

DRAFT FOR DISCUSSION PURPOSES ONLY
AGREEMENT ESTABLISHING THE
FREMONT COMMUNITY JOINT PLANNING COMMISSION

Edit Comments and Suggestions
January 9, 2006

This Agreement Establishing the Fremont Community Joint Planning Commission (the "Agreement") is entered into by: the City of Fremont, a Michigan municipal corporation, whose office is located at 101 E. Main Street, Fremont, Michigan 49412; Dayton Township, a Michigan municipal corporation, whose office is located at _____; Sheridan Charter Township, a Michigan municipal corporation, whose office is located _____; and Sherman Township, a Michigan municipal corporation, whose office is located at _____.

1. Purpose and Jurisdictional Area

The CITY OF FREMONT, DAYTON TOWNSHIP, SHERIDAN CHARTER TOWNSHIP, and SHERMAN TOWNSHIP find it in their long-term interests to cooperate on planning and zoning issues, and a means of achieving this goal is to jointly plan for land use and to jointly exercise certain zoning powers. As a result, all four participating entities enter into this Agreement to establish a joint planning commission pursuant to the legal authority granted by Public Act 226 of 2003, as amended (MCL 125.131, et seq.), as well as an ordinance enacted by the City Council of the City of Fremont on _____; an ordinance enacted by the Township Board of Dayton Township on _____; an ordinance enacted by the Township Board of Sheridan Charter Township on _____; and an ordinance enacted by the Township Board of Sherman Township on _____. The joint planning commission established by this Agreement shall be referred to as the "Fremont Community Joint Planning Commission."

Comment: *We like that the Agreement specified that cooperation amongst the participating governmental units will include both planning and zoning functions. However, there will need to be some clarification on the transition to a common zoning code and how the Joint Planning Commission would function in relation to the existing municipal Planning Commissions until that code is adopted.*

The jurisdictional area of the Fremont Community Joint Planning Commission shall comprise the corporate limits of the City of Fremont, Newaygo County, Michigan, and the corporate limits of Dayton Township, Newaygo County, Michigan, and the corporate limits of Sheridan Charter Township, Newaygo County, Michigan, and the corporate limits of Sherman Township, Newaygo County, Michigan. **Comment:** *The second paragraph could be condensed for clarity and read:*

"The jurisdictional area of the Fremont Community Joint Planning Commission shall comprise the corporate limits of the City of Fremont and Dayton, Sheridan Charter and Sherman Townships, all in Newaygo County, Michigan."

2. Composition of the Planning Commission

The Fremont Community Joint Planning Commission shall consist of thirteen (13) members.

Comment: *The composition of the Commission should include alternate members with no voting rights – 1 from each governmental unit, with the thought that these members are being groomed to eventually take over a full committee position.*

3. Terms and Qualifications of Office.

The Fremont Community Joint Planning Commission shall be comprised of thirteen (13) members as described in this section. The mayor of the City of Fremont shall appoint four (4) members with confirmation by the Fremont City Council. The Supervisor of Dayton Township shall appoint three (3) members with confirmation by that Township's Board of Trustees. The Supervisor of Sheridan Charter Township shall appoint three (3) members with confirmation by that Township's Board of Trustees. The Supervisor of Sherman Township shall appoint three (3) members with confirmation by that Township's Board of Trustees. **Comment:** *Change "Township Board of Trustees" to "Township Board"*

The initial members appointed by the City of Fremont shall be appointed for staggered terms with one member appointed for a one (1) year term, one member appointed to a two (2) year term, and two members appointed to three (3) year terms. The initial members appointed by all of the townships participating in this agreement shall be appointed for staggered terms with one member appointed for a one (1) year term, one member appointed to a two (2) year term, and one members appointed to a three (3) year term. After the initial terms, all appointed members shall serve for terms of three (3) years ending on December 31 of the applicable year.

All duly appointed members of the Fremont Community Joint Planning Commission shall reside within the jurisdictional area of the Fremont Community Joint Planning Commission as defined in this agreement. At least two of the members appointed by each of the municipalities participating in this agreement shall reside within the jurisdictional area of their appointing municipality.

