



City of Plymouth  
City Commission Regular Meeting Minutes  
Monday, February 1, 2021 - 7:00 p.m.  
In-Person at 525 Farmer and Online Webinar

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City of Plymouth  
201 S. Main  
Plymouth, Michigan 48170-1637

www.plymouthmi.gov  
Phone 734-453-1234  
Fax 734-455-1892

**1. CALL TO ORDER**

- a. Mayor Wolcott called the meeting to order at 7:00 p.m., followed by the Pledge of Allegiance.
- b. Roll Call

Present: Mayor Oliver Wolcott, Mayor Pro Tem Nick Moroz, Commissioners Suzi Deal, Ed Krol, Kelly O'Donnell, Marques Thomey, and Tony Sebastian

Also present: City Manager Paul Sincock, Attorney Robert Marzano, and various members of the City administration

**2. CITIZENS COMMENTS**

**3. APPROVAL OF THE AGENDA**

Thomey offered a motion, seconded by Krol, to approve the agenda for Monday, February 1, 2021.

There was a roll call vote.

Yes: Deal, Krol, Moroz, O'Donnell, Thomey, Sebastian, Wolcott

MOTION PASSED 7-0

**4. ENACTMENT OF THE CONSENT AGENDA**

- c. Approval of January 18, 2021 City Commission Regular Meeting Minutes
- d. Approval of January 25, 2021 Commission Study Session-Strategic Planning Meeting Minutes
- e. Special Event: Wilcox Wednesday Music in the Park 2021, Wednesdays at Noon June/July/August

Moroz offered a motion, seconded by Krol, to approve the consent agenda.

There was a roll call vote.

Yes: Deal, Krol, Moroz, O'Donnell, Thomey, Sebastian, Wolcott

MOTION PASSED 7-0

**5. COMMISSION COMMENTS**

Krol said the strategic planning session was informative and enjoyable. Deal reminded the group that nominations for the Ruth Huston-Whipple Award are being accepted until April. Moroz thanked the DMS for clearing the recent snow so well. Thomey said the strategic planning session was a great opportunity for staff and elected officials to work together. Wolcott congratulated the following staff members for their work anniversaries: Marleta Barr-19 years, Renee Revels-19 years, Lisa Hominga – 15 years, John Buzuvis – 15 years, Mark Farhat – 9 years, Tom Stec – 4 years, T aylur Friend – 2 years.

**6. OLD BUSINESS**

There was no old business.

**7. NEW BUSINESS**

a. Traffic Control Order No. 20-3

The following resolution was offered by Thomey and seconded by Sebastian.

RESOLUTION 2021-12

WHEREAS The City operates several streets and roads which need traffic control orders; and

WHEREAS A temporary traffic control order has been in place for the alley commonly known as Fleet Street.

NOW THEREFORE BE IT RESOLVED THAT the City Commission of the City of Plymouth does hereby adopt Traffic Control Order number 20-03 for parking restrictions along the alley commonly known as Fleet Street.

BE IT FURTHER RESOLVED THAT the City Clerk shall make Traffic Control Order 20-03 a part of the official meeting minutes of this City Commission Meeting.



**Traffic Control Order**

Traffic Control Order No. 20-3

TO: Maureen Brodie CMC  
City Clerk

FROM: Chris S. Porman  
Street Administrator

RE: Traffic Control Order

DATE: November 23, 2020

Pursuant to the authority provided by Section 28.11.53 of the Uniform Traffic Code of the City of Plymouth, the following traffic regulatory signs are directed to be installed.

Fleet Street in Parking Deck Area:

On Eastbound Fleet, North side of right of way, Install four (4) No Parking Loading Zone/20 Min. Standing Only 5PM-9PM signs on existing concrete columns. Remove existing No Parking Loading Zone signs. All other parking and regulatory signs to remain.

On Northbound Fleet, West side of right of way, Install two (2) No Parking Loading Zone/20 Min. Standing Only 5PM-9PM signs on existing concrete columns. Remove existing No Parking Loading Zone signs. All other parking and regulatory signs to remain.

On Northbound Fleet, East side of right of way, Install two (2) No Parking Loading Zone/20 Min. Standing Only 5PM-9PM signs on rear wall of building at 380 S. Main St. Remove existing No Parking Loading Zone signs. All other parking and regulatory signs to remain.

On Northbound Fleet, East side of right of way, Install one (1) No Parking Loading Zone/20 Min. Standing Only 5PM-9PM signs on rear wall of building at 336 S. Main St. Remove existing No Parking Loading Zone signs. All other parking and regulatory signs to remain.

On Northbound Fleet, East side of right of way, Install one (1) No Parking Loading Zone/20 Min. Standing Only 5PM-9PM signs on rear wall of building at 318 S. Main St. Remove existing No Parking Loading Zone signs. All other parking and regulatory signs to remain.

Parking restrictions other than those listed above exist and are unaffected by this TCO.

This emplacement is ordered temporary subject to review in seventy (70) days with reports and recommendations to the City Manager prior to the expiration of the 90 day test period.

cc: Paul J. Sincoc, City Manager  
Al Cox, Director of Public Safety

There was a roll call vote.

Yes: Deal, Krol, Moroz, O'Donnell, Thomey, Sebastian, Wolcott

MOTION PASSED 7-0

b. Strategic Plan and Adoption of One Year Tasks

The following resolution was offered Thomey by and seconded by Sebastian.

RESOLUTION 2021-13

- WHEREAS The City of Plymouth has a Strategic Plan and has worked collaboratively with the City Commission and the City Administration to work on the plan; and
- WHEREAS The City Commission and City staff are highly committed to the success of the Strategic Plan and there is a need to establish one-year tasks to meet the vision of the plan; and
- WHEREAS The City Commission and City Administration held a workshop on January 25, 2021 with Dr. Lew Bender to establish the one-year tasks for 2021.

NOW THEREFORE BE IT RESOLVED THAT THE City Commission of the City of Plymouth does hereby adopt the following Strategic Plan one-year tasks for 2021:

**\*Goal Area One – Quality of Life**

- Restore sports and recreational programs that were halted by COVID-19 ASAP
- Review and evaluate the special event policy with safety considerations
- Address challenges with the Kellogg Park improvements with safety considerations
- Move Kellogg Park Fountain project forward
- Continue to re-engage service clubs to help enhance parks and public properties
- Increase followers by 2,000 on all our **communications** platforms
- Develop an internal & external communications plan
- Upgrade City Hall facilities to accommodate remote meetings and **remote participation**
- Continue investigating multi-modal transportation opportunities
- Revisit noise ordinance

**\*Goal Area Two – Financial Stability**

- ~~Find a mechanism~~ **Identify mechanisms** for funding sources for capital improvement projects
- Increase funding to the Public Improvement Fund
- Create a potential package for financing emergency structural repairs
- Develop a comprehensive asset management plan that includes a review the equipment fleet
- Search out other possible revenue streams through continued association with the CWW and MML
- Develop a financial plan for public safety
- Continue to make extra payments towards legacy costs
- Monitor outside influences on our revenue sources, including unfunded mandates, the 35th District Court, Library and the PCCS
- Negotiate three labor contracts

**\*Goal Area Three – Economic Vitality**

- Complete Saxton's development
- Develop municipal parking lot at Saxton's site
- Support development of 23 parcels adjacent to the Starkweather School property
- Continue to administer the grant and the brownfield plan to support the Pulte project's completion
- Finish ~~RRC~~ **Redevelopment Ready Communities (RRC)** by the end of **2021 year**
- Develop an annual training calendar for the Planning Commission, the Historic District Commission, the Zoning Board of Appeals and the DDA, and identify a funding source
- Implement temporary plans to assist businesses in recovery efforts

**\*Goal Area Four – Service and Infrastructure**

Explore enhanced pedestrian safety opportunities into targeted intersections

Research funding opportunities for ADA compliance at the PCC

Implement 2021 infrastructure program

Continue training for future career development and succession planning

Conduct a traffic study to determine whether to make additional streets one way

Update mapping resources including parcel data, completing 50% by the end of the year

~~Continue to add multi-modal transportation opportunities where applicable~~

Update/replace current technology to ensure compliance with new regulations, rules and operating systems.

Revisit paid parking

Several grammar changes were made.

There was a roll call vote.

Yes: Deal, Krol, Moroz, O'Donnell, Thomey, Sebastian, Wolcott

MOTION PASSED 7-0

c. Wilcox Fountain in Kellogg Park – Award Contract – Action One of Three

The following resolution was offered Moroz by and seconded by Krol.

RESOLUTION 2021-14

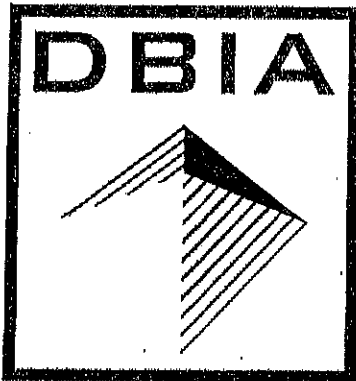
WHEREAS The City of Plymouth owns Kellogg Park in the heart of the City and Wilcox Foundation is desirous of replacing the water feature fountain in Kellogg Park with a new Wilcox Fountain; and

WHEREAS The new Wilcox Fountain is being designed and constructed by Outside The Lines (OTL) of Anaheim, California; and

WHEREAS The City Attorney's Office has worked with all parties in this matter to bring this Contract and General Conditions to the City Commission for adoption.

NOW THEREFORE BE IT RESOLVED THAT the City Commission of the City of Plymouth does hereby authorize a contract between the City of Plymouth and OTL to design and construct the Wilcox Fountain in Kellogg Park.

BE IT FURTHER RESOLVED THAT The City Clerk of the City shall include a complete copy of the approved contract and general conditions with the official meeting minutes of this City Commission meeting.



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# **STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN- BUILDER - LUMP SUM**

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**Document No. 525**

Second Edition, 2010

© Design-Build Institute of America

Washington, DC

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# Standard Form of Agreement Between Owner and Design-Builder - Lump Sum

*This document has important legal consequences. Consultation with  
an attorney is recommended with respect to its completion or modification.*

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This **AGREEMENT** is made as of the \_\_\_\_\_ day of January in the year of 2021, by and between the following parties, for services in connection with the Project Identified below.

**OWNER:**

*(Name and address)*  
City of Plymouth  
201 S. Main  
Plymouth, MI 48170

**DESIGN-BUILDER:**

*(Name and address)*  
Outside the Lines, Inc.  
2150 S. Towne Centre Place, Suite 100  
Anaheim, CA 92806

**PROJECT:**

*(Include Project name and location as it will appear in the Contract Documents)*

Kellogg Park Water Feature  
381 South Main Street  
Plymouth, MI 48170

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

## **Article 1**

### **Scope of Work**

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents (the "Work").

## **Article 2**

### **Contract Documents**

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments, minor changes and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) ("General Conditions of Contract");

2.1.2 The Basis of Design Document is attached as Exhibit A.

2.1.3 This Agreement, including all exhibits and attachments, executed by Owner and Design-Builder; Exhibit A – Basis of Design Document; Exhibit B – Design-Builder's Scope of Work; Exhibit C – Project Schedule; and Exhibit D – Insurance.

2.1.4 The General Conditions of Contract; and

2.1.5 Construction Documents prepared in accordance with Section 2.4 of the General Conditions of Contract.

## **Article 3**

### **Interpretation and Intent**

3.1 Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, this Agreement shall govern.

3.3 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.4 Intentionally Omitted

**3.5** The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

## Article 4

### Ownership of Work Product

**4.1 Work Product.** All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

**4.2 Owner's Limited License Upon Project Completion and Payment in Full to Design-Builder.** Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with the Project, conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design.

**4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate.** If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently possess the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

**4.3.1** Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party.

**4.3.2.** Intentionally Omitted.

**4.4 Owner's Limited License upon Design-Builder's Default.** If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

**4.5** Intentionally Omitted

## Article 5

### Contract Time

**5.1 Date of Commencement.** The Work shall commence within five (5) days of the execution of this Agreement by both parties.

**5.2 Final Completion.**

5.2.1 Final Completion of the entire Work shall be achieved no later 220 calendar days after the Date of Commencement ("Scheduled Substantial Completion Date") per Exhibit C.

5.2.2 Interim milestones and/or Substantial Completion of Identified portions of the Work ("Scheduled Interim Milestone Dates") shall be achieved as follows: *(Insert any interim milestones for portions of the Work with different scheduled dates for Substantial Completion)*

None.

5.2.3 Intentionally Omitted.

5.2.4 Intentionally Omitted.

5.3 **Time is of the Essence.** Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 thru 5.7 Intentionally Omitted.

## Article 6

### Contract Price

6.1 **Contract Price.** Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the lump sum of One Million Twenty Five Thousand Dollars (\$1,025,000.00). ("Contract Price"). Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.2 thru 6.4 Intentionally Omitted.

## Article 7

### Procedure for Payment

7.1 **Progress Payments.**

7.1.1 Design-Builder shall submit Design-Builder's Application for Payment monthly to Owner on the Twenty-Fifth (25th) day of each month with the percentages of work completed projected to the end of that month beginning with the first month after the Date of Commencement and in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment within fifteen (15) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.1.3 Contract Price includes an Initial Payment of \$25,000.00 which is to be processed upon execution of this Agreement.

7.1.4 Deposits for specialty, custom fabricated and long lead items are identified in Exhibit B, and will be shown on the Schedule of Values as independent line items. All deposits must be received by Design-Builder in a timely manner so as to avoid a schedule delay or escalation in price.

7.2 Intentionally Omitted.

7.3 **Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4 **Interest.** Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing fifteen (15) days after payment is due at the rate of One half percent (1/2%) per month until paid.

7.5 Intentionally Omitted.

## **Article 8**

### **Termination for Convenience**

8.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

8.1.1 All Work executed and for cost or expense in connection with the executed Work;

8.1.2 The reasonable costs and expenses attributable to such termination; and

8.1.3 The fair and reasonable sums for overhead and profit on the sum of items 8.1.1 and 8.1.2 above in the amount of ten percent (10%).

8.2 Intentionally Omitted.

8.3 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Article 4 hereof.

## **Article 9**

### **Representatives of the Parties**

9.1 **Owner's Representatives.**

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Article 10 the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Paul J. Sincock, City Manager  
City of Plymouth  
201 S. Main  
Plymouth, MI 48170  
(734) 453-1234

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of

Contract and shall be the person to whom all Notices required by the Contract Documents shall be sent: *(Identify individual's name, title, address and telephone numbers)*

Paul J. Sincock, City Manager  
City of Plymouth  
201 S. Main  
Plymouth, MI 48170  
(734) 453-1234

## 9.2 Design-Builder's Representatives.

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Article 10 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

John S. Cunningham, Vice President of Operations  
2150 S. Towne Centre Place, Suite 100  
Anaheim, CA 92806  
(714) 637-4747

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract and shall be the person to whom all Notices required by the Contract Documents shall be sent: *(Identify individual's name, title, address and telephone numbers)*

John S. Cunningham, Vice President of Operations  
2150 S. Towne Centre Place, Suite 100  
Anaheim, CA 92806  
(714) 637-4747

## 9.3 Wilcox Foundation

9.3.1 Owner and Design-Builder agree that Design-Builder is authorized to fulfill the requests of The Wilcox Foundation for copies of any and all documents, including, but not limited to, schedules for the execution of work, status reports, change orders, submissions for progress payments and correspondence between Owner and Design-Builder. The Wilcox Foundation Representative and the person to whom all Notices required by the Contract Documents shall be sent is:

The Wilcox Foundation  
c/o Scott Dodge  
6377 Cardeno Drive  
La Jolla, CA 92037  
[Scottdodge24@gmail.com](mailto:Scottdodge24@gmail.com)

## Article 10

### Insurance

10.1 **Insurance.** Design-Builder shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto as Exhibit D and in accordance with Article 5 of the General Conditions of Contract.

10.2 Intentionally Omitted.

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

**OWNER:**

City of Plymouth  
*(Name of Owner)*

\_\_\_\_\_  
*(Signature)*

Paul J. Sincock  
*(Printed Name)*

City Manager  
*(Title)*

Date: \_\_\_\_\_

**DESIGN-BUILDER:**

Outside the Lines, Inc.  
*(Name of Design-Builder)*

\_\_\_\_\_  
*(Signature)*

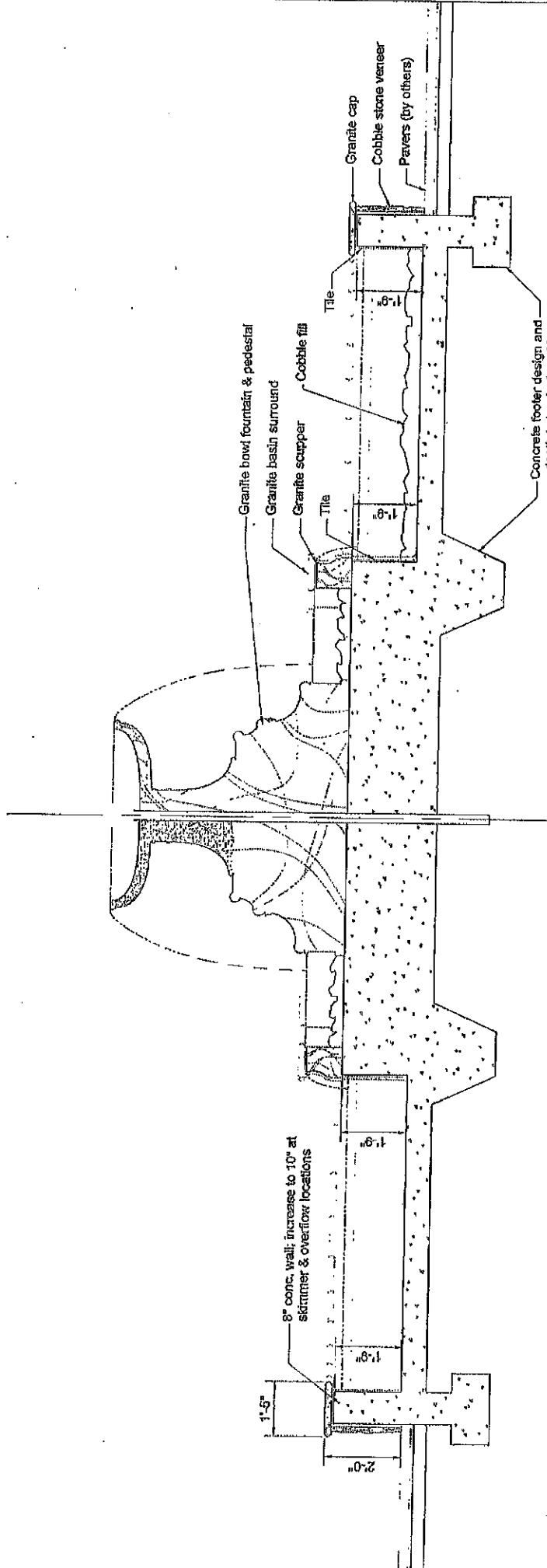
J. Wickham Zimmerman  
*(Printed Name)*

Chief Executive Officer  
*(Title)*

Date: \_\_\_\_\_



# EXHIBIT A



Scale: 1/8" = 1'-0"

This drawing shall not be used for any other project without the written consent of the author. The author shall not be responsible for any errors or omissions in this drawing. The author shall not be responsible for any damages or liabilities arising from the use of this drawing.

PRELIMINARY DRAWING  
BUDGETING ONLY

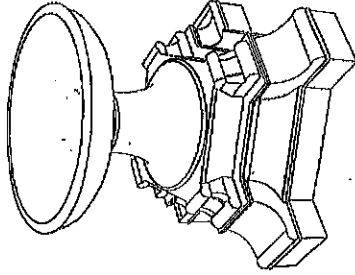
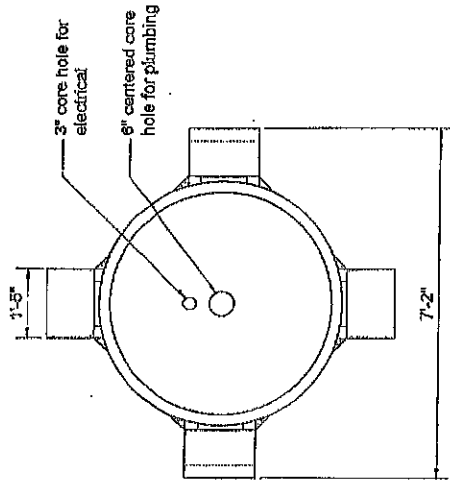
03/17/2000

Section

Alfred Park  
Sunbelt

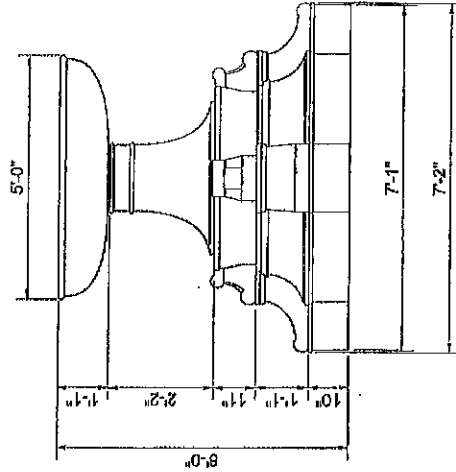
© 2008 OTL, Inc.  
714.637.4747  
www.otlinc.com

# EXHIBIT A



Perspective View - NTS

NOTE: Fountain centerpiece bowl, column, and base may be fabricated and shipped as multiple pieces; joining/breaks to be approved by OTL



Fountain Centerpiece

Scale: 1/4" = 1'-0"

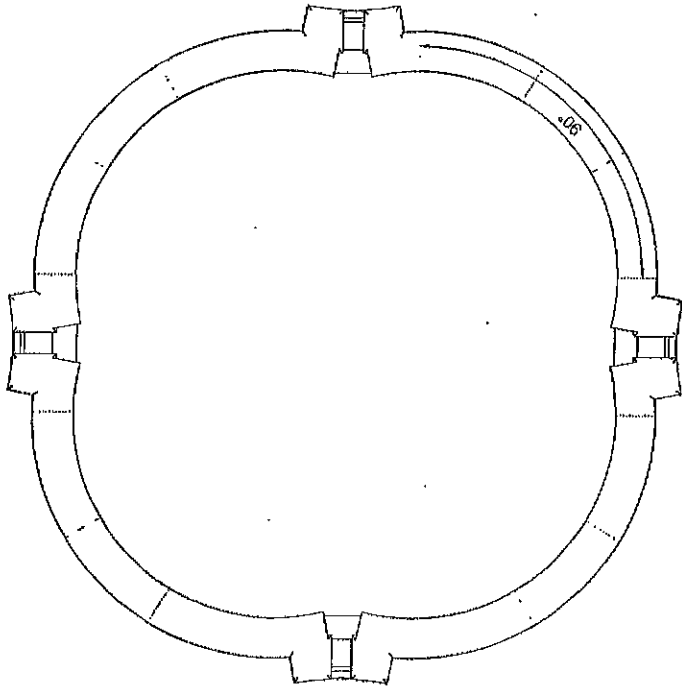
These drawings are the property of Granite Details, Inc. and shall remain the property of Granite Details, Inc. They are to be used only for the project and location specified. They are not to be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of Granite Details, Inc.

PRELIMINARY DRAWING -  
BIDDING ONLY

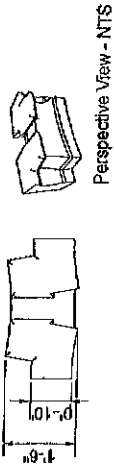
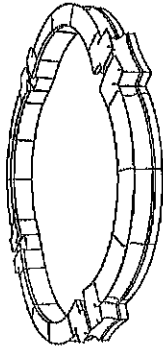
Granite Details

Kellogg Park Fountain

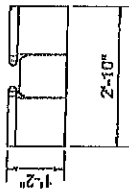
EXHIBIT A



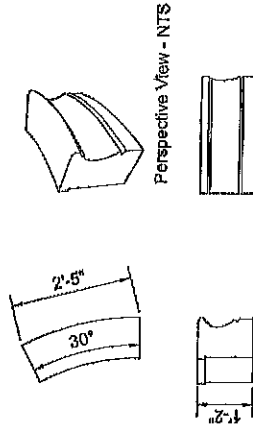
Perspective View - NTS



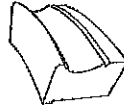
Perspective View - NTS



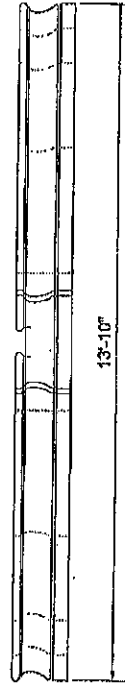
Granite Basin Scupper  
Qty: 4



Perspective View - NTS



Granite Basin Surround  
Qty: 12



Granite Basin Surround

SCALE: 1/4" = 1'-0"

These drawings are preliminary and are subject to change without notice. The contractor shall verify all dimensions and conditions in the field before construction. The contractor shall be responsible for obtaining all necessary permits and approvals in this jurisdiction. © 2015 GTS, Inc. www.gts.com

PRELIMINARY DRAWING -  
BUDGETING ONLY

DATE: 02/20/2015

Granite Details

Office: Park  
Surround

## EXHIBIT B

### Scope of Work

#### DESIGN SERVICES

1. In concert with the Project Team, finalize the water features design criteria.
2. Provide Construction Documents (suitable for permits) for the water feature construction, mechanical and electrical systems.

#### CONSTRUCTION SERVICES

1. CIP concrete fountain basin and walls.
2. Waterproofing for interior of fountain basin walls.
3. Tile finish for the interior basin walls. Tile will be Aliante Black 4x12 Porcelain Tile in Matte Finish.
4. Custom carved Steel Grey Granite center bowl and mid-level weir wall/scuppers.
5. Steel Grey Granite perimeter caps.
6. K2 cobble veneer for the exterior basin wall veneer.
7. Natural cobble for the interior basin floors.
8. Complete recirculation and filtration system including below grade equipment vault, effect pumps, filter pump, filter, water quality system, custom upper center nozzle, lower bowl cascade jets, intakes, skimmers, discharges, level sensor/control, overflow stub-out and all necessary PVC pipe and fittings.
9. Fountain lighting, total of 30 lights with all necessary conduit, wire and hook-up to control panel located in the vault.
10. Start-up and commissioning.
11. Provide all labor and materials to construct/install the Project pursuant to the Contract and Construction Documents

#### QUALIFICATIONS

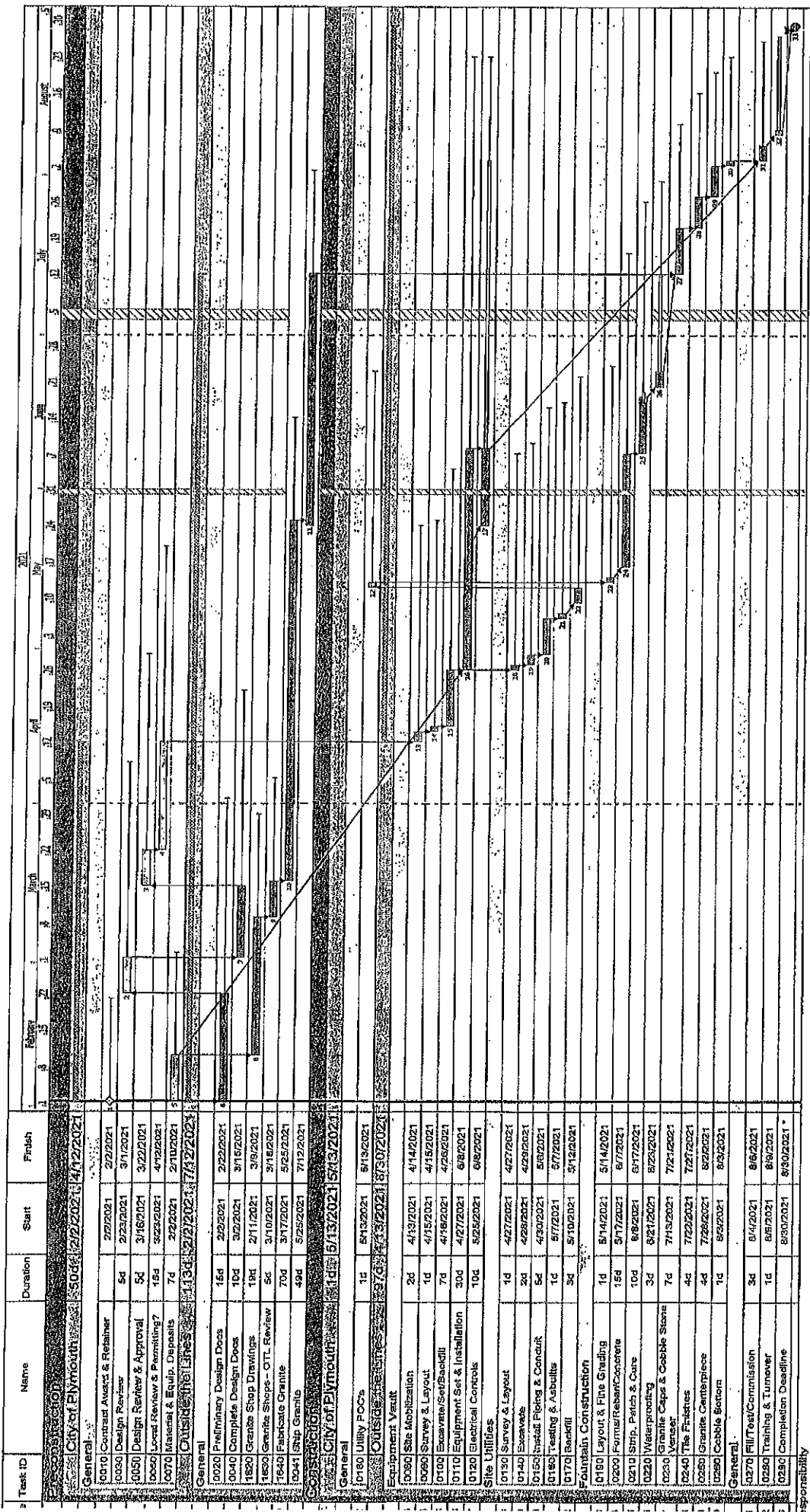
1. Accelerated construction schedule requiring overtime have not been included at this time.
2. Budget is based on open shop and non-prevailing wage rates.
3. Excavation, trenching and backfill for vault and recirculation pipe is included based on using excavated material for backfill. Any leftover spoils shall be left in the immediate areas for removal and/or use by others.
4. Drainage tile under the fountain concrete will be included and stubbed out 5' from fountain (for tie into site drainage system by others).

## EXHIBIT B

5. All construction work and stocking of material shall be performed during normal working hours under one continuous move-in.
6. Deposits will be required.
7. Clear access (15' wide (minimum) access roads) to and around the work areas shall be made available to OTL for the duration of the project.
8. Suitable space on premises shall be made available to OTL for storage containers, material and equipment lay down.
9. OTL's standard one-year warranty applies from date of substantial completion of OTL's work.

## EXCLUSIONS

1. Costs related to dewatering (permanent and temporary), storm damage or similar events.
2. All excavation and sub-grade (base) preparation for water feature to within +/- 0.1' of concrete subgrade by others.
3. All clearing, grubbing and demolition.
4. All survey.
5. Excavation and/or trenching of bedrock, hardpan or caliche (if present).
6. All import, export or trucking of soil.
7. Walkways and paving outside of the water feature.
8. Maintenance of the water feature.
9. Cold weather work / protection / tenting / heating / loss of productivity.
10. BIM modeling.
11. Permits and fees.
12. Parking, construction water, construction power, trash dumpsters and temporary toilet facilities is by others.
13. Electrical service and hook-up to control panel located in the water feature vault is by others.
14. Domestic water supply (backflow prevented) to water feature and vault to be provided by others.
15. Gravity sanitary sewer/storm drain requirements (with p-trap to meet codes) to water feature and vault by others.



Date: 1/25/2021  
 Author: OTL

## Kellogg Park Fountain Fountain Feature - Contract Schedule



**PLYMOUTH**  
 CITY OF PLYMOUTH  
 Outside the Lines

Task ID	Name	Duration	Start	Finish
0000	Contract Award & Retainer	5d	2/2/2021	2/7/2021
0010	Design Review	5d	2/23/2021	3/1/2021
0020	Design Review & Approval	5d	3/16/2021	3/22/2021
0030	Local Review & Permitting?	15d	2/23/2021	4/7/2021
0040	Material & Equip. Deposits	7d	2/22/2021	2/10/2021
0050	Outside the Lines	13d	2/23/2021	3/7/2021
0060	General			
0070	Preliminary Design Docs	15d	2/22/2021	2/22/2021
0080	Complete Design Docs	10d	3/2/2021	3/15/2021
0090	Grante Shop Drawings	18d	2/11/2021	3/19/2021
0100	Grante Shops - OTL Review	5d	3/10/2021	3/15/2021
0110	Fabricate Granite	70d	3/17/2021	5/25/2021
0120	Ship Granite	49d	5/25/2021	7/12/2021
0130	Construction	1d	5/13/2021	5/13/2021
0140	General			
0150	Utility POCs	1d	5/13/2021	5/13/2021
0160	Equipment Vault	2d	4/13/2021	4/14/2021
0170	Site Mobilization	1d	4/15/2021	4/15/2021
0180	Excavate/Set/Backfill	7d	4/16/2021	4/23/2021
0190	Equipment Set & Installation	30d	4/27/2021	6/6/2021
0200	Electrical Controls	10d	5/25/2021	6/4/2021
0210	Site Utilities			
0220	Survey & Layout	1d	4/27/2021	4/27/2021
0230	Excavate	2d	4/28/2021	4/29/2021
0240	Install Paving & Concurt	5d	4/30/2021	5/3/2021
0250	Sealing & Asphalts	1d	5/7/2021	5/7/2021
0260	Backfill	3d	5/10/2021	5/12/2021
0270	Fountain Construction			
0280	Layout & Fine Grading	1d	5/14/2021	5/14/2021
0290	Form/Rebar/Concrete	15d	5/17/2021	6/1/2021
0300	Strip, Patch & Cure	10d	6/8/2021	6/17/2021
0310	Waterproofing	3d	6/21/2021	6/23/2021
0320	Granite Caps & Cobble Stone	7d	7/13/2021	7/21/2021
0330	The Finishes	4d	7/22/2021	7/27/2021
0340	Granite Centerpiece	4d	7/28/2021	8/2/2021
0350	Cobble Bottom	1d	8/2/2021	8/2/2021
0360	General			
0370	Final Test/Commission	3d	8/4/2021	8/6/2021
0380	Training & Turnover	1d	8/6/2021	8/6/2021
0390	Completion Deadline		8/30/2021	8/30/2021

responsibility

City of Plymouth



INSURED: Outside the Lines, Inc.

POLICY#: 6079201127

POLICY PERIOD: 12/15/2020

TO: 12/16/2021



**Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

It is understood and agreed as follows:

- I. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** caused in whole or in part your acts or omissions, or the acts or omissions of those acting on your behalf:
  - A. in the performance of your ongoing operations subject to such **written contract**; or
  - B. in the performance of your work subject to such **written contract**, but only with respect to **bodily injury or property damage** included in the **products-completed operations hazard**, and only if:
    - 1. the **written contract** requires you to provide the additional insured such coverage; and
    - 2. this **coverage part** provides such coverage.
- II. But if the **written contract** requires:
  - A. additional insured coverage under the 11-85 edition, 10-93 edition, or 10-01 edition of CG2010, or under the 10-01 edition of CG2037; or
  - B. additional insured coverage with "arising out of" language; or
  - C. additional insured coverage to the greatest extent permissible by law;
 then paragraph I. above is deleted in its entirety and replaced by the following:
 

**WHO IS AN INSURED** is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of your work that is subject to such **written contract**.
- III. Subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:
  - A. coverage broader than required by the **written contract**; or
  - B. a higher limit of insurance than required by the **written contract**.
- IV. The insurance granted by this endorsement to the additional insured does not apply to **bodily injury, property damage, or personal and advertising injury** arising out of:
  - A. the rendering of, or the failure to render, any professional architectural, engineering, or surveying services, including:
    - 1. the preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
    - 2. supervisory, inspection, architectural or engineering activities; or
  - B. any premises or work for which the additional insured is specifically listed as an additional insured on another endorsement attached to this **coverage part**.

CNA75079XX (10-16)

Policy No:

Endorsement No:

Effective Date:

Insured Name:



**Blanket Additional Insured - Owners, Lessees or  
Contractors - with Products-Completed  
Operations Coverage Endorsement**

V. Under **COMMERCIAL GENERAL LIABILITY CONDITIONS**, the Condition entitled **Other Insurance** is amended to add the following, which supersedes any provision to the contrary in this Condition or elsewhere in this coverage part:

**Primary and Noncontributory Insurance**

With respect to other insurance available to the additional insured under which the additional insured is a named insured, this insurance is primary to and will not seek contribution from such other insurance, provided that a **written contract** requires the insurance provided by this policy to be:

1. primary and non-contributing with other insurance available to the additional insured; or
2. primary and to not seek contribution from any other insurance available to the additional insured.

But except as specified above, this insurance will be excess of all other insurance available to the additional insured.

VI. Solely with respect to the insurance granted by this endorsement, the section entitled **COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

The Condition entitled **Duties In The Event of Occurrence, Offense, Claim or Suit** is amended with the addition of the following:

Any additional insured pursuant to this endorsement will as soon as practicable:

1. give the Insurer written notice of any **claim**, or any **occurrence** or offense which may result in a **claim**;
2. send the Insurer copies of all legal papers received, and otherwise cooperate with the Insurer in the investigation, defense, or settlement of the **claim**; and
3. make available any other insurance, and tender the defense and indemnity of any **claim** to any other insurer or self-insurer, whose policy or program applies to a loss that the Insurer covers under this **coverage part**. However, if the **written contract** requires this insurance to be primary and non-contributory, this paragraph 3. does not apply to insurance on which the additional insured is a named insured.

The Insurer has no duty to defend or indemnify an additional insured under this endorsement until the Insurer receives written notice of a **claim** from the additional insured.

VII. Solely with respect to the insurance granted by this endorsement, the section entitled **DEFINITIONS** is amended to add the following definition:

**Written contract** means a written contract or written agreement that requires you to make a person or organization an additional insured on this **coverage part**, provided the contract or agreement:

- A. is currently in effect or becomes effective during the term of this policy; and
- B. was executed prior to:
  1. the **bodily injury** or **property damage**; or
  2. the offense that caused the **personal and advertising injury**;for which the additional insured seeks coverage.

Any coverage granted by this endorsement shall apply solely to the extent permissible by law.

CNA75079XX (10-16)

Policy No:

Endorsement No:

Effective Date:

Insured Name:

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**Blanket Additional Insured - Owners, Lessees or  
Contractors - with Products-Completed  
Operations Coverage Endorsement**

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

CNA75079XX (10-16)

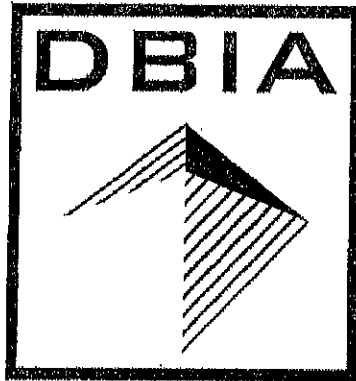
Policy No:

Endorsement No:

Effective Date:

Insured Name:

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**STANDARD FORM OF GENERAL  
CONDITIONS OF CONTRACT  
BETWEEN OWNER AND  
DESIGN-BUILDER**

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**Document No. 535**

Second Edition, 2010

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Washington, DC



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## Article 1

### General

#### 1.1 Mutual Obligations

1.1.1 *Owner and Design-Builder* commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

#### 1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder - Lump Sum* (2010 Edition).

1.2.2 *Basis of Design Document* is attached as Exhibit A to the 525 included within the Contract Documents.

1.2.3 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by the Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both the Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

1.2.4 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.5 *Design-Build Team* is comprised of the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder.

1.2.6 *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of the Design Consultant, but is retained by the Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

1.2.7 *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.

1.2.8 *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, pandemics, adverse weather conditions not reasonably anticipated, and other acts of God.

1.2.9 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition).

1.2.10 Intentionally Omitted.

1.2.11 Intentionally Omitted

1.2.12 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.13 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the

Project or Site, the practices involved in the Project or Site, or any Work.

**1.2.14** Intentionally Omitted.

**1.2.15** *Site* is the land or premises on which the Project is located.

**1.2.16** *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

**1.2.17** *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

**1.2.18** *Substantial Completion* or *Substantially Complete* means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

**1.2.19** *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

## Article 2

### **Design-Builder's Services and Responsibilities**

#### **2.1 General Services.**

**2.1.1** Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

**2.1.2** Design-Builder shall provide Owner and the Wilcox Foundation with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; and (iv) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time.

**2.1.3** Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

**2.1.4** The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents. The meeting will be Coordinated by the Design-Builder.

## **2.2 Design Professional Services.**

**2.2.1** Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

## **2.3 Standard of Care for Design Professional Services.**

**2.3.1** The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

## **2.4 Design Development Services.**

**2.4.1** Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

**2.4.2** Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meetings minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

**2.4.3** Owner's review and approval of interim design submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

**2.4.4** To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

**2.4.5** Owner will review and approve the interim design submissions in a timely manner as required to meet the construction schedule.

## **2.5 Legal Requirements.**

**2.5.1** Design-Builder shall perform the Work in accordance with all Legal Requirements and shall

provide all notices applicable to the Work as required by the Legal Requirements.

**2.5.2** The Contract Price and/or Contract Time shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

## **2.6 Government Approvals and Permits.**

**2.6.1** Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

**2.6.2** Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

## **2.7 Design-Builder's Construction Phase Services.**

**2.7.1** Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, start-up, material, equipment and machinery to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

**2.7.2** Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

**2.7.3** Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.

**2.7.4** Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

**2.7.5** Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

**2.7.6** Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

## **2.8 Design-Builder's Responsibility for Project Safety.**

**2.8.1** Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder

shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

**2.8.2** Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

**2.8.3** Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

## **2.9 Design-Builder's Warranty.**

**2.9.1** Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. All materials shall be furnished in accordance with the respective industry tolerance of color variation, thickness, size, finish, texture and performance standards. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, failure to maintain the Work in a commercially reasonable manner or modifications performed by others. THIS WARRANTY IS PROVIDED IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY DESIGN-BUILDER. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion. Nothing in this provision shall be interpreted to limit in any manner the Owner's legal remedies for breach of this Agreement.

## **2.10 Correction of Defective Work.**

**2.10.1** Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work.

**2.10.2** Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. Design-Builder must be provided a reasonable opportunity to inspect and make corrections, or such warranty claims are barred. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

**2.10.3** The one-year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

## Article 3

### Owner's Services and Responsibilities

#### 3.1 Duty to Cooperate.

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

3.1.3 Owner shall give Design-Builder and the Wilcox Foundation timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

#### 3.2 Furnishing of Services and Information.

3.2.1 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

3.2.1.1 To the extent available, surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

3.2.1.2 To the extent available, geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

3.2.1.3 Temporary and permanent easements, parking for workers, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

3.2.1.4 A legal description of the Site;

3.2.1.5 To the extent available, record drawings of any existing structures at the Site; and

3.2.1.6 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

3.2.1.7 Utilities for Design-Builder to commence and complete the Work on the Project.

3.2.1.8 Six (6) foot temporary fencing around the Project and adjacent materials, equipment, and storage.

3.2.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

#### 3.3 Financial Information.

3.3.1 At Design-Builder's request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents.

3.3.2 Intentionally Omitted.

### **3.4 Owner's Representative.**

**3.4.1** Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Bullder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Bullder with prompt notice if it observes any failure on the part of Design-Bullder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Bullder and shall be vested with the authority to act on behalf of Owner.

### **3.5 Government Approvals and Permits.**

**3.5.1** Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees.

**3.5.2** Design-Bullder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

### **3.6 Owner's Separate Contractors.**

**3.6.1** Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Bullder in order to enable Design-Bullder to timely complete the Work consistent with the Contract Documents.

**3.6.2** Owner through its separate contractors shall demolish, remove, and grade/fill the existing water feature and establish a grade of +/- .10' prior to Design-Bullder's commencement of its Work.

## **Article 4**

### **Hazardous Conditions and Differing Site Conditions**

#### **4.1 Hazardous Conditions.**

**4.1.1** Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Bullder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Bullder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

**4.1.2** Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless.

**4.1.3** Design-Bullder shall be obligated to resume Work at the affected area of the Project only after (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

**4.1.4** Design-Bullder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time to the extent Design-Bullder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

**4.1.5** To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Bullder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

#### 4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions."

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after Design-Builder's knowledge that such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

### Article 5

#### Insurance

##### 5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit D to the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement.

5.1.2 Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) should any insurance coverage be canceled prior to the expiration date thereof that written notice will be delivered in accordance with the policy as amended by any endorsements. Owner will be included as an additional insured on Design-Builder's insurance in accordance with the policy as amended by any endorsements. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder with reasonable promptness according to the Design-Builder's information and belief.

##### 5.1.1 Intentionally Omitted

##### 5.2 Owner's Liability Insurance.

5.2.1 Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

##### 5.3 Owner's Property Insurance.

5.3.1 Unless otherwise provided in the Contract Documents, Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located Builder's Risk Insurance upon the Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property and will name Design-Builder as an additional insured..

5.3.2 Intentionally Omitted.

5.3.3 Intentionally Omitted.

5.3.4 Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

5.3.5 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

5.4 Intentionally Omitted

## **Article 6**

### **Payment**

#### **6.1 Schedule of Values.**

6.1.1 Unless required by the Owner upon execution of this Agreement, within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

6.1.2 The Owner will timely review and approve the schedule of values so as not to delay the submission of the Design-Builder's first application for payment. The Owner and Design-Builder shall timely resolve any differences so as not to delay the Design-Builder's submission of its first application for payment.

#### **6.2 Monthly Progress Payments.**

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment through the end of the month. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents.

6.2.2 The Application for Payment will include any deposits that Design-Builder must make for custom fabricated or specialty items. Payment for these deposits shall be made by the Owner in sufficient time so that the Design-Builder's progress is not delayed. No retainage shall be withheld from any deposit amounts.

6.2.3 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.4 All discounts offered by Subcontractors, Sub-Subcontractors and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

6.2.5 The Application for Payment shall constitute Design-Builder's representation that the Work described herein has been performed consistent with the Contract Documents, has progressed to the point

indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon Design-Builder's receipt of payment.

### **6.3 Withholding of Payments.**

**6.3.1** On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

**6.3.2** Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

### **6.4 Right to Stop Work and Interest.**

**6.4.1** If Owner fails to pay timely Design-Builder any amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

### **6.5 Design-Builder's Payment Obligations.**

**6.5.1** Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

**6.5.2** Design-Builder shall initiate and uphold the provisions of the Michigan Construction Lien Act, including, but not limited to, providing to Owner, with each request for payment, a Sworn Statement and Conditional Waivers of Lien from Subcontractors and Materials Providers. Design-Builder will provide Unconditional Waivers of Lien from Subcontractors and Material Providers for which Design-Builder has received payment.

### **6.6 Substantial Completion.**

**6.6.1** Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

**6.6.2** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

**6.6.3** Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the

portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Design-Build and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Build agree that Owner's use or occupancy will not interfere with Design-Build's completion of the remaining Work.

## **6.7 Final Payment.**

**6.7.1** After receipt of a Final Application for Payment from Design-Build, Owner shall make final payment by the time required in the Agreement, provided that Design-Build has achieved Final Completion.

**6.7.2** At the time of submission of its Final Application for Payment, Design-Build shall provide the following information:

**6.7.2.1** An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work for which Design-Build has previously been paid and which will in any way affect Owner's interests;

**6.7.2.2** A general release executed by Design-Build waiving, upon receipt of final payment by Design-Build, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

**6.7.2.3** Consent of Design-Build's surety, if any, to final payment;

**6.7.2.4** All operating manuals, warranties and other deliverables required by the Contract Documents; and

**6.7.3** Upon making final payment, Owner waives all claims against Design-Build except claims relating to (i) Design-Build's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Build's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any special warranties required by the Contract Documents.

**6.7.4** Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punch List if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Build under Sections 2.9 and 2.10 herein, and shall not be a reason to withhold final payment from Design-Build, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

## **Article 7**

### **Indemnification**

#### **7.1 Patent and Copyright Infringement.**

**7.1.1** Design-Build shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Build of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Build shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Build in any such action or proceeding. Design-Build agrees to keep Owner informed of all developments in the defense of such actions.

**7.1.2** If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Build shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Build cannot so procure such right within a reasonable time, Design-Build shall promptly, at Design-Build's option and at Design-Build's

expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

**7.1.3** Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

**7.1.4** The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

## **7.2 Intentionally Omitted**

## **7.3 Payment Claim Indemnification.**

**7.3.1** Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

## **7.4 Design-Builder's General Indemnification.**

**7.4.1** To the fullest extent permitted by law, Design-Builder shall indemnify, hold harmless and defend Owner, its officers, directors, elected officials, agents, insurers and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

**7.4.2** If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Section 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

**7.5 and 7.6 Intentionally Omitted**

**Time**

**8.1 Obligation to Achieve the Contract Times.**

**8.1.1** Design-Bullder agrees that it will commence performance of the Work and achieve the Contract Time in accordance with Article 5 of the Agreement.

**8.2 Delays to the Work.**

**8.2.1** If Design-Bullder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Bullder is responsible, the Contract Time for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Bullder to an extension of the Contract Time include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

**8.2.2** In addition to Design-Bullder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Bullder shall also be entitled to an appropriate adjustment of the Contract Price.

**Article 9**

**Changes to the Contract Price and Time**

**9.1 Change Orders.**

**9.1.1** A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Bullder, stating their agreement upon all of the following:

**9.1.1.1** The scope of the change in the Work;

**9.1.1.2** The amount of the adjustment to the Contract Price; and

**9.1.1.3** The extent of the adjustment to the Contract Time.

**9.1.2** All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Bullder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

**9.1.3** If Owner requests a proposal for a change in the Work from Design-Bullder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Bullder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

**9.2** If Owner and Design-Bullder disagree upon whether Design-Bullder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Bullder shall resolve the disagreement pursuant to Article 10 hereof.

**9.3 Emergencies.** In any emergency affecting the safety of persons and/or property, Design-Bullder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time on account of emergency work shall be determined as provided in this Article 9.

**9.4 and 9.5 Intentionally Omitted**

## Article 10

### Contract Disputes

#### 10.1 Notice of Contract Disputes.

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request. Given that this is a lump-sum contract, Design-Builder is not entitled to any contract changes or amendments.

#### 10.2 Dispute Avoidance and Resolution.

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless the Owner and Design-Builder mutually agree otherwise.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation.

#### 10.3 Arbitration.

10.3.1 Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.

10.3.2 The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

**10.3.3** Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

**10.4** **Duty to Continue Performance.** Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

**10.5** **CONSEQUENTIAL DAMAGES.** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

## **Article 11**

### **Stop Work and Termination for Cause**

#### **11.1 Owner's Right to Stop Work.**

**11.1.1** Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

**11.1.2** Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner.

#### **11.2 Owner's Right to Perform and Terminate for Cause.**

**11.2.1** If Design-Builder persistently fails to (i) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time, as such times may be adjusted, (ii) comply with applicable Legal Requirements, (iii) timely pay, without cause, to the extent it has previously been paid, Design Consultants or Subcontractors, or (iv) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

**11.2.2** Upon the occurrence of an event set forth in Section 11.2.1 above, Owner shall provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner shall give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

**11.2.3** Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner shall be entitled to an interest in and the use of only those materials and supplies at the project site for which payment has been made to Design-Builder. Under no circumstances shall Owner be entitled to any interest in or use of Design-Builder's tools, machinery or equipment, regardless of whether the same are located on the Project site. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder.

**11.2.4** Intentionally Omitted.

### **11.3 Design-Builder's Right to Stop Work.**

**11.3.1** Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

**11.3.1.1** Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

**11.3.1.2** Intentionally Omitted

**11.3.2** Should any of the events set forth in Section 11.3.1 above occur, Design-Builder shall provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time to the extent it has been adversely impacted by such stoppage.

### **11.4 Design-Builder's Right to Terminate for Cause.**

**11.4.1** Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

**11.4.1.1** The construction and Installation Work (not the design services) has commenced and has then been stopped for one hundred and eighty (180) consecutive days, or more than one hundred and eighty (180) days during the duration of the Project, because of court order, pandemic, or any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

**11.4.1.2** Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

**11.4.1.3** Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

**11.4.2** Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder shall provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder shall give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

### **11.5 Intentionally Omitted.**

## **Article 12**

### **Electronic Data**

#### **12.1 Electronic Data.**

**12.1.1** The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies

(collectively "Electronic Data").

**12.2 Intentionally Omitted.**

**Article 13**

**Miscellaneous**

- 13.1 Assignment.** Neither Design-Build nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.
- 13.2 Successorship.** Design-Build and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.
- 13.3 Governing Law.** The Agreement and all Contract Documents shall be governed by the laws of the State of Michigan.
- 13.4 Severability.** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.
- 13.5 No Waiver.** The failure of either Design-Build or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.
- 13.6 Headings.** The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.
- 13.7 Notice.** Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement, or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.
- 13.9 Amendments.** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

Ellen Elliott, 404 Irvin, said she appreciated that the City and the citizens were able to work together to move the project forward.

There was a roll call vote.

Yes: Deal, Krol, Moroz, O'Donnell, Thomey, Sebastian, Wolcott

d. Wilcox Fountain in Kellogg Park – Grant Agreement – Action Two of Three

The following resolution was offered by Moroz and seconded by Thomey.

**RESOLUTION 2021-15**

- WHEREAS The City of Plymouth is the owner of Kellogg Park and the Wilcox Family Foundation has generously offered to fund the new Wilcox Fountain in Kellogg Park; and
- WHEREAS The City of Plymouth and the City of Plymouth Downtown Development Authority has committed a total of \$50,000 to the project; and
- WHEREAS There is need to formalize an agreement between the City and Wilcox Family Foundation.

NOW THEREFORE BE IT RESOLVED THAT the City Commission of the City of Plymouth does hereby authorize the Grant Agreement between the City of Plymouth and the Wilcox Family Foundation.

BE IT FURTHER RESOLVED THAT the City Clerk shall include a complete copy of the Grant Agreement as a part of the meeting minutes of this City Commission meeting.

Several typographical errors were pointed out and there was a discussion about signage and benches.

**GRANT AGREEMENT**

**The Wilcox Family Foundation**

This Grant Agreement ("Agreement") is made by and between the CITY OF PLYMOUTH, a Michigan municipal corporation, whose address is 201 South Main Street, Plymouth, Michigan 48170 (the "City"), and the WILCOX FAMILY FOUNDATION, a Michigan non-profit corporation, whose address is 6377 Cardeno Drive, La Jolla, California 92037 (the "Foundation"). Based on the Recitals below, and in consideration of the mutual promises and benefits herein, the parties agree as follows.

**RECITALS**

The Foundation wishes to make a gift to the City in connection with the donation and construction of a Fountain in Kellogg Park ("Fountain") for the use and benefit of the City and the Plymouth community.

The City desires to accept the gift, subject to the terms and conditions set forth in this Agreement, and in consideration of the gift, the City will name and refer to the Fountain as the "Wilcox Fountain."

**AGREEMENT**

1. **The Grant.** The parties agree that the Foundation, as grantor, will make a gift and donate, as described herein, to the City and the City will use the gift funds for the purchase and construction of the Fountain, pursuant to the terms set forth herein, to be owned by the City and name and refer to the Fountain as the "Wilcox Fountain." The Fountain will be constructed on the same site of a fountain currently located in Kellogg Park.

2. **Grant Amount.** The Foundation agrees to make a gift to the City for the donation of a Fountain, including the provision of all labor and material of its construction (collectively, the "Construction Work") to be provided by Outside the Lines ("OTL"), and for the construction of certain related site work ("Site Work") to be provided by Shaw Construction, Inc. ("Shaw"). The amounts from these companies are as follows:

OTL Contract	\$1,025,000.00	Attached hereto as <b>Exhibit A</b>
Shaw Proposal	<u>\$195,449.10</u>	Attached hereto as <b>Exhibit B</b> <sup>1</sup>
Proposals total	\$1,220,449.10	

<sup>1</sup> The proposal includes a \$10,000 allowance for electrical. As of the date of this Agreement, that has been increased to \$30,000 which will be treated as a lump sum not-to-exceed amount to be billed against on a time and material basis. The Foundation has agreed to fund any costs that might exceed the original \$10,000 allowance up to the amount of \$30,000.

The City and the Downtown Development Authority have agreed to pay the sum of Fifty Thousand and 00/100 Dollars (\$50,000.00) toward the Construction Work and Site Work. Accordingly, the amount of the gift from the Foundation will be the sum of the two proposals less the City's \$50,000.000 contribution or the total amount of One Million, One Hundred Seventy Thousand, Four Hundred Forty-Nine and 10/100 Dollars (\$1,170,449.10)<sup>2</sup>.

The construction of the Fountain shall be consistent with the initial schematics submitted by OTL, attached hereto as Exhibit C, and Shaw's final construction plans with the exception of minor deviations necessary to complete the Fountain project. The Foundation will not have any responsibility or obligation absent written modifications of this Agreement for future additional funding, including funding for any cost overruns, cost increases, change orders, costs incurred due to delays as a result of bad weather or otherwise or any other costs, unforeseen or not, that may arise in connection with completing the Fountain project.

3. Acceptance of Grant. The City, as grantee, accepts the Foundation's Grant, subject to the terms and conditions of this Agreement. Further, this acceptance is made in accordance with City Charter Section 5.14 allowing the City Commission to receive any gift to the City and apply the same in accordance with the terms and conditions of such gift.

4. Payment of the Grant. The entire amount of the Grant funds shall be deposited with an escrow agent, mutually agreed upon by the Foundation and City. The Grant funds will be disbursed directly to the contractors in installments as the construction progresses. Payments will be made by separate disbursements directly to OTL and Shaw (the "Contractors") upon the Foundation, or its authorized agent, being provided with a Contractor's payment request approved by the City for work satisfactorily performed to the extent of the amounts of the Grant designated for the Construction Work and the Site Work, respectively. Such payment requests shall be in form and substance acceptable to the City and contain such information as is customarily provided to owners in a construction project. Such payment requests may be made on a monthly basis. Payments for approved payment requests will be made within fifteen (15) days of receipt of an completion payment request of the Contractors and a certification by the City to the Foundation that: (i) the payment request submitted by the Contractor is for work that is in conformity with the plans, specifications, and City codes, (ii) the work comprising the payment request has been satisfactorily completed, and (iii) the payment request is correct. Any fees charged by the escrow agent shall be paid by the Foundation with funds independent of this Grant.

5. Use of the Grant Funds. The Grant funds shall be solely used to pay the costs of the Construction Work and Site Work and related expenses and costs. The Grant funds are being provided for the express purposes stated above which are in accordance with the uses permitted by Internal Revenue Code Section 501 (c)3 and the Foundation's governing documents.

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<sup>2</sup> See Footnote 1 for possible additional funding by the Foundation.

If the entire amount of the Grant funds designated for either Site Work or Construction Work and related expenses and costs is not expended, any surplus funds will be used for enhancements to the Fountain or Kellogg Park, as mutually agreed to by the City and Foundation.

6. City Agreements. In consideration for receiving the Grant, the City agrees as follows:

a. Contracts. The City will endeavor to execute written contracts with both OTL and Shaw by March 1, 2021, including detailed milestone payment schedules for each Contractor, subject to approval by the City Commission. The City will construct the Fountain as set forth in the OTL design attached hereto as **Exhibit C**, subject to the color and materials selected by the Foundation being first approved by the Historic District Commission. The City will not make any material modifications to the Fountain location, design or materials without written approval of the Foundation. If both contracts are not fully executed by that date and/or the City Commission has not approved the contracts, notwithstanding anything else to the contrary contained herein, this Agreement will terminate. Such contracts shall observe all City ordinances and other requirements for public works projects. Shaw Construction shall appear on behalf of the Fountain project at any City meetings requiring approval at no additional cost or expense to the City.

b. Project Start Date. The City will commence the project, starting with design, no later than February 15, 2021.

c. Fountain Name. The City will name and refer to the Fountain as the "Wilcox Fountain." The name of the Fountain will continue for fifty (50) years and, at the end of such term, shall automatically renew for another like term unless the Fountain has been completely replaced in which case the City may rename the Fountain. The name will be exclusive and no other Fountain sponsors', donors' or other contributors' plaques or acknowledgements shall be placed within fifty (50) feet of the Fountain commemorating any contributions (other than temporary signs erected for City or other permitted events at Kellogg Park).

d. Future References. The City, to the extent reasonably possible, agrees to make reference to the "Wilcox Fountain" (not "the Fountain" or the "Kellogg Park Fountain") on City maps, publicity materials, informational drawings that are prepared or published by the City which publicly show or depict Kellogg Park and the Fountain. No commercial advertising or signage shall be placed within fifty (50) feet of the Fountain other than:

- (i) signage regarding safety or directional matters ; or
- (ii) temporary commercial signage erected for City or other permitted events at Kellogg Park.

e. Bronze Plaque. The City will permit a permanent bronze plaque to be placed in a prominent location near the Fountain (such as on the perimeter of the surrounding pavers), in the Foundation's sole discretion, and will maintain and replace the plaque, as necessary, with a plaque of equal quality, including the replacement of a stolen, vandalized or damaged plaque. The plaque shall be of a size of approximately 24'x30' (or similar size or configuration) and shall state:

Wilcox Fountain

This Fountain was made possible by a grant from The Wilcox Foundation, at the request of Jack Wilcox, in memory of his parents, George and Harriet Wilcox, and in recognition of 150th Anniversary of the founding of the Village of Plymouth in 1867.

The Plaque will be mounted on a brick or block base or plinth, in the Foundation's sole discretion, and will conceptually appear like a podium where the plaque can be approached and read. The City acknowledges, understands and agrees that the naming of the Fountain and plaque placement are an integral and essential part of this Agreement and without the City's promise to name it the "Wilcox Fountain," the Foundation will not make this Grant.

Such plaque will require Historic District Commission and perhaps other City approvals for content, design and location.

The Foundation shall provide and be responsible for installation of the plaque at its sole cost and expense, in coordination with the City's Contractors.

f. Benches. The City agrees that the Foundation will have the option to provide and install benches at the Foundation's cost around the perimeter of the pavers surrounding the Fountain promptly after completion of the installation of the pavers. The Foundation will select the design to be complementary to the Fountain. An attempt will be made to save the existing pavers, if reasonably feasible.

The benches will be subject to City and perhaps other municipal approvals as to type, color and location. The Foundation agrees that once installed, the benches will become the property of the City.

g. Design. OTL and Shaw will design and construct the Fountain and City will have no responsibility or liability regarding the Fountain.

7. Publicity. For purposes of publicizing the Grant, the City will have the right, without charge, to use photographs of Jack Wilcox and his family and use the names, likenesses, and images of the family in photographic, audiovisual, digital or any other form of medium (the "Media Materials") and to use, reproduce, distribute, exhibit, and publish

the Media Materials in any manner and in whole or in part, including in brochures, website postings, informational and marketing materials, and reports and publications describing City's development and business activities.

8. Maintenance and Insurance. The City will maintain the Fountain and keep it in good working order (subject to downtime for repair, maintenance, design defects and when the City, in its sole discretion, determines the Fountain should not be in operation for the public's health, safety and welfare or to protect the Fountain) and maintain insurance for personal liability and property damage, as part of the City's standard insurance coverage. The Foundation will have no responsibility to maintain the Fountain or for any liability whatsoever.

9. Representations by City. The City represents that, to the best of its knowledge and after diligent search of City records, there are no outstanding agreements, contracts or commitments of any kind with any other third parties that exist which would prohibit the City from exclusively naming the Fountain "Wilcox Fountain." The Foundation is relying on these representations in making the Grant.

10. Default/Mediation. If either the Foundation or City asserts there has been a default hereunder, such party shall deliver a written notice of default specifying such default. The other party shall have fourteen (14) days to respond to such written notice of default. In the event of any controversy or claim arising out of this Agreement, or the rights or obligations of the parties, the parties shall try to settle their differences in good faith amicably between themselves. If such individuals are unable to resolve the dispute, then either party may give the other party a written notice of intent to mediate the dispute and, within thirty (30) days of such written notice, the parties shall refer the dispute to non-binding mediation before resorting to litigation, unless doing so would cause an applicable statute of limitations to expire. Such mediation shall be conducted pursuant to the commercial mediation rules of the American Arbitration Association with costs shared equally. If any unresolved matter is not resolved within 30 days following referral to non-binding mediation, either party may seek any remedy at law or in equity that may be available and in any such litigation or where a party seeks a declaration of any rights under this agreement, the prevailing party shall be awarded its reasonable its attorneys fees and costs incurred.

11. Assignment. This Agreement and the rights and benefits hereunder may not be assigned by either party without the prior written consent of the other party, which consent shall be in the sole and absolute discretion of the non-assigning party. Notwithstanding the foregoing, nothing hereunder shall prevent the City from (i) contracting, in its sole discretion, with third parties for maintenance of the Fountain; or (ii) the City transferring ownership of Kellogg Park to another municipal entity, as allowed under law.

12. Foundation Authority. The Foundation represents and warrants that the Foundation: (i) has the requisite authority to enter into this Agreement; (ii) the Grant will

not violate the Foundation's organizational documents or bylaws; and (iii) the Foundation's Board of Trustees has approved the Grant to the City and disbursement of Grant funds.

13. Entire Agreement. This Agreement constitutes the entire agreement of the parties with regard to the matters referred to herein, and supersedes all prior oral and written agreements, if any, of the parties in respect hereto. This Agreement may not be modified or amended except by written agreement executed by both parties.

14. Governing Law and Venue. This Agreement will be governed by and construed in accordance with the laws of the State of Michigan.

15. City of Plymouth Approvals. This Agreement, including the naming of the Fountain, is strictly subject to the approvals by the City or its boards and commissions stated or referenced herein, the color and materials are subject to approval by the Historic District Commission and the Agreement will not be effective unless and until all such approvals are granted by the respective City boards and commissions. Further, the Fountain project is subject to approvals consistent with the City's Monument Policy adopted October 18, 1993.

16. Agreement Execution Date. This Agreement must be executed by the City and the Foundation by February 15, 2021. If not executed by that date, the Foundation's offer to make the Grant described herein shall terminate.

Agreed to and accepted by:

CITY OF PLYMOUTH

WILCOX FAMILY FOUNDATION, INC.

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

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

Oliver Wolcott

Scott Dodge

Its: Mayor

Its: President

Dated: February \_\_\_\_, 2021

Dated: February \_\_\_\_, 2021

Open.09992.80534.23568931-1

There was a roll call vote.

Yes: Deal, Krol, Moroz, O'Donnell, Thomey, Sebastian, Wolcott

MOTION PASSED 7-0

e. Wilcox Fountain in Kellogg Park – Disbursement Agreement – Action Three of Three

The following resolution was offered by Moroz and seconded by Sebastian.

RESOLUTION 2021-16

WHEREAS The Wilcox Foundation is providing funding for the Wilcox Fountain in Kellogg Park and this construction project will require that payments be authorized to be made to the vendors in this project; and

WHEREAS The Wilcox Foundation has established a Disbursement Agreement between the Wilcox Foundation and Cole, Newton & Duran, a public accounting firm; and

WHEREAS Under the terms of the agreement the City will be required to authorize payment to the vendors based on the submittals turned in by the vendors.

NOW THEREFORE BE IT RESOLVED THAT the City Commission of the City of Plymouth does hereby authorize the Mayor to sign the Disbursement Agreement on behalf of the City of Plymouth.

BE IT FURTHER RESOLVED THAT the City Clerk is hereby directed to include a complete copy of the Disbursement Agreement with the official meeting minutes of this City Commission Meeting.

## DISBURSEMENT AGREEMENT

This Disbursement Agreement ("Agreement") is made this \_\_\_\_\_ day of January, 2021 between the Wilcox Foundation, a Michigan non-profit corporation, ("Foundation") whose address is 1345 Park Place, Plymouth, Michigan, and Cole, Newton & Duran, a public accounting firm, (the "Firm") whose address is 33762 Schoolcraft Road, Livonia, Michigan 48150 and it shall become effective when signed by all parties

### Recitals

- A. The Foundation has entered into a Grant Agreement with the City of Plymouth ("City") wherein the Foundation is making a grant to the City to be used for the installation of a fountain in Kellogg Park ("Fountain") in the City of Plymouth.
- B. The Fountain project will be completed by two contractors. Outside the Lines ("OTL") will provide the Fountain structure and Shaw Construction Company ("Shaw") will provide site work, ("Contractors").
- C. The City and the Foundation have agreed that the grant funds shall be placed with a third-party that will administer the disbursement of the grant funds to the Contractors as provided herein.
- D. The Firm has agreed to be the third-party administrator and to disburse the grant funds as provided herein.

Now Therefore, for valuable consideration, the parties hereto mutually agree as follows:

- 1. The Foundation will deposit the City's grant funds in the amount of \$1,170,449.10, with the Firm, less the amount of any deposits relating to the Contractors' contracts with the City previously made by the Foundation. Additional funds may be added to cover any Change Orders. The Firm will deposit the funds in the Community Financial Credit Union.
- 2. Term. The term of this Agreement will commence when it has been signed by all parties and will end when all funds have been disbursed in accordance with the terms hereof.
- 3. The Firm will hold the funds in a segregated non-interest-bearing account and make periodic disbursements directly to the Contractors as provided herein.
- 4. During the term of this Agreement, the Firm need not be concerned with the sufficiency of the funds necessary to complete the project, whether or not the construction will be completed, whether or not it is in conformity with the specifications or the quality of the work.
- 5. The Firm shall disburse the grant funds by check directly to the Contractors within five (5) days of the receipt of a Payment Request from the City approving payment and containing a Certification by the City to the Foundation stating that:

- a. the City has reviewed the Payment Request and has inspected the work;
- b. the Payment Request submitted by the Contractor is for work that is in conformity with the plans, specifications, and City codes;
- c. the work comprising the Payment Request has been satisfactorily completed;
- d. the Payment Request is accurate.

6. Should the Foundation notify the Firm of an objection to any disbursement pursuant to this Agreement, the Firm shall hold the funds in its possession in a non-interest bearing account until new instructions are received.

7. If new joint instructions are not forthcoming within a reasonable time, the Firm may commence an interpleader action in the proper court of competent jurisdiction and deposit all funds and documents with the court, retaining any and all amounts necessary to pay the Firm's costs and reasonable attorneys' fees for taking such action.

8. As consideration for performing the duties described herein, Foundation agrees to pay the Firm its hourly rate of \$200 for all time spent performing its duties as stated herein and will pay for all reasonable expenses incurred in such performance. The Firm will submit monthly statements to the Foundation.

9. The Foundation acknowledges that the Firm is acting at the request of the Foundation and hereby agrees to indemnify, defend and hold the Firm and the City harmless from all liability relating to any acts performed in good faith under this Agreement. The liability of the Firm and its employees relating to this Agreement shall be limited to the lesser of any actual damages or the amount of the construction funds undistributed to the Contractors under this Agreement.

10. The Foundation acknowledges that the Firm is acting at the request of the Foundation and hereby releases and holds the Firm harmless from liability for any acts performed in good faith in relation to the funds and the disbursement thereof.

11. General Provisions.

- a. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.
- b. It is agreed that the agreements herein contained shall be binding upon the administrators, successors, and assigns of the parties.
- c. In the event that any provision of this Agreement, or part thereof, shall be held to be void or unenforceable by order entered by a court of competent jurisdiction, such determination shall not affect or impair the enforceability of the remaining portions of this Agreement.
- d. Each party hereto represents and warrants to the other parties hereto that it has full power and authority to execute this Agreement and to perform or cause to be performed the obligations on its part to be performed.
- e. This Agreement may be amended only by written instrument executed by each of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the dates set forth by their signatures.

Wilcox Foundation

Cole, Newton and Duran

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

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

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

The City of Plymouth hereby acknowledges the terms of this Agreement which provide for the disbursement of the construction funds to the Contractors constructing the Wilcox Fountain upon receipt of a completed Payment Request Certification from the City.

City of Plymouth

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

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Payment Request Certification

In connection with the construction of the Wilcox Fountain in Kellogg Park, the City of Plymouth has received a Payment Request from

\_\_\_\_\_ Shaw Construction Company.

\_\_\_\_\_ Over the Line.

The amount of the Payment Request is for \$ \_\_\_\_\_

The date of the Payment Request is \_\_\_\_\_ 2021.

The City, in accordance with the disbursement procedures for the disbursement of Wilcox Foundation grant funds being held by Cole, Newton and Duran, as the disbursement administrator, hereby approves the Payment Request for payment and provides the following certification.

CERTIFICATION

The City of Plymouth hereby certifies that:

- e. the City has reviewed the Payment Request and has inspected the work;
- f. the Payment Request dated \_\_\_\_\_, 2021 submitted by the above referenced Contractor is for work that is in conformity with the plans, specifications, and City codes;
- g. the work comprising the Payment Request has been satisfactorily completed; and
- h. the Payment Request is accurate.

City of Plymouth

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

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

There was a roll call vote.

Yes: Deal, Krol, Moroz, O'Donnell, Thomey, Sebastian, Wolcott

MOTION PASSED 7-0

f. Second Quarter Budget Amendments

The following resolution was offered for discussion.

RESOLUTION 2021-17

WHEREAS Actual patterns of departmental expenditures occurred differently than originally projected in the 2020-2021 City Budget as adopted in June of 2020; and

WHEREAS Overall revenue and expenditure forecasts require modifications to the original budgetary allocations as established in the adopted budget; and

WHEREAS The City Budget amendments require the approval of the City Commission for changes between activity departments and between funds of the City.

NOW THEREFORE BE IT RESOLVED THAT the 2020-2021 City Budget is hereby amended as indicated in the 2<sup>nd</sup> quarter amendments column of the attached Budget Amendments Summary, which is made part of this resolution.

BE IT FURTHER RESOLVED that the City Finance Director is authorized to change the budgetary appropriations as indicated in the Budget Amendments Summary effective February 1, 2021.

BUDGET ADJUSTMENT SUMMARY  
SECOND QUARTER - FY 20-21

FUND DEPT./ACTIVITY	Approved Budget	1st Qtr. Amendments	2nd Qtr. Amendments	3rd Qtr. Amendments	4th Qtr. Amendments	Tot. All Amendments	Amended Budget
<b>GENERAL FUND REVENUE:</b> #101							
Property Taxes	8,366,760	-	100			100	8,366,860
Licenses & Permits	5,100	-	-			-	5,100
Federal/State Grants	30,660	240,076	27,201			267,277	267,926
State-Shared Revenues	1,000,866	(11,750)	34,016			(7,734)	1,001,898
Charges for Services	814,110	-	-			-	814,110
Cemetery Revenues	162,600	-	-			-	162,600
Parking Revenues	86,200	200	-			200	86,400
Other Operating Revenues	585,830	(32,500)	(46,790)			(79,290)	506,540
Appropriation of Surplus	-	-	-			-	-
Total Operating Revenue	9,243,936	166,036	14,619	-	-	180,655	9,424,591
Transfers in From Other Sources	10,000	-	-			-	10,000
Total Revenue All Classes	9,253,936	166,036	14,619	-	-	180,655	9,434,591
<b>GENERAL FUND EXP:</b> #101							
City Commission	116,000	-	-			-	116,000
City Manager	316,880	-	-			-	316,880
Legal Services	126,600	10,000	-			10,000	136,600
Finance Department	483,425	1,500	300			2,000	485,425
City Clerk	159,000	-	1,400			1,400	160,400
City Assessor	89,780	-	5,000			5,000	94,780
Management Information Services	260,820	-	8,000			8,000	268,820
Election Services	102,320	2,300	7,000			9,300	111,720
Cemetery	141,050	-	1,000			1,000	142,050
Police Department	4,066,695	-	-			-	4,066,695
Fire Department	868,840	5,200	760			7,040	1,006,080
MSD Administration	260,830	300	5,000			5,300	266,430
City Hall Maintenance	116,656	-	4,625			4,625	121,281
Parks & Public Property	189,800	-	-			-	189,800
MSD Yard Maintenance	78,456	-	-			-	78,456
Street Lighting	163,000	-	-			-	163,000
Miscellaneous MSD Services	2,325	-	-			-	2,325
Railway Maintenance Expense	-	-	-			-	-
Special Events	174,325	1,500	-			1,500	175,825
Parking System	41,225	-	-			-	41,225
MSD Services - DDA	166,200	-	-			-	166,200
Other Funerals	282,300	-	4,700			4,700	287,000
Cost of Care	267,500	10,000	147,350			157,350	424,850
Cost Service	31,234	-	-			-	31,234
Tot. Gen'l Operating Expenditures	9,644,430	31,800	166,325	-	-	217,916	9,861,761
Transfers Out to Other Funds	389,643	100,000	-			100,000	489,643
Contingency	219,614	81,000	(170,706)			(136,657)	82,957
Total Expenditures	9,253,687	166,036	14,619	-	-	180,655	9,434,367

There was a roll call vote.

Yes: Deal, Krol, Moroz, O'Donnell, Thomey, Sebastian, Wolcott

MOTION PASSED 7-0

**BUDGET ADJUSTMENT SUMMARY**  
**SECOND QUARTER - FY 20-21**

FUND DEPT/ACTIVITY	Approved Budget	1st Qtr. Amendments	2nd Qtr. Amendments	3rd Qtr. Amendments	4th Qtr. Amendments	Tot. All Amendments	Amended Budget
<b>MAJOR ST FUND REV: #202</b>							
Gas & Weight Taxes	688,618	(4,748)	-			(4,748)	683,870
Contrib & Other	16,000	(7,800)	(3,600)			(11,000)	4,000
Appropriation of Surplus	-	-	-			-	-
<b>TOTAL REVENUE</b>	<b>703,618</b>	<b>(12,248)</b>	<b>(3,600)</b>	<b>-</b>	<b>-</b>	<b>(15,748)</b>	<b>687,870</b>
<b>MAJOR ST FUND EXP: #202</b>							
Administration/Debt	20,725	-	(4,376)			(4,376)	16,350
Routine Maintenance	129,225	-	275			275	129,500
Stormwater System Maintenance	1,000	-	-			-	1,000
Traffic Signal Maintenance	70,760	-	575			575	71,335
Snow & Ice Control	85,975	-	25			25	86,000
Road Construction	30,000	-	-			-	30,000
Transfers Out to Other Funds	344,300	-	-			-	344,300
Contingency	21,643	(12,248)	-			(12,248)	9,395
<b>TOTAL EXPENDITURES</b>	<b>703,618</b>	<b>(12,248)</b>	<b>(3,600)</b>	<b>-</b>	<b>-</b>	<b>(15,748)</b>	<b>687,870</b>

FUND DEPT/ACTIVITY	Approved Budget	1st Qtr. Amendments	2nd Qtr. Amendments	3rd Qtr. Amendments	4th Qtr. Amendments	Tot. All Amendments	Amended Budget
<b>LOCAL ST FUND REV: #203</b>							
Gas & Weight taxes	276,045	4,642	-			4,642	280,687
Contrib & Other	355,280	-	-			-	355,280
Appropriation of Surplus	-	-	-			-	-
<b>TOTAL REVENUE</b>	<b>631,325</b>	<b>4,642</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>4,642</b>	<b>635,967</b>
<b>LOCAL ST FUND EXP: #203</b>							
Administration/Debt	23,376	3,075	(200)			2,875	26,250
Routine Maintenance	160,876	-	-			-	160,876
Stormwater System Maintenance	1,000	-	-			-	1,000
Traffic Signal Maintenance	42,525	25	150			176	42,700
Snow & Ice Control	40,400	-	50			50	40,450
Road Construction	30,000	-	-			-	30,000
Contingency	333,350	1,642	-			1,642	334,992
<b>TOTAL EXPENDITURES</b>	<b>631,325</b>	<b>4,642</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>4,642</b>	<b>635,967</b>

FUND DEPT/ACTIVITY	Approved Budget	1st Qtr. Amendments	2nd Qtr. Amendments	3rd Qtr. Amendments	4th Qtr. Amendments	Tot. All Amendments	Amended Budget
<b>RECREATION FUND REV: #208</b>							
Cultural Center Revenues	531,000	-	(60,250)			(60,250)	480,750
Transfer from General Fund	250,000	100,000	-			100,000	350,000
Administrative Charges	1,000	-	-			-	1,000
Program Fees & Charges	308,100	(70,000)	(23,600)			(93,600)	214,500
Appropriation of Surplus	88,945	(50,782)	(44)			(60,826)	28,119
<b>TOTAL REVENUE</b>	<b>1,179,045</b>	<b>(30,782)</b>	<b>(73,794)</b>	<b>-</b>	<b>-</b>	<b>(104,576)</b>	<b>1,074,469</b>
<b>RECREATION FUND EXP: #208</b>							
Cultural Center & Administration	976,825	-	(33,327)			(33,327)	943,498
Base Skills	8,200	-	(4,000)			(4,000)	4,200
Recreation Vending	-	-	-			-	-
Recreation Services	23,876	-	(15,857)			(15,857)	8,019
Adult Athletics	-	-	-			-	-
Youth Athletics	8,650	-	-			-	8,650
Miracle League	9,100	-	-			-	9,100
PCHA	17,000	-	1,350			1,350	18,350
PCHA - Mini Mitas	4,900	-	(2,450)			(2,450)	2,450
MSD Services	8,050	-	(25)			(25)	8,025
Soccer	98,750	(30,782)	(7,000)			(37,782)	60,968
Liquor	3,520	-	(1,760)			(1,760)	1,760
Classes & Special Events	20,150	-	(3,000)			(3,000)	17,150
Therapeutic Program	1,000	-	(250)			(250)	750
Senior Programs-Classes	6,025	-	(2,475)			(2,475)	3,550
Plymouth-Canton Stealers	-	-	-			-	-
Capital Outlay	-	-	-			-	-
Contingency	-	-	-			-	-
<b>TOTAL EXPENDITURES</b>	<b>1,179,045</b>	<b>(30,782)</b>	<b>(73,794)</b>	<b>-</b>	<b>-</b>	<b>(104,576)</b>	<b>1,074,469</b>

**BUDGET ADJUSTMENT SUMMARY  
SECOND QUARTER - FY 20-21**

FUND DEPT/ACTIVITY	Approved Budget	1st Qtr Amendments	2nd Qtr. Amendments	3rd Qtr. Amendments	4th Qtr. Amendments	Tot. All Amendments	Amended Budget
<b>SOLID WASTE FUND REV:</b> #228							
Property Taxes	1,058,600	-	3,000			3,000	1,061,600
Sales of Service	410,800	-	-			-	410,800
Transfer from General Fund	11,633	-	-			-	11,633
Appropriation of Surplus	30,667	-	(2,350)			(2,350)	28,317
<b>TOTAL REVENUE</b>	<b>1,611,400</b>	<b>-</b>	<b>650</b>	<b>-</b>	<b>-</b>	<b>650</b>	<b>1,612,050</b>
<b>SOLID WASTE FUND EXP:</b> #228							
Operating Expenses	1,493,900	-	650			650	1,494,550
Landfill Closure	-	-	-			-	-
Contingency	17,500	-	-			-	17,500
Transfers Out to Other Funds	-	-	-			-	-
<b>TOTAL EXPENDITURES</b>	<b>1,611,400</b>	<b>-</b>	<b>650</b>	<b>-</b>	<b>-</b>	<b>650</b>	<b>1,612,050</b>

FUND DEPT/ACTIVITY	Approved Budget	1st Qtr. Amendments	2nd Qtr. Amendments	3rd Qtr. Amendments	4th Qtr. Amendments	Tot. All Amendments	Amended Budget
<b>DDA OPER FUND REV:</b> #248							
Property Taxes-Non School	1,058,310	-	-			-	1,058,310
Program Fees & Other	91,460	-	-			-	91,460
Appropriation of Surplus	-	-	-			-	-
<b>TOTAL REVENUES</b>	<b>1,149,760</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1,149,760</b>
<b>DDA OPER FUND EXP:</b> #248							
Administration	315,580	-	-			-	315,580
Police Services	33,700	-	-			-	33,700
Parking System	45,120	-	-			-	45,120
Saxton Parking Facility	10,000	-	-			-	10,000
DDA Marketing	88,200	-	-			-	88,200
Streetscape Maintenance	282,930	-	-			-	282,930
Contrib to DDA Debt Funds	226,210	-	-			-	226,210
Contrib to DDA Cap Imp Fund	25,000	-	-			-	25,000
Contingency	123,020	-	-			-	123,020
<b>TOTAL EXPENDITURES</b>	<b>1,149,760</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1,149,760</b>

FUND DEPT/ACTIVITY	Approved Budget	1st Qtr Amendments	2nd Qtr. Amendments	3rd Qtr. Amendments	4th Qtr. Amendments	Tot. All Amendments	Amended Budget
<b>BLDG &amp; ENGINEERING FD REV:</b> #249							
Permit Fees	683,760	-	500			500	684,260
Contrib. & Other	64,000	-	-			-	64,000
Appropriation of Surplus	8,360	-	(460)			(460)	5,900
<b>TOTAL REVENUES</b>	<b>634,100</b>	<b>-</b>	<b>50</b>	<b>-</b>	<b>-</b>	<b>50</b>	<b>634,160</b>
<b>BLDG &amp; ENGINEERING FD EXP:</b> #249							
Engineering/Inspections	629,100	-	50			50	629,160
Capital Outlay	5,000	-	-			-	5,000
Contingency	-	-	-			-	-
<b>TOTAL EXPENDITURES</b>	<b>634,100</b>	<b>-</b>	<b>50</b>	<b>-</b>	<b>-</b>	<b>50</b>	<b>634,160</b>

**BUDGET ADJUSTMENT SUMMARY**  
**SECOND QUARTER - FY 20-21**

FUND DEPT/ACTIVITY	Approved Budget	1st Qtr Amendments	2nd Qtr. Amendments	3rd Qtr. Amendments	4th Qtr. Amendments	Tot. All Amendments	Amended Budget
<b>NBHD SERVICES FUND REV:</b> #252							
Miscellaneous	19,720	-	-			-	19,720
Transfer from General Fund	73,010	-	-			-	73,010
Appropriation of Surplus	-	-	-			-	-
<b>TOTAL REVENUES</b>	<b>92,730</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>92,730</b>
<b>NBHD SERVICES FUND EXP:</b> #252							
Administration	500	-	-			-	500
OVDA Community Center	2,000	-	-			-	2,000
Senior Transportation	86,550	-	-			-	86,550
Contingency	3,680	-	-			-	3,680
<b>TOTAL EXPENDITURES</b>	<b>92,730</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>92,730</b>

FUND DEPT/ACTIVITY	Approved Budget	1st Qtr Amendments	2nd Qtr. Amendments	3rd Qtr. Amendments	4th Qtr. Amendments	Tot. All Amendments	Amended Budget
<b>DDA GAP IMP FUND REV:</b> #405							
Contrib. & Other	25,060	-	-			-	25,060
Appropriation of Surplus	-	119,377	-			119,377	119,377
<b>TOTAL REVENUES</b>	<b>25,060</b>	<b>119,377</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>119,377</b>	<b>144,427</b>
<b>DDA GAP IMP FUND EXP:</b> #405							
Capital Improvements	25,060	119,377	-			119,377	144,427
Contingency	-	-	-			-	-
<b>TOTAL EXPENDITURES</b>	<b>25,060</b>	<b>119,377</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>119,377</b>	<b>144,427</b>

FUND DEPT/ACTIVITY	Approved Budget	1st Qtr Amendments	2nd Qtr. Amendments	3rd Qtr. Amendments	4th Qtr. Amendments	Tot. All Amendments	Amended Budget
<b>WATER/SEWER OPER FUND REV:</b> #592							
Sales & Service Charges	4,397,405	(30,000)	360			(29,650)	4,367,755
Sale of Bonds	-	-	-			-	-
Appropriation of Surplus	-	-	-			-	-
<b>TOTAL REVENUES</b>	<b>4,397,405</b>	<b>(30,000)</b>	<b>360</b>	<b>-</b>	<b>-</b>	<b>(29,650)</b>	<b>4,367,755</b>
<b>WATER/SEWER OPER FUND EXP:</b> #592							
Administration	3,408,460	475	-			475	3,408,925
Trunk & Lateral	215,100	-	450			450	215,550
Mains Maintenance	231,025	-	100			100	232,025
Meter Maintenance	161,025	-	-			-	161,025
Service Maintenance	41,025	-	3,085			3,085	45,510
Hydrant Maintenance	45,925	-	1,575			1,575	47,500
Capital Outlay	-	-	-			-	-
Contingency	302,365	(30,475)	(5,480)			(35,935)	266,420
<b>TOTAL EXPENDITURES</b>	<b>4,397,405</b>	<b>(30,000)</b>	<b>360</b>	<b>-</b>	<b>-</b>	<b>(29,650)</b>	<b>4,367,755</b>

FUND DEPT/ACTIVITY	Approved Budget	1st Qtr Amendments	2nd Qtr. Amendments	3rd Qtr. Amendments	4th Qtr. Amendments	Tot. All Amendments	Amended Budget
<b>EQUIPMENT FUND REV:</b> #881							
Miscellaneous	807,750	-	7,500			7,500	815,250
Appropriation of Surplus	-	-	-			-	-
<b>TOTAL REVENUES</b>	<b>807,750</b>	<b>-</b>	<b>7,500</b>	<b>-</b>	<b>-</b>	<b>7,500</b>	<b>815,250</b>
<b>EQUIPMENT FUND EXP:</b> #881							
Miscellaneous	781,080	-	16,280			16,280	777,320
Contingency	48,890	-	(8,760)			(8,760)	37,930
<b>TOTAL EXPENDITURES</b>	<b>807,760</b>	<b>-</b>	<b>7,600</b>	<b>-</b>	<b>-</b>	<b>7,600</b>	<b>815,260</b>

**8. REPORTS AND CORRESPONDENCE**

a. Liaison Reports

Thomey said he plans to attend a ribbon cutting at Robin's Inn, 932 Penniman, on Friday, February 12 at 4:00 p.m. Krol said the ZBA would be hearing two petitions at their February 4 meeting. Deal said there is a DDA committee working on Ice Fest Lite and that the committee is looking into event ideas for March and April. Wolcott reminded the group that a scavenger hunt will be part of the Ice Fest to encourage visitors to be disbursed throughout the downtown. He said the next DDA meeting was scheduled for February 8.

**9. ADJOURNMENT**

Hearing no further discussion, Wolcott asked for a motion to adjourn at 7:46 p.m. A motion to adjourn was offered by Sebastian and seconded by Krol

There was a roll call vote.

Yes: Deal, Krol, Moroz, O'Donnell, Thomey, Sebastian, Wolcott

MOTION PASSED 7-0

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OLIVER WOLCOTT  
MAYOR

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MAUREEN A. BRODIE, CMC, MIPMC  
CITY CLERK