toward the Plan of the newborn child. If the newborn child is not enrolled in this Plan on a timely basis, as defined in the section "Timely Enrollment" following this section, there will be no payment from the Plan and the parents will be responsible for all costs.

Charges for covered routine Physician care will be applied toward the Plan of the newborn child. If the newborn child is not enrolled in this Plan on a timely basis, there will be no payment from the Plan and the covered parent will be responsible for all costs.

If the child is not enrolled within 31 days of birth, the enrollment will be considered a Late Enrollment.

It is replaced with the following:

Enrollment Requirements for Newborn Children.

A newborn child of a covered Employee who has Family coverage (employee plus more than one dependent) is automatically enrolled in this Plan. Charges for covered nursery care will be applied toward the Plan of the newborn child. If the newborn child is required to be enrolled and is not enrolled in this Plan on a timely basis, as defined in the section "Timely Enrollment" following this section, there will be no payment from the Plan and the parents will be responsible for all costs.

Charges for covered routine Physician care will be applied toward the Plan of the newborn child. If the newborn child is required to be enrolled and is not enrolled in this Plan on a timely basis, there will be no payment from the Plan and the covered parent will be responsible for all costs.

If the child is required to be enrolled and is not enrolled within 31 days of birth, the enrollment will be considered a Late Enrollment.

ACCEPTED:

by _____
City of Monroe

Date: _____

Finance Committee Meeting

AGENDA

August 6, 2013

Item:

Approval - Bravo Wellness Agreement

Department:

Additional Information:

Financial Impact:

Budgeted Item:

Recommendation / Request:

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Attachments / click to download

- Client Services Agreement
- Business Associate Agreement

Cover Memo

Item # 3

Wellness Incentives. Done Well.

One International Place
20445 Emerald Parkway Dr. SW
Suite 400
Cleveland, Ohio 44135

877.662.7286
855.297.3215 [fax]

www.bravowell.com

July, 2013

RE: Agreements for Execution between City of Monroe and Bravo Wellness

We have provided a checklist of what documents need to be signed and returned. Attached please find the Client Services Agreement between City of Monroe and Bravo Wellness for your review and execution. Fees for services elected in Options 1, 2 and 3 of Exhibit A will be assessed to City of Monroe. If at any point additional services are needed, the fees are shown for reference purposes.

If City of Monroe does not have a standard Business Associate Agreement to satisfy Exhibit D of the Agreement, a sample has been provided for signature.

Below are the documents we will need you to execute and return.

- ☐ Complete the signature block of the Client Services Agreement.
- ☐ Initial each of the Exhibits in the Client Services Agreement.
- ☐ Complete the signature block of the Business Associate Agreement.
- ☐ Return all pages of the documents to **Contracts@Bravowell.com** as soon as possible.

We will accept an electronic version of the full agreement. Do not hesitate to contact Marion Eastman if questions arise related to these documents. Once we receive the signed agreement in its entirety, we will return a fully executed copy to you.

Thank you,

Contracts Department

Client Services Agreement

For:

City of Monroe

July 29, 2013

Bravo Wellness, LLC
CLIENT SERVICES AGREEMENT

This CLIENT SERVICES AGREEMENT ("Agreement") made and entered into as of this 29th day of July, 2013 ("Effective Date") by and between **Bravo Wellness, LLC**, located at 20445 Emerald Parkway Dr. SW, Suite 400, Cleveland, Ohio 44135 (hereinafter referred to as "Bravo") and **City of Monroe** located at 215 North Broad Street, Monroe, Georgia 30655 or as designated by its health plan (hereinafter referred to as "Employer").

WHEREAS, Bravo provides consulting, technology, and administrative support for wellness programs and incentives, directly and through third parties, in order to determine individual member qualifications for the program (hereinafter referred to as the "Program").

WHEREAS, Employer and/or its health plan wishes to engage Bravo in providing communication materials and Program information to employees and their covered spouses/dependents, if applicable and additional services as herein provided to its Eligible Members who elect to participate in the Program.

NOW THEREFORE, in consideration of the execution hereof and of the covenants and conditions herein contained, it is mutually agreed as follows:

1. **LETTER OF ENGAGEMENT**

Bravo and Employer have previously executed a Letter of Engagement, the terms of which are incorporated by reference herein. In the event of a conflict, the terms of this Agreement shall supersede any conflict with the terms contained in the Letter of Engagement.

2. **DEFINITIONS**

a. ***Annual Compliance Checklist*** shall mean a document in which Employer will provide current contribution or plan design information for Bravo to review and provide feedback on certain compliance issues under The Final Wellness Rules for Group Health Plans (2006 HIPAA) and the wellness incentive provisions of the Affordable Care Act (ACA), or as otherwise amended, for plan years beginning on or after January 1, 2014. Only those items and issues set forth on the Form included as **Exhibit D** shall be addressed.

b. ***Fee(s)*** shall mean all fees as set forth on **Exhibit A, the Addendums to this Agreement, and the Proposal**.

c. ***Proposal*** shall mean the written document summarizing the services and vendors selected and Fees to be paid by Employer for the Program Impact Periods.

d. ***The Incentives for Nondiscriminatory Wellness Programs in Group Health Plans*** shall mean the federal regulations entitled "Incentives for Nondiscriminatory Wellness Programs in Group Health Plans" specifically identified as 26 CFR Part 54, 29 CFR Part 2590, and 45 CFR Parts 146 and 147.

e. ***Eligible Member(s)*** shall mean an employee and/or an employee's covered dependent who is participating in Employer's group health plan and who is eligible to participate in the Program.

f. ***Participant(s)*** shall mean Eligible Members who elect to participate in the Program.

g. ***Screening Provider*** shall mean a third-party vendor that provides the screening services for the Program in accordance with Bravo's protocols.

h. ***Web Portal*** shall mean the optional personalized participant internet website that can provide registration, review of results, and program specific materials.

i. ***Program Impact Period*** shall mean the period of time for which results of the Program are applied based upon the achievement of specified outcomes and/or completion of various activities.

j. ***Cycle(s)*** shall mean the time period during which services are provided for possible screenings-and-results packages, examples of which are Participation-Based, Progress-Based, and Outcomes-Based, the selection of which are made during implementation of Employer's program. Employer contracts with Bravo to provide no fewer than two Cycles of services.

k. ***Re-launch Date*** shall mean the date when services shall be initiated for the next and subsequent Program Impact Periods.

3. **BRAVO SERVICES**

a. Employer has executed a Letter of Engagement with Bravo committing Employer to the non-refundable consulting Fee and authorizing the commencement of the services outlined in **Exhibit A**. Customization of those services may be subject to additional Fees.

b. Bravo agrees to use commercially reasonable efforts to fulfill the provision of services provided by Bravo, subject to Section 7 and provided that Employer completes and executes an Annual Compliance Checklist in substantially the same form as outlined in **Exhibit D** that contains accurate and updated plan rates prior to each Program Impact Period effective date. Employer shall be solely responsible for any errors or noncompliance attributable to inaccurate information provided by Employer.

c. Employer can choose to engage a third-party vendor to provide authentication services for the Participants utilizing an eligibility management or other third-party portal (also known as "single-sign-on" or "SSO"). If SSO is utilized, Employer agrees that no additional authentication of the Participants will be required for the Participants to access the information contained on the Bravo Web Portal or any third-party website linked from Bravo's Web Portal. A set-up Fee may apply for SSO services. Bravo will not accept any liability for SSO services, including indemnification for losses associated with SSO services.

4. **FEES AND INVOICING**

Bravo will send invoices for all Fees as they are incurred, as outlined in **Exhibit A**. All payments shall be due within thirty (30) days after receipt of Bravo's invoice. Failure to make payment within the thirty (30) day period shall result in a late fee equal to two percent (2%) of the amount on the invoice and shall also accrue interest at a rate of one and one half percent (1.5%) per month. If Employer disputes in good faith any portion of an invoice from Bravo, it shall pay the undisputed portion of the invoice and specify the reasons why it disputes part of the invoice. The parties shall work in good faith for ten (10) business days to resolve the dispute.

If the parties are not able to resolve their dispute within said ten (10) business day period, the parties shall designate a mutually-acceptable party to resolve the dispute. If the parties are not able to agree upon a mutually-acceptable party within five (5) business days, the matter shall be referred to the parties' own accountants, who shall work to resolve the matter or select a third party acceptable to both accounting firms to resolve the dispute. The decision of any third party selected by Bravo and Employer, or their respective accounting firms, shall be binding on Bravo and Employer.

Employer shall be responsible for any city, state or federally-imposed taxes that are or may become applicable. In addition, Employer shall pay any sales tax incurred by Bravo on the purchase of goods or services made available to and requested by Participants under this Agreement.

A billing agent may be identified in **Exhibit A** to receive invoices on behalf of Employer. It is Employer's responsibility to ensure payment. If a collections issue arises with Employer's billing agent, Employer must remit payment, including late fee penalties, within five (5) business days.

5. **SCREENING REQUIREMENTS**

The scope of services, terms of relationship, and associated Fees for Employer's selected Screening Provider (if applicable) are included in the addenda herein.

If Employer selects a Screening Provider from Bravo's list of Subcontracted Screening Providers, as further described in Exhibit A, Bravo shall subcontract directly with the Subcontracted Screening Provider. Subcontracted Screening Providers are held to Bravo's privacy and security standards; provide uniformity of service, data accuracy, timeliness, licensing, and insurance; and have complied with all of Bravo's standards and service expectations contained within Bravo's screening requirements.

If Employer selects a Screening Provider not from Bravo's subcontracted list (an "Employer-Contracted Screening Provider"), Employer shall execute an agreement directly with the Employer-Contracted Screening Provider, including a business associate agreement. Bravo shall not be responsible for the data quality or turnaround time as a result of selecting this Employer-Contracted Screening Provider. Employer shall obtain a written acknowledgment from Employer-Contracted Screening Provider that Employer-Contracted Screening Provider shall comply with the Bravo's screening protocols. Bravo is under no obligation to accept data from any vendor that has not complied with the screening protocols and data standards. Furthermore, if the Employer-Contracted Screening Provider does not comply with Bravo's screening protocols and data standards, additional processing Fees may apply.

It is Employer's responsibility, whether a Subcontracted or an Employer-Contracted Screening Provider is selected, to ensure compliance with the following standards for all Screening Events:

a. All wellness screenings must be private to comply with HIPAA regulations. Separate rooms or privacy screens between private stations must be provided in a common area.
b. A registration/check-in and checkout area, supported by Employer.

An additional list of best practice suggestions for Screening Events is included in the implementation guide.

6. **RECORDS, REPORTS, AND DATA**

a. All data obtained by Bravo as a result of the services outlined herein shall be understood as follows:
    i. Participants retain ownership of their own Protected Health Information ("PHI") and reserve the right to limit or revoke the right of transfer or authorization. Bravo provides an electronic Notice of Privacy Practices outlining these rights for Participants.
    ii. Employer retains ownership of all de-identified, non-PHI data as long as the Participant count is sufficient to protect Participant's PHI, except that Bravo shall have a fully-paid, non-exclusive, perpetual, royalty-free license to use all such de-identified data obtained for research and development purposes.
    iii. Participant PHI can only be provided to third-parties that are authorized business associates of Employer's health plan. Any other entity can only obtain PHI with an authorization release that complies with Health Insurance Portability and Accountability Act (hereinafter "HIPAA") from each Participant.
    iv. If Employer directs Bravo in writing to send data obtained through the services to an authorized covered entity or another business associate of Employer's health plan, Employer may be required to provide authorized releases from each Participant before Bravo will release the data. Employer may be requested annually to provide written authorization for Bravo to release data to an authorized covered entity or another business associate of Employer's health plan. Custom data formats will be subject to additional lead time and may be subject to programing Fees**.**
b. Unless a longer retention period is requested in writing by the Employer, Bravo will retain records covered by this Agreement, including but not limited to data regarding the extent and cost of health screenings, for seven (7) years from the date the record was developed or from the date the record was last in effect or used, whichever is later, in accordance with HIPAA.

c. Bravo will supply Employer with an extract file, in standard format, detailing points earned per Participant, as outlined by the plan design. The extract file shall only contain information that is not PHI or is de-identified health information, as defined in the HIPAA regulations and other guidance. Request for customization of the extract file may result in additional Fees.

d. Bravo will supply Employer with a standard aggregate report summarizing Program results, unless arrangements have otherwise been agreed to. The aggregate report shall only contain information that is not PHI or is de-identified health information, as defined in the HIPAA regulations. Request for additional data and/or customization of the aggregate data may result in additional Fees.

e. Bravo does not provide a completed Form 5500, but upon written request by the Employer of no less than thirty (30) days, Bravo will supply Employer with any information it specifically requests in order to complete its own Form 5500.

7. **COMPLIANCE WITH LAWS AND REGULATIONS**

Bravo agrees to use commercially reasonable efforts to maintain current knowledge and compliance with Incentives for Nondiscriminatory Wellness Programs in Group Health Plans, as amended ("Laws"), associated with the administration of the Program. Employer acknowledges that an adequate release shall be obtained from each Participant for this Program and shall support Bravo in gathering this release, if applicable, from each Participant permitting Bravo to create, receive, transmit, and/or maintain any and all information, whether protected or individually identifiable, that may be necessary to perform the services anticipated by this Agreement, if required.

Bravo is not a Covered Entity pursuant to HIPAA, and Employer or its health plan shall provide Bravo with a signed Business Associate Agreement, as set forth in **Exhibit C**. It is Employer's responsibility to ensure that any vendor or third-party that Employer, its authorized representative, or the health plan instructs Bravo to share data with, shall have obtained an executed Business Associate Agreement.

Bravo will provide Employer an electronic print-ready approved communication packet for distribution to Eligible Members. Bravo's logo and other markings must be included on all Program communication pieces unless Bravo provides authorized written consent for removal. Given sufficient notice, Bravo will review any Employer or vendor created materials at no additional charge. Bravo shall not be liable for any changes to the materials provided by Bravo and/or any materials used to communicate the Program that were not approved by Bravo.

8. **CONFIDENTIAL INFORMATION**

"Confidential Information" includes all confidential or proprietary information, documentation, data, know-how, devices, designs, trade secrets and technology, whether obtained by a party under this Agreement from the other party before or after the execution of this Agreement, without regard to medium of storage or method of transmission of such information, including without limitation (i) all proprietary documents, including but not limited to all product or service descriptions, business plans, bids, proposals, financial data, memoranda, manuals, handbooks, production books and audio or visual recordings developed by a party; (ii) all computer software and systems developed or provided by one party to the other (including all documentation relating thereto); (iii) all proprietary methods, algorithms, logic, techniques, policies, strategies and procedures utilized by Bravo or provided by Bravo to Employer in connection with the provision of the services and all Intellectual Property (defined below), (iv) all claims data that is not de-identified, and (v) all other material bearing a "Confidential Information" or similar designation.

Employer and Bravo acknowledge that Confidential Information of the other party shall not include information which (i) was in the first party's possession legitimately and without obligation of confidentiality prior to the initiation of the negotiation of this Agreement, or (ii) is information generally available within the healthcare, employee benefits, or health care industries, or (iii) is information rightfully obtained by it through third party sources, provided that such third party source was not bound by a duty of confidentiality relating to the disclosure of such information.

Employer and Bravo acknowledge that the other's Confidential Information disclosed to it pursuant to this

Agreement is disclosed in confidence and with the understanding that it constitutes valuable information developed at great expenditure of time, effort and money. Each party agrees to secure and protect the Confidential Information of the other party using all commercially reasonable means, but in no event shall such means be less than those used by the party to secure and protect its own Confidential Information. Neither party shall use Confidential Information belonging to the other party, except as is necessary to accomplish the objectives of this Agreement and the performance of the services hereunder. Neither party shall disclose, transfer, publish or display Confidential Information belonging to the other party to any third parties, unless expressly permitted herein.

If disclosure of Confidential Information is required by law, the party under such requirement shall, if and when permissible, notify the other party, and to the extent required in any Business Associate Agreement, either or both Bravo and Employer will notify the applicable covered entity. Bravo or Employer or, where applicable, the applicable covered entity, may object to the request and/or seek an appropriate protective order. Except as provided herein, in no event shall either party disclose Confidential Information to a third party including a government agency except under a valid order from a court having jurisdiction or under a valid discovery request or subpoena which requires the specific disclosure, nor shall either party disclose any Confidential Information that is not specifically required be disclosed under applicable law.

Employer and Bravo acknowledge that any disclosure of Confidential Information to it by the other party is done in reliance upon the receiving party's representations and covenants in this Agreement. Employer and Bravo agree not to use, duplicate or make any copies of the Confidential Information of the other except as necessary to carry out its responsibilities under this Agreement. Upon termination of this Agreement for any reason whatsoever, Employer will promptly return to Bravo, or destroy, and Bravo will promptly return to Employer, or destroy, all material constituting or containing Confidential Information of the other, provided, however, that each party may retain one copy of such Confidential Information for archival purposes only.

9. **INTELLECTUAL PROPERTY**

a. Employer shall not have any ownership interest in trademarks, service marks, trade names, slogans or logos of Bravo. Any use of Bravo's logo requires written consent and approval by Bravo. Any use shall cease immediately upon termination or expiration of this Agreement.

b. All representations of the Bravo Wellness, LLC trademarks, service marks, trade names, slogans and logos that Employer uses will be exact copies of those provided by Bravo or shall first be submitted to Bravo for approval, for which approval shall not be unreasonably withheld or delayed.

10. **INSURANCE, LICENSES AND PERMITS**

All parties, including but not limited to Screening Providers, will be responsible for obtaining all licenses and permits as may be required by applicable law or regulation and to perform the services hereunder. Throughout the Term of this Agreement, the parties shall maintain the insurance coverage listed on **Exhibit E**.

11. **INDEMNIFICATION**

a. Employer shall defend, indemnify, and hold Bravo harmless from and against all actions or causes of action, claims, demands, liabilities, losses, damages, or expenses of any kind (including court costs and attorneys' fees) which Bravo may at any time sustain or incur hereunder, other than those which arise from Bravo's negligence, misconduct, or a breach of this Agreement.

Bravo shall defend, indemnify, and hold Employer harmless from and against all actions or causes of action, claims, demands, liabilities, losses, damages, or expenses of any kind (including court costs and attorneys' fees) which Employer may at any time sustain or incur hereunder that arise from Bravo's negligence or misconduct.

Bravo is a fiduciary based on the services it provides Employer to the extent of reasonable alternatives and appeals only. In this regard, Bravo will comply with Employer's reasonable alternatives and

appeals procedures for the Program. A standard reasonable alternatives and appeals process checklist is set forth in **Exhibit E**.

b. The indemnification obligations described above will not apply to any losses to the extent that such losses were caused by: (a) negligence, gross negligence, or willful misconduct on the part of the indemnified party or their agents; (b) the breach by the indemnified party of any representation, warranty or covenant in this Agreement or any document expressly incorporated into this Agreement; or (c) the violation of any applicable law by the indemnified party.

12. **LIMITATION OF LIABILITY**

EXCEPT AS SET FORTH IN THIS AGREEMENT, UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER UNDER ANY CONTRACT, STRICT LIABILITY, NEGLIGENCE, OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, LOST PROFITS, AND/OR LOSS OF USE OR LOSS OF BUSINESS, IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT, EVEN IF SUCH LOSS OR DAMAGE WAS FORESEEABLE OR EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL BRAVO'S LIABILITY TO EMPLOYER EXCEED THE AMOUNTS PAID BY EMPLOYER TO BRAVO DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH CLAIM. BRAVO SHALL NOT BE LIABLE TO EMPLOYER FOR ANY CLAIM BROUGHT BY THIRD PARTIES, EXCEPT AS SUCH CLAIM MAY ARISE UNDER SECTION 10 ABOVE.

BRAVO DOES NOT WARRANT THAT THE SERVICES WILL RESULT IN A REDUCTION IN HEALTH CARE CLAIMS THAT CAN BE MEASURED.

To the extent that any new rules, laws, and regulations become effective or any modifications or reinterpretations of any existing rules, laws and regulations become effective during the life of this Agreement but after the date on which an action by Bravo took place that either (1) affect or result in this Agreement or the Program requiring modification or termination, or (2) if such rules, laws, regulations, modifications or reinterpretations are applied retroactively to affect this Agreement or the Program, then Bravo shall not be responsible for and shall be held harmless by Employer with respect to any fines, liabilities, violations, investigations, assessments, legal fees or additional Employer liability or causes of action that come about as a result thereof. However, Bravo shall take commercially reasonable actions to comply with such changes after they become effective.

a. Bravo shall not be liable or responsible to Employer or any third-party for changes made by Employer to the Program, approved communications, or Employer's plans without advanced written notice to Bravo or for Employer's improper application of screening results. It is Employer's responsibility to provide accurate information on the Annual Compliance Checklist (**Exhibit D)** and to disclose any changes to the information to Bravo for review of the Program's compliance with the Incentives for Nondiscriminatory Wellness Programs in Group Health Plans.

b.. Failure by Employer to disclose any and all plan information, including changes, shall void the compliance determination of the Annual Compliance Checklist and shall void any indemnification by Bravo.

Employer agrees to hold Bravo harmless from any disputes that may arise from undisclosed plan information. Bravo shall not indemnify Employer or any third-party or be liable or responsible to Employer or any third-party for any misrepresentations made by any other third-party regarding the Program or the services provided by Bravo.

Furthermore, Bravo shall be indemnified and held harmless by Employer pursuant to Section 10 above, for any liability resulting from any errors caused by the authentication services provided by the Employer, or any of the

Employer's subcontracted third-party vendors, except for those errors resulting from the gross negligence or willful misconduct of Bravo or their subcontracted vendors.

13. **AUTHORITY AND CONTROL TO MANAGE THE PLAN**

a. Employer, as administrator for its employee benefit plans, has the sole discretionary authority to control and manage the operation of those plans. If and to the extent that the services are provided through a welfare benefit plan, or if Employer determines that the services themselves constitute a welfare benefit plan, it shall be Employer's sole responsibility to ensure compliance with laws that apply to it as plan administrator, including the Patient Protection and Affordable Care Act, HIPAA, Title I of the Genetic Information Nondiscrimination Act of 2008 (GINA), the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), and ERISA. Employer acknowledges that Bravo and its designated agents have the sole discretionary authority to control and manage the operation of the Program. However, the only discretionary authority Bravo shall have within the Program is with respect to the administration or interpretation of reasonable alternatives and appeals. If Employer, as fiduciary for all benefit plans and the Program, rejects and/or overrules the recommendations and actions of Bravo, Bravo shall not indemnify Employer or any third-party or be liable or responsible to Employer or any third-party for any action taken by Employer inconsistent with Bravo's recommendations.

b. Employer must notify Bravo if its employee benefit plan does not contain language explicitly allowing for the plan to contract with third party business associates for the provision of health plan operations.

c. All reasonable alternatives and appeals- processing actions of Bravo shall be within a framework of policies, interpretations, practices and procedures made, established, or approved by Employer as administrator of Employer's plans.

14. **TERM AND TERMINATION OF AGREEMENT**

a. Based upon the range of the dates for each of the services provided, the initial term of this agreement shall commence on the Effective Date and continue through the end of the second Cycle, as described in **Exhibit A** (the "Term"). Beginning with the third Cycle, this Agreement shall automatically renew thirty (30) days prior to the Re-launch Date for a successive Term of equal duration upon the same terms and conditions contained in this Agreement, unless otherwise amended. Following the completion of a Term, either party may terminate this Agreement for any reason with sixty (60) days advance written notice to the other party, subject to the Fees set forth in **Exhibit A**.

b. Notwithstanding subsection (a) above, either party may terminate this Agreement upon at least sixty (60) days advance written notice to the other party if the other party is found to be in material breach of this Agreement or in the event that federal, state, or local laws, rules, or regulations become effective or are modified or interpreted in such a way as to impact adversely Bravo's ability to provide services under this Agreement. The party in breach shall have sixty (60) days from the date of notice to cure any material breach prior to termination of this Agreement. Additionally, either party may terminate this Agreement immediately (i.e. upon delivery of notification to the other party) resulting from the insolvency of the other party, appointment of a trustee or receiver for any substantial part of the assets of the other party, or assignment by the other party for the benefit of its creditors, or the commencement of any proceedings under the bankruptcy laws by or against such other party.

c. In the event of termination, upon written request within sixty (60) days of termination, Bravo will provide the health plan (covered entity) a data file that includes all biometric screening results for each Participant in Bravo's database. Alternatively, the file can be directed to a third-party upon written request from the health plan (covered entity) provided there is an executed Business Associate Agreement between the health plan (covered entity) and the designated third-party. There is no fee to receive one file in Bravo's standard format, custom programming can be included if the standard format is not acceptable, as outlined in **Exhibit A**. Any laws or regulations that prohibit the release of all or part of this information shall supersede this provision.

d. Bravo agrees to complete the performance of any services still required pursuant to previous Term (or portion thereof) in the event that this Agreement is terminated for reasons other than a material breach of the Agreement by Employer or the occurrence of an immediate termination event by either party. All scheduled events and events for which an order has been placed will be honored beyond the termination date.

15. **INDEPENDENT CONTRACTORS**

Employer and Bravo are separate entities, independently contracting for purposes of this Agreement. In no event shall any party be considered the employee, agent, partner, or co-venturer of the other.

16. **NON-DISCLOSURE OF TRADE SECRETS/PROPRIETARY INFORMATION**

Each party anticipates having access to and becoming familiar with the other party's trade secrets and other proprietary information, related to the parties' business, projects, operations, activities or affairs whether of a technical or financial nature or otherwise (including, without limitation, reports, financial information, marketing and sales information, pricing, business plans and proposals, supplier lists, client lists, ideas, concepts, trade secrets, know-how, processes, data, formulae, algorithms, software developments, inventions, papers, resumes, computer records and other technical or business information, whether concerning Bravo's business or otherwise) which has not been publicly disclosed and which the party acquires directly or indirectly from the other party, its officers, employees, clients, agents or representatives.

Each Party expressly agrees not to disclose any of the other party's trade secrets or proprietary information to any person or entity. Both Parties shall at all times maintain all Participant information and other protected or individually identifiable health or health care information in its possession in the strictest confidence in accordance with applicable local, state and federal laws and any and all regulations issued thereunder and as delineated in Employer's Business Associate Agreement that is incorporated herein as **Exhibit C** or otherwise agreed to by the parties.

17. **AMENDMENTS / NOTICES**

This Agreement may only be amended by written instrument signed by the parties hereto. All written amendments and other official communications regarding this Agreement should be directed to the individuals as described on the signature page hereof via courier, overnight service, mail, electronic mail or fax.

Failure of either party hereto to accept delivery of notice shall not be construed as a failure of the provisions of such notice. Service of notice shall be effective at the time of delivery if by courier, on the third day following the date the notice is mailed if by mail, at the time of delivery if by electronic mail, on the date of receipt if by fax, or on the date of delivery if by overnight service.

18. **ENTIRE CONTRACT**

a. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns, estates, heirs, beneficiaries, and representatives.

b. This Agreement and any exhibits and schedules attached hereto and the Non-Disclosure Agreement, if applicable, constitute the entire agreement of the parties with respect to the subject hereof, and supersede all prior understandings, agreements and oral representations and warranties of the parties with respect to the subject matter of this Agreement. Any reference in this Agreement shall be deemed to include any exhibits and schedules.

19. **FORCE MAJEURE**

In the event that either party's business or operations are substantially interrupted by acts of war, fire, labor strike, insurrection, riots, earthquakes or other acts of nature of any cause that is not that party's fault or is beyond that party's reasonable control, then that party shall be relieved of its obligations only as to those

affected operations and only as to those affected portions of this Agreement for the duration of such interruption.

20. **ASSIGNMENTS**

a. Neither Party may assign any of its rights under the Agreement, voluntarily or involuntarily, except (a) with the consent of the other Party; (b) by merger, consolidation, dissolution, or operation of law; (c) to a person or entity that acquires all or substantially all of its assets; or (d) to a parent company or any affiliate or subsidiary, provided that any such assignee agrees in writing to be bound by the terms of the Agreement.

b. Any purported assignment of rights in violation of this Section is void.

21. **GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio applicable to contracts made and to be performed therein, without regard to conflicts of law principles thereunder.

22. **NOTICE PROCEDURE**

No notice or other communication under this Agreement is sufficient to affect any rights, remedies or obligations of a Party unless the notice or communication is in writing and (as elected by the Party giving the notice) is (i) personally delivered, (ii) transmitted by a recognized courier service agreed to by the Parties from time to time or (iv) transmitted by postage prepaid certified or registered mail (with a return receipt requested - airmail if international), to the Party to which notice or communication is being given at the appropriate address as follows:
(a) If to Bravo:
Bravo Wellness, LLC
Attn: Jim Pshock
20445 Emerald Parkway Drive SW, Suite 400
Cleveland, Ohio 44135

(b) If to Employer:
City of Monroe
Attn: Renee Prather
215 North Broad Street
Monroe, Georgia 30655

Except as otherwise specified in this Agreement, all notices or communications are deemed to have been duly given on the date of receipt. A Party may change its address by notice to the other Party.

23. **NONWAIVER OF DEFAULT**

If a Party fails to strictly enforce the performance of a provision of this Agreement, the failure does not constitute a waiver of that provision at any future time and it does not prevent that Party from insisting on the strict keeping and performance of that provision at a later time.

24. **SIGNATORY AUTHORITY**

This Agreement has been authorized by the proper parties of the Employer and the signatory to the Agreement represents and agrees on behalf of the Employer to comply with all applicable laws, provide information to Bravo that is true and accurate, and to comply with the non-disclosure provisions of this Agreement.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

Bravo Wellness, LLC	**City of Monroe**
_____	_____
Signature	Signature
__James R. Pshock / CEO_____	_____
Printed Name/Title	Printed Name/Title
Date: _____	Date: _____

Employer Initials_____
Bravo Initials_____

EXHIBIT A

PRICING DETAILS[1]

1. **CONSULTING and ADMINISTRATION SERVICES**

Annual Consultation Fee for services as detailed herein **$2,500.00**

Due on the Effective Date of this Agreement and each subsequent Re-Launch Date

Per-Participant Administration Fee for services detailed herein **$70.00** per Participant per Event[2].

Early Termination Fee:
If Employer terminates prior to the Term, a minimum Fee of **$7,280.00** applies, which is calculated by taking 50% of the number of Eligible Members multiplied by the Per-Participant Administration Fee. In the event of a shortfall, Employer will be invoiced for the difference between the actual Per-Participant Administration Fees paid and the applicable minimum fee.

2. **WELLNESS SERVICES**

a. Employer has executed a Letter of Engagement with Bravo committing Employer to the non-refundable consulting Fee and authorizing the commencement of the per-Cycle services. Customization of these services may be subject to additional Fees.

1. Review current wellness program and health improvement resources. Identify gaps to close to qualify as "reasonably designed" program as defined in the wellness regulations.
2. Finalize multi-year strategy and timeline. Determine formal overall program goals and success measurements.
3. Assign lead Client Account Manager, Screening Coordinator and other applicable staff to deliver services engaged.
4. Engage Bravo Implementation Team (Model Office) and complete client specific Virtual Critical Path (VCP) to assure all expectations and milestones are understood and documented for tracking.
5. Finalize specific near term participation goals and outcome-based biometric goals, financial impacts and methods to gather results (i.e. plan building).
6. Facilitate detailed logistical planning for biometric screenings by location, provider packets, custom appeal forms, and reasonable alternatives.
7. Provide basic HR staff FAQ and training conference call or webcast.
8. Complete formal Client Service Agreement, Business Associate Agreement(s), and other formal contracting required to engage desired services.
9. Provide completed compliance checklist and completed annual compliance verification worksheet.
10. Launch client-specific employee communications (electronic/PDF versions) and client-specific web portal to support program communication, registration, event scheduling and coordination, and act as a "hub" for all health improvement resources available to eligible individuals.
11. Review file layouts for eligibility, result extract, vendor (i.e. Disease Management) exports with client, exchange and verify successful test files, establish secure FTP or other method for file exchange, and document frequency of each file.
12. Prepare standard aggregate reporting package.

b. Employer has executed a Letter of Engagement with Bravo committing Employer to the non-refundable consulting Fee and authorizing the commencement of the per-Participant services. Customization of these services may be subject to additional Fees.

[1] All Fees are subject to the terms and conditions in this Agreement.

[2] "Event" means a specific window of time where eligible members elect to become Participants in the Program and complete the necessary components of the Program. There can be multiple Events related to a Program Impact Period. Make-up screenings and re-screens due to an appeal are not considered separate Events.

Employer Initials_____
Bravo Initials_____

1. Assist eligible individuals who registered for the program throughout the screening, health assessment, health activity, appeals and alternatives processes.
2. Coordinate biometric screening events on-site and through walk-in patient service centers as outlined in the Buyer's Guide. (Screening fees are based upon vendors selected as noted in Buyer's Guide.)
3. Coordinate the collection, verification and processing of all provider packet screening forms *(a $15.00 per form fee will be applied)*.
4. Track individual participants throughout the process, gather screening forms, lab results and biometrics.
5. Load all results into proprietary IncentiSoft wellness adjudication system and "score" results against client-specific participation-based, activity-based and outcomes-based goals.
6. Generate and provide a personalized results letter to each participant, including rights to appeal, the appeal process overview, and alternatives. Filing deadlines for appeals and requesting alternatives is 30 days from the date of the results letter.
7. Process Type 1 Appeals– disputed accuracy and Type 2 Appeals – requests for waiver/alternative due to medical issue, or other custom appeal protocols as mutually defined during implementation.
8. Issue participant appeal disposition letters notifying them of appeal decision and applicable alternative goals and deadlines.
9. Coordinate communication, tracking and verification of completed alternatives warranted by Type 2 appeals.
10. Deliver result extracts/payroll files to employer or designated party(s) and screening data to applicable health improvement partners.
11. Fees for health improvement partners will be quoted separate from the Bravo fees should they apply.

c. **Screening Services**

Employer must select a Screening Provider as outlined below, The Fees and terms of services will be outlined in separate addendums pertaining to the selected Screening Provider and/or services. If Employer adds additional services during the Cycles, addendums corresponding to these services will be sent to Employer for signature prior to implementation of these services.

The Letter of Engagement will outline anticipated services selected. Employer will be invoiced only for the applicable items ordered as events are planned. Screening Service fees are subject to review and revision, as further detailed in addendums. The three screening selections listed below can be engaged in any combination. Selections can differ between group events and new hire screenings.

Selection 1: Subcontracted Screening Provider –Subcontracted through Bravo, as described in Section 5 of this Agreement. Bravo will coordinate, order, schedule, and oversee data transfer, and exceptions through the Subcontracted Screening Provider. Screening protocols are outlined in **Exhibit B. See Addendum attached hereto for specific services and pricing.**

Selection 2: Employer-Contracted Screening Provider –Independently contracted with Employer, as described in Section 5 of this Agreement. Bravo is not responsible for data quality or turn around as a result of Employer-Contracted Screening Provider. Employer acknowledges full responsibility for ensuring Employer-Contracted Screening Provider follows all the Screening Provider expectations outlined in **Exhibit B**. If Employer selects an Employer-Contracted Screening Provider with whom Bravo has not previously worked with, a one-time set-up and integration Fee of $2,500.00 will apply. For any Employer-Contracted Screening Provider, an additional Fee of $10 per-Participant will apply.

Selection 3: Provider Packets – Available for both Featured and Alternative Screening Providers. Electronically-delivered participant instructions and provider screening form to allow Participants to screen through their provider.

- Standard packet and processing - **$15 per unique form received**
- Additional Costs may apply for customization, including but not limited to:
  - Customization of fields and/or form
  - Requiring lab verification of tobacco/nicotine use
  - Follow up on all missing data points
  - Data entry of non-required results
  - Other customization requests

Employer Initials_____
Bravo Initials_____

d. Non-Standard Customization Fees

Custom programing for services beyond Bravo's standard programming and reasonable customization as outlined herein is available. A custom quote will be provided and approved by Employer before any billable custom programming begins.

3. **BILLING AGENT (If other than Employer), as described in Section 4**
Direct Invoices for all services engaged above to:

☐Billing Agent
XX
Address
City, State, Zip

☐All Fees ☐Some Fees (NOTE)

4. **TERM** – The Term of Exhibit A shall run through end date of the second Program Impact Period. Fees are subject to change upon renewal of Exhibit. Screening dates and communications referred to in Section 2 herein will be determined annually during implementation.

Cycle One

Initial Launch	July 29, 2013
Initial Program Impact Period	April 1, 2014 – March 31, 2015

Cycle Two

Re-Launch Date	July 2014
Second Program Impact Period	April 1, 2015 – March 31, 2016

Annual Re-Launch Date for Subsequent Cycles: July 10th [3]

A non-refundable deposit of thirty percent (30%) of the estimated total amount for the Program is due to Bravo no less than thirty (30) days prior to the start of Participant registration. This deposit is fully applied to the first invoice Employer receives.

3 Pursuant to Section 14(a), this Agreement will automatically renew for a subsequent term of equal duration on the Annual Re-Launch Date, unless notice is given by either Party thirty (30) days prior to the Annual Re-Launch Date.

Employer Initials_____
Bravo Initials_____

EXHIBIT B

SCREENING PROVIDER PROTOCOLS

Materials available upon request to be reviewed with Alternative Screening Providers.

Employer Initials_____
Bravo Initials_____

EXHIBIT C

BUSINESS ASSOCIATE AGREEMENT

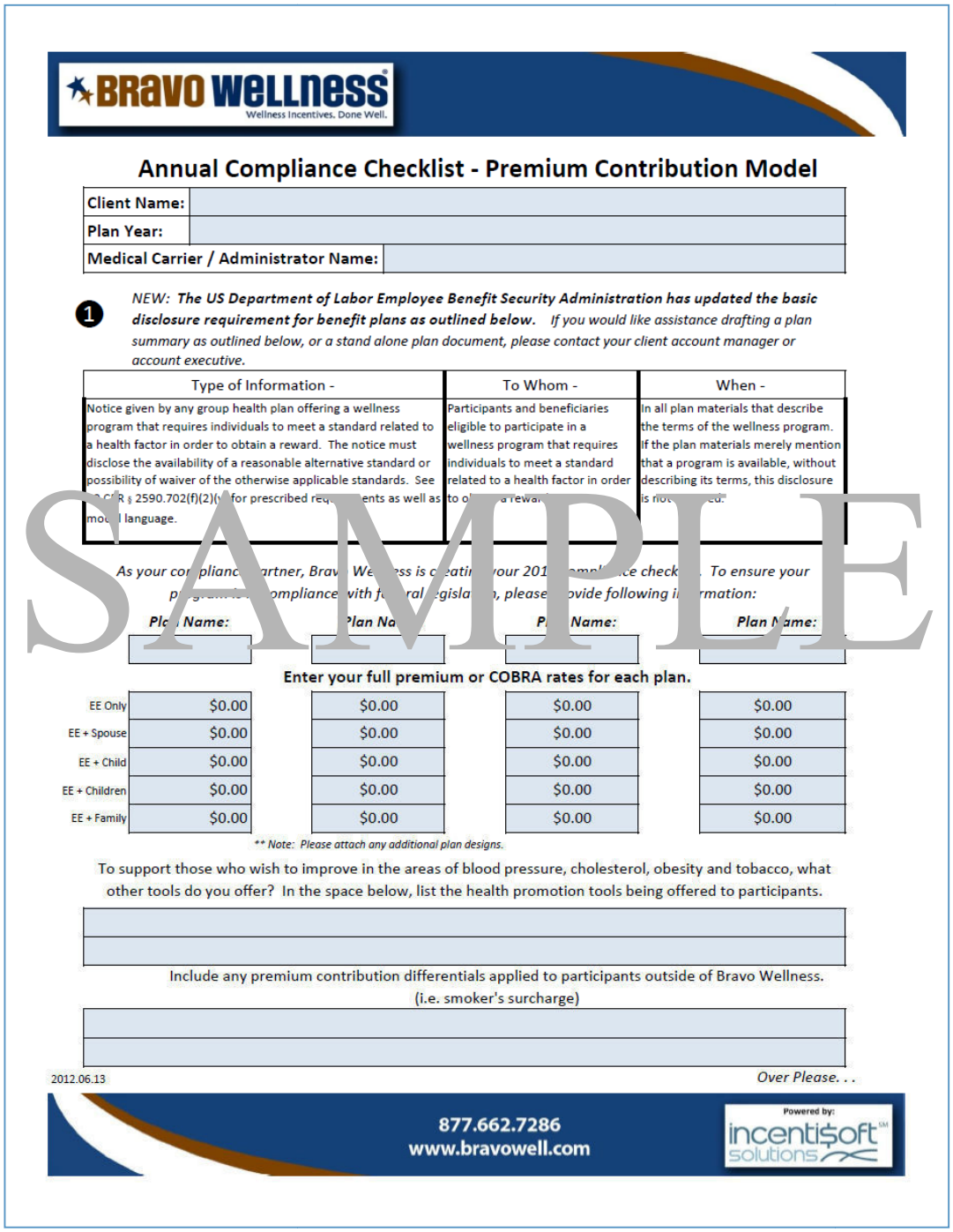
If Employer does not have a standard Business Associate Agreement, Bravo can provide its Business Associate Agreement upon request. Bravo's Notice of Privacy Practices is also available upon request.

Employer Initials_____
Bravo Initials_____

EXHIBIT D

ANNUAL COMPLIANCE CHECKLIST TEMPLATE

The checklist should be obained electronically from your Client Account Manager. The below is a sample image of the document for your reference.



BRAVO WELLNESS
Wellness Incentives. Done Well.

Annual Compliance Checklist - Premium Contribution Model

Client Name:	
Plan Year:	
Medical Carrier / Administrator Name:	

❶ *NEW:* ***The US Department of Labor Employee Benefit Security Administration has updated the basic disclosure requirement for benefit plans as outlined below.*** *If you would like assistance drafting a plan summary as outlined below, or a stand alone plan document, please contact your client account manager or account executive.*

Type of Information -	To Whom -	When -
Notice given by any group health plan offering a wellness program that requires individuals to meet a standard related to a health factor in order to obtain a reward. The notice must disclose the availability of a reasonable alternative standard or possibility of waiver of the otherwise applicable standards. See 29 CFR § 2590.702(f)(2)(i) for prescribed requirements as well as to obtain a reward model language.	Participants and beneficiaries eligible to participate in a wellness program that requires individuals to meet a standard related to a health factor in order	In all plan materials that describe the terms of the wellness program. If the plan materials merely mention that a program is available, without describing its terms, this disclosure is not required.

As your compliance partner, Bravo Wellness is creating your 2013 compliance checklist. To ensure your program is in compliance with federal legislation, please provide following information:

Plan Name:	*Plan Name:*	*Plan Name:*	*Plan Name:*

Enter your full premium or COBRA rates for each plan.

EE Only	$0.00	$0.00	$0.00	$0.00
EE + Spouse	$0.00	$0.00	$0.00	$0.00
EE + Child	$0.00	$0.00	$0.00	$0.00
EE + Children	$0.00	$0.00	$0.00	$0.00
EE + Family	$0.00	$0.00	$0.00	$0.00

*** Note: Please attach any additional plan designs.*

To support those who wish to improve in the areas of blood pressure, cholesterol, obesity and tobacco, what other tools do you offer? In the space below, list the health promotion tools being offered to participants.

Include any premium contribution differentials applied to participants outside of Bravo Wellness. (i.e. smoker's surcharge)

2012.06.13 *Over Please. . .*

877.662.7286
www.bravowell.com
Powered by: incenti$oft solutions

Employer Initials_____
Bravo Initials_____

EXHIBIT E

MINIMUM INSURANCE COVERAGE

	Insurance Type	Per Occurrence	Annual Aggregate
Bravo	General Liability	$1,000,000	$1,000,000
Bravo	Professional Liability	$1,000,000	$1,000,000
Employer	General Liability	$1,000,000	$1,000,000
Screening Provider(s)	General Liability	$1,000,000	$1,000,000
Screening Provider(s)	Professional Liability	$1,000,000	$1,000,000

Employer Initials_____
Bravo Initials_____

Addendum

Hooper Holmes

Unless otherwise specified, when screenings are ordered the price per Participant per Event is based upon the greater of the number of people signed up as of the final estimate date or the actual number who attend each Screening Event, as outlined below for standard hours and screening service.

Number of Participants at Screening Event[4]	*1^ (provider packet alternative available)*	*2-19*	*20 – 100*	*101 – 500*	*>500*
Cost Per Participant	*$115*	*$85*	*$60*	*$55*	*$50*

Additional Costs may apply if selected. If terms vary, Employer will be notified when order is placed**.**

- Additional Lab tests outside of standard panel (details of standard panel provided upon request)
- Pipe and Drape Screening Room Set-Up: **$30 per station per day**
- Premium off-hours, outside of Monday through Friday 6:00 a.m. – 7:00 p.m., Weekend and Holiday Hours
- Cancellation less than 10 days prior to the event is subject to a **50% cancellation fee**. If less than 48 hours, a **100% cancellation fee** will apply.
- Omron (Body Fat Analyzers) at small events of 20 or less: **$4 per participant**

Additional surcharges may be applicable for performing services in select states

- Fees outlined herein are subject to increases made by the applicable third-party solution provider and shall be provided to Employer in writing at least thirty (30) days prior to their effective date. Nothing in this Addendum shall prohibit Employer from selecting other or additional solution providers.

- The chart below outlines the basic expectations when selecting Hooper Holmes.

	Featured Screening Provider
Protocols	See Exhibit B
Contracts	Hooper Holmes subcontracted with Bravo
Registration	On-line or paper available through standard wellness screening form
Scheduling	Hooper Holmes includes on-line scheduling tool, paper scheduling may be available
Screening Form	Standard wellness screening form (The current wellness screening form can be requested at any time)
Timeline	30 days minimum to order group events Final estimate of Participants required 10 days prior to event to determine invoiced amount, which shall be the greater number of either estimated or actual Participants
Service Expectations	Results delivered to Bravo within three to five (3- 5) business days Bravo will post results within five (5) business days of receiving results

[4] With Hooper Holmes, a Screening Event is defined as continuous block of time scheduled for one location on the same or different day for which the screening services will be conducted between the hours of 6:00 am and 7:00pm, Monday through Friday. Morning, afternoon and evening screening times during the same day shall be considered as one screening event for the same location.

Employer Initials_____
Bravo Initials_____

Addendum

BioSignia Know Your Number

Employer has chosen to engage BioSignia Know Your Number.

Standard Fees

Per-Participant Fee: $15.00

Any changes in Fees will be communicated sixty (60) days prior to the increase taking effect.

This Addendum has been authorized by the proper parties of the Employer.

Exhibit C

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is effective as of July 29, 2013 (the "Agreement Effective Date") by and between City of Monroe, a Georgia municipality that is either a Covered Entity itself or a Business Associate having a relationship with a Covered Entity ("Company") and Bravo Wellness, LLC, an Ohio limited liability company ("Business Associate").

RECITALS

WHEREAS, the U.S. Department of Health and Human Services ("HHS") has issued final regulations (the "HIPAA Omnibus Rule"), pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), governing the privacy of individually identifiable health information obtained, created or maintained by certain entities, including healthcare providers (the "HIPAA Privacy Regulations"), the security of such information in electronic form (the "HIPAA Security Regulations"), and modifications to the HIPAA Privacy Regulations and HIPAA Security Regulations under the Health Information Technology for Economic and Clinical Health Act and the regulations promulgated thereunder (the "HITECH Act");

WHEREAS, Company has engaged Business Associate to perform services or provide goods, or both;

WHEREAS, Company possesses Individually Identifiable Health Information and/or Electronic Protected Health Information that is protected under HIPAA and the HIPAA Omnibus Rule and is permitted to use or disclose such information only in accordance with such laws and regulations;

WHEREAS, Business Associate may receive such information from Company, or create, receive, maintain or transmit such information on behalf of Company, in order to perform certain of the services or provide certain of the goods, or both;

WHEREAS, Company wishes to ensure that Business Associate will appropriately safeguard Individually Identifiable Health Information and/or Electronic Protected Health Information;

WHEREAS, the HIPAA Privacy Regulations, HIPAA Security Regulations, and the HITECH Act require that the Company and Business Associate enter into this Agreement in order to protect the privacy and security of PHI; and

WHEREAS, the Parties desire to enter into this Agreement to protect PHI, and to amend any agreements between them, whether oral or written, with the execution of this Agreement.

NOW THEREFORE, Company and Business Associate agree as follows:

1. **Definitions.** The parties agree that the following terms, when used in this Agreement, shall have the following meanings, provided that the terms set forth below shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in the HIPAA Omnibus Rule.

a. "*HIPAA*" means the Health Insurance Portability and Accountability Act of 1996 as codified at 42 U.S.C. § 1320d.

b. "*HIPAA Omnibus Rule*" means the final regulations promulgated under HIPAA, including the HIPAA Privacy Regulations, the HIPAA Security Regulations, and regulations implementing the HITECH Act.

c. "*HIPAA Privacy Regulations*" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the privacy of Protected Health Information, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart E.

d. "*HIPAA Security Regulations*" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the security of Electronic Protected Health Information, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart C.

e. "*HITECH Act*" means the Health Information Technology for Economic and Clinical Health Act, part of the American Recovery and Reinvestment Act of 2009, as codified at 42 U.S.C.A. prec. § 17901 and any regulations promulgated thereunder.

f. "*Covered Entity*" means a health plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a transaction covered by the HIPAA Privacy Regulations and HIPAA Security Regulations.

g. "*Individually Identifiable Health Information*" means information that is a subset of health information, including demographic information collected from an individual, and:

(1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

a) that identifies the individual; or

b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

h. "*Protected Health Information*" or "*PHI*" means Individually Identifiable Health Information transmitted or maintained in any form or medium that (i) is received by Business Associate from Covered Entity, (ii) Business Associate creates for its own purposes from Individually Identifiable Health Information that Business Associate received from Covered Entity, or (iii) is created, received, transmitted or maintained by Business Associate on behalf of Covered Entity. Protected Health Information excludes Individually Identifiable Health Information in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. § 1232g, records described at 20 U.S.C. § 1232g(a)(4)(B)(iv), employment records held by the Covered Entity in its role as employer, and, effective March 26, 2013, records regarding a person who has been deceased for more than fifty (50) years.

i. "*Unsecured Protected Health Information*" means PHI that has not been rendered unusable, unreadable, or indecipherable to unauthorized persons through use of a technology or

methodology as set forth in the guidance specified by the Secretary or as otherwise defined in the HITECH Act.

j. "*Data Aggregation*" means, with respect to PHI created or received by a Business Associate in its capacity as the Business Associate of a Covered Entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective Covered Entities.

k. *"Electronic Protected Health Information"* or *"Electronic PHI"* means Protected Health Information that is transmitted by or maintained in electronic media as defined in the HIPAA Security Regulations.

l. "*Breach*" shall mean the acquisition, access, use or disclosure of Protected Health Information in a manner not permitted under the HIPAA Privacy Regulations which comprises the security or privacy of the Protected Health Information. Except as excluded below, effective September 23, 2013, any acquisition, access, use or disclosure of Protected Health Information in a manner not permitted under the HIPAA Privacy Regulations shall be presumed to be a "Breach" unless Covered Entity or Business Associate, as applicable, demonstrates that there is a low probability that the Protected Health Information has been compromised based on a risk assessment of at least the following factors: (a) the nature and extent of the Protected Health Information involved, including the types of identifiers and the likelihood of re-identification; (b) the unauthorized person who used the Protected Health Information or to whom the disclosure was made; (c) whether the Protected Health Information was actually acquired or viewed; and (d) the extent to which the risk to the Protected Health Information has been mitigated.

"Breach" shall not include:

(i) Any unintentional acquisition, access, or use of Protected Health Information by a workforce member or person acting under the authority of Covered Entity or Business Associate, if such acquisition, access or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the HIPAA Privacy Regulations; or

(ii) Any inadvertent disclosure by a person who is authorized to access Protected Health Information at Covered Entity or Business Associate to another person authorized to access Protected Health Information at Covered Entity or Business Associate, respectively, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Regulations; or

(iii) A disclosure of Protected Health Information where Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

m. "*Secretary*" shall mean the Secretary of the Department of Health and Human Services or his designee.

n. "*Security incident*" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

2. **Status of Parties.** Business Associate hereby acknowledges and agrees that Company is either a Covered Entity or a Business Associate having a business relationship with a Covered Entity and that Business Associate is a business associate, as defined in 45 CFR 160.103, of Company.

3. **Permitted Uses and Disclosures by Business Associate.**

a. *Performance of Services.* Business Associate may use and disclose PHI in connection with the performance of the services set forth in the Client Services Agreement if such use or disclosure of PHI would not violate HIPAA or the HIPAA Privacy Regulations if done by Company and satisfies the minimum necessary policies and procedures of the Company, or if such use or disclosure is expressly permitted under Section 3.b. or 3.c. of this Agreement.

b. *Proper Management and Administration.* Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that:

(1) the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person; and

(2) Business Associate will be notified by such person of any instances of which it becomes aware in which the confidentiality of the PHI has been breached.

c. *Other Permitted Uses.* Unless otherwise limited herein, the Business Associate may also:

(1) perform Data Aggregation for the Health Care Operations of Company as permitted by 45 CFR § 164.504(e)(2)(i)(B).;

(2) use, analyze, and disclose the PHI in its possession for the public health activities and purposes set forth at 45 C.F.R. § 164.512(b);

(3) use PHI to report violations of law to appropriate federal and state authorities according to 45 C.F.R. § 164.502(j)(1); and

(4) de-identify any and all PHI provided that Business Associate implements de-identification criteria in accord with 45 C.F.R. §164.514(b).

4. **Nondisclosure.**

a. *As Provided In Agreement.* Business Associate shall not use or further disclose PHI except as permitted or required by this Agreement.

b. *Disclosures Required By Law.* Business Associate shall not, without the prior written consent of Company, disclose any PHI on the basis that such disclosure is required by law without notifying Company so that Company shall have an opportunity to object to the disclosure and to seek appropriate relief. If Company objects to such disclosure, Business Associate shall refrain from disclosing the PHI until Company has exhausted all alternatives for relief. Business

Associate shall require reasonable assurances from persons receiving PHI in accordance with Section 3.b. hereof that such persons will provide Company with similar notice and opportunity to object before disclosing PHI on the basis that such disclosure is required by law.

c. *Marketing*. Business Associate will not sell PHI or use or disclose PHI for purposes of marketing, as defined in the HIPAA Omnibus Rule.

d. *Additional Restrictions*. If Company notifies Business Associate that Company has agreed to be bound by additional restrictions on the uses or disclosures of PHI pursuant to HIPAA or the HIPAA Privacy Regulations, Business Associate shall be bound by such additional restrictions and shall not disclose PHI in violation of such additional restrictions.

5. **Safeguards, Mitigation and Enforcement.**

a. *Safeguards.* Business Associate shall use any and all appropriate safeguards to prevent use or disclosure of PHI other than as provided by this Agreement or as required by law. Business Associate further agrees to use appropriate administrative, physical and technical safeguards, including the appointment of a security official, to protect the confidentiality, integrity and availability of any PHI or Electronic PHI that it creates, receives, maintains, or transmits on behalf of the Company in accordance with the HIPAA Security Regulations and the HITECH Act.

b. *Business Associate's Agents or Subcontractors.* Business Associate shall ensure that any agents or subcontractors to whom it provides PHI agree in writing to be bound by the same restrictions and conditions that apply to Business Associate with respect to such PHI by entering into a business associate agreement; provided, however, that Business Associate shall not disclose or provide access to PHI to any subcontractor or agent without the prior written consent of Company.

c. *Mitigation.* Business Associate shall have procedures in place to mitigate, to the maximum extent practicable, any deleterious effect that is known to the Business Associate of any use or disclosure of PHI by Business Associate, or its agents or subcontractors, in violation of this Agreement or applicable law.

d. *Sanctions.* Business Associate shall have and apply appropriate sanctions against any employee, subcontractor or agent who uses or discloses PHI or Electronic PHI in violation of this Agreement or applicable law.

e. *Company's Rights of Access and Inspection.* From time to time upon reasonable notice, or upon a reasonable determination by Company that Business Associate has breached this Agreement, Company may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement. The fact that Company inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Agreement, nor does Company's (1) failure to detect or (2) detection of, but failure to notify Business Associate or require Business Associate's remediation of, any unsatisfactory practices constitute acceptance of such practice or a waiver of Company's enforcement or termination rights under this Agreement. The parties' respective rights and obligations under this Section 5.e. shall survive termination of the Agreement.

f. *United States Department of Health and Human Services.* Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI, and the security of

Electronic PHI, available to the Secretary of the United States Department of Health and Human Services ("HHS") for purposes of determining Company's compliance with the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HITECH Act after the compliance dates, respectively, of these regulations; provided, however, that Business Associate shall immediately notify Company upon receipt by Business Associate of any such request for access by the Secretary of Health and Human Services, and shall provide Company with a copy thereof as well as a copy of all materials disclosed pursuant thereto. The parties' respective rights and obligations under this Section 5.f. shall survive termination of the Agreement.

6. **Obligation to Provide Access, Amendment and Accounting of PHI.**

a. *Access to PHI.* Business Associate shall make available to Company such information as Company may require to fulfill Company's obligations to provide access to, and copies of, PHI in accordance with 45 CFR 164.524.

b. *Amendment of PHI.* Business Associate shall make available to Company such information as Company may require to fulfill Company's obligations to amend PHI in accordance with 45 CFR 164.526. In addition, Business Associate shall, as directed by Company, incorporate any amendments to Company's PHI into copies of such information maintained by Business Associate.

c. *Accounting of Disclosures of PHI.* Business Associate shall make available to Company such information as Company may require to fulfill Company's obligations to provide an accounting of disclosures with respect to PHI in accordance with 45 CFR 164.528. Business Associate shall make this information available to Company upon Company's request.

d. *Forwarding Requests From Individual.* In the event that any individual requests access to, amendment of, or accounting of PHI directly from Business Associate, Business Associate shall within two (2) days forward such request to Company. Company shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Company would cause Company or Business Associate to violate HIPAA, or the HIPAA Omnibus Rule, Business Associate shall instead respond to the individual's request as required by such law and notify Company of such response as soon as practicable.

7. **Notice of Use or Disclosure, Security Incident or Breach.**

a. Business Associate agrees to report to Company any use or disclosure of the PHI not permitted by this Agreement, any Breach of Unsecured Protected Health Information, or any Security Incident involving Electronic PHI, of which it becomes aware without unreasonable delay, but no later than ten (10) calendar days after the discovery of the breach, use or disclosure of the PHI.

b. Business Associate shall provide the following information to Company within thirty (30) days of discovery of a Breach:

(i) the date of the Breach;

(ii) the date of the discovery of the Breach;

(iii) a description of the types of Unsecured PHI that were involved in the Breach;

(iv) identification of each individual whose Unsecured PHI has been, or is reasonably believed to have been accessed, acquired, or disclosed; and

(v) any other details necessary to complete an assessment of the risk of harm to the individuals.

c. Company will be responsible for providing notification to individuals whose Unsecured PHI has been disclosed, as well as provide notification to the Secretary and the media, as required pursuant to 45 CFR 164.404, 164.406 and 164.408.

d. The parties acknowledge and agree that this section constitutes notice by Business Associate to Company of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to Company shall be required. "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.

e. Business Associate agrees to pay actual costs for notification and for any associated mitigation costs incurred by Company.

f. Business Associate agrees to establish procedures to investigate the Breach, mitigate losses, and protect against any future Breaches, and to provide a description of these procedures and the specific findings of the investigation to Company in the time and manner reasonably requested by Company.

g. Upon any Breach, Business Associate shall evaluate whether such Breach is a Breach requiring notice under any state laws. If Business Associate determines that such Breach requires notice to be provided under any state laws, Business Associate shall be responsible for providing such notices in accordance with the applicable state laws.

8. **Obligations of Company.**

a. Company shall notify Business Associate of any limitation(s) in its notice of privacy practices of Company in accordance with 45 CFR § 154.520 to the extent that such limitations may affect Business Associate's use or disclosure of PHI.

b. Company shall notify Business Associate of any changes in or revocation permission by individual to use or disclose PHI to the extent that such changes may affect Business Associate's use or disclosure of PHI.

c. Company shall notify Business Associate of any restriction to the use or disclosure of PHI that Company has agreed to in accordance with 45 CFR § 164.522 to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

d. Company shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA or the HIPAA Omnibus Rule if done by Covered Entity.

9. **Material Breach, Enforcement and Termination.**

a. *Term.* This Agreement shall be effective as of the Agreement Effective Date or such earlier date as of which Business Associate creates, receives, maintains or transmits PHI on behalf of Covered Entity, and shall continue until the Agreement is terminated in accordance with the provisions of Section 9.b.

b. *Termination*. Company may terminate this Agreement and the Client Services Agreement:

(1) immediately if Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations or the HITECH Act;

(2) immediately if a finding or stipulation that Business Associate has violated any material standard or requirement of HIPAA or other security or privacy laws is made in any administrative or civil proceeding in which Business Associate has been joined; or

(3) pursuant to Sections 9.c. or 10.b. of this Agreement.

c. *Remedies*. If Company determines that Business Associate has breached or violated a material term of this Agreement, Company may, at its option, pursue any and all of the following remedies:

(1) exercise any of its rights of access and inspection under Section 5.e. of this Agreement;

(2) take any other reasonable steps that Company, in its sole discretion, shall deem necessary to cure such breach or end such violation; and/or

(3) terminate this Agreement and the Client Services Agreement immediately.

d. *Knowledge of Non-Compliance*. Any non-compliance by Business Associate with this Agreement or with HIPAA or the HIPAA Omnibus Rule automatically will be considered a breach or violation of a material term of this Agreement if Business Associate knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the noncompliance.

e. *Reporting to United States Department of Health and Human Services*. If Company's efforts to cure any breach or end any violation are unsuccessful, and if termination of this Agreement and the Client Services Agreement is not feasible, Company shall report Business Associate's breach or violation to the Secretary of Health and Human Services, and Business Associate agrees that it shall not have or make any claim(s), whether at law, in equity, or under this Agreement or the Client Services Agreement, against Company with respect to such report(s).

f. *Return or Destruction of Records.* Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Company, or created, maintained, or received by Business Associate on behalf of Company, including such PHI received, created, or maintained by any agent of the Business Associate, shall:

(1) Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

(2) Destroy or return, as specified by Company, the remaining PHI that the Business Associate still maintains in any form;

(3) Continue to use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to ePHI, to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;

(4) Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out by Section 3.b. or 3.c. of this Agreement which applied prior to termination; and

(5) Destroy or return, as specified by Company, the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

g. *Transfers.* Upon termination of this Agreement for any reason, the Company may instruct Business Associate to transmit all PHI that Business Associate still maintains, including such PHI received, created, or maintained by any agent or subcontractor of the Business Associate, to another business associate of the Company.

h. *Injunctions*. Company and Business Associate agree that any violation of the provisions of this Agreement may cause irreparable harm to Company. Accordingly, in addition to any other remedies available to Company at law, in equity, or under this Agreement, in the event of any violation by Business Associate of any of the provisions of this Agreement, or any explicit threat thereof, Company shall be entitled to an injunction or other decree of specific performance with respect to such violation or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages. The parties' respective rights and obligations under this Section 9.g. shall survive termination of the Agreement.

i. *Indemnification.* Business Associate shall indemnify, hold harmless and defend Company from and against any and all claims, losses, liabilities, costs and other expenses resulting from, or relating to, the acts or omissions of Business Associate in connection with the representations, duties and obligations of Business Associate under this Agreement. The parties' respective rights and obligations under this Section 9.h shall survive termination of the Agreement.

10. **Miscellaneous Terms.**

a. *State Law.* This Agreement shall be governed and construed under the laws of the State of Ohio. Nothing in this Agreement shall be construed to require Business Associate to use or disclose PHI without a written authorization from an individual who is a subject of the PHI, or written authorization from any other person, where such authorization would be required under state law for such use or disclosure.

b. *Amendment.* Company and Business Associate agree that amendment of this Agreement may be required to ensure that Company and Business Associate comply with changes in state and federal laws and regulations relating to the privacy, security, and confidentiality of PHI. Company may terminate this Agreement upon written notice in the event that Business Associate does not promptly enter into an amendment that Company, in its sole discretion, deems sufficient to ensure that Company will be able to comply with such laws and regulations. This Agreement may not otherwise be amended except by written agreement between both parties.

c. *No Third Party Beneficiaries.* Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than Company and Business Associate, and their respective successors and assigns, any rights, obligations, remedies or liabilities.

d. *Ambiguities*. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with applicable law protecting the privacy, security and confidentiality of PHI, including, but not limited to, HIPAA and the HIPAA Omnibus Rule.

e. *Conflicts.* To the extent that any provisions of this Agreement conflict with the provisions of any other agreement or understanding between the parties, this Agreement shall control with respect to the subject matter of this Agreement.

f. *Ownership of PHI*. As between Company and Business Associate, Company holds all right, title and interest in and to any and all PHI received by Business Associate from, or created or received by Business Associate on behalf of, Company, and Business Associate does not hold, and will not acquire by virtue of this Agreement or by virtue of providing any services or goods to Company, any right, title or interest in or to such PHI or any portion thereof. Except as specified in Section 3.c. above or as otherwise agreed to in writing by both parties, Business Associate shall have no right to compile and/or distribute any statistical analysis or report utilizing such PHI, any aggregate information derived from such PHI, or any other health and medical information obtained from Company.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Agreement Effective Date.

Bravo Wellness, LLC	**City of Monroe**
_____	_____
By: James R. Pshock (Print Name)	By: (Print Name)
Chief Executive Officer Title:	_____ Title:
_____ Date	_____ Date

Finance Committee Meeting

AGENDA

August 6, 2013

Item:

Approval - Purchase of Hand Held Units

Department:

Additional Information:

Financial Impact:

Budgeted Item:

Recommendation / Request:

Viewing Attachments Requires Adobe Acrobat. Click here to download.

Attachments / click to download

Hand Held Unit Quote

Cover Memo

Item # 4

HD SUPPLY POWER SOLUTIONS

6525 BEST FRIEND RD SUITE 100
NORCROSS, GA 30071

Phone: 404.223.1822
Fax: 770.798.1309

www.hdsupplypowersolutions.com

ITRON FC300 HANDHELD UNIT QUOTE

Quotation: U00304185.02

To: **MONROE WATER LIGHT & GAS**
420 N BROAD STREET
MONROE, GA 30655

Attn:
Phone:
Fax:

Issued Date: **Jul 19, 2013**
Expiration Date: **Aug 18, 2013**

Sales Contact: **Andy Staker**
(P) 404.223.1810
(F) 404.691.4736
andrew.staker@hdsupply.com

Item	CustLine	Product and Description	Quantity	Price	Unit	Extended
HANDHELD EQUIPMENT						
ITRON FC300 HAND HELD QUOTE						
1		**FC3-0004-001** FC300, SREAD RADIO, BLUETOOTH ANNUAL MAINTENANCE BILLED DIRECTLY FROM ITRON- $435 EA DEL: 8-10 WKS ARO	6	4,590.000	EA	27,540.00
2		**MX9302PWRSPLY** AC POWER SUPPLY FOR FC300 hh OR DESKTOP DOCK DEL: 8-10 WKS ARO	2	75.000	EA	150.00
3		**90000A066CBLPWRAC** AC POWER CORD DEL: 8-10 WKS ARO	2	10.000	EA	20.00
4		**FC3002DSKCRDL** SINGLE DESKDOCK, FC300 WITH USB ANNUAL MAINTENANCE BILLED DIRECTLY FROM ITRON- $37. 80 EA DEL: 8-10 WKS ARO	1	425.000	EA	425.00
5		**MX9052CABLE** FC300 CHARGE/COMM INTERFACE CABLE, UBS HOST DEL: 8-10 WKS ARO	1	55.000	EA	55.00
6		**FC3004MLTDOCK** DOCK, 5 BAY MULTI DOCK W/ BUILT IN POWER SUPPLY ANNUAL MAINTENANCE BILLED DIRECTLY BY ITRON-$192 EA DEL: 8-10 WKS ARO	1	1,850.000	EA	1,850.00
7		**FC3058CABLE** MCLITE CABLE- CONNECTS TO FC300SR TO CAR DOCK DEL: 8-10 WKS ARO	1	175.000	EA	175.00

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NORCROSS, GA 30071

Phone: 404.223.1822
Fax: 770.798.1309

www.hdsupplypowersolutions.com

ITRON FC300 HANDHELD UNIT QUOTE

Quotation: U00304185.02

Item	CustLine	Product and Description	Quantity	Price	Unit	Extended
HANDHELD EQUIPMENT						
		ITRON FC300 HAND HELD QUOTE				
			SECTION TOTAL:			$30,215.00
TRAINING						
8		**1 DAYOF TRANING** 1 DAY OF TRAINING BY MR. SITCO	1	1,500.000	EA	1,500.00
			SECTION TOTAL:			$1,500.00
			QUOTE TOTAL:			**$31,715.00**

Special Notes

1) All items are In Stock unless otherwise noted.
2) All item pricing on this quote is valid for thirty days unless otherwise specified.
3) All applicable taxes apply.

HD Supply Power Solutions offers the industry's most extensive and dynamic portfolio of products, services and solutions for the Public Power, Investor-owned Utilities, Construction and Industrial markets.

HD SUPPLY POWER SOLUTIONS

6525 BEST FRIEND RD SUITE 100
NORCROSS, GA 30071

Phone: 404.223.1822
Fax: 770.798.1309

www.hdsupplypowersolutions.com

ITRON FC300 HANDHELD UNIT QUOTE

Quotation: U00304185.02

TERMS AND CONDITIONS OF SALE ("Terms")

1. All references in this document to "Seller" shall include HD Supply, Inc. and / or any parent, subsidiary or affiliate of HD Supply, Inc. (including any division of the foregoing) whether or not performing any or all of the scope hereunder or specifically identified herein. All references to "Buyer" shall include all parent(s), subsidiaries and affiliates of the entity placing the order. Buyer and Seller may be referred to individually as a "Party" and collectively as "Parties".

2. All sales to Buyer are subject to these Terms, which shall prevail over any inconsistent terms of Buyer's purchase order or other documents. Additional or different terms and conditions in any way altering or modifying these Terms are expressly objected to and shall not be binding upon Seller unless specifically accepted in writing by Seller's authorized representative. No modification or alteration of these Terms shall result by Seller's shipment of goods following receipt of Buyer's purchase order, or other documents containing additional, conflicting or inconsistent terms. There are no terms, conditions, understandings, or agreements other than those stated herein, and all prior proposals and negotiations are merged herein. These Terms are binding on the Parties, their successors, and permitted assigns.

3. Prices on Seller website, catalogs or in Seller quotes are subject to change without notice, and all such prices expire and become invalid if not accepted within 10 calendar days from the date of issue, unless otherwise noted by Seller in writing. Price extensions if made are for Buyer's convenience only, and they, as well as any mathematical, stenographic or clerical errors, are not binding on Seller. Prices shown do not include any sales, excise, or other governmental tax or charge payable by Seller to any federal, state or local authority. Any taxes now or hereafter imposed upon sales or shipments will be added to the purchase price, and Buyer shall reimburse Seller for any such tax or provide Seller with an acceptable tax exemption certificate. All prices and other terms provided to Buyer shall be kept confidential except to the extent a Party is required by law to disclose the same.

4. Seller shall not be liable for delay or default in delivery resulting from any cause beyond Seller's reasonable control, including, but not limited to, governmental action, strikes or other labor troubles, fire, damage or destruction of goods, wars (declared or undeclared), acts of terrorism, manufacturers' shortages, availability or timeliness of transportation, materials, fuels, or supplies, and acts of God (each a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event: (a) the time for Seller's performance shall be extended reasonably and the Parties shall adjust all affected dates accordingly, (b) the purchase price shall be adjusted for any increased costs to Seller resulting from such Force Majeure Event; and (c) Buyer shall not be entitled to any other remedy.

5. Seller is a reseller of goods only, and as such does not provide any warranty for the goods it supplies hereunder. Notwithstanding this As-Is limitation, Seller shall pass through to Buyer any transferable manufacturer's standard warranties with respect to goods purchased hereunder. BUYER AND PERSONS CLAIMING THROUGH BUYER SHALL SEEK RECOURSE EXCLUSIVELY FROM MANUFACTURERS IN CONNECTION WITH ANY DEFECTS IN OR FAILURES OF GOODS, AND THIS SHALL BE THE EXCLUSIVE RECOURSE OF BUYER AND PERSONS CLAIMING THROUGH BUYER FOR DEFECTIVE GOODS, WHETHER THE CLAIM OF BUYER OR THE PERSON CLAIMING THROUGH BUYER SHALL SOUND IN CONTRACT, TORT, STRICT LIABILITY, PURSUANT TO STATUTE, OR FOR NEGLIGENCE. BUYER SHALL PASS THESE TERMS TO SUBSEQUENT BUYERS AND USERS OF GOODS. SELLER EXCLUDES AND DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER ASSUMES NO RESPONSIBILITY WHATSOEVER FOR SELLER'S INTERPRETATION OF PLANS OR SPECIFICATIONS PROVIDED BY BUYER, AND BUYER'S ACCEPTANCE AND USE OF GOODS SUPPLIED HEREUNDER SHALL BE PREMISED ON FINAL APPROVAL BY BUYER OR BY BUYER'S RELIANCE ON ARCHITECTS, ENGINEERS, OR OTHER THIRD PARTIES RATHER THAN ON SELLER'S INTERPRETATION. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT, WHETHER IN CONTRACT, WARRANTY, INDEMNITY, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, ARISING DIRECTLY OR INDIRECTLY OUT OF THE PERFORMANCE OR BREACH OF THESE TERMS, SHALL SELLER BE LIABLE FOR (a) ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, CONSEQUENTIAL OR SIMILAR DAMAGES SUCH AS LOSS OF USE, LOST PROFITS, ATTORNEYS' FEES OR DELAY DAMAGES, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR CAUSED BY SELLER'S BREACH OF THIS AGREEMENT, (b) ANY CLAIM THAT PROPERLY IS A CLAIM AGAINST THE MANUFACTURER, OR (c) ANY AMOUNT EXCEEDING THE AMOUNT PAID TO SELLER FOR GOODS FURNISHED TO BUYER WHICH ARE THE SUBJECT OF SUCH CLAIM(S). ALL CLAIMS MUST BE BROUGHT WITHIN ONE YEAR OF ACCRUAL OF A CAUSE OF ACTION.

6. Buyer shall indemnify, defend, and hold Seller its officers, directors, employees and agents harmless from any and all costs (including attorneys' and accountants' fees and expenses), liabilities and damages resulting from or related to any third party (including Buyer's employees) claim, complaint and/or judgment arising from Buyer's use of any goods furnished hereunder, as well as any negligent, intentional, or tortious act or omission of Buyer or any material breach by Buyer of these Terms.

7. When goods are delivered to Buyer in Seller's own vehicles, the F.O.B. point shall be Buyer's designated delivery site. In all other cases the F.O.B. point shall be Seller's store or warehouse and all responsibility and costs of shipping and delivery beyond the applicable F.O.B. point shall be borne by Buyer. Title and risk of loss shall pass to Buyer at the applicable F.O.B. point, which for goods not delivered in Seller's own vehicles shall be when Seller delivers the goods to the common carrier. All claims for shortage of goods or for loss or damage to goods as to which Seller has the risk of loss shall be waived unless Buyer, within 10 calendar days after receipt of the short or damaged shipment, gives Seller written notice fully describing the alleged shortage or damage. Partial shipments are permitted at Seller's discretion.

8. Any change in product specifications, quantities, destinations, shipping schedules, or any other aspect of the scope of goods must be agreed to in writing by Seller, and may result in a price and delivery adjustment by Seller. No credit for goods returned by Buyer shall be given without Seller's written authorization. All returns are subject to a restocking charge.

9. Unless otherwise agreed in writing, payment terms are Net 30, payable in United States of America ("U.S.") dollars. Notwithstanding the foregoing, all orders are subject to Seller's continuing approval of Buyer's credit. If Buyer's credit is not approved or becomes unsatisfactory to Seller then Seller, in its sole discretion, may suspend or cancel performance, or require different payment terms, including but not limited to cash on delivery or in advance of shipment. In addition, Seller may in its discretion require an advance deposit of up to 100% of Seller's selling price for any specially manufactured goods ordered by Buyer hereunder. Payments due hereunder shall be made in the form of cash, check, or money order, or other tender approved in writing by Seller. Seller may, in its sole discretion, apply Buyer's payment against any open charges. Past due accounts bear interest at the lesser of 1.5% per month or the maximum rate permitted by applicable law, continuing after Seller obtains judgment against Buyer. Seller may exercise setoff or recoupment to apply to or satisfy Buyer's outstanding debt. Buyer shall have no right of setoff hereunder, the same being expressly waived hereby.

10. Buyer shall not export or re-export, directly or indirectly, all or any part of the goods or related technology obtained from Seller under these Terms except in accordance with applicable export laws and regulations of the U.S. Further, a Buyer that is a non-U.S. company or citizen shall similarly limit any export or re-export activity to that which would be deemed compliant with U.S. export laws and regulations if performed by a U.S. company or citizen.

11. Buyer shall pay Seller all costs and expenses of collection, suit, or other legal action brought as a result of the commercial relationship between them, including, but not limited to, all actual attorneys' and paralegals' fees, and collection costs, incurred pre-suit, through trial, on appeal, and in any administrative or bankruptcy proceedings. Any cause of action that Seller has against Buyer may be assigned without Buyer's consent to HD Supply, Inc. or to any affiliate, parent or subsidiary of HD Supply, Inc.

12. This Agreement, Buyer's account, and the business relationship between Buyer and Seller shall be governed by and construed in accordance with the laws of Georgia without regard to conflicts of laws rules, and specifically excluding the UN Convention on Contracts for the International Sale of Goods. The Parties agree that any legal action arising under or related to this Agreement shall be brought in Cobb County, Georgia, and any right to object to such venue or to assert the inconvenience of such forum is hereby waived.

13. If Buyer fails to comply with these Terms, Seller may terminate or restrict any order immediately upon notice to Buyer. Buyer certifies that it is solvent and that it will advise Seller immediately if it becomes insolvent. Buyer agrees to send Seller written notice of any changes in the form of ownership of Buyer's business within 5 days of such changes. Buyer and Seller are the only intended beneficiaries of this document, and there are no third party beneficiaries.

14. The invalidity or unenforceability of all or part of these Terms will not affect the validity or enforceability of the other terms. The parties agree to replace any void or unenforceable term with a new term that achieves substantially the same practical and economic effect and is valid and enforceable.

15. The following provisions shall survive termination, cancellation and completed performance of this Agreement as long as necessary to allow the aggrieved party to fully enforce such clauses: 5, 6, 9, 10, 11 and 12.

HD Supply Terms and Conditions of Sale – Rev 1/2013

Finance Committee Meeting

AGENDA

August 6, 2013

Item:

Discussion / Approval - Out of State Travel

Department:

Additional Information:

Financial Impact:

Budgeted Item:

Recommendation / Request:

Viewing Attachments Requires Adobe Acrobat. Click here to download.

Attachments / click to download

Out of State Travel Info

Cover Memo

Item # 5

QS/1 Data Systems

QS/1 Financial Customer Conference

October 17-18, 2013

"QS/1's 2013 Financial Customer Conference will be held at the Hyatt Regency in Greenville, SC. The conference will feature round-table topics that address industry issues, as well as an expo hall that will allow you to meet individually with QS/1 representatives. I'd like to invite you and your associates to join us and share in these discussions."

"This is an excellent opportunity to share information and learn from your peers. There will also be a chance to learn about upcoming enhancements, as QS/1 continues to look for ways to make your office more efficient."

— Jim Mitchell, Sales Manager, QS/1 Governmental Solutions

To register for the conference, call 800.231.7776, or **click here**.

For hotel reservations, call **800.891.3797**, or make **reservations online**.

Trade Shows & Events

Brochures | Demos | The Gov Report

- Business License Brochure
- Fixed Assets Brochure
- Inventory Software Brochure
- Accounting Suite Brochure
- Payroll Software Brochure
- Utility Billing Brochure
- QS/1 Advantages
- Centralized Collections
- Governmental Overview

Item # 5