Comment: *In paragraph 3 of this section, the Council desires that all four of its appointed members reside within the City limits at the time of their appointment or re-appointment to the Joint Planning Commission. If they were to subsequently move their residency outside the City limits, they would be permitted to complete their current 3-year term but would not be eligible for re-appointment.*

At least one of the members appointed by the City of Fremont shall be duly elected member of the Fremont City Council. At least one of the members appointed by each of the townships participating in this agreement shall be a duly elected trustee of the appointing township.

At least one of the members appointed by each of the municipalities to the initial Fremont Community Joint Planning Commission will have experience in land use planning and regulation. Further, all of the members appointed to the Fremont Community Joint Planning Commission will commit to completing continuing education land use planning and regulation each year.

Comment: *Language should read "At least two (2) members appointed....."*

Comment: *Paragraph 5 of this section references education requirements for Joint Planning Commissioners. The City feels we should specify the minimum requirements in the Agreement. The City's Planning Commission rules were recently revised to include an education requirement, which reads as follows:*

Education requirements: *"Within the first twelve (12) months of being appointed to the Planning Commission, each member shall attend at least eight (8) hours of education through seminars or continuing planning education that involves planning and zoning issues as approved in advance by the City Manager. Thereafter, each member of the Planning Commission shall attend at least three (3) hours of seminars or continuing education per calendar year as approved in advance by the City Manager. The City*

shall pay for all such approved seminars and continuing planning education courses subject to the appropriation and availability of training funds by the City Council.

If a commissioner does not fulfill this requirement, such shall be deemed neglect of duty and the member subject to removal under subsection (i) above.”

Comment: *The Joint Planning Committee may want to adopt a similar provision. Obviously, the language outlined above would have to be modified (e.g., delete reference to City Manager) to be relevant to the Joint Planning Commission. An approval mechanism (by the full Commission or an Executive Committee) would be necessary so as to ensure that there are sufficient budgetary resources available to cover the cost of the training activities and that each member has an opportunity to participate in the activities. One suggestion is to allocate the training funds on a per capita basis (1/13th) so that each member has an available allocation for training. If the member desires to participate in training activities that cost more than his/her allocation, then the Joint Planning Commission would either need to reallocate unneeded funds from another member or elsewhere in the budget, or have the appointing jurisdiction cover the cost above the allocation.*

4. Operating Procedures

The business performed by the Fremont Community Joint Planning Commission shall be conducted at a public meeting of the Fremont Community Joint Planning Commission held in compliance with the open meetings act, Public Act 267 of 1976, as amended (MCL 15.261, et seq.). **Comment:** *The Committee may want to consider adding a provision regarding the location and general times for the meetings or hearings of the Joint Planning Commission. Are we going to move them around or are they going to be held in one location (Library, City Hall, other?) Would the meetings be held in the afternoon or evening? Would any specific public hearings be held at the offices of the particular governmental unit to allow for easier accessibility? The availability and retention of materials and records should also be determined. Much of this will depend on how and who provides administrative and planning/zoning support to the Commission.*

Materials prepared for, or on behalf of, the Fremont Community Joint Planning Commission in the performance of an official function are subject to the Freedom of Information Act, Public Act 442 of 1976, as amended (MCL 15.231, et seq.). The Fremont Community Joint Planning Commission, at its first meeting of every calendar year, shall select a Chairperson, Vice-Chairperson, and Secretary, who shall serve as such officials of the Fremont Community Joint Planning Commission for that calendar year. Appointees selected to serve in these positions must represent different participating municipalities. **Comment:** *The Council would like to see the Commission's officers limited to two (2) consecutive one-year terms in any one office.*

5. Removal from Office and Filling Vacancies.

The Fremont Community Joint Planning Commission may request the removal of one of its members by petitioning the appointing municipality. **Comment:** *This section states that the Joint Planning Commission may request the removal of one of its members by petitioning the appointing municipality. Is a petitioning process necessary? Could this section merely state that members may be removed by the respective participating governmental unit's Supervisor or Mayor, after a hearing for cause, with the approval of the respective governmental unit's Township Board or City Council?*

A member on the Fremont Community Joint Planning Commission may be removed from office by the appointing municipality following a hearing for cause. "Cause" shall include, but not be limited to, performance, conduct, or behavior, whether by act or omission that the entity appointing the member concludes materially adversely affects the orderly or efficient operation of the Fremont Community Joint Planning Commission. **Comment:** *The Agreement specifies the "causes" for which a commissioner could be removed. One of the causes states "Repeated unsatisfactory work performance or failure to attain objectives after appropriate notice and consultation." Does this apply to each commissioner or is it referring to any employee(s) or contractual administrative personnel? Who will determine such objectives? If we are to include this as a "cause," then there should be written measurable objectives.*

Examples of performance, conduct, or behaviors that constitute "cause" for purposes of this provision include:

- Material breach of this Agreement;
- Violation of established by-laws, rules, regulations, and policies, whether written or oral;
- Repeated unsatisfactory work performance or failure to attain objectives after appropriate notice and consultation;
- Attendance infractions (missing more than 3 meetings per year); and/or **Comment:** *Another cause for removal from office is for attendance infractions (missing more than three meetings per year.) How many meetings per year will there be? Is this a calendar year or the previous 12-month period? If there are twelve meetings per year (monthly), and a member misses three of them, that person will have missed 25% of the meetings, which may be acceptable. However, if there are only four meetings per year (one each quarter), then missing three meetings would mean a member missed 75% of the meetings, which would not be acceptable. This needs to be clarified.*
- Conviction of any crime or engaging in conduct punishable as a crime; **Comment:** *The 5th "cause" for removal sets a standard that conflicts with commonly held practices regarding a person's conviction of a crime versus the initial accusation of committing a crime. Who is going to make the determination as to whether a member's conduct would be punishable as a crime? The Committee may wish to consider a possible suspension of a member's eligibility while an accusation of a crime is being investigated or leave such decision up to the appointing governing body. Finally, the inclusion of "any" crime is far too broad, and would include misdemeanors and civil infractions. The next paragraph references that an office becomes vacant only when a member is convicted of a felony; the two should be consistent.*
- Removal of residency from the appointing municipality.

The office of a member becomes vacant when the incumbent dies, resigns, is convicted of a felony, is removed by the Fremont Community Joint Planning Commission or the appointing governing body for cause, or ceases to be a resident of the participating governing body that appointed him/her.

Comment: *Need to be sure statement is consistent with section three which states: "All duly appointed members of the Fremont Community Joint Planning Commission shall reside within the jurisdictional area of the Fremont Community Joint Planning Commission as defined in this agreement. At least two of the members appointed by each of the municipalities participating in this agreement shall reside within the jurisdictional area of their appointing municipality". (Language States: two members shall reside within the jurisdictional area of their appointing municipality. However, third member could not reside in the jurisdictional area of the appointing municipality)*

If a vacancy occurs, the vacancy shall be filled for the balance of the unexpired term by the participating entity that made the original appointment to the vacant position. **Comment:** *Removal of a member from the Commission due to relocation out of the appointing municipality would apply to all four of the City's appointments but only two of the three appointments by each Township. This would depend on whether*

the Commission permits the City to require that all four of its appointed members be residents of the City at the time of appointment or re-appointment to the Commission.

The wording of this paragraph could also be interpreted that the Joint Planning Commission has the authority to remove a member of the Commission. It can only “recommend or request” the removal of a member by the appointing municipal governing body.

6. Operating Budget

The Fremont Community Joint Planning Commission shall be funded by the participating entities on an annual basis. The funds and financials of the Fremont Community Joint Planning Commission shall be managed as a separate account under the auspices of [**the City of Fremont?**]. **Comment:** *The City may be willing to administer the budget; however, we need to work through a few issues before we decide. Initially, our reaction is that it makes sense for the City to do this, just as we do for the Fire Contract and as we did during the interim period when the District Library was being formed. This would be on a contractual basis under a separate agreement acceptable to both the Joint Planning Commission and the City Council.*

The Fremont Community Joint Planning Commission shall approve payments for goods, services, and per diem member fees drawn from an account jointly held by all of the municipalities participating in this agreement. The Fremont Community Joint Planning Commission shall establish an annual budget, which requires the approval of all of the municipalities participating in this agreement.

Funding for the annual budget shall be divided between **Comment:** *Remove “between”, replace with “among”* the City of Fremont, Dayton Township, Sheridan Charter Township, and Sherman Township based on the weighted average percentage of real taxable valuation plus the weighted average percentage of population as recorded by the U.S. Census Bureau in 2000 for each municipality as expressed below:

Jurisdiction	Population	Taxable Value	Sum of Weights
Weight of Element	50%	50%	100%
City of Fremont	20.99%	20.44%	41.43%
Dayton Township	9.45%	9.18%	18.64%
Sheridan Township	12.04%	13.11%	25.16%
Sherman Township	7.51%	7.26%	14.77%
Totals	50.00%	50.00%	100.00%

The City of Fremont’s contribution shall equal the annual approved budget of the Fremont Community Joint Planning Commission multiplied by the sum of one half of the percentage determined by dividing the City’s Real Taxable Valuation by the Total Real Taxable Valuation plus one half of the percentage determined by dividing the City’s Population by the Total Population recorded by the U.S. Census Bureau in 2000 for the jurisdictional area of the Fremont Community Joint Planning Commission.

Dayton Township’s contribution shall equal the annual approved budget of the Fremont Community Joint Planning Commission multiplied by the sum of one half of the percentage determined by dividing the Township’s Real Taxable Valuation by the Total Real Taxable Valuation plus one half of the percentage determined by dividing the Township’s Population by the Total Population recorded by

the U.S. Census Bureau in 2000 for the jurisdictional area of the Fremont Community Joint Planning Commission.

Sheridan Charter Township's contribution shall equal the annual approved budget of the Fremont Community Joint Planning Commission multiplied by the sum of one half of the percentage determined by dividing the Township's Real Taxable Valuation by the Total Real Taxable Valuation plus one half of the percentage determined by dividing the Township's Population by the Total Population recorded by the U.S. Census Bureau in 2000 for the jurisdictional area of the Fremont Community Joint Planning Commission.

Sherman Township's contribution shall equal the annual approved budget of the Fremont Community Joint Planning Commission multiplied by the sum of one half of the percentage determined by dividing the Township's Real Taxable Valuation by the Total Real Taxable Valuation plus one half of the percentage determined by dividing the Township's Population by the Total Population recorded by the U.S. Census Bureau in 2000 for the jurisdictional area of the Fremont Community Joint Planning Commission.

Comment: *With regard to the calculation to be used to determine each municipality's share of the budget, we recommend that the calculation be re-calculated each budget year based on the most current information, just as we do with the Fire Contract. This would be every ten years for the U.S. Census Bureau population information and annually for the taxable value of real property information.*

With regard to the budget, the Joint Planning Committee should address the following:

- *Who is going to staff the Commission? How this commission is staffed will help determine how the budget will be established.*
- *How will the budget be developed each year?*
- *How much can each participating governmental unit anticipate contributing to the operating budget for the first and subsequent years? The Commission will need to develop an initial estimated budget and calculate each unit's projected contribution amount. This information would be critical in seeking each unit's adoption of the Agreement.*
- *What will the Commission's fiscal year be? We have three different fiscal years between the four entities. This may depend on whether the City, another unit or a private party administers the budget. It would be more efficient and accurate to have the Commission's fiscal year coincide with the administrative agency's fiscal year.*
- *What administrative services are involved with handling the finances? It may be appropriate for the administering agent to charge a fee to cover administrative services.*
- *What happens if one or more participating governmental units do not approve the Commission's annual budget? Will it take just a majority of the members to adopt it or all of them? Would the Committee consider a provision that allows the Commission to continue functioning at the previous year's budget appropriations (or a reduced percentage such as 90%) until such time as all units approve of the budget?*
- *If members are to receive a per diem meeting fee, there should be additional discussion on this provision. With the exception of the elected officials (City Council and Board of Review members) the City does not pay its volunteer board, committee or commission members. If the members of the Joint Planning Commission were to receive remuneration, it could effect whether other board or commission members receive per diem fees. Mileage reimbursement for the use of personal vehicles should also be set and limited (City uses annual IRS rate.)*

- *The budget should include an appropriation for “legal services” and identify what such funds can be used for and with whose approval. The Commission should consider a policy that addresses its liability exposure and how it would obtain and pay for any legal services to defend itself in a suit brought against the Commission. Should it require approval of all participating units for the retention of legal counsel for a suit and the appropriation of the necessary funds to cover the original trial and subsequent appeals?*
- *The budget should also consider an appropriation for “professional planning and/or zoning services” to cover the required update of the Joint Master Plan every five years and for any P&Z consulting services needed to amend the plan or a joint zoning code. Maybe something similar to the “equipment replacement fund” in the Fire Contract that would include an annual fixed amount of contributions from each unit to be used to cover the above expenses as spread out over a “schedule.”*

7. Procedure for Joining the Fremont Community Joint Planning Commission

A city, village, or township may petition to join the Fremont Community Joint Planning Commission pursuant to Public Act 226 of 2003, as amended (MCL 125.131, et seq.) by presenting a formal resolution stating the reasons for the request and committing to meeting the conditions set forth in this agreement.

The Fremont Community Joint Planning Commission will consider each petition to join received and make a formal recommendation to the member municipalities. After receiving the Fremont Community Joint Planning Commission’s recommendation, each participating municipality will vote to accept or reject the petition to join. If a majority of participating municipalities vote to accept the petition to join, then the Fremont Community Joint Planning Commission will develop and present recommendations concerning the revision of this agreement to the participating municipalities. Upon the revision of this agreement, the petitioning municipality will pay a one time fee. **Comment:** *The Agreement should specify how the “one-time fee” would be calculated. Is it intended to cover a portion of the funds appropriated by each governmental unit for the match toward the Partnerships for Change grant? Will it cover extra contributions to the Commission from the units for special projects, legal expenses, etc.? Should the buy-in include a pro-rated portion of the annual budget based on the new entity’s date of entry and percentage of budget responsibility?*

If a majority of participating municipalities vote to reject the petition to join, then the petition shall be rejected and no further action will be taken.

8. Procedure for Withdrawal from the Fremont Community Joint Planning Commission

A participating municipality shall have the right to withdraw from the Fremont Community Joint Planning Commission subject to the following requirements:

- Any and all obligations **Comment:** *Obligations should also include the balance of any contractual fees, service contracts, legal costs, etc. of the Fremont Community Joint Planning Commission shall be settled prior to withdrawal;*
- Provide for public notice and a public hearing **Comment:** *The second bullet should clarify if the “public hearing” would be held by the Joint Commission or the appointing body (City prefers the latter.) Is this a “noticed” public hearing or just a right to be heard at a regular Commission or local unit meeting? on a proposal to withdraw for the Fremont Community Planning Commission; and*

- Pass an ordinance, which states the reasons for formal withdrawal from the Fremont Community Joint Planning Commission.

The withdrawal shall take effect when the above requirements have been satisfied. Upon the withdrawal of three (3) or more participating entities, this Agreement shall become null and void and the Fremont Community Joint Planning Commission shall cease to function and shall have no further legal authority. **Comment:** *The final paragraph of this section should clarify that if additional entities join the Commission at a later date, then the number of withdrawing entities would need to be adjusted upward. Is the intent that the Commission would dissolve if only one entity remains? Upon its dissolution, what would happen to the assets and liabilities of the Commission? Would an entity leaving the Commission be entitled to any assets or be subject to any further liabilities of the Commission?*

9. Powers and Duties

All the powers and duties of a planning commission under each applicable planning act are, with respect to the jurisdictional area of the Fremont Community Joint Planning Commission, hereby transferred by the participating entities to the Fremont Community Joint Planning Commission. In exercising such powers or performing such duties, the Fremont Community Joint Planning Commission shall follow the procedures of the Township Planning Act, Public Act 168 of 1959, as amended (MCL 125.321, et seq.), and the Township Zoning Act, Public Act 184 of 1943, as amended (MCL 125.271, et seq.). Further, any plan formally developed and adopted under the Township Planning Act by the Fremont Community Joint Planning Commission shall be subject to review and approval by the legislative bodies of the participating municipalities.

10. Amendments

This Agreement may only be amended by written addendum approved and executed by the designated officials of the participating entities. **Comment:** *This section states that the Agreement may only be amended by written addendum approved and executed by the designated officials of the participating entities. We should spell out the titles of the designated officials (Township Boards and City Council.)*

11. Effective Date

Provided that no proper notice of intent to file a petition or a petition is filed with the City of Fremont, Dayton Township, Sheridan Charter Township, and Sherman Township, as provided by Section 9 of Public Act 226 of 2003 (MCL 125.139), this Agreement shall take effect upon the adoption and publication by each participating entity, respectively, of ordinances pursuant to the procedures outlined in Public Act 226 of 2003. **Comment:** *It appears that the first phrase in this section may need to be re-worded to clarify the intent of this section.*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of _____, 2005.

**City of Fremont
Dayton Township
Sheridan Charter Township
Sherman Township